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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 16.07.2012

OA No. 341/2010

Mr. C.B. Sharma, counsel for applicant.
Mr. Mukesh Agarwal, counsel for respondent nos. 1 & 3.
None present for other respondents.

At the request of learned counsel for the applicant,
put up the matter on 17.08.2012 for hearing.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

K. S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

17-8-2012

OA NO. 341/2010

Mr. C.B. Sharma, counsel for applicant
Mr. Mukesh Agarwal, counsel for Resp. 1 & 3
Mr. K.S. Sharma, counsel for Resp. 2

Heard the learned counsel for the parties.

For the reasons dictated separately
the OA stands disposed of

Anil Kumar
(ANIL KUMAR)
Admn. Member

K. S. Rathore
(JUSTICE K.S. RATHORE)
Judl. Member

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 341/2010

DATE OF ORDER: 17.08.2012

CORAM

**HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**

V. K. Verma S/o Shri Badan Singh Verma, aged about 62 years, R/o C-58, Chatrashal Nagar, Via Malviya Nagar, Jaipur and retired from the post of Divisional Engineer, Telecom District, Jaipur on 31.01.2008.

...Applicant

Mr. C.B. Sharma, counsel for applicant.

VERSUS

1. Union of India through its Secretary to the Government of India, Department of Telecom, Ministry of Communications and Information Technology, Government of India, Sanchar Bhawan, 20, Ashoka Road, New Delhi-110117.
2. Chief General Manager Telecom, Rajasthan Telecom Circle, Sardar Patel Marg, Jaipur – 302008.
3. Union Public Service Commission, through its Secretary, Dholpur House, Shahjahan Road, New Delhi – 110069.
4. Shri Ranveer Singh, Inquiry Officer and DGM (A&P), Office of GMTD, Muzaffar Nagar, U.P.

...Respondents

Mr. Mukesh Agarwal, counsel for respondent nos. 1 & 3.

Mr. K.S. Sharma, counsel for respondent no. 2.

None present for respondent no. 4.

ORDER (ORAL)

The present Original Application is directed against the impugned order dated 23rd July, 2009 (Annexure A/1) whereby the respondents-department has imposed a penalty of withholding 10% of the monthly pension upon the applicant otherwise admissible to him for a period of three years.

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2. The applicant has assailed the impugned punishment order on the ground that the Inquiry Officer has not acted as per procedure for conducting enquiry proceedings, and the applicant alleged for biasness against the Inquiry Officer vide Annexure A/4, A/5 and A/6, but no action was taken by the respondent no. 2 and the Inquiry Officer continued the proceedings, which is against the provisions of CCS (CCA) Rules, 1965. It is also alleged that the Inquiry Officer acted against the procedure, and relied upon on the documents which were not subject matter of the enquiry and also relied upon on the investigation report of CBI, which is subjudice before the competent criminal court.


3. It is also submitted by the applicant that after the enquiry, the matter was sent to the Union Public Service Commission (UPSC) for advice, and it is alleged that the advice given by the UPSC is also against the facts and circumstances of the case because on the ground of grave misconduct, advice for punishment of withholding of 10% pension for three years has been suggested by the UPSC, and the Disciplinary Authority has acted upon the suggestion / advice given by the UPSC. The punishment order passed by the respondent nos. 1, on behalf of the President, is passed on the advice given by the UPSC and, thus, the respondent no. 1 has not applied his mind before passing the punishment order.

4. Per contra, the respondent no. 2 has raised preliminary objections regarding maintainability of this Original Application, and it is submitted that earlier the applicant has also filed OA No. 292/2010 on 16.06.2010 before this Tribunal seeking the relief



that 'the respondents be directed to release the amount of DCRG, commutation with the benefits along with the interest @ market rate from August, 2009 till the payment is made to the applicant', and the applicant further prayed that if any order is passed by the respondents against the applicant, which is not available to him, such order may be quashed and set aside. It is further submitted that the applicant has preferred the present O.A. on 18.07.2010 against the charge-sheet dated 22.10.2003 and order dated 23.07.2009 and also against the enquiry report. It is also submitted that all the material were already in the possession of the applicant as the said documents were filed by the applicant in his earlier OA No. 292/2010, and it is well settled law that no one can file different applications / suits / writ for seeking different reliefs / claims at different times when all the cause of action were available at that time. Learned counsel for the respondent no. 2 has submitted that the present Original Application is not maintainable as the same is barred under Order-2, Rule-2, Civil Procedure Code, 1908.

5. Besides the preliminary objection, the respondent no. 2 has submitted that in view of the findings given by the Inquiry Officer, the charges levelled against the applicant are partly proved, and the UPSC has also confirmed the enquiry report, and thus the punishment awarded by the official respondents vide order dated 23rd July, 2009 (Annexure A1) cannot be said to be disproportionate, and has submitted that the respondents have rightly withhold 10% of the monthly pension otherwise admissible to the applicant for a period of three years. It is also submitted on behalf of the respondents that the punishment was awarded in



the year 2009 and the amount of 10% of the monthly pension has already been recovered as the period of three years has already elapsed.

