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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No.980/89

Date: 23.10.92

BETWEEN :

N.Kesavan

.. Applicant.

A N D

1. Union of India, rep.
by the Secretary,
Ministry of Communications,
New Delhi.

2. Director General Dept. of
posts, Dak Bhavan,
Sansad Marg, New Delhi.

.. Respondents.

Counsel for the Applicant

.. Mr.T.Jayant

Counsel for the Respondents

.. Mr.N.V.Ramana

CORAM:

HON'BLE SHRI A.B.GORTHI, MEMBER (ADMN.)

HON'BLE SHRI T.CHANDRASEKHARA REDDY, MEMBER (JUDL.)

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Judgement of the Division Bench delivered by
Hon'ble Shri A.B.Gorthi, Member(Admn.).

The applicant joined service in 1951 as a Postal Clerk and after having rendered about 30 years of service was promoted in 1981 as R.M.S. Superintendent, which is a Class-II post. He retired from the service on 31.5.1986. A few days before his retirement on 22.5.1986 he was served with a charge sheet which is at Annexure A-4 to the application. After an enquiry and in consultation with the U.P.S.C., by an order in the name of the President, the applicant was found guilty of the charges and his monthly pension was reduced by 10% for a period of 5 years. Aggrieved by this impugned order dated 27.12.1988 the applicant filed this application praying that the impugned order be quashed.

2. We have heard learned counsel for both the parties.

Learned counsel for the applicant assailed the validity of the impugned order essentially on the ground that the applicant cannot be said to be guilty of any "grave misconduct" or negligence as would justify the imposition of reduction of his pension.

The charges against the applicant pertain to the period of 1983 when just prior to the end of the financial year, he had released certain payments to a furniture contractor without actually receiving the furniture items. The furniture when received later was found to be substandard and accordingly the allegation was that the applicant failed to ensure the proper quality and specification of the articles of furniture supplied to the department. The applicant took part in the enquiry which

2 ~~concluded~~ conducted with the enquiry officer finding the applicant guilty of the charges. The case was referred to the U.P.S.C. which observed that the applicant ~~referred~~ ^{resorted} to the practice of incurring heavy expenditure by making purchases on behalf of the Govt. when

the financial year was coming to a close, to avoid lapse of funds. The Commission further observed, while agreeing with the enquiry report, that the applicant failed to maintain financial propriety by his failure to have the quality and specifications of the items of furniture properly checked before acceptance. Thus there was agreement with the enquiry officer's finding that the applicant exhibited lack of devotion to duty and acted in a manner un-becoming of a Govt. servant. Keeping in view the gravity of the charges proved against the applicant, the competent authority passed the order directing reduction of the applicant's pension by 10% for a period of 5 years.

3. Learned counsel for the applicant vehemently contended that as there was no evidence of the applicant having misappropriated any funds, he could not be said to be guilty of any misconduct. Admittedly all the items of furniture for which payments were made were in fact received by the department, though after the lapse of the financial year. The contention raised on behalf of the applicant is that the applicant acted with no other intention than to avoid lapse of Govt. funds. In support of his contention learned counsel for the applicant drew our attention to the Judgements of the Tribunal in the case of K.M.Sarma Vs. Union of India A.T.R. 1987(1) CAT 307 and RL.Khandelval Vs. Union of India A.T.R. 1989(1) CAT 402. In case of K.M.Sarma it was stated in the impugned order "that the charge proved is in the nature of technical irregularity." The Tribunal therefore observed that in the said order the Govt. had not found that the misconduct, ~~if~~ if any, committed by the applicant amounted to grave misconduct or grave negligence. The facts in Sarma's case are therefore distinguishable. In the case of the applicant, there was a clear finding at every stage that the applicant failed to maintain absolute integrity and exhibited lack of devotion to duty. Even in the impugned order passed in the name of the President, it was recorded that the

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applicant failed to keep in mind the basic principles of financial propriety. A public servant is expected to exercise utmost caution in respect of expenditure of public money as a person of ordinary prudence would exercise in respect of his own money. It was categorically recorded that the applicant exhibited lack of devotion to duty and acted in a manner un-becoming of a Govt. servant. It cannot therefore be said that in the instant case the applicant was not found guilty of either grave misconduct or grave negligence.

