

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

(9)

O.A. No. 466/1993 199
T.A. No.

DATE OF DECISION 18/12/97

R.P.Saxena

Petitioner

Mr. Shiv Kumar

Advocate for the Petitioner (s)

Versus

Union of India and Ors.

Respondent

Mr. U.D.Sharma

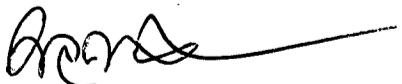
Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. O.P.Sharma, Administrative Member

The Hon'ble Mr. Ratan Prakash, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✕
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✕


(Ratan Prakash)
Judicial Member


(O.P. Sharma)
Administrative Member

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

OA No.466/1993

Date of order 15-2-1997

R.P.Saxena, last employed on the post of Postal Assistant, Bharatpur City Head Office, Bharatpur.

..Applicant

Versus

1. Union of India through the Secretary, Ministry of Communications, Department of Post, Dak Bhavan, New Delhi.
2. The Director (Postal Services), Jaipur Region, Jaipur.
3. The Sr. Superintendent (PMS), Jaipur Division, Jaipur.

.. Respondents

Mr. Shiv Kumar, counsel for the applicant

Mr. U.D.Sharma, counsel for the respondents.

CORAM:

Hon'ble Mr. O.P.Sharma, Administrative Member

Hon'ble Mr. Ratan Prakash, Judicial Member

O R D E R

Per Hon'ble Mr. O.P.Sharma, Administrative Member

In this application under Section 19 of the Administrative Tribunals Act, 1985, Shri R.P.Saxena has prayed that the order dated 23/24.6.1993 (Ann.A1) passed by respondent No.2, the Director (Postal Services), Jaipur Region, Jaipur, enhancing the penalty of compulsory retirement already imposed on the applicant to that of removal from service may be declared illegal and be quashed, with all consequential benefits.

2. The facts of the case, as stated by the applicant, are that he was initially appointed on the post of Postal Assistant at Udaipur on 4.5.1956 and he continued to hold the said post till penalty of compulsory retirement was imposed on him w.e.f. 17.3.1992. The applicant was convicted under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 and Sections 120-B and 477A of

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the IPC by the Special Judge, CBI Cases, Jaipur. The applicant filed an appeal against his conviction before the Rajasthan High Court which suspended the sentence imposed on him as a consequence of his conviction by the Special Judge, CBI Cases, Jaipur. Subsequent to the applicant's conviction as aforesaid, the Assistant Post Master General (Staff), office of the Chief Post Master General, Rajasthan Circle, Jaipur issued a show-cause notice to the applicant vide Ann.A2 dated 18.9.1990, why penalty of dismissal from service should not be imposed on him. The applicant's OA, No. 587/90, seeking quashing of show-cause issued to him vide Ann.A2 was dismissed by the Tribunal. The applicant submitted a representation dated 11.01.1992 against the aforesaid proposal. Thereafter, the Superintendent (RMS), GP Division, Jaipur imposed on the applicant the penalty of compulsory retirement under Rule 19(i) of the CCS(CCA) Rules vide order dated 17th March, 92 (Ann.A4). The applicant did not file any appeal against the order of penalty of compulsory retirement imposed on him. Subsequently respondent No.2, the Director (Postal Services), Jaipur Region, Jaipur passed an order stating that he proposed to revise the penalty already imposed on the applicant under Rule 29(1) of the CCS(CCA) Rules and a copy of this communication dated 14.8.1992 (Ann.A5) was sent to the applicant also. He was, thereafter, served with a show-cause notice dated 17th September, 1992 (Ann.A6) giving the applicant an opportunity to make a representation against the proposed enhancement of the penalty already imposed on him to that of removal from service. Thereafter, vide order dated 03/04.6.1993 (Ann.A1) the Director (Postal Services), Jaipur Region, Jaipur enhanced the penalty of compulsory retirement already imposed on the applicant to that of removal from service.

