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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD.

O.A. NO. 509/1987 Date of the order: 16 -4-1990.

Between

P. Singa Rao ... Applicant

A N D

1. Union of India, rep. by
Secretary, Min. of Finance
(Deptt. of Revenue), New Delhi.

2. Commissioner of Income-Tax,
Andhra Pradesh-I, Hyderabad-4.

3. Secretary,
Union Public Service Commission,
New Delhi.

... Respondents

Appearance:

For the Applicant : Mr.G.V.R.S.Vara Prasad,Advocate

For the Respondents : Mr.N.Bhaskara Rao, Addl.CGSC

CORAM:

The Hon'ble Mr.D.Surya Rao, Member (Judicial)

and

The Hon'ble Mr.R.Balasubramanaiam, Member (Admn.)

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(JUDGMENT OF THE TRIBUNAL DELIVERED BY THE HON'BLE SRI D.SURYA RAO, MEMBER (JUDICIAL)).

The applicant herein is a former Income-Tax Officer who seeks to question the order F.No.C.14011/26/87-AD.VI(A) dated 15-4-1987 issued by the Under Secretary, Ministry of Finance (Department of Revenue), Government of India, New Delhi, in the name of the President, withholding the entire monthly pension payable to the applicant, permanently. The facts of the case can be briefly summarised as under:

2. The applicant who joined the service as an Upper Division Clerk in the Income-Tax Department, got promotions from time to time and was finally appointed as Income-Tax Officer in 1975. His date of retirement was 31-8-1984. One month prior to his retirement, the 2nd Respondent issued a memo. dated 19-7-84 pointing out certain lapses in the assessments made by the applicant which, according to the 2nd respondent, clearly showed lack of devotion to duty and negligence, and called for the explanation of the applicant. The applicant submitted his explanation on 30-7-1984. Thereafter, i.e. on 29-8-1984, just before the retirement of the applicant, a charge-memo. was issued comprising seven articles of charges. .An enquiry officer (Commissioner of Departmental Enquiries, New Delhi) was appointed on 30-1-1985 as also a Prosecuting Officer on behalf of the Department. Subsequently, by an order dated 21-3-1985 there was a change in the Commissioner of Departmental Enquiries. The applicant alleges that the departmental enquiry was hurried denying all the requests of the applicant for adjournment and that no witnesses were produced or examined before the Enquiry Officer. After the applicant was examined and after receipt of the written briefs of the Presenting Officer and the Applicant, the Enquiry Officer

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submitted her report on 31-5-1985. According to this report, charges 1, 4 and 7 were partly proved, charges 2, 5 and 6 were proved while the charge 3 was not proved. Thereafter, the 2nd Respondent, by memo. dated 17-1-1986 called upon the applicant to explain why the penalty of withholding of the entire pension should not be imposed upon him in view of the charges held to be proved. The applicant alleges that the copy of the report of the Enquiry Officer was not sent alongwith the memo. dated 17-1-1986. The applicant, despite this handicap, submitted his reply on 20-1-1986. Thereafter, the first Respondent while agreeing with the findings of the Enquiry Officer and the report of the U.P.S.C. received in the matter, by the impugned memo. dated 15-4-1987, directed withholding of the entire monthly pension due to the applicant permanently. The applicant states that since the advice of the U.P.S.C. was not received by him, though it was alleged to have been enclosed to the memo. dated 15-4-87, he sought for a copy of the same. Thereafter, he filed the present Application questioning the impugned order dated 15-4-1987.

3. On behalf of the Respondents, a counter has been filed by the 2nd Respondent, denying the various contentions and the claimsof the applicant. It is specifically denied that the copy of the enquiry officer's report was not sent alongwith the memo. of the 2nd respondent dated 17-1-86. The contention of the applicant that the first Respondent did not enclose alongwith his letter dated 15-4-87, the copy of the UPSC advice, is also denied. Other allegations, namely, that the Enquiry Officer's report is contrary to law and weight of evidence, arbitrary and biased, that the charge-sheet was served hurriedly, that the applicant was not given due opportunity, that it was necessary for the

Respondents to examine the witnesses, that there is no proper consultation with the U.P.S.C., are all denied.

