

Central Administrative Tribunal
Principal Bench

OA No.87/2012
MA No.1855/2012

New Delhi, this the 1st day of August, 2018

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)

Shri S.K. Nanda, IAS (Haryana, 1976)
Aged 60 years,
s/o Shri B.K. Nanda,
R/o 115-C, Sukhdev Vihar,
New Delhi. ...Applicant

(By Advocate: Sh. Rohit Sharma, Sh. Rounak Nayak and
Sh. Anshul Chowdhary)

Versus

1. Union of India through
Secretary,
Ministry of Personnel,
Public Grievance and Pensions,
Department of Personnel & Training,
North Block, New Delhi.
2. State of Haryana through
Chief Secretary,
Haryana Civil Secretariat,
Sector-2, Chandigarh. ...Respondents

(By Advocate: Sh. Rajinder Nischal)

ORDER (ORAL)

Ms. Aradhana Johri, Member (A):

The applicant is an IAS Officer of Haryana Cadre. While posted as Director of Sports, Govt. of Haryana, he was served with a chargesheet dated 11.12.1990 for certain acts of omission and commission which pertain to appointment/transfer of coaches, supplies of synthetic tracks, misuse of funds drawn to attend Olympics, certain purchases etc. An enquiry was ordered

on 21.08.1991 and the Inquiry Officer submitted his report dated 12.05.1992 in which he did not find the charges proven. Thereupon, respondent no.2 (Haryana Government) ordered a *de novo* enquiry vide order dated 07.10.1992 but the applicant did not participate in this enquiry. The Inquiry Officer, therefore, proceeded with the *ex parte* enquiry and submitted his report on 16.12.1994 holding some of the charges as proved against the applicant. The Inquiry Report was forwarded to the applicant. The applicant submitted his representation against the findings of the Inquiry Officer on 23.07.1996.

2. It is the contention of the applicant that before consideration of his representation dated 23.07.1996, he was appointed as OSD with the Food Processing Industries Minister, Govt. of India in September, 1996 but he was not allowed to join on the ground of disciplinary proceedings being pending against him. It is further submitted that under these compelling circumstances, the applicant had to tender written apologies on 19.12.1996 and 30.12.1996 not to repeat the omissions in future. Respondent no.2, vide order dated 13.01.1997, taking into consideration the nature of the allegations and the apology of the applicant, decided to administer a simple warning to the applicant with advice to clear his account with concerned bank regarding interest liability. Consequently, vide order dated 13.03.1997, the applicant was promoted in the Selection Grade (Rs.4800-150-5700) w.e.f. 07.09.1989, and subsequently, vide order dated 13.08.1997, he was promoted to the Super Time

Scale with immediate effect. Against the aforesaid promotion order, the applicant made a representation dated 15.09.1997 for granting him Super Time Scale w.e.f. 27.11.1992, the date his batch-mates were promoted in the same scale, which was rejected by the respondents vide order dated 02.12.1997.

3. Thereafter the applicant filed OA No.630-CH-1998 before the Chandigarh Bench of this Tribunal praying to quash the warning given to him, to quash the order placing the warning on his file, and to grant super time scale w.e.f. 17.11.1992. This OA was dismissed by the Tribunal on 14.05.2003.

4. Thereafter, the applicant challenged the Tribunal's order dated 14.05.2003 before the Hon'ble High Court of Punjab & Haryana by filing of CWP No.12849-CAT of 2003. The said CWP was decided vide order dated 14.12.2005. The Hon'ble High Court did not disturb the order of the Tribunal insofar as it related to the prayer of the applicant for grant of super time scale from 27.11.1992. However, the Hon'ble High Court passed the following orders on 14.12.2005 regarding penalty:-

“A bare perusal of paragraph 2(a) would show that it would come into operation on the conclusion of a disciplinary proceeding and not at any stage prior thereto. It also visualizes that on the conclusion of the disciplinary proceedings if some misconduct on the part of the officer is found, only a recognized penalty should be awarded. Paragraph 3, however, deals with a situation where the departmental proceedings have not yet been concluded and are still pending. This clause postulates that a warning can be administered to an officer for the improvement of his work and conduct and should not be taken as a displeasure or reprimand on account of some misconduct. Admittedly in the matter before us, the disciplinary proceedings against the petitioner had been concluded and the Inquiry Officer had found him guilty of all the 5 charges and it was at that stage that the written apology was tendered by

him and accepted by the Government with a simple warning which was subsequently made recordable vide Annexure P.5 dated 23.7.1997 on the advise Annexure R.1 tendered by the Central Government. We are, therefore, of the opinion that the warning administered to the petitioner was clearly unwarranted by Annexure P.8.

