

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE
ORIGINAL APPLICATION No. 170/00243/2017
TODAY, THIS THE 30th DAY OF AUGUST, 2018
HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER
HON'BLE SHRI DINESH SHARMA, ADMINISTRATIVE MEMBER

Shri.T.C Gupta,
S/o Shri.Gyan Chan Gupta,
Aged about 62 years,
R/o S-77, Golden Enclave,
Old Airport Road,
Bangalore – 560017
(Retired on 30.9.2014 as Joint Commissioner of Income Tax, Bangalore)
...Applicant
(Applicant present in person)

Vs.

1. Union of India, through the Secretary Finance,
Ministry of Finance, Department of Revenue,
Government of India, New Delhi-110 001.

2. Pr. Chief Commissioner of Income Tax,
Karnataka & Goa Region,
C.R. Building, Bangalore – 560001.

...Respondents
(By Advocate Shri V.N. Holla, Sr. Central Govt. Panel Counsel)

ORDER

Hon'ble Shri Dinesh Sharma, Administrative Member

The applicant, who retired from the post of Joint Commissioner of Income Tax, Bangalore on 30.09.2014, was served a memorandum, dated 28.09.2014, and after conduct of enquiry, imposed a penalty of withholding of 25% of his monthly pension for a period of three years. The applicant has

filed this O.A requesting to set aside the said penalty order mainly on the following grounds :

- (i) His submission under Rule 15(2) of CCS (CCA) Rules, 1965, against the enquiry report which was submitted by him within 15 days, was not considered;
- (ii) Union Public Service Commission (UPSC) was not consulted ;
- (iii) The order passed for withholding of pension by any authority other than the President is illegal and without any jurisdiction;
- (iv) The conclusion of the enquiry by the Enquiry Officer finding him guilty of charge for delay in handing over records was not correct since he had delivered the records in 17 days even though he was not legally bound to furnish them;
- (v) The finding of the Enquiry Officer about the surreptitious recording of telephonic conversation is also not correct since there was nothing illegal in his recording nor was it done with any corrupt or malicious motive;
- (vi) There was delay in passing final order in the Disciplinary Enquiry. They took 30 months instead of 18 months as required under DoPT instructions dated 14.10.2013;
- (vii) No personal hearing was given;
- (viii) His representation against the memorandum was not considered separately by the disciplinary authority; and

- (ix) The Enquiry Officer belonged to the batch lower than the charged officer;
- (x) Even the charges which have shown to have been proved do not amount to grave misconduct deserving such serious penalty.

2. The applicant, in M.A. No. 407/2017, requested for adding one more additional ground that he was not given an opportunity under Rule 14(18) of CCS (CCA) Rules, 1965. The Enquiry Officer should have given him formal opportunity since he was not personally examined as a witness during the enquiry.

3. The respondents in their reply have denied all the allegations of the applicant except those relating to material on record. They have alleged that the applicant was given 15 days time to submit reply against enquiry report and his reply was not received within this time. Regarding consultation with UPSC, the respondents have quoted lack of time due to direction of this Tribunal to finish the enquiry within a stipulated time, They have also cited the judgements in the case of State of U.P vs. Manbodhan Lal Srivastava, 1958 SCR 533, and Ram Gopal Chaturvedi vs. State of Madhya Pradesh, 1979 SCR (1) 472, wherein it has been held that consultation with UPSC under Article 320(3)(C) is not mandatory, it does not confer any right on the public servant and that absence of consultation does not afford a cause of action. The respondents have produced various office orders showing the delegation of power by which the powers of the President are exercised in various stages of disciplinary action by authorities specified in those orders. They have repeatedly mentioned that the applicant was given ample opportunity to defend himself and he has been acted against for proven act of misconduct and has been punished by a reasoned, speaking order. Regarding the additional

ground taken by the applicant, the respondents have quoted the discussion held with the applicant that is noted on the last day of enquiry proceedings.

4. After going through the pleadings and hearing both the sides, we find that the applicant has alleged number of procedural and substantial irregularities and has also questioned the quantum of punishment taking into account the gravity, or otherwise, of the misconduct. The respondents have denied all these contentions. Our findings on the major grounds taken by the applicant are as follows.

5. Regarding submission under Rule 15(2) of CCS (CCA) Rules, 1965, the issue is whether the 15 days period is meant only for sending reply, or includes its receipt also, by the disciplinary authority. The relevant portion of the Rule 15(2) runs as follows :

“15.(2)the Government Servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary Authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant.”

The crucial word here is “submit”. The applicant wants it to mean as “sending”, while the respondents mean it to include “receipt” and not just “sending”. Since the Rule does not use the word “send”, it will not be correct to interpret it to mean as unilaterally dispatch of representation without ensuring that it reaches disciplinary authority within the stipulated time. The applicant has admitted that he sent it only on the last day and, therefore, action of the respondents, in passing an order without considering delayed representation, is not incorrect.