4. We have heard the learned counsel for the applicant Sri G.V.R.S. Vara Prasad and Sri N.Bhaskara Rao, Addl.CGSC for the Department. The first contention argued by the learned counsel for the applicant is that Rule 9(2) of the C.C.S. (Pension) Rules, requires that the disciplinary authority must forward his report with findings to the President and that in the instant case, the Commissioner of Income-tax, the 2nd Respondent herein, has not forwarded his findings to the President. The second contention is that the applicant was not given a copy of the Enquiry Officer's report when calling upon him to submit his reply to the findings of the enquiry officer. It was also contended that he was not given a copy of the report of the U.P.S.C. The next contention of the learned counsel for the applicant is that the findings of the enquiry officer, particularly in regard to the charge-7, are perverse and based on presumptions. He finally contended that all charges except the charge-7, are trivial in nature and that if charge No.7 is excluded or held not proved, it cannot be said that the applicant was guilty of grave misconduct.

5. Before dealing with the contentions, it would be necessary to mention the charges held to have been proved, wholly or partly, against the applicant.

Article-I of the charge is to the effect that in 28 assessment cases, during the period 1-6-82 to 5-6-83, the applicant had completed the assessments in undue haste, either on the same day or within a few days of the receipt of the returns. The Enquiry Officer held that out of the 28 cases, in respect of 7 cases the charge was proved. The UPSC concurred with the finding of the Enquiry Officer.

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Article-II of the charge is that the applicant while functioning as ITO Survey Circle at Guntur during the period 1-6-82 to 5-6-83, completed the assessment in 8 cases without proper investigation and scrutiny. This charge was also held proved completely by the Enquiry Officer and accepted by the U.P.S.C.

Article-III of the charge was held not proved.

Article-IV of the charge is that in three cases, the applicant completed the assessments under section 143(3) although they have to be done under Section 143(1). The Enquiry Officer held that in respect of two parties the assessment was correctly done by the applicant under Section 143(3) and in respect of the third party, the applicant himself accepted that the assessment was wrongly done under 143(3) but claimed it as a bonafide mistake. To this extent only the charge was held proved. Another limb of the charge is that in six cases where the total income was below Rs.25,000/- the applicant was alleged to have wrongly completed the assessments under 143(1). The plea of the applicant that he had done so under Instruction No.1499 of CBDT Bulletin dated 22-2-1983, was accepted. Consequently, this limb of the charge was held not proved. The UPSC also accepted this explanation.

Article-V of the charge is that the applicant had acted beyond his official power, by issuing a refund exceeding Rs.one lakh to a firm called M/s Uma Mahesware Construction Company. The applicant pleaded lack of knowledge of the instructions. This plea was not accepted by the Enquiry Officer and the charge was held proved. The Commission held that the plea of ignorance cannot be accepted as an excuse.

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Article-VI of the charge consist of two limbs. The first limb is that in respect of a firm, M/s Uma Maheswara Construction Company, Guntur, the applicant didnot attempt to assess the income at the rate of 12.5% of the receipts which was the established principle but he did so at the rate of 9%. Thus, as against the loss determined at Rs.7,60,220/-, an income of Rs.13,60,400/- should have been determined. It was further stated that the tax deduction at source of Rs.18,699 was wrongly given credit during this year. The second limb of the charge is that the applicant had, in respect of M/s Kanyaka Metal Mart, for the year 1981-82, merely made an addition of Rs.5,000/- towards inadmissibles, and completed its assessment without scrutiny. It was further held that he should not have allowed a shortage of Rs.38,668.30 ps. in a purely trading concern. In respect of both these charges, the reasons for making this hurried assessment to the benefit of the firms is alleged to be personal gain for the applicant. Both the charges were held to be proved by the Enquiry Officer and agreed to by the UPSC.