3. The applicant's grounds for assailing the enhancement of penalty are that while enhancing the penalty, the earlier penalty of compulsory retirement imposed on the applicant had not been set-aside and while under Rule 29(1)(v) of the CCS(CCA) Rules the appellate authority exercising the power of revision is required to pass the

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final order of revision within a period of six months from the date of the original penalty order, in this case even the show-cause notice was issued after expiry of the aforesaid period of six months and the final order was passed after the expiry of about one year and a few months. Further while the original penalty of compulsory retirement was imposed on the ground of conduct which led to his conviction, the enhancement of the penalty has been done on the ground that the applicant lacks integrity and devotion to duty. There was no such charge against the applicant. The amount of loss etc. caused to the Government/the amount of alleged misappropriation by him was only Rs. 612 and, therefore, the penalty of removal from service imposed on the applicant is disproportionate to the misconduct alleged against him. The order passed by the revising authority has led to stoppage of the pension of the applicant, which was earlier being paid to him on account of the fact that the penalty of compulsory retirement had been imposed on him. Any order of forfeiture of pension can be passed only by the President of India under Rule 9 of the CCS(CCA) Rules. Therefore, for all the above reasons, the applicant has prayed that the order passed at Ann. Al enhancing the penalty of compulsory retirement to that of removal from service should be quashed.

4. The respondents in their reply have taken a preliminary objection to the effect that the applicant is entitled to prefer an appeal against the order by which the penalty has been enhanced to that of removal from service. Since no such appeal has been preferred and thus the alternative remedy available to the applicant has not been exhausted, the application is not maintainable.

5. Further according to them, the applicant had been convicted in two criminal cases by the the Special Judge, CBI Cases, Jaipur vide orders dated 21.12.1989 and 31.3.1990 under various sections of the Prevention of Corruption Act and the IPC, referred to by the applicant. He was sentenced to six months simple imprisonment with fine of Rs. 100 each in both the cases. According to the respondents, their information is that the appeal preferred by the applicant before the High Court

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against his conviction and sentence has been dismissed. The appellate authority while acting as revising authority had considered the facts of the case and the conduct of the applicant, as emerging from his conviction by the court of law and had, thereafter, come to the conclusion that penalty of compulsory retirement imposed on the applicant was inadequate and, therefore, it deserves to be enhanced. The applicant's representation against the proposal of enhancing the penalty received on 12.10.1992 was duly considered by the appellate authority before passing the order enhancing the penalty. The enhancement of the penalty of compulsory retirement to that of removal from service has the effect of setting-aside the earlier order of penalty of compulsory retirement. The time limit of six months prescribed under Rule 29(i) of the ODS(OCA) Rules for revising the order of the disciplinary authority is only for the purpose of calling for the records of enquiry and for initiation of the process of revision and it does not contemplate that the final order should be passed within six months from the date of the order which is proposed to be revised. The records were called for by the revising authority vide memo dated 14.8.1992 (Ann.A5) i.e. within the period of six months from 17.3.1992, the date on which the order imposing penalty of compulsory retirement had been passed. The question before the revising authority was of enhancement of the penalty already imposed and his findings that the applicant lacks integrity and devotion to duty flowed from the applicant's conviction in the criminal cases. The thrust was on the misconduct and the gravity of the charges established against the applicant and, therefore, the penalty of removal from service imposed is proportionate to the misconduct, because the amount involved has no relevance to the gravity of the misconduct. The applicant was not getting any pension on superannuation from service but he had been given pension on account of the penalty of compulsory retirement imposed on him. Therefore, if the penalty of removal from service is subsequently imposed on him, he is divested of his right to receive pension and Presidential sanction for the purpose is not required.

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6. During the arguments the learned counsel for the applicant stated that contrary to the instructions of the Government no opportunity of personal hearing was given to the applicant inspite of the fact that he ^{had} ~~had~~ asked for such an opportunity in his representation against the proposal to enhance the penalty imposed on him. Therefore, on this ground itself the order of enhancement of penalty was vitiated. He added that once a person has been retired, may be as a measure of penalty, penalty of removal from service could not be imposed on him. He further stated that all the points raised by him in his representation against the proposal to enhance the penalty had not been dealt with by the authority which passed the order enhancing the penalty. He then relied upon the Tribunal's order in Mahesh Kumar Singh Vs. Union of India and Ors, 1995(1) SLJ (CAT) 62, wherein the Patna Bench of the Tribunal had held that there had been violation of principles of natural justice when personal hearing was not given to an employee by the appellate authority in connection with the appeal against penalty of removal from service imposed on him. Following the ratio of this judgment, the penalty of removal from service imposed on the applicant deserves to be set-aside. The learned counsel for the respondents during his oral arguments defended the action of the respondents stating that all these were within four corners of the rules and the law.

