

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA No.2262/2014

NEW DELHI THIS THE 12TH DAY OF OCTOBER, 2015

HON'BLE MR. JUSTICE B.P. KATAKEY, MEMBER (J)

HON'BLE MR. V.N. GAUR, MEMBER (A)

Chandra Pal Singh Vimal,
Ex. Engineer (Civil)
@ C P S Vimal,
Group 'A', Aged 64 years,
S/o Shri Kanchan Singh,
WZ-96, A Block, School Road,
Uttam Nagar, New Delhi-110059.

...Applicant

(By Advocate: Mr. Arun Nischal)

VERSUS

Union of India
Through its Secretary,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi-110108.

...Respondent

(By Advocate: Mrs. Avinash Kaur)

O R D E R (O R A L)

Hon'ble Mr. Justice B. P. Katekey, Member (J)

The applicant, who retired on attaining the age of superannuation on 31.12.2009, has filed this present O.A. challenging the order dated 29.10.2013 passed by the disciplinary authority imposing the penalty of 5% cut of the monthly pension otherwise admissible to the applicant, for the period of five years.

2. Based on the first stage advice of the CVC dated 08.05.2007 a charge memo was issued to the applicant on 01.07.2008, on the following Article of charges :

“ ARTICLE-I

Shri C.P.S. Vimal, Executive Engineer, made excess payment and caused loss to the Government to the tune of Rs.4,54,770/- for the item of Earthwork in excavation over areas in all kinds of soil, which arose as an additional/substituted item during the execution of item no.1.02(a) which was for the earthwork in excavation over areas in ordinary/hard rock, because there was no hard rock. He made payment for this item under agreement item no.1.03 and made cost adjustment at later stage, thus wrongly deriving the rates under Clause 12.1.2(ii) of the agreement and contravening the provisions in Clause 23.9 of CPWD Works Manual.

ARTICLE-II

Shri C.P.S. Vimal, Executive Engineer, failed to inspect the work at regular intervals due to which oversize aggregates were used in WBM. He also made payments for the same at provisional rates. He thus contravened Clause 5.2.1 of CPWD Works Manual, which states:-

“It is incumbent upon various officers concerned with the work i.e. Senior Architect, Architect, Superintending Engineers and Executive Engineers (Civil and Electrical), Assistant Engineers and Junior Engineers, to inspect the works frequently to ensure that the works are being executed in general according to design, drawing and specifications laid down in the contract. The officer who records/ test checks the measurement for an item of work will

be responsible for the quality, quantity and dimensional accuracy of the work.”

2. Thus, by his above acts of omission and commission, the said Shri C.P.S. Vimal committed grave misconduct, failed to maintain absolute integrity, and exhibited lack of devotion to duty, thereby contravening Rule 3(1) (i) & (ii) of the CCS (Conduct) Rules, 1964.”

3. The applicant on receipt of the charge memo submitted his reply denying the charges leveled against him. The disciplinary authority being not satisfied with the reply submitted by the applicant decided to proceed with the inquiry and accordingly the inquiry officer and presenting officer were appointed. The inquiry officer submitted his report on 09.09.2009 with a finding that the charges leveled against the applicant have not been proved. Based on the first stage advice of the CVC, a major penalty charge sheet was also issued to the Assistant Engineer. The inquiry officer in respect of the said inquiry conducted against the Assistant Engineer also submitted its report that the charges leveled against him are not proved.

4. The matter was, thereafter, sent to the CVC for 2nd stage advice who, in respect of the applicant has advised imposition of the suitable cut in pension. Note of disagreement thereafter was issued to the applicant on 07.01.2011. The matter was also referred to the UPSC for its advice. UPSC on 14.03.2013 advised

that "however, it is also cannot be denied that oversize stone aggregate was used in the WBM and payments made at provisional rates necessitating the subsequent cost adjustment to the tune of Rs.21,278/- which reflects on the quality of CO's supervisory capability but these shortcomings appear to be essentially of supervisory nature and would not amount to greivous misconduct justifying a cut in pension."

5. There being differences of opinion between the CVC and the UPSC, the matter was referred to the DoP&T. Vide communication dated 21.08.2013 the advice of the Prime Minister to the disciplinary authority to accept the advice of the CVC for imposition of penalty for a 5% cut in the pension for a period of 5 years, was sent by the Under Secretary to the Government of India, Ministry of Personnel, Public Grievances & Pensions from the DoP&T. The disciplinary authority thereafter passed the impugned order dated 29.10.2013 imposing the penalty of cut in pension. Hence the present O.A.

