

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.420/86

Mr.P.C.Joshi,
Vijay Apartment,
Block No.6,
Dadiseth Road,
Malad,
BOMBAY - 400 064.

... Applicant

vs.

1. Commissioner for
Departmental Enquiries,
Govt. of India,
Central Vigilance Commission,
New Delhi - 110 011.
 2. Collector of Central Excise,
Central Excise Building,
Maharshi Karve Road,
Churchgate,
Bombay - 400 020.
 3. Deputy Director,
Union Public Service Commission,
Shah Jehan Road,
New Delhi.
 4. Under Secretary,
Ministry of Finance,
Department of Revenue,
Govt. of India,
New Delhi.
 5. Union of India,
Law Ministry,
New Delhi.
- ... Respondents

Coram: Hon'ble Member(A) P.Srinivasan

Hon'ble Member(J) M.B. Mujumdar

Appearances:

1. Mrs. Bhagwat,
Advocate for the
Applicant.
2. Mr. P.M. Pradhan,
Advocate for the
Respondents.

ORAL JUDGMENT

Date: 14-1-1988

(Per P.Srinivasan, Member(A))

The applicant was working as an
Administrative Officer in the Class II service in

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the Central Excise Department, 'P' Division, Bombay. In this application he challenges order dated 4th August, 1986 signed by the Under Secretary, Ministry of Finance in the name of the President, imposing the penalty of withholding his entire pension on a permanent basis (hereafter referred to as "the impugned order").

2. The applicant who was due to retire from service on 31-1-1980 was suspended from service with effect from 18-1-1980 i.e. about 13 days before the date of his superannuation in view of disciplinary proceedings contemplated against him. Notwithstanding such suspension he was allowed to retire on 31-1-1980 and to draw normal pension subject to a token cut of Rs.1/-. Disciplinary proceedings were actually initiated thereafter by a Memorandum dtd. 22-3-1982 addressed to the applicant by the Under Secretary, Ministry of Finance by order and in the name of the President. Since the proceedings were initiated after the applicant's retirement, the sanction of the President for doing so was duly obtained in accordance with Rule 9(2)(b)(i) of the Pension Rules, 1972. The applicant was charged with having aided and abetted a certain M.M. Tekwani, an Upper Division Clerk working under him for "falsely showing in the office record the purchase of 849 meters

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of cloth for tying records" during the period 25-4-1979 and 31-8-1979 and, as a result, "obtaining a sum of Rs.5,466.55 as the cost of the said cloth". An Inquiry Officer was appointed who submitted his report on 27-10-1984 holding the charges to have been proved. The matter was referred to the Union Public Service Commission(UPSC). In its letter dtd. 15-7-1986 addressed to the Secretary, Ministry of Finance, Govt. of India, UPSC observed that the applicant's total connivance in the matter had been clearly established and his actions amounted to gross lack of integrity and "deliberate frauding in Govt. purchases." The letter concluded that "the Commission, therefore, consider that the charge of aiding and abetting Shri Tekwani in falsely showing in office records, the purchase of cloth for tying records in far excess of the quantity actually purchased and distributing the same to the sections concerned has been proved against Shri Joshi. In the light of their findings as above and taking into account all other aspects relevant to the case, the Commission consider that ends of justice would be met if the entire monthly pension otherwise admissible to Shri Joshi is withheld on a permanent basis. They advise accordingly." Thereupon the impugned order was passed on 4-8-1986, narrating, inter alia, that the President had, after considering the applicant's representation

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in response to a notice dated 21-6-1985 to show cause against the proposed penalty and in consultation with the UPSC, come to the conclusion that ^{of the} charge against the applicant had been proved and that therefore the penalty of withholding of the entire pension otherwise admissible to the applicant was being imposed on him.

3. In the application, the findings of the Inquiry Officer holding the charge levelled against the applicant to have been proved have been challenged on a number of grounds. In addition, the reasonableness of the penalty imposed is also attacked as grossly disproportionate to the charge. However, when the application came up for hearing before us today, ^{M Mys} ~~Ms~~ Bhagwat, learned Counsel for the applicant, very fairly in our opinion, confined her arguments to the reasonableness of the penalty. She did so after consulting the applicant who was also present in person in Court. She submitted that prior to the action with which he was charged and which occurred in April to August, 1979, the applicant had rendered 35 years of faithful service. The charge against him was that he had aided and abetted another in showing fictitious purchase to the tune of Rs.5,466.50, the primary responsibility in this regard being that of Tekwani, the UDC. ^M Whether the applicant had himself benefitted from the transaction - he denies having derived any benefit - was a matter of



pure guess work, though the Inquiry Officer has recorded that there was "every possibility that he might have shared the cost of the less purchased cloth with his UDC, Shri Tekwani". Denying him pension for the rest of his life was a grossly disproportionate penalty for a solitary lapse at the fag end of his service blotting out the ^{Fruits} prints of 35 years of unblemished service. Smt. Bhagwat therefore pleaded that this Tribunal should reduce the quantum of penalty imposed on the applicant.

