

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 28 of 2002

Jabalpur, this the 15<sup>th</sup> day of June, 2004

Hon'ble Mr. M.P. Singh, Vice Chairman  
Hon'ble Mr. Madan Mohan, Judicial Member

Bijoy Kumar  
aged 61 years  
Son of late Shri S.P. Sahai  
resident of C/o Amit Prakash  
Block No. 2/5, Goyal Homes  
Plot No.287 Sector-B  
Shahpura, Bhopal(M.P.)

APPLICANT

(By Advocate - Shri S. Nagu)

VERSUS

1. Union of India  
through Secretary  
Department of Communication  
Ministry of Communication  
Sanchar Bhawan  
12, Ashoka Road  
New Delhi.

2. Chief General Manager  
Bharat Ratna Bhim Rao Ambedkar  
Institute of Telecom Training  
Ridge Road, Jabalpur(M.P.)

RESPONDENTS

(By Advocate - Shri Harshit Patel on behalf of  
Shri S.C. Sharma)

ORDER

By Madan Mohan, Judicial Member -

By filing this OA, the applicant has sought the  
the following main reliefs :-

"(i) to quash the order dated 18.2.2002 as being  
void, illegal and arbitrary.

(ii) to declare that the action of the respondents  
in initiating the disciplinary proceedings and  
punishing the applicant is violative of principles  
of natural justice and Rule 9(1) of CCS(pension)  
Rules, 1972.

(iii) to direct the respondents to consider the  
applicant by constituting a review DPC to the  
junior Administrative Grade in the ITS Group 'A' with  
retrospective effect and promote him if found fit with  
all consequential benefit including fixation of pay,  
fixation of seniority, re-fixation of pension and arrears  
of salary & pension.




: 2 :

(iv) to hold that the impugned penalty order is perverse and unwarranted in the eyes of law.

(v) to direct the respondents to release full amount of gratuity and commuted value of pension and also the withheld pension pursuant to the penalty order alongwith interest at the rate of 18% per annum till date of realisation".

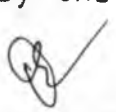
2. The brief facts of the case are that the applicant was initially appointed as Junior Engineer (Telecom) on 2.3.1963 and he was awarded two promotions i.e. first one in August, 1973 as Assistant Engineer (Telecom) and the second one on 31.5.1990 as Divisional Engineer (Telecom). During the relevant period from 20.9.1991 to 7.10.1996 the applicant was posted as Divisional Engineer (Administration) Office of the General Manager (Telecom) District Jabalpur. The applicant was superannuated on 31.1.2001. There was some litigation between applicant and the respondents which culminated into filing of contempt petition in which Senior officers were impleaded by name. When the applicant was approaching the age of superannuation and a little more than one year was left for him to retire, a chargesheet under Rule 14 of CCS (CCA) Rules, 1965 was issued on 25.8.1999 (A/3) mentioning three charges. Among five enlisted prosecution witnesses only one Shri P. Ram, Sub Divisional Officer (Phones)-III was produced by prosecution for examination and cross-examination. In the meantime, the applicant attained the age of superannuation and retired w.e.f. 31.1.2001. On his retirement, the applicant was paid full pension but his total amount of gratuity and the commuted value of pension were withheld. These two amounts are withheld even till date.



2.1 As late as in July, 2001, the applicant was served with Memorandum dated 13.7.2001 issued by respondent no. 1 by which for the first time the applicant came to know that the Inquiry Officer exonerated the applicant of all the three charges but on account of adverse advice of the Central Vigilance Commission, the disciplinary authority proposed to differ with the exonerative findings and by assigning reasons to hold all the three charges as established. Aggrieved by the dissent findings, the applicant preferred his reply dated 19.8.2001 giving cogent reasons to clearly establish that the exonerative findings of the inquiry officer were legal and valid. Without paying any heed to the contention of the applicant, a final order of penalty under Rule 9 of CCS(Pension) Rules, 1972 was passed by order and in the name of the President of India directing for 10% cut in pension for a period of two years. Alongwith penalty order, the applicant was supplied with the recommendations of the U.P.S.C. which was consulted by the respondent no. 1 before passing of the penalty order. Copy of the UPSC's recommendations dated 9.1.2002 is marked as Annexure A-7. The impugned order is void, illegal and contrary to the rules and deserves to be quashed and set aside.

