

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.1255/93.

Friday, this the 29th day of October, 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,  
Hon'ble Shri D.S.Baweja, Member (A)

Ramchandra Pandharinath Chindhe,  
Resident at : Malvadi,  
Post Vadgaon Sheri,  
Pune - 411 014.  
(By Advocate Mr.S.P.Kulkarni)

...Applicant.

Vs.

1. Union of India  
Through : Senior Postmaster,  
Pune Head Post Office,  
Pune - 411 001.
2. Senior Superintendent of Post  
Offices Pune City East Divn.,  
Pune - 411 042.
3. The Director of Postal Services,  
Pune Region O/o. P.M.G., Pune,  
Pune Region,  
Pune - 411 001.
4. Post Master General,  
Pune Region,  
Pune - 411 001.  
(By Advocate Mr.S.S.Karkera for  
Mr.P.M.Pradhan).

...Respondents.

: O R D E R (ORAL) :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

In this application, the applicant is challenging the Presidential order of penalty dt. 31.1.1997. The Respondents have filed their reply opposing the application. We have heard Mr.S.P.Kulkarni, the learned counsel for the applicant and Mr.S.S.Karkera for Mr.P.M.Pradhan, the learned counsel for the

...2.

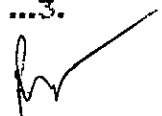


respondents.

2. The applicant was working as a Postal Assistant and came to be charge sheeted for certain irregularities. The applicant was issued with a minor penalty charge sheet dt. 13.1.1989. The applicant retired from service on 31.1.1989 and subsequently, another charge sheet was issued against the applicant on 8.11.1990. The applicant gave a reply denying the allegations. Then, after holding the enquiry the Enquiry Officer found that Charge Nos.1 to 3 were fully proved and Charge No.4 was partly proved. The Senior Post Master who is the Disciplinary Authority dis-agreed with the finding of the Enquiry Officer regarding Charge No.4 and he held that all the charges are proved against the applicant. Since the applicant had retired from service he had no powers to impose any punishment. He, therefore, recommended to the President that Rs.20,160/- may be recovered towards the loss sustained to the Department out of the gratuity amount due to the applicant. When the papers were sent to the President of India, the President consulted the UPSC who advised that in addition to withholding of gratuity amount 1/4th of the pension amount should also be withheld in order to recover the loss of government money. On that basis, the President has passed an order dt. 31.1.1997 which is at page 138 of the paper book. The Presidential Order says that Rs.21,160/- should be recovered out of his gratuity amount and he also imposed a cut in the pension to the extent of 25% on monthly pension for a period of 5 years. Being aggrieved by this order, the applicant has approached this Tribunal.

3. The applicant has taken number of grounds challenging the

...3.



impugned order. He has attacked the impugned order both on merits and also on legal contentions. The respondents have filed reply justifying the action taken against the applicant.

4. At the time of arguments, the learned counsel for the applicant contended that there is violation of principles of natural justice since the action has been taken against the applicant by considering the advise of the UPSC without furnishing a copy of the same to the applicant. His further grievance is that the Disciplinary Authority recommended only deduction of certain amount from the gratuity, but the Presidential Order is otherwise, but the applicant had no notice of the same. He, therefore, contended that the impugned order is liable to be set aside. The learned counsel for the respondents has justified the impugned order.

5. After hearing both the sides, we feel that without going into the merits of the case the OA can be disposed of in view of the subsequent event and on certain legal points which were brought to our notice.

In a minor penalty charge sheet, the question of imposing the minor penalty like censure, withholding of increment etc. does not arise after the official retires from service. Here, admittedly the applicant retired from service on 31.1.1989. Therefore, none of the minor penalties can be levied against the applicant except one of recovery of loss of government money. The learned counsel for the applicant has also invited our attention to the government circulars which clearly provide that minor penalty charge sheet can be continued after the retirement only for the limited purpose of recovering any loss of government money.

...4. 

6. Both the UPSC and the Presidential Order proceeded on the basis of loss of government money and therefore certain order should be passed to recover that amount. From the materials on record, we find that due to the negligence of the applicant the department has suffered a loss of Rs.27,067.50 on investigation it was revealed that due to the negligence on the part of the applicant it facilitated the commission of fraud to the tune of Rs.45,609.65. Now, it is seen that Rs.21,160/- has been withheld from the gratuity amount and for the last three years 25% of the applicant's pension has been deducted. The learned counsel for the respondents on our direction to day placed a chart before us which shows that nearly Rs.24,000/- has been recovered from the applicant's pension till the end of September, 1999. Therefore, the total amount so far recovered is about Rs.45,000 and odd. Therefore, we see that as on to day the loss has been fully recovered from the gratuity and part of pension of the applicant.

7. In view of this subsequent event mentioned above, the question is whether we should go into the merits of the case and then decide the validity or otherwise of the Presidential Order. The learned counsel for the applicant also brought to our notice that the family of the applicant met with a tragedy about two to three months back and five members of his family including wife died in a Cylinder Accident in the house and only the applicant and one son have survived. Even the applicant is not interested in remanding the case to the President for further orders or prosecuting this case any further. Hence, taking all the facts and circumstances of the case into consideration, we feel that since Rs.45,000 and odd has already been recovered from the applicant and hence no further recovery need be done. We hope this

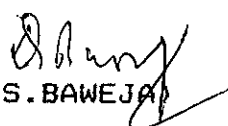
...5.




will meet the interests of justice. We are passing this order in the peculiar facts and circumstances of the case and this should not be taken as a precedent in any other case.

8. We are also conscious of the limits and the powers of the Tribunals and Courts in interfering with the quantum of penalty imposed by Disciplinary Authority. Normal rule is that the discretion exercised by the Disciplinary Authority should not be interfered with unless it shocks the conscience of the Court or Tribunal. But in view of the peculiar facts and circumstances of the case mentioned above and in view of the fact that the loss of the government money has been fully recovered and recent tragedy of 5 deaths in applicant's family, we feel that an equitable order is necessary in the facts and circumstances of the case.

9. In the result, the application is allowed partly by not interfering with the validity or legality of the impugned order dt. 13.1.1989 and for the reasons stated above, we hereby direct the respondents not to make any more recovery from the pension of the applicant from 1.11.1999 and onwards the applicant's pension should be restored in full as on 1.11.1999 and applicant should be paid full pension thereafter. No order as to costs.

  
(D.S. BAWEJA)  
MEMBER (A)

  
(R.G. VAIDYANATHA)  
VICE-CHAIRMAN.

B.