CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 315/99

the 31st day of MAY 2005

CORAM: **Hon'ble Shri A.K. Agarwal - Vice Chairman**
Hon'ble Shri S.G. Deshmukh - Member (J)

Shri V.B.Hajela,
formerly employed as
Inspectig Officer (Textiles),
Office of the Director of
Inspection, Director General
of Supplies & Disposals,
Mumbai, and residing at
Quarter No.6-D, Willow House,
Eden Woods, Thane 400601. ... Applicant
(By Advocate Shri Ramesh Ramamurthy)

Versus

Union of India through
The Secretary,
Ministry of Commerce,
Department of Supply,
Government of India,
Nirman Bhavan, New Delhi.

Director of Inspection
Director General of Supplies
& Disposals, Government of
India, Aayakar Bhavan Annexe,
New Marine Lines, Mumbai.

Union Public Service
Commission, Dolpur House,
Shajahan Road, New Delhi. ...Respondents
(By Advocate Shri R.R.Shetty)

ORDER

{Per A.K. Agarwal, Vice Chairman}

This OA has been remitted back by the Hon'ble High Court of Judicature at Bombay vide order dated 15.12.2004 for deciding it afresh on its own merits in accordance with law.

2. The Tribunal had earlier dismissed the OA vide its order dated 27.2.2003 on the ground that the challenge to the impugned penalty order dated 1.5.1997 imposing 10% cut in pension was barred by limitation and even other reliefs cannot be looked into as the OA suffers from multiple reliefs. The Hon'ble High Court in its order dated 15.12.2004 has held that the order dated 13.10.1998 directly flows from the disciplinary proceedings commenced with the charge sheet dated 22.7.1997 and the Tribunal was not right in assuming that these were two separate cause of actions. The Tribunal's order dated 27.2.2003 was therefore quashed and set aside and the matter was remitted back for deciding this OA afresh on its own merits in accordance with law.

3. The applicant in this OA has sought the following reliefs -

" That the charge sheet Memorandum dated 27.2.1987 be declared malafide, vindictive and bad in law and be quashed and set aside.

That the order dated 1.5.1997 imposing 10% cut in the pension for a period of 2 years be declared illegal and bad in law and be quashed and set aside.

That the order dated 13.10.1998 be declared illegal, bad in law and be quashed and set aside.

That the period of deemed suspension from 27.5.1988 to 28.2.1991 be treated as period spent on duty for all purposes and the applicant be paid full emoluments for the said period.

That in the light of above reliefs, the pay of the applicant be refixed and be qualifying services be refixed and the qualifying services be recalculated and the paid to the applicant accordingly.

That such order and further order or orders be passed as the nature and circumstances of the case may require.

That the costs of this Petition be provided for."

4. The respondents had initiated disciplinary action against the applicant on the basis of charge memo dated 27.2.1987 and had imposed the penalty of compulsory retirement vide order dated 26.5.1988 and the

applicant was also relieved from service on 27.5.1988. Aggrieved by such penalty order the applicant filed OA 604/88 which was allowed by the Tribunal vide order dated 8.8.1991 on the ground that the Enquiry Officer's report was not given to the applicant before passing the punishment order. Thereafter the President of India vide order dated 19.2.1992 allowed, under Rule 9 (2) (a) of CCS (Pension) Rules 1972, continuation of departmental proceedings from the stage of supplying a copy of the inquiry report to the applicant. This order dated 19.2.1992 also directed that the applicant would be under deemed suspension from 27.5.1988 to 28.2.1991 i.e. till the date of his superannuation. An OA challenging the order treating the period as deemed suspension was allowed by the Tribunal vide order dated 5.8.1992. An appeal was filed by the respondents before the Hon'ble Supreme Court and the same was allowed vide order dated 11.4.1996 setting aside the order of the Tribunal dated 5.8.1992. It was held by the Hon'ble Supreme Court that both the requirements for applicability under sub-rule 4 of Rule 10 of the CCS(CCA) Rules, 1965 were satisfied in the present case and the

Government servant has to be treated as deemed to have been placed under suspension with effect from 27.5.1988, the date of passing of revision order of compulsory retirement.

5. The OA has to be decided afresh on merits in compliance of the order of the High Court dated 15.12.2004. The main reliefs sought are that the penalty of 10% cut in pension for 2 years be quashed and set aside and the period of deemed suspension i.e. from 27.5.1988 to 28.2.1991 be treated as spent on duty. As per the facts of this case the disciplinary proceedings commenced with the charge memo dated 29.7.1987 and culminated in an order of compulsory retirement which was set aside by the Tribunal, on the ground that Enquiry Officer's report was not given to the applicant before the punishment order was passed. Thereafter a copy of the Enquiry Officer's report was given to the applicant vide letter dated 19.2.1997 and he was asked to file a reply within a period of 15 days.