3. Heard the learned counsel for the parties.

4. It is argued on behalf of the applicant that the report submitted by the enquiry officer exonerating the applicant from all the three charges and the dissenting view taken by the disciplinary authority is baseless having no cogent reasons. Hence, the alleged three charges were not established and proved against the applicant by any evidence. The dissent note was taken merely on technical ground that charges are proved against the applicant which cannot be accepted for such type of order of 10% cut from the pension of the applicant. The impugned order can only be passed in case of grave misconduct while no grave misconduct has been committed by the applicant and it is also not proved by the




enquiry officer while it was mandatory to prove it in order to justify the impugned order.

5. In reply, the learned counsel for the respondents argued that the applicant was given opportunity of hearing and this is not a case of 'no evidence' and he has drawn our attention towards Annexure A-7 i.e. letter dated 9.1.2002 issued by the Union Public Service Commission addressed to the Secretary to the Govt. of India, Ministry of Communications, Deptt. of Telecommunications, New Delhi under the subject "Disciplinary proceedings under Rule 14 of the CCS(CCA) Rules, 1965 instituted against Shri Bijoy Kumar, DE (since retired)" in which it is clearly mentioned that "in the light of the findings as discussed above and after taking into account all other aspects relevant to the case, the Commission observe that the charges proved against the C.O. constitute grave misconduct on his part and consider that ends of justice would be met in this case if 10% cut in pension is imposed upon the CO for a period of two years. They advise accordingly." It is further argued that on the basis of the above report of the U.P.S.C., the President has been pleased to pass the impugned order dated 18.02.2002 in which the President has observed as under:

"The President has carefully considered the records of the enquiry, the findings of the Enquiry Authority, the submissions made by Shri Bijoy Kumar, the advice tendered by U.P.S.C., and all other facts and circumstances relevant to this case, considering the circumstances in totality and on an objective assessment of the entire case, the President has found the said Shri Bijoy Kumar guilty of grave misconduct during the period of his service, and has accepted the advice tendered by the UPSC. The President has accordingly ordered that 10% (ten percent) of the monthly pension otherwise admissible to the said Shri Bijoy Kumar be withheld for a period of two years."

Learned counsel for the respondents has argued that the impugned order passed by the President after considering




all the facts and circumstances of the case and also the advice tendered by the Union Public Service Commission, is proper and in order.

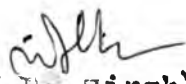
6. After hearing the learned counsel for both the parties and careful perusal of the record, we find that the applicant was given due opportunity of hearing and this is not a case of 'no evidence'. We have carefully perused the advice of the Union Public Service Commission (Annexure A-7) in which it has advised as under:-

"In the light of the findings as discussed above and after taking into account all other aspects relating to the case, the Commission observe that the charges proved against the C.O. constitute grave misconduct on his part and consider that ends of justice would be met in this case if 10% cut in pension is imposed upon the C.O. for a period of two years. They advise accordingly."

The above advice is given by the UPSC by considering all relevant aspects relating to the case of the applicant. We also find that in view of the above advice of the U.P.S.C. and submissions made by the applicant and all other facts and circumstances in totality and on an objective assessment, the applicant has been found guilty of grave misconduct during his service period and as such the impugned order has been passed by the President vide order dated 18.2.2002 which is a speaking, detailed and reasoned order. Hence, there is no irregularity or illegality has been committed by the respondents in passing the said impugned order.

7. In the facts and circumstances of the case and in the light of discussions made above, we find no ground to allow the present original application and the same is therefore dismissed with no order as to costs.

  
(Madan Mohan)  
Member (Judicial)

  
(M.P. Singh)  
Vice Chairman