

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, JAIPUR

DATE OF ORDER : 15.7.2004

Original Application No. 76/2003

Kalyan Singh son of Late Shri Bhadai Ram age 60 years resident of A-12, Vivekanand Colony, Naya Khera, Amba Bari, Jaipur.

....Applicant

° VERSUS

1. Union of India through Secretary communication to the Government of India, Department of Telecom, Sanchar Bhawan, New Delhi.
2. Central Vigilance Commission, Block-1A, INA, Central Pool Complex, New Delhi through Chairman.
3. Principal G.M., Jaipur Telecom District (Bharat Sanchar Nigam Ltd.), Jaipur.
4. The Chief General Manager, BSNL, Rajasthan Telecom Circle, Jaipur.
5. Union Public Service Commission, Dholpur House, New Delhi through Chairman.

....Respondents

Mr. A.C. Upadhyaya, Counsel for the applicant.

Mr. Tej Prakash, Counsel for the respondents.

CORAM

Hon'ble Mr. S.K. Agrawal, Member (Administrative)

Hon'ble Mr. J.K. Kaushik, Member (Judicial)

ORDER

PER HON'BLE MR. S.K. AGRAWAL

This Original Application has been filed by the applicant with a prayer to direct the respondents to promote the applicant to Sr. Administrative Grade from December, 2001 i.e. from the date of giving promotion to juniors and to fixup the pay and make payment of arrears including arrears of retiral benefits. The further prayer of the applicant is that the charge sheet, inquiry report and the punishment order dated 27.11.2002 by which 50% pension has been reduced be set aside and final 100% pension with all other retirement benefits may be ordered to be given to the applicant.

2. The brief facts of the case are that the applicant retired on superannuation on 28.2.2002 rrom the post of Dy. General Manager in the Sr. scale of JAG DOT staff and was working on deputation with BSNL as Dy. General Manager at Jaipur. While the applicant was working as such, a charge sheet dated 6.3.2000 was issued to the applicant and an inquiry was also conducted and final inquiry report dated 29.6.2001 was submitted by the Inquiry Officer. It was served upon the applicant with a forwarding letter dated 3.1.2002. The article of charge against the applicant was that while ~~he~~ functioning as Telecom District

Manager during the period from 1996 to 1998, he misused his official position and awarded contract, about Rs.4/- lacs for the work of erection/dismantling of lines and wires in the area to his daughter, Ms. Mamta Singh Suman, in violation of the prescribed procedures/instructions and further, he unauthorisedly waived the conditions of previous experience of the contractors, as per the terms & conditions as stipulated in the Notice inviting Tenders by misusing his official position, while awarding the contract. The respondents authority had, therefore, held that the applicant by his above act had committed grave misconduct, failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Govt. servant, thereby contravening the CCS(Conduct) Rules, 1964 in addition to P&T Manual VolumeII.

3. The case of the applicant here is that during the pendency of the departmental proceedings, ad hoc promotion to the post of Sr. Administrative Grade were given even to the junior persons to the applicants and applicant's name was not considered for ad hoc promotion while the applicant's seniority number was 1717 and the junior persons seniority number upto 1719 were promoted and as such the applicant was entitled to the promotion in December, 2001 when the junior persons were promoted to Sr. Administrative Grade. That in pursuance of DOT, New Delhi order dated 21.2.2002 and 27.2.2002, the applicant was retired from services on attaining the age of superannuation on 28.2.2002 and provisional pension was allowed to the applicant. The respondents authority after considering the representation given by the applicant passed the punishment order (Annexure A/3) by which 50% of the monthly pension has been withheld on permanent basis.

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The applicant further mentions in the OA that no full proof case of misconduct was establishment on the part of the applicant and the Inquiry Officer in his report has clearly mentioned that violation of Rule 426 and 443 was found to be correct inasmuch as final report given by the Inquiry Officer was partly proved is out of record and arbitrary. The applicant has, therefore, urged that the disciplinary action taken by the respondents was without any basis.

4, The applicant has earlier filed OA No. 453/2002 before this Tribunal at Jaipur for not deciding the matter even after submitting the Inquiry Report dated 29.6.2001 but in the meanwhile the punishment order was passed and thus the earlier OA was withdrawn by the applicant on 15.12.2002 with liberty to file a fresh OA against the penalty of withholding of 50% pension on permanent basis. The applicant has further stated in the OA that as per provisions made in CCS (C&A) Rules and CCS Pension rules, the pensionary benefits are not be withheld even where minor penalty becomes justified to be imposed. It is, therefore, against the principles of natural justice to withhold the pensionary benefits when in the inquiry report no charges beyond doubt stands proved and also there was no allegation of any loss caused to the Government by the action of the applicant. The applicant has, therefore, urged that since he has not committed any grave misconduct and the charges were also not totally proved as per the Inquiry report and no specific finding given in the punishment order that he was guilty of grave misconduct or negligence as required under Rule R-9(1), the applicant cannot be punished.