Article-VII of the charge is that during the course of search operations of two firms viz. M/s Uma Maheswara Construction Company, Guntur and M/s Kanyaka Metal Mart, certain incriminating material against the applicant were found in the books of the said firms. The books of M/s Uma Maheswara Construction Company ~~would show~~ showed payments of Rs.5,000/- on 26-4-82 and Rs.30,000/- on 29-5-82. An entry showing payment of car hiring charges for the applicant was also found in the books.

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In the books of M/s Kanyaka Metal Mart, an entry was found showing payment of Rs.4,000/- on 22-5-1982 as ITO's mamool. The charge against the applicant is that these entries show that he secured pecuniary gain or resorted to illegal gratification in these two cases. The Enquiry Officer held that the two payments of Rs.5,000/- and Rs.30,000/- by M/s Uma Maheswara Construction Company, cannot be related to a payment made to the applicant and hence the charge to this extent is not proved. The ~~disciplinary authority~~ enquiry officer, however, held that since there was an entry of Rs.100/- on 6-5-82 in the books of this company to the effect that rent was paid towards car for Sri P.Singa Rao (the applicant), the charge stands proved. This was accepted by the UPSC. In regard to the entry in the books of M/s Kanyaka Metal Mart, the charge is that Rs.4,000/- was paid on 21-5-1982 as ITO's 'mammool'. The Enquiry Officer held that since the assessment of the firm was done on 16-4-82, no other ITO could have come into the picture and that since the applicant had made a wrong assessment in respect of this firm in regard to Article-VI it must be proved that this part of Article-VII is proved. The UPSC concurred with this assessment of the Enquiry Officer.

6. We will now take up the contentions raised by the learned counsel for the applicant. The first contention viz., that ~~the order under~~ Rule 9(2) of the Pension Rules is not complied with since the Disciplinary Authority Commissioner of Income Tax A.P. did not forward his report with findings to the president is not correct. We have called for and perused the file and find that the Commissioner has along with his letter dated 5-12-1985 submitted

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his findings on the report of the Inquiry Officer in respect of each of the charges. This contention is thus not factually correct. The next contention is that the Enquiry Officer's report was not given to the applicant when he was called upon to show cause why the penalty of withholding the entire pension should not be imposed upon him. This contention is also not correct. The Memo F.No.14011/26/85-Ad.IV A dated 2-1-86 calling upon the applicant to show cause, specifically states that the Inquiry Officer's report is enclosed. The applicant in his reply dated 20-1-86 thereto never denied that the copy was not furnished. On the other hand the fact that he mantions therein ~~to~~ the Inquiry Officer ~~having~~ held Article III as not proved and Articles I, IV and VII as partially proved shows that he had the report with him. In so far as non-supply of the report of the UPSC is concerned the respondents have denied that it was not enclosed to the punishment order. In any evant it was again furnished and the applicant himself has enclosed a copy with his material papers. Hence he cannot-make out a grievance in regard to the UPSC report.

7. We will now take up the contention that no case of gross misconduct has been made out against the applicant which would warrant action under Rule 9 of the C.C.S.(Pension) Rules. From the details pertaining to the charges narrated above, it is clear that charge-VII is the main charge against the applicant wherein it is alleged that he has recieved monetary gain from M/s Uma Maheswara Construction Company, and M/s Kanyaka Metal Mart. These allegations if established, would also mean that the benefits conferred on these companies as mentioned in Articles II, IV, V and VI