6. We have heard Mr. Nischal, learned counsel appearing for the applicant and Ms. Avinash Kaur, learned counsel appearing for the respondents. Referring to the various orders as well as advice of the CVC and UPSC and also the provisions of Rule 9 of the CCS (Pension) Rules, 1972, it has been submitted by the learned counsel for the applicant that it is apparent from the

nature of allegation leveled against the applicant and also the advice of the UPSC that no mis-conduct has been committed by the applicant warranting imposition of any penalty under the provisions of the 1972 rules, not to speak up the grave misconduct or negligence and hence, the impugned order dated 29.10.2013 passed by the disciplinary authority needs to be interfered with. Referring to the said order imposing the penalty it is also submitted by the learned counsel that no finding having been recorded by the disciplinary authority that the misconduct committed by the applicant is in the nature of grave misconduct or negligence, no penalty or of withholding of any part of the pension could have been passed by the disciplinary authority in view of the provisions contained in Rule 9 of the 1972 Rules. Learned counsel further submitted that the DoP&T being not the disciplinary authority, could not have quantified the penalty to be imposed, as has been done in the instant case, based on which the impugned order has been passed by the disciplinary authority.

7. The learned counsel appearing for the respondents on the other hand has submitted that their being conflict in the advice of the CVC and the UPSC, the matter was referred to the DoP&T as required. Referring to the communication dated 21.08.2013, issued by the Under Secretary, it has also been submitted that it

is apparent there from that since imposition of the penalty of cut in pension has been advised by the Prime Minister, it pre-supposes commission of grave misconduct or negligence by the applicant and hence, the impugned order dated 29.10.2013 does not need any interference by this Tribunal.

8. The arguments advanced by the learned counsel for the parties are duly considered. We have also perused the pleadings including the annexures appended thereto.

9. The Articles of charges based on which major penalty charge was issued, has already been noticed above. The inquiry officer, as mentioned above, in his report found that the charges leveled against the applicant have not been proved. The CVC in his second stage advice dated 01.12.2010 has, however, advised the disciplinary authority for cut in pension, without mentioning anything relating to the commission of grave misconduct or negligence by the applicant. The advice of the UPSC dated 14.03.2013 is otherwise, which has opined that the allegation against the applicant having reflected on the quality of the applicant's supervisory capabilities and being short comings essentially of supervisory nature, it would not amount to gravisous misconduct justifying the cut in pension. Because of the said conflicting advice from the CVC as well as the UPSC the matter

was referred to the DoP&T, based on which the Prime Minister has advised the disciplinary authority, which has been communicated by the aforesaid communication dated 21.08.2013 for cut in pension of the applicant. The said communication also does not reflect recording any finding relating to the grave misconduct or negligence, which is required to be recorded by the disciplinary authority before imposing the penalty as provided under Rule 9 of the 1972 rules.

10. The order passed by the disciplinary authority dated 29.10.2013 also does not reflect recording any finding relating to the commission of grave misconduct or negligence conducted by the applicant.

11. Rule 9 (1) of the 1972 Rules empowers the President to withhold a pension or gratuity or both, either in full or in part or withdrawing the pension full or in part and whether permanently or for a specified period, and of ordering recovery from the pension or gratuity or gratuity of the whole or in part of any pecuniary loss to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of the grave misconduct or negligence during the period of service including service rendered upon re-employment after retirement. Recording a finding by the Disciplinary Authority relating to commission of grave misconduct or negligence is, therefore, a

condition precedent for imposing the penalty of withholding the pension as provided under sub-rule (1) of Rule 9 of 1972 Rules.

12. As discussed above, no finding has been recorded by the disciplinary authority relating to commission of grave misconduct or negligence by the applicant before imposing the penalty of cut in pension.

13. Hence, the impugned order dated 29.10.2013 passed by the disciplinary authority is set aside. The respondents are directed to release the pension of the applicant, which has been withhold by virtue of the said order passed, within 1 (one) month from the date of receipt of this order and also to pay the pension admissible to the applicant in future.

14. The O.A is accordingly allowed. No costs.

(V. N. Gaur)
Member (A)

(B.P. Katakey)
Member (J)

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