4. In the case of Khandelval (supra) the petitioner therein was a Senior authorised Representative of the Incomtax Appellate Tribunal and the allegation against him was that he did not complete the assessment in respect of one Mrs. Syamala Devi by 31.3.1979, with the result that the assessment became barred by limitation. In that context it was observed by the Allahabad Bench of this Tribunal that "unless there is a clear allegation or the charge of corruption or any involvement or inaction resulting in any personal gain or otherwise, the same action or inaction while discharging the statutory powers and exercise of jurisdiction in the matter of a quasi-judicial nature by the officers cannot be the subject matter of the disciplinary jurisdiction". Without entering into an examination of the merits of the judgement, ~~in the said case~~, it can be discerned that the said case will be of no assistance to the applicant in the instant case. The charge against the applicant is for violating financial propriety in making payments in advance without receiving the articles. There was no question of the applicant acting in a quasi judicial capacity in the matter of purchase of articles of furniture.

5. Apart from the admitted facts that the applicant made payments to the contractor prior to receiving the goods, there was also the charge against the applicant that he failed to

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Copy to:-

1. Secretary, Ministry of Communications, Union of India, New Delhi.
2. Director General Department of Posts, Dak Bhavan, Sansad Marg, New Delhi.
3. One copy to Sri. T.Jayant, advocate, CAT, Hyd.
4. One copy to Sri. N.V.Ramana, Addl. CGSC, CAT, Hyd.
5. One spare copy.

Rsm/-

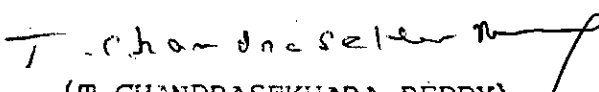
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ensure that the goods supplied were of a proper quality. The entire episode would disclose an undue haste on the part of the applicant in making payments to the contractor without ensuring either that the goods were supplied in time or that they were of proper specification and quality. Under those circumstances the conduct of the applicant can rightly be described as grave-misconduct in the handling of Govt. funds.

6. Learned counsel for the applicant argued that the contractor was not examined as a Defence witness. We do not find that the lapse in this regard, if any, would affect the merits of the case. It cannot be said that there was no evidence in the enquiry proceedings to substantiate the findings on the various articles of charge. Learned counsel for the applicant questioned the validity of the charge sheet on the ground that it was issued after 3 years of the incident. The delay of 3 years in this particular case cannot be said to be of such a long duration as would have prejudiced the applicant in his defence. The plea in this regard cannot therefore be accepted.

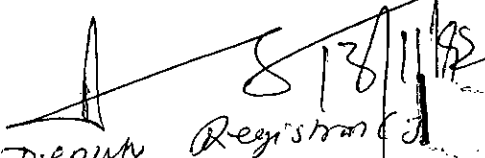
7. Having heard the learned counsel for the applicant at length and perused the material on record, we do not find any justifiable ground on which we could interfere with the impugned order. The application is therefore dismissed with no order as to costs.


(A.B. GORTHI)
Member (Admn.)


(T. CHANDRASEKHARA REDDY)
Member (Judl.)

Dated: 23 October, 1992

sd


Deputy Registrar

contd. ... 6/-

2 / O.A. 985/89

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD

THE HON'BLE MR A.B. GOSWAMI

AND

THE HON'BLE MR. R. BALASUBRAMANIAN : M(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY :
M(JUDL)

AND

THE HON'BLE MR. C. J. ROY : MEMBER(JUDL)

Dated: 23/10/ -1992

ORDER/JUDGMENT:

R.A./C.A./M.A.No

in

O.A.No. 985/89

T.A.No.

(wp.No)

Admitted and interim directions
issued.

Allowed

Disposed of with directions

~~Dismissed~~

Dismissed as withdrawn

Dismissed for default

M.A.Ordered/Rejected

~~No orders as to costs~~

pvm