6. The learned counsel for the applicant during the course of arguments mentioned that as per Article of charge the applicant was alleged guilty of accepting sub-standard Tarpaulins in inspection offered by M/s

India Proofing and General Industries showing an undue favour to the firm. However in the statement of imputation of mis-conduct, it has been added that he did not draw 20 samples as required. The learned counsel contended that the statement of imputation is only meant to elucidate the charges and no basic addition, not included in the Article of charge,can be allowed.

7. The learned counsel stated that even para 6.7 of the inquiry report reveals that number of supplementary charges were added by the Enquiry Officer and on the basis of such additions ~~an enquiry~~, the Enquiry Officer held the applicant guilty. The learned counsel for the applicant contended that the enquiry report is perverse and not based on the actual charge levelled against the applicant. The counsel stated that the applicant in his reply to the Enquiry Officer's report has clearly mentioned that there was no rule for taking twenty samples. Further, the Enquiry Officer did not take into consideration the deposition of SW-2 Shri D.K.Nandy who stated that 20 samples are not meant for critical requirement/Test. The learned counsel for the applicant continuing his submissions stated that the penalty

order dated 1.5.1997 indicates that the Disciplinary Authority has not exercised its own mind but has only relied upon the recommendation of UPSC. He submitted that para 8 of order dated 1.5.1997 is a reproduction from the advice of UPSC. However the advice of UPSC was not made available to the applicant before the order of penalty was passed by the Disciplinary Authority.

8. The learned counsel for the applicant contended that when the applicant had retired from service on 28.2.1991 disciplinary action based on an incident of 1984 could not have been initiated against him in the year 1992 under CCS (CCA) Rules. Moreover, vide notice dated 1.5.1997 he has been asked to show cause as to why the period of deemed suspension from 27.5.1988 to 28.2.1991 not be treated as period not spent on duty. He contended that after superannuation no such show cause notice could be issued because after retirement the disciplinary action could be taken only under CCS (Pension), Rules, 1972. The counsel also contended that another employee, guilty of similar misconduct was let off with minor penalty and was also not placed under suspension. In view of this the penalty imposed on the applicant smacks of discrimination.

9. The learned counsel for the respondents stated that the Article of Charge is very clear and statement of imputation has only clarified it. However, the applicant has failed to give proper reply to the same. In the statement of imputation of misconduct the factual details as well as the instructions issued on the subject have been given. He contended that whatever has been explained and illustrated in the statement of imputation flows from the main charge. Further, article of charge as well as the statement of imputation both are to be treated as one part of the charge sheet.

10. The learned counsel stated that the applicant had himself accepted a number of shortfalls in the inspection carried out by him inasmuch he had accepted that ' Bag test' was not carried out by him but he had carried some other test for deciding that the material is water proof. Even other tests namely the proper head test and cone test were carried out in the laboratory and not by him. The counsel for the respondents submitted that as per the ratio laid down by the Apex Court, the Courts / Tribunals are not expected to re-appreciate the evidence in disciplinary matters. In this

case the rules and procedures have been properly followed and there is no violation of the principle of natural justice.

11. The learned counsel for the respondents submitted that the disciplinary action against a delinquent employee, based upon the charge sheet issued before superannuation can be continued even after retirement. He stated that order dated 19.2.1992 of the Ministry of Commerce, Department of Supplies clearly mentioned that it is proposed to continue the proceedings in accordance with the procedure laid down under Rule 14 and 15 of CCS (CCA) Rules 1965. The sanction for the same was accorded by the President under Rule 9(2) (a) of CCS (Pension) Rules 1972. However such proceedings can be continued only after obtaining sanction from the President which has been taken in this case.

12. The learned counsel stated that the objection raised by the applicant about non-submission of the advice of UPSC before passing the penalty order is not sustainable in view of the verdict of the Full Bench in the case of **Chiranji Lal Vs Union of India** decided on 22.4.1999. He also relied upon a verdict of the Apex Court **Sunil Kumar Banerjee Vs.State of West Bengal,** AIR 1980 SC 1170 wherein it was held that

consultation with vigilance does not indicate that the decision of the disciplinary authority got tainted. The learned counsel contended that the advice of UPSC is mandatory and there is nothing wrong if certain portion of that advice, finds place in the penalty order.