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would constitute grave misconduct. Two limbs of Article II are relatable to Article VII viz., that the applicant allowed the claim of M/s Uma Maheswara Construction Company viz., that income be computed at 9½% of the turnover instead of at 12½% and that in the case of M/s Kanyaka Metal Mart the applicant without scrutiny (though purchases of the firm exceeded Rs. One crore and required scrutiny) allowed a shortage of Rs.38, 668-30Ps. Similarly charge No.V is relatable to charge VII in that the applicant ordered refund to M/s Uma Maheswara Construction Co. though he was not authorised to do so. Article VI is also connected with Article VII in that it is alleged that the applicant had hastily completed the assessments of M/s Uma Maheswara Construction Company and M/s Kanyaka Metal Mart for securing pecuniary gain. In regard to charges other than charge VII, the main contention of the applicant's counsel is that these charges at best amount to bonafide mistakes or usual mistakes in the course of duty, that these mistakes were committed not only by the applicant but other I.T.O.s also and that pe se these charges do not constitute conduct unbecoming of a Government Servant. He therefore contends that if charge VII is excluded or held not proved even if the other charges are held proved there is no gross misconduct which would entail action under Rule 9 of the Pension Rules. We would accept this argument since there is no specific finding or conclusion by any of the authorities viz., the Enquiry Officer, the Commissioner of Income Tax, the U.P.S.C. or the president that the charges proved constitute acts of gross negligence or misconduct. However if charges II, V and VI are read with charge VII where in it is alleged that the applicant has recieved illegal gratification or pecuniary advantage from two firms viz.,

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M/s Uma Maheswara Construction Company and Kanyaka Metal Mart, it can reasonably be concluded or held that the benefits given to the two firms as alleged in charges II, V and VI are not bonafide or usual mistakes, but a Quid-pro-quo for the pecuniary advantage recieved by the applicant from them. The pecuniary gain is contained in Article-VII. Under this charge, it is alleged that he recieved from Rs.5000/- on 26-4-82 and Rs.30,000/- on 29-5-82 from M/s Uma Maheswara Construction Company. This portion of the Charge was held by the Enquiry Officer and the UPSC as not proved. In so far as M/s Kanyaka Metal Mart is concerned, there is an entry in the books showing payment of Rs.4,000/- on 22-5-82 as I.T.O.'s mammool which was held by the Enquiry Officer to be a payment to the applicant. Further, an entry in the books of M/s Uma Maheswara Construction Company showing payment of Rs.100/- on 6-5-82 to the applicant for rent paid for a car was also held proved. Thus, the pecuniary gains which are held to be proved against the applicant comprise of car hiring charges of Rs.100/- paid by M/s Uma Maheswara Construction Company and Rs.4,000/- by M/s Kanyaka Metal Mart.

8. The question is whether the findings of the Commissioner of Enqeuiries as accepted by the UPSC and the President that these payments to the applicant are ~~not~~ based upon any legal evidence. The payment of Rs.100/- as car hire charges to the applicant is sought to be proved from the entry S-36 in the book of account of M/s Uma Maheswara Construction Company which is as follows:-

"6-5-1982 Rent paid towards car to Sri P.Singa Rao- Rs.100-00"

Similarly the payment of Rs.4000/- is sought to be proved

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by the entry S-34 dated 22-5-1982 in the Account Books of Kanyaka Metal Mart which is to the following effect:

"I.T.O.'s Mammool Rs.4000-00"

The statements of the Accountants/Payments of M/s Kanyaka Metal Mart and M/s Uma Maheswara Construction Company namely G.V.S.Subba Rao and P.Raja Rao recorded by the Income Tax Authorities were marked as Exhibits S-31 and S-32 respectively. Neither of these two persons were a witness to the payment of the two amounts under S-34 and S-36 to the applicant. In so far as the payment of Rs.4000/- under S-34 is concerned the author of the Account Book stated specifically that he did not know to whom the payment was made (Vide S-31) while Raja Rao was unable to remember the circumstances under which the entry S-36 was made. Subba Rao in his statement to the A.D.I. merely stated that he was making the entries in the Account Books according to the directions of one Adinarayana. All that Sri Raja Rao deposed before the A.D.I. Vide Exhibit S-32 was that the firms auditor M.K. Sherieff used to ask him about money in connection with ~~relating to that~~ and thereupon he was making payments. payment of Income Tax and expenditure. The Auditor M.K.Sherieff whose statement also was ~~rendered~~ recorded as Ex. S-33 by the A.D.I. was only asked to explain the payment of Rs.30,000/- on 29-5-82 and he denied that the amount was paid by him. He was not asked any question in regard to car expenditure incurred under Ex.S-36 for Sri P.Singa Rao the applicant. The applicant was not present when the statments Exhibits.S-31 to 33 were rendered. Neither these witnesses nor any one else like Adinarayana at whose behest the payments under Ex.S-34 were made were examined. None of the statements made by these three witnesses implicate