We accordingly quash Annexure P.2 and as a consequence thereof also quash Annexure P.5 but give liberty to the respondents to proceed against the petitioner from the stage prior to the making of the order Annexure P.2 dated 13.1.1997.”

5. After the order of the Hon'ble High Court, the disciplinary authority reconsidered the matter with reference to the stage of the proceedings prior to 13.01.1997, and thereafter, vide order dated 07.05.2007 imposed the punishment of reduction of pay by one stage in the time scale of applicant's pay for a period of two years with further directions that during the period of reduction, the applicant will not earn increments of pay and on the expiry of this period, the reduction will have the effect of postponing the future increments of pay. The applicant preferred an appeal against the order dated 07.05.2007, which was sent to the UPSC for advice. The UPSC submitted its advice finding the allegations against the applicant to be correct. Accordingly, the DOP&T, vide order dated 05.09.2008, confirmed the penalty imposed on the applicant. The applicant submitted Memorial dated 07.11.2008, which was rejected by the Government of India, Department of Personnel & Training, vide order dated 27.12.2010.

6. The applicant has filed the present OA seeking the following reliefs:-

- (a) *Quash the charge sheet dated 11.12.1990 and orders dated 7.5.2007, 5.9.2008 and 27.12.2010 passed by respondents no.2 and 1 respectively, whereby the punishment of reduction of pay by one stage in the time scale of applicant's pay for a period of two years with further directions that during the period of reduction, the applicant will not earn increments of pay and on the expiry of this period, the reduction will have the effect of postponing the future increments of pay has been ordered; and*
- (b) *Grant promotion with retrospective effect to super-time scale w.e.f. 27.11.1992 and to all consequential reliefs; and*
- (c) *Grant arrears of pay, allowances and increments in view of prayers (a) and (b) along with interest @ 18% per annum; and*
- (d) *Award compensation and damages for the harassment faced by the applicant in connection with this frivolous case; and*
- (e) *Pass any such further or other orders that this Hon'ble Tribunal may deem fit in the interest of justice."*

7. The respondents have contended that there is no merit in the present OA. As far as holding of second enquiry is concerned, they have filed copy of Tribunal's order dated 05.01.1996 passed by the Chandigarh Bench in OA No.458/CH/1995 filed by the applicant, upholding the second enquiry. The respondents, therefore, submit that this matter need not be gone into again as it is already settled.

8. The respondents have reiterated that the issue of grant of super time scale to the applicant w.e.f. 27.11.1992 has also been settled by the Chandigarh Bench of this Tribunal in its order dated 14.05.003 passed in OA No.630-CH-1998 and by the Hon'ble High Court of Punjab & Haryana by order dated 14.12.2005 in CWP No.12849-CAT of 2003 in which the

applicant's plea to give back dated super time scale has been rejected.

9. The respondents have gone on to say that on the matter of quashing the chargesheet dated 11.12.1990, the penalty order dated 07.05.2007, the appellate order dated 05.09.2008 and rejection order of memorial dated 27.12.2010, the Hon'ble High Court gave liberty to the respondents to proceed against the applicant from the stage prior to the making of the order dated 13.01.1997, by which the warning was issued.

10. We have heard the arguments of the counsels from both sides.

11. On the matter of quashing the chargesheet dated 11.12.1990 and subsequent rejection of appeal/memorial, no relief has been granted to the applicant either by Tribunal or by Hon'ble High Court. In fact, Hon'ble High Court permitted the respondents to proceed against the applicant from the stage prior to the making of the order dated 13.01.1997 i.e. to look into the quantum of punishment, while striking down the punishment of a simple warning which was made recordable. Further, the matter of second enquiry has already been settled in OA No.458/CH/1995 (supra) in which the second enquiry has been upheld. Thus, there is no reason to re-visit this matter.

12. As far as quantum of punishment is concerned, it is seen that the respondents have passed orders after consultation with

UPSC, and since serious charges have been proved, the punishment awarded to the applicant does not appear to be excessive. As per directions of Hon'ble High Court in CWP No.12849-CAT of 2003, the disciplinary authority was given liberty to proceed against the applicant from the stage prior to the order dated 13.01.1997 of giving a warning. The penalty imposed also passes the touchstone of being one of the recognized penalties under AIS (Discipline & Appeal) Rules, 1969 and approved by the Competent Authority. Therefore, we do not find any reason to interfere with the impugned orders.

13. In the facts and circumstances of the case, we do not find any merit in this OA and the same is accordingly dismissed. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/Ahuja/