13. On the issue of treating the period as deemed suspension the counsel for the respondents stated that the penalty of 10% cut in pension is not a minor penalty because an action for cut in pension under Rule 9(1)of CCS (Pension) Rules can be initiated only when the pensioner is guilty of grave misconduct. Thus the contention of the applicant that only minor penalty had been imposed upon him and, therefore the period of suspension be treated as duty, has no force. As far as the contention of the applicant regarding the penalty imposed on another employee is concerned, he stated that the case of another employee had different facts and circumstances. Further in departmental proceedings, each case has to be decided on its own merit. The penalty order in this case is based upon the Enquiry Officer'sreport as well as the advice of the UPSC and both held that the charge against the applicant is established. In view of this the OA deserves to be dismissed.

14. We have heard both the counsel and have gone through the material placed on record. One objection of the applicant is that after retirement from service w.e.f. 28.2.1991 the disciplinary proceedings based on an incident of 1987 could not have been initiated as per the rules. We however notice that a charge sheet was served on the applicant in the year 1987 itself and also a penalty of compulsory retirement was imposed vide order dated 26.5.1988. Since the order of compulsory retirement was set aside by Tribunal and enquiry was restarted after furnishing a copy of the advice of UPSC the matter got re-opened. The order for the continuation of disciplinary proceedings dated 19.2.1992 has been issued under Rule 9 (2) (a) of the CCS (Pension) Rules which provides as follows -

> The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

15. In the instant case the requirement of approval of President has been met since the order itself states that the sanction has been accorded by thePresident under clause (a) of sub rule (2) of Rule 9 of CCS (Pension), Rules, 1972. Thus we do not find any illegality in the continuation of the departmental proceedings which were initiated against the applicant when he was in service.

15. The applicant has sought relief to the effect that charge sheet dated 27.2.1987 be declared as malafide, vindictive and bad in law. From the facts of the case we notice that the applicant was compulsorily retired as a result of departmental proceedings and reinstated after the order dated 8.8.1991 of the Tribunal. The applicant in reply to the report of the Enquiry Officer had not mentioned any malice in issuing the charge sheet to him. His representation was essentially based on the fact that the Enquiry Officer had given conclusion without any supporting evidence. We, therefore do not see any merit in this contention of the applicant.

16. The learned counsel for the applicant had contended that non-supply of UPSC's advice had caused prejudice to the applicant. On this issue a Full Bench in the case Chiranji Lal (supra) has held that since consultation with the UPSC is a part of the second stage, it is not necessary to give further show cause notice to the charged officer together with the advice received from the UPSC. We, therefore do not find any force in this argument of the applicant.

17. It has been held by the Apex Court in a catena of judgments that in disciplinary matters the Courts are not expected to analyse the evidence. They have essentially to see that proper procedure has been followed and the orders have been passed by a competent authority, it is based on evidence relevant to the facts of the case and irrelevant factors have not influenced the decision. In the instant case we find number of instances pointed out in the report of the Enquiry Officer that the conduct of the applicant was umbecoming of a government servant. Hence this is not a case of no evidence. We are however not expected to go into the quantum of punishment until and unless it is shockingly disproportionate to the proved

misconduct. We are satisfied that there is evidence on record to prove the misconduct of the applicant and he has been awarded the penalty by the competent authority after following the procedure laid down under the rules and the penalty of 10% cut in pension for a period of two years is not shockingly disproportionate.

18. Another relief sought by the applicant is for quashing and setting aside order dated 13.10.1988 treating the period of deemed suspension from 27.5.1988 to 8.2.1991 as not spent on duty. We notice from the facts of the case that on this point the Tribunal had provided relief to the applicant vide its order dated 5.8.1992. However, an appeal was filed in the Supreme Court of India which held that in this case both the conditions required for application of sub rule (4) of Rule 10 are satisfied and, therefore the Tribunal's order was set aside by order dated 11.4.1996 of the Apex Court . We have for the reasons mentioned above held that the order imposing penalty on applicant is sustainable in law. The penalty of cut in pension cannot be construed as a minor penalty since it is imposed only when a pensioner is found guilty of grave misconduct. Under such

circumstances there is no illegality in treating the period 27.5.1988 to 28.2.1991 as period under deemed suspension. Hence this relief claimed by the applicant also deserves to be rejected.

19. In view of our decision on important issues relevant to the case in foregoing paras we are of the considered opinion that this OA has no merit .The OA is accordingly dismissed with no order as to costs.

(S.G.Deshmukh)
Member (J)

(A.K.Agarwal)
Vice Chairman

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