7. The applicant has, in his O.A and in his rejoinder, very strongly argued about the mandatory nature of UPSC consultation under proviso to Rule 9 of CCS (Pension) Rules, 1972, He has countered decisions of the Apex Court

quoted by the respondents by saying that these decisions are of a date before the CCS (Pension) Rules were framed, and therefore, not relevant. However, going by the Apex Court decisions cited by the respondents, it is clear that in spite of similar mandatory language used in Article 320(3) of the Constitution of India, the Court has held that it does not give any right to the Government servant to invalidate any action taken against him. The CCS (Pension) Rules cannot have a sanctity greater than the Constitution of India. Therefore, the Apex Court's decisions, though of a time before CCS (Pension) Rules were framed, will apply to the facts of this case. Hence, the action taken by the respondents cannot be invalidated on this ground.

8. Regarding the findings of the Enquiry Officer, in respect of the charges of delay in furnishing the records and surreptitious recording of conversation which were agreed to by the Disciplinary Authority, in the absence of any valid ground for doing so, it will not be proper for this Tribunal to substitute its judgement for theirs and come to any conclusion different from what is arrived at by them. The report gives a detailed examination of evidence available and the findings do not appear to be in any way vitiated by any grave mistake or malafides.

9. Regarding the Inquiry Officer being junior to the Charged Official, the respondents have replied that the DoPT instructions will not be applicable to the retired officers. Though it appears desirable, to gain confidence, that the enquiry is conducted by an officer senior in rank to the charged official, it is not a fatal factor to invalidate the whole enquiry.

10. Amongst the major grounds for seeking relief, what remains to be considered is whether the charges proved against the applicant really amount to such a grave misconduct so as to warrant imposing of punishment of

withholding of 25% of monthly pension for a period of three years. The applicant has given, in detail, instances of cases where a misconduct should be considered as grave. This, according to him, should be in a case of possession of disproportionate assets, obtaining or attempting to obtain illegal gratification, misappropriation of Government property, falsification of Government records, gross irregularity or negligence in the discharge of official duties, misuse of official position or power for personal gain, disclosure of secret or confidential information and false claim on the Government, like TA claims, reimbursement claims etc. He has quoted this from the Annexure to the Government of India Instruction-3.

11. In the light of the above, we have to examine the charges proved against the applicant for which he has been awarded major penalty of withholding of 25% monthly pension for a period of three years. The first charge proved against the applicant is about the delay in furnishing the official records. These records were in his possession as assessing authority and he alleges that he had provided them despite being not bound by law to do so. Though he had been charged for delay of more than one month, these were actually given by him within 17 days. The respondents have nowhere shown that this delay resulted in any severe loss to Government or failure in taking action against anyone. There is not even an allegation about his having delayed submission of these documents on account of malafides or corruption. The charge of surreptitious recording of conversation, also does not amount to such a huge dereliction of duty in the absence of any intent to commit an offence. From the records it appears that he had recorded the conversation more with the intent of proving his own lack of guilt rather than for trapping anyone else.

12. Thus, to sum up, we find that though there are some procedural slippages like the one regarding not strictly following Rule 14(18) of CCS

(CCA) Rule, 1965, and non consulting of UPSC, none of these slippages have resulted in seriously vitiating the enquiry against the applicant. The charges on which he has been found guilty are definitely an act of misconduct. However, we do not feel that the quantum of punishment awarded to the applicant is proportionate to the gravity of the misconduct. Therefore, we feel that the interest of justice will be served if the period of punishment is reduced from withholding of 25% of his monthly pension for three years to withholding of same percentage for a period of six months.

12. The O.A. is disposed of in terms of the above. No orders as to costs.

(DINESH SHARMA)
ADMINISTRATIVE MEMBER

(DR. K.B. SURESH)
JUDICIAL MEMBER

Cvr.

Annexures referred to by the applicant :

1. Annexure A1 Copy of Penalty order dated 21.3.2017
2. Annexure A2 Copy of respondent report dated 15.2.2017 along with enquiry report
3. Annexure A3 Copy of application representation dated 8.3.2017
4. Annexure A4 Copy of Supplementary representation dated 9.3.2017
5. Annexure A5 Copy of the Note Sheet dated 6.2.2017 to 14.2.2017
6. Annexure A6 Copy of order dated 10.6.2015 with RTI reply dated 28.9.2015
7. Annexure A7 Copy of the note sheet dated 24.9.2014

Annexures filed by the respondents in the reply :

1. Annexure R1 Copy of office order No.50/10/2005-Ad.1/Vig
dated 27.10.2016
2. Annexure R2 Copy of the office order