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the applicant. Hence all that was available before the Enquiry Officer are the two entries Ex.S-34 and Ex.S-36. The former refers to payment of Rs.4,000/- as ITO's mammool and the latter to payment of Rs.100/- as car hire charges for Sri P.Singa Rao, the applicant. Mere entries in the Account Books do not constitute proof of the correctness of the entries or truth of the entries. These have to be duly provedby the persons making payment or the persons at whose behest they had made the payments stating that these payments were made to the applicant or for his benefit. As already stated supra neither of the witnesses who wrote the Account Books assert or state that the payments were made for the benefit of the applicant. Though the Evidence Act is not applicable to departmental enquiries and though the technical rules of evidence do not apply to domestic enquiries, yet it is a basic principle of law that no employee can be held guilty of having received illegal payments or gratification without legal proof. It would be useful in this context to refer to two Supreme Court decisions rendered relating to the proof required. AIR 1972 SC 330 (M/s Bareilly Electricity Supply Co., Vs. The Workmen and others) was a decision wherein an award of an Industrial Tribunal relating to payment of Bonus was questioned before the Supreme Court. The question was whether certain Reserves of a company were used as working capital and whether the management was required to prove byproducing documents that a portion of the reserves were used as working capital. A plea was made by the management that strict p r o o f was not required. R e l i a n c e was placed

~~relying~~ upon the decision of the Supreme Court in AIR 1957 SC 887 (Union of India Vs. Varma) wherein it was held, in reply to a contention that the evidence of witnesses were not recorded in the mode prescribed in the Evidence Act, that "the Act has no application to enquiries conducted by a Tribunal even though they may be judicial in character. The law requires that such Tribunals should observe rules of natural justice in the conduct of the enquiry and if they do so their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that which obtains in a court of law". These observations, in Varma's case, were considered in the Bareilly Electricity Supply case by the Supreme Court and it was held as follows:-

> "But the application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used. When a document is produced in a court or a Tribunal, the question that naturally arises is, is it a genuine document, what are its contents and are the statements contained there true."

The next decision which would be relevant in regard to the question as to what is the legal evidence or proof required before a domestic tribunal in establishing the guilt of an employee is the decision rendered by the Supreme Court in AIR 1969 SC 983 (Central Bank of India Vs. P.C.Jain). That was a case wherein the charge against 'A', an employee of the Central Bank was that a sum of Rs.30,400/-was paid to him by 'B' the cashier of the Bank, that 'A' left the same day

for Muzaffarnagar to retire, certain Bills drawn by 'C', that it was within the knowledge of 'A' that the Bills drawn by 'C' were on bogus firms, that they were retired by the representative of 'C' who accompanied 'A' to Muzaffarnagar and that instead of reporting these serious matters to the Bank, 'A' had denied even having gone to Muzaffarnagar. The facts viz. payment of Rs.30,400/- by the Cashier 'B' to 'A' and about he having gone to Muzaffarnagar were sought to be proved by 'D' an internal auditor who was not a witness to the payment of the Rs.30,400/- by 'B' to 'A' or to the fact about his leaving for Muzaffarnagar. 'D', however, sought to depose to these facts on the basis of a statement made to him by 'B'. The enquiry officer accepted the evidence of 'D'. 'B' whose statement was also recorded in the enquiry and whose evidence formed substantive evidence, denied having made a statement to 'D'. The Enquiry Officer purporting to believe 'D' as against 'B' held the applicant guilty. The Supreme Court in AIR 1969 SC 983 while accepting that it was open to the Domestic Tribunal to accept the evidence of 'D' as against 'B' held that the alleged statements of 'B' to 'D' could not, however, form substantive evidence. While doing so, the Supreme Court referred to the earlier judgments in AIR 1960 SC 1352, AIR 1961 SC 860 and AIR 1963 SC 1723 and held as follows:

> "It is in this connection that importance attaches to the views expressed by this Court in the cases cited above where it was pointed out that a finding of a domestic tribunal may be perverse if it is not supported by any legal evidence. It is true that, in numerous cases, it has been held that domestic tribunals,

like an Enquiry Officer, are not bound by the technical rules about evidence contained in the Indian Evidence Act; but it has nowhere been laid down that even substantive rules which would form part of principles of natural justice, also can be ignored by the domestic tribunals. The principle that a fact sought to be proved must be supported by statements made in the presence of the person against whom the enquiry is held and that statements behind the back of the person charged are not to be treated as substantive evidence, is one of the basic principles which cannot be ignored on the mere ground that domestic tribunals are not bound by the technical rules of procedure contained in the Evidence Act. In fact, learned counsel for the appellant Bank was unable to point out any case at all where it may have been held by this Court or by any other Court that a domestic tribunal will be justified in recording its findings on the basis of hearsay evidence without having any direct or circumstantial evidence in support of these findings."

9. Applying the principles laid down by the Supreme Court in the aforesaid decisions, the question is whether it was open to the Commissioner of Enquiries, the Enquiry Officer, to hold merely on the basis of what is contained in Exhibits S-36 and S-34, that the payment of Rs.100/- as hire charges for a car used by the applicant and the payment of Rs.4,000/- to him is established. As already stated supra, the entries in these accounts do not by themselves establish that the payments have been made to the applicant. When these entries are disputed, the question naturally arises is whether the entries are true. Mere production of the accounts books does not prove the truth of the entries therein. The writers of these entries are not able to say or prove that the payments were made for the benefit of the applicant or to him. The fact of payment must be supported by statements made which implicate the applicant. Unless these

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facts are duly proved by substantive evidence, the applicant cannot be held to be guilty of charge No.7. If this be not the case then all that need be done in any enquiry is to produce a document containing an alleged payment to an employee and thereafter without proof of such payment to him by the person who made the payment ~~and thereafter~~ hold the employee guilty of having received the payment. Clearly, such a procedure, if accepted, would be violative of the principles of natural justice and equity. The Enquiry Officer, in the instant case, held that in view of the proximity of the assessment of M/s Uma Maheswara Construction Company and M/s Kanyaka Metal Mart, it can be held that the applicant had received the money. This at best is only a suspicion but not based upon any proof. It is well established that findings of ~~the~~ guilt cannot be based upon suspicion. We would accordingly hold that Charge No.7 to the extent that the applicant had received illegal gratification or payment from M/s Uma Maheswara Construction Company and M/s Kanyaka Metal Mart is a perverse finding and not based upon any legal evidence.

10. As already indicated earlier, in regard to Articles 1, 2, 4, 5, and 6, the allegations are that the applicant had either hurriedly completed the assessments without proper scrutiny or investigation or he has not followed the rules/instructions. There is no finding specifically that in doing so the applicant had acted malafidely or sought to give benefit to the firms concerned as a consequence of his having