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5. The respondents in their counter reply have submitted that the finding of the Inquiry Officer on that part of the charge which has been held ~~has~~ proved is clearly stated on page 22 of the Inquiry report. The respondents have further stated that the applicant was not promoted to Junior Administrative Grade on regular basis as on the date of his retirement and as such he was not entitled for promotion to Sr. Administrative Grade. The applicant was further considered for regular promotion to Jr. Administrative Grade against the vacancies for the years 1994-95, 1995-96, 1996-97 and 1997-98 but since a disciplinary case was pending against him, the recommendations were kept in sealed cover. Further the disciplinary proceedings initiated against the applicant while he was in service has ended with imposition of penalty of withholding of 50% pension on permanent basis, therefore, the recommendation of the DPC for the regular promotion to Jr. Administrative Grade will not be opened as per GOI letter dated 14.9.1992. Since the applicant retired without being promoted to Jr. Administrative Grade on regular basis, he has no claim for promotion to Sr. Administrative grade. The respondents have further stated that on receipt of the inquiry report, the ~~GBT~~ <sup>Govt</sup> was consulted. The copy of the Inquiry Report was forwarded to the applicant to make his representation, if so desired. The representation ~~was~~ submitted by the applicant was duly considered by the President of India in consultation with the UPSC. Thereafter the fully speaking order was passed ~~at~~ by the President imposing penalty. The respondents have further stated that since disciplinary case was pending against the applicant as on the date of retirement, the applicant was entitled only for provisional pension as per Rule 69(i)(a) of CCS Pension Rules and Rule 69(i)(c) also

requires that no gratuity shall be payable to the Government Servant until the conclusion of the Departmental proceedings and issue of final orders. The respondents have vehemently denied in their reply that financial loss sustained to the Govt. is a pre- condition for imposition of penalty of withholding/withdrawing of the pension under Rule 9 of the CCS(Pension) Rules,1972. Further in the present case, the President found the applicant guilty of grave misconduct during the period of his service. The respondents have further stated that the UPSC was consulted in accordance with Article 320 of the Constitution of India. The President considered, inter-alia, the statutory advice tendered by the UPSC before imposing penalty upon the applicant. A copy of the UPSC advice was also forwarded to the applicant alongwith impugned order. The respondents authority have taken the advice of CVC as distinct from the advice of UPSC, is not a statutory advice. There is no provision in any of the statutory advice rules for making available a copy of CVC's advice to the charged officer in departmental proceedings. However, in the instant case, the applicant has admitted as having received the copy of the CVC's report from the respondents.

6. It is the case of the respondents that punishment was imposed strictly in consonance with the provisions of Rule 9 of the CCS(Pension) Rules, 1972 and there was no infirmity whatsoever in the procedure followed. The respondents have also stated that Rule 9(i) of the CCS(Pension) Rules, 1972 empowers the President to withhold or withdraw the pension or part thereof whether permanently or for a specified period. The said rule further confers on the President the right of ordering recovery from a pension of the whole or part of any

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pecuniary loss caused to the Government. According to the respondents, the OA filed by the applicant is pre-mature and <sup>as</sup> hence he has rushed to the Tribunal in the absence of valid cause of action without availing the remedies available to him under the relevant service rules inasmuch as he has not availed the remedy to file Review Petition under Rule 29-A of the CCS(CCA) Rules, 1965. The respondents have further stated that this Tribunal has no jurisdiction to sit in judgement over the decision of the competent Disciplinary Authority to impose penalty on the applicant on the basis of valid evidence of record. There was neither any denial of reasonable opportunity nor violation of principles of natural justice also no infirmity in the procedure followed.

7. The respondents have further submitted that the Hon'ble Supreme Court has held in the case of State Of Andhra Pradesh vs. Sree Ram Rao, AIR 1963 SC 1723 that there is no warrant for the view that in considering whether a public officer is guilty of the misconduct charged against him, the rule in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the court, must be applied and if that rule be not applied, the High Court in a Petition under Article 226 of the Constitution is competent to declare the order of the authorities holding a departmental inquiry invalid. The respondents have, therefore, concluded the arguments that the entire action taken by them against the applicant was fully in order and there is no merit in the OA filed by the applicant.

8. We have considered all the facts of the

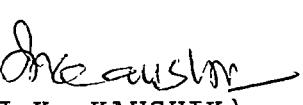
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case alongwith arguments putforth by the learned counsel for the applicant as well as by the respondents.

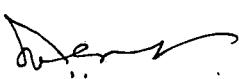
9. The facts are not denied that by misusing his financial position, the applicant awarded contract to his daughter and by this action, he was found guilty of grave misconduct during the period of his service. Besides it, it is found that the respondents authority had completely followed the rules by taking the advice of the CVC and also referring the matter to the UPSC before considering departmental disciplinary action against the applicant. We, therefore, find that the punishment imposed on the applicant is strictly in accordance with the provisions of CCS(Pension) Rules, 1972 and there was no infirmity whatsoever in the procedure followed by the respondents. We have also seen that Rule 9(i) of the CCS(Pension) Rules, 1972 empowers the President to withhold/withdraw a pension or part thereof whether permanently or for a specified period. Besides it is also true that the applicant has rushed to this Tribunal without availing the remedies available under the relevant service rules by not filing the Review Petition under Rule 29 of the CCS (CCA) Rules and as such the arguments putforth by the respondents authority that the OA is premature is not without any basis.

10. In view of the above, we do not find any strength or merit in the OA filed by the applicant. The same is dismissed with <sup>no</sup> order as to costs.

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(J.K. KAUSHIK)

MEMBER (J)

  
(S.K. AGRAWAL)

MEMBER (A)