7. We have heard the learned counsel for the parties and have perused the material on record as also the judgment of the Tribunal cited before us.

8. As to the preliminary objection raised by the respondents regarding maintainability of the OA on the ground that no appeal has been preferred against the order of removal from service, the learned counsel for the applicant stated that since the application has already been admitted, this question can no longer be raised. We are of the view that a legal issue can be raised at any stage and the question whether appeal should have been filed against the order of removal from service is indeed a legal issue. However, the OA was filed in August,

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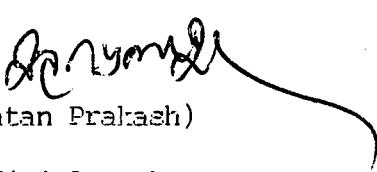
1993 and it was also admitted in the same month. In the interest of justice, therefore, we hold that this application should be dealt with on merits rather than dismissed on the preliminary ground raised by the respondents.

9. The applicant was convicted in two separate cases under various sections of the Prevention of Corruption Act and the IPC referred to by the applicant himself. The amount of loss caused to the Government or the amount misappropriated by the applicant as revealed by the orders of conviction of the applicant may be comparatively small but it is the nature and the gravity both of the conduct leading to the applicant's conviction which forms the basis of imposition of penalty on him under Rules 19(i) of the OCS(CCA) Rules. It is significant to note that the applicant did not choose to challenge the penalty of compulsory retirement imposed on him on account of grounds which led to his conviction, by filing an appeal before the appellate authority. Thus implicitly the applicant accepted the penalty of compulsory retirement imposed on him. All that now has happened is that the appellate authority, to whom actually no appeal was preferred, while acting as a revising authority, enhanced the penalty imposed on the applicant to that of removal from service after following the prescribed procedure. The learned counsel for the applicant stated during the arguments that he did not wish to press the ground that enhancement of penalty by way of revision should have been effected within six months from the date of the original order imposing penalty of compulsory retirement. On the ground of alleged failure of the revising authority to grant personal hearing to the applicant, it may be stated that the representation made by the applicant dated 9.10.1992 which was received by the respondents on 10.10.1992 has not been placed on record by the applicant himself. We, therefore, do not know what were the submissions made by him in the said representation and in particular, we do not know whether the applicant had asked for any personal hearing. Therefore, it cannot be said that there was any violation of principles of natural justice in not granting a personal

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hearing to the applicant as held by the Tribunal in Maheesh Kumar Singh's case. In any case, the order passed by the Director (Postal Services), Jaipur Region, Jaipur, respondent No.2 is a detailed order, wherein, apparently, all the points raised by the applicant in his representation have been considered. The conclusion that the applicant lacks integrity and devotion to duty directly flows from the conduct which led to his conviction and, therefore, it is not that the penalty has been enhanced on grounds different from those on which the penalty of compulsory retirement was imposed on the applicant. This case involves enhancement of the penalty imposed and is not a case of withholding or withdrawing of pension under Rule 9 of the CCS(Pension) Rules under which pension payable to a government servant who has retired on superannuation etc. can be withdrawn or withheld. Therefore, the sanction of the President is not required under Rule 9 of the CCS (Pension) Rules for enhancing the penalty of compulsory retirement to that of removal from service, even though such enhancement may entail denial of the pension being paid to the applicant on account of the earlier imposition of penalty of compulsory retirement. We have also carefully considered all the other averments, arguments and grounds of the applicant but we find no merit therein.

10. The OA is dismissed. No order as to costs.


(Ratan Prakash)

Judicial Member


(O.P. Sharma)

Administrative Member