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received ~~the~~ a pecuniary advantage from the firms. It is only in regard to two firms viz. M/s Uma Maheswara Construction Company and M/s Kanyaka Metal Mart that the allegations are made by way of charge No.7. In regard to other firms or individuals there is no suggestion whatsoever that the intention of the applicant was to benefit them. Even in regard to M/s Uma Maheswara Construction Company and M/s Kanyaka Metal Mart, since ~~the charge~~ Article 7 A cannot be held to be proved for the reasons given by us in para 9 supra, it follows that the benefit given to these two firms is also not motivated or as a 'quid pro quo' for any pecuniary benefit or gain received. In the absence of any material to show that the applicant had acted with a corrupt motive, it cannot be held perse that any of the charges 1 to 6 constitute grave misconduct or negligence. It is not every misconduct or negligence for which pension, as a whole or in part, can be withheld under Rule 9 of the C.C.S.(Pension) Rules, 1972. As already stated earlier, neither the disciplinary authority nor the U.P.S.C., nor the Government nor the President has examined and determined that the various acts of misconduct constituted by the subject matter of charges 1 to 6 to the extent proved, A amount to grave misconduct or negligence. Rule 9 of the Pension Rules requires that when exercising power there under the Government must apply its mind to the nature of negligence and hold A that misconduct or negligence was a grave one. The authority for this ~~purpose is~~ proposition of law B is contained in a decision of the Central Administrative Tribunal, New Delhi in ATR 1987(1) CAT 307 (K.M.Sharma Vs.

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Vs. Union of India) wherein the scope and ambit of Rule 9(1) of the Pension Rules was considered. It was held therein as follows:

> "This rule empowers Government to withhold, withdraw or reduce pension if it finds that the misconduct committed was a grave misconduct or negligence while the pensioner was in service. The power to withhold or withdraw or reduce pension can beexercised only in cases of grave misconduct or negligence of duty and not in all cases of misconduct. The power to withbold or withdraw or reduce pension, which undoubtedly results in serious consequences to a pensioner, can be exercised only in the circumstances enumerated in Rule 9(1) of the Pension Rules and not in all cases. The exercise of power by Government is conditioned by its finding that the misconduct or negligence was a grave one and not otherwise. The order itself must disclose that Government had applied its mind to the nature of misconduct and that misconduct or negligence in duty was a grave one. A fortiori Government must also so record that in its order itself. From this it follows that the order made by Government does not conform with the requirements of Rule 9 of the Pension Rules and is manifestly illegal."

No doubt, the Charge No.7 has been held to be proved, It is only if Charge that It can be reasonably inferred that the benefit conferred upon M/s Uma Maheswara Construction Company and M/s Kanyaka Metal Mart, by the applicant, was the result of corrupt motive and consequently the benefits conferred would amount to gross misconduct. Since we have held that this charge cannot be legally sustained it follows that even in regard to these two firms, the illegalities committed, per se, do not amount to gross misconduct.

11. For the reasons given by us supra, the applicant is entitled to succeed. The Application is allowed and the impugned order dated 15-4-1987 made in File No.C.14011/26/87-AD.VI(A) passed by the first Respondent, permanently withholding the entire monthly pension

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payable to the applicant, is quashed and the Respondents are directed to make payment of the pension, gratuity and other terminal benefits which have been withheld, with interest at 12 per cent per annum, from the date they are due till the date of payment. The Respondents are directed to comply with these directions within four months from the date of this order. The parties are directed to bear their own costs.

(D.Surya Rao)
Member(J)

(R.Balasubramaniam)
Member(A)

Dated: 16 th day of April 1990.

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DEPUTY REGISTRAR(A)

TO:

1. The Secretary,(Union of India) Ministry of Finance, Department of Revenue, New Delhi.
2. The Commissioner of Income Tax, Andhra Pradesh-1, Hyderabad-4.
3. The Secretary, Union Public Service Commission, New Delhi.
4. One copy to Mr.G.V.R.S.Vara Prasad, Advocate, 69/3RT, Vijaynagar colony, Hyderabad.
5. One copy to Mr.N.Bhaskara Rao,Addl.CGSC,CAT,Hyderabad.
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