4. Shri P.M. Pradhan, learned Counsel, for the respondents stoutly resisted the contentions of Mrs. Bhagwat and submitted that the penalty imposed after ^{by} the consultation with the UPSC should not be disturbed by this Tribunal particularly because the charge against the applicant involved moral turpitude.

5. We have given the most anxious thought to the rival contentions. We are conscious that this Tribunal should ordinarily be slow in interfering with the quantum of penalty imposed as a result of disciplinary proceedings, especially where, as in this case, it is based on the views of an independent body like the UPSC. The ruling of the Full Bench of this Tribunal sitting in Bombay in Shankar Damle vs. Collector of Central Excise, TA No. 218 of 1986, is also to this effect. The Full Bench however concluded

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the discussion on the subject with this significant observation: "Whether the quantum of punishment should be interfered with or not will depend upon the facts of each case". In Bhagatram vs. State of Himachal Pradesh, 1983 SCC(L&S)342, their Lordships of the Supreme Court observed, "it is equally true that the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate would be violative of Article 14 of the Constitution".

6. Turning to the facts of the present case what do we find ? The applicant was found guilty of aiding and abetting an UDC working under him to fabricate official records to show fictitious purchase of cloth for tying records. The charge involved moral turpitude on the part of the applicant which deserved deterrent punishment. On the other hand, the punishment imposed denies him pension for the rest of his life and practically wipes out the 35 years of service rendered by him upto the date of occurrence of the transaction with which he was charged. Pension being the main source of income of a retired person, denial of pension can, in a sense, be regarded as deprivation of livelihood somewhat similar to dismissal of a serving Government servant. Did the gravity of the misconduct in this case justify such an extreme punishment? In our view

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it is necessary for this purpose to examine in some detail the charge against the delinquent official and the nature of the evidence that led the Inquiry Officer to hold against him. We should not here be understood to cast any doubt on the finding of the Inquiry Officer, because that is no longer ^M an issue before us, having been given up at the stage of oral arguments. Different shades of punishment may be justified for what broadly constitutes the same offence, depending on the facts of each case and extenuating factors present in one may call for a lower penalty than in another.

7. The fraudulent transaction in which the applicant is accused of **abetment** was one of fictitious purchase of cloth worth Rs.5,466.50. The inquiry report makes it clear that the primary role was that of Tekwani, the UDC who initiated the paper work. The applicant approved Tekwani's proposal. The Inquiry Officer found that the entire purchase worth Rs.5,466.50 could not be said to be fictitious, but something less. He was also of the view that there was "every possibility" of the applicant having shared with Tekwani the amount attributable to fictitious purchase; that amount, though not specified, had to be much less than Rs.5,466.50. What was the evidence on which the Inquiry Officer held that

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the applicant actively connived in the transaction and was not just careless ? There was considerable difference in the quantity of cloth to be purchased, the price to be paid, and the party from whom it was to be purchased between a proposal of Tekwani earlier approved by the applicant's superior and subsequent proposals for actual purchase approved by the applicant. 33 proposals were approved by the applicant in a period of 4 months, each such proposal limited to purchases worth less than Rs.100/-, beyond which the applicant's power of approval did not extend. The bills in respect of the purchases approved by the applicant showed quantities purchased and purchase rate per unit written in a different ink and similar proforma bills leaving the quantity and price per piece blank were found at Tekwani's residence. The party from whom the purchases were said to have been made was not traceable and was probably non-existent at the time. It was not clear whether the practice of obtaining quotations from a number of parties had been followed. There was no proof that the cloth said to have been purchased had been distributed to different user sections or that it was actually required in such large quantity. The Inquiry Officer concluded, "Since Shri Tekwani was only a UDC, all these

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irregularities in the purchase and issue of the cloth must have been committed by him in connivance with and under the directions of the charged officer Shri P.C.Joshi"(emphasis supplied)

8. It will be seen from the narration above that the extent of the fraud itself - whether Rs.5466.50 or less - and the benefit, if any, derived therefrom by the applicant is uncertain and the finding of the applicant's active **Complicity** therein was based on probability (albeit high) while repeated careless behaviour on his part in approving purchases was however, clear. We feel that, in the circumstances, the extreme punishment awarded in this case was indeed disproportionate to the misconduct and that the ends of justice would be met if the penalty is reduced to stoppage of pension for two years from 1-8-1986 and a fine of Rs.5,500/- to be paid by the applicant on or before 31-3-1988.

9. In the light of the above, we issue the following directions:


- (i) The penalty imposed on the applicant is reduced to stoppage of pension for two years from 1-8-1986 and a fine of Rs.5,500/- to be paid by the applicant on or before 31-3-1988

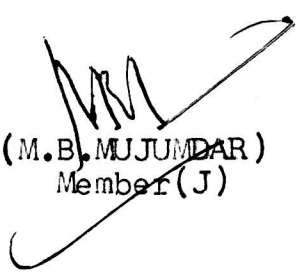
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- (ii) After the expiry of two years from 1-8-1986 the applicant should be paid his normal pension according to the rules.

10. The application is allowed in part and in the circumstances of the case, parties to bear their own costs.


(P. SRINIVASAN)
Member(A)


(M. B. MUJUMDAR)
Member(J)