6. The respondent nos. 1 & 3 has also filed their reply and submitted that the Inquiry Officer has conducted the enquiry strictly as per procedure prescribed under the CCS (CCA) Rules, 1965. It is also submitted that the respondent no. 1, consequent upon the retirement of the applicant, being the Disciplinary Authority after taking into account the Inquiry Officer's report & representation received from the applicant and facts and records of the case and in consultation with the CVC & UPSC, issued the order of punishment dated 23.07.2009 under Rule 9 of CCS (Pension) Rules, 1972 without any prejudice and withheld 10% of the monthly pension of the applicant for a period of three years. It is submitted by the respondents that the order of punishment has been passed by the Disciplinary Authority with due application of mind and the punishment awarded against the applicant is commensurate with the charges levelled against him.

7. We have heard the rival submissions put forth on behalf of the respective parties and carefully gone through the relevant provisions as has been referred to by the respective parties and also carefully perused the documents available on record, and also gone through the judgments relied upon by the learned counsel appearing for the applicant. We have also carefully perused the enquiry report. Upon perusal of the enquiry report dated 29.05.2008, it reveals that on the basis of documentary and oral evidence produced before the Inquiry Officer, the Inquiry

Officer was of the view that instead of Rs. 11,24,341.44, the applicant is only responsible to cause the excess payment of Rs. 70,180/-. Therefore, the charge of failing to maintain absolute integrity, devotion to duty and acting in a manner unbecoming of a Govt. Servant thereby infringing Rule 3 (1) (i) (ii) and (iii) of CCS (Conduct) Rule, 1964 levelled against the applicant has been proved.

8. From bare perusal of the impugned order dated 23rd July, 2009 (Annexure A/1), it reveals that the Inquiry Officer submitted his inquiry report dated 29.5.2008 holding that the charge of failing to maintain absolute integrity, devotion to duty and acting in a manner unbecoming of a Govt. servant levelled against the applicant as proved. Thereafter, the case records were referred to CVC for second stage advice. The CVC vide OM dated 24.07.2008 advised for imposition of penalty of a suitable cut in pension. The applicant submitted his representation dated 19.09.2008, which has been considered by the Disciplinary Authority and the case records were referred to the UPSC for the Commission's statutory advice in the case.

9. After the enquiry report submitted by the Inquiry Officer, the respondents-department has sought advice from the UPSC, and the UPSC vide its advice dated 05.06.2009 has opined as follows: -

"10. In light of their findings as discussed above and after taking into account all relevant facts, the Commission are of the view that the charge which is partly proved against the CO constitutes grave misconduct. The Commission consider that the ends of justice would be met in this case if ten percent of the monthly pension of Shri V.K. Verma, the CO, is withheld for three years. His gratuity may be released to



him if not required in any other case. They advise accordingly".

10. We have also carefully gone through the memorandum of charge-sheet and the charges levelled against the applicant, and upon perusal of the memorandum of charge-sheet and the enquiry report as well as advice given by the UPSC, it is wrong to allege that the Disciplinary Authority as well as UPSC has not applied their mind. As apparent by the findings given by the Inquiry Officer and the advice given by the UPSC, the applicant is found liable to make the excess payment to the party and corresponding loss to BSNL to the extent of Rs. 70,180/- and not Rs. 11,24,341/- as mentioned in the charge memorandum, and as advised by the UPSC. Thus, the Charged Officer exercised his supervisory responsibility in an indifferent manner; therefore, the charge is partly proved against the Charged Officer.

11. In view of the advice given by the UPSC and on the basis of the findings given by the Inquiry Officer, the Disciplinary Authority has rightly imposed the penalty upon the applicant vide order dated 23rd July, 2009 (Annexure A/1) observing as follows: -

"6. The President has carefully considered the records of the inquiry, the findings of the Inquiring Authority, the submissions made by Shri V.K. Verma, the advice tendered by the UPSC, 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 V.K. Verma guilty of grave misconduct during the period of his service, and has accepted the advice tendered by the UPSC. The President accordingly hereby orders that 10% (Ten per cent) of the monthly pension otherwise admissible to the said Shri V.K. Verma, be withheld for a period of 3 (Three) years. The President further orders that the gratuity may be released if not required in any other case".



In view of the above, it is clear that the Disciplinary Authority has passed the impugned punishment order dated 23rd July, 2009 (Annexure A/1) considering all the facts and circumstances of the case and also considered the records of the enquiry, the findings of the Inquiry Officer, the submissions made by the applicant and the advice tendered by the UPSC.

12. The judgments relied upon by the learned counsel appearing for the applicant are not applicable to the facts and circumstances of the present case

13. In view of the above facts and circumstances of the case, we are of the view that the Disciplinary Authority has rightly passed the impugned punishment order dated 23rd July, 2009 (Annexure A/1), and as such impugned punishment order dated 23rd July, 2009 (Annexure A/1) requires no interference by this Tribunal. Thus, as discussed hereinabove, we find no merit in the present Original Application and the same deserves to be dismissed.

14. Consequently, the Original Application being bereft of merit; fails and the same is dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

K. S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)