

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO. 170/00403/2017

DATED THIS THE 03RD DAY OF JANUARY, 2018

HON'BLE DR. K.B. SURESH, MEMBER (J)
HON'BLE SHRI K. N. SHRIVASTAVA, MEMBER (A)

Smt Glenda Fernandez,
Age: 76 years,
W/o Late Sri N.D. Fernandez,
Care of Deanna Gomez,
10, Karrawa Close,
Carsledine, Qld 4034,
Brisbane, Australia.

.....Applicant

(By Advocate Shri P. A. Kulkarni)

Vs.

1. Railway Board,
Rail Bhavan,
New Delhi : 110 001,
By its Secretary,

2. General Manager,
South Western Railway,
Hubballi : 580 020.
For and on behalf of Union of India
And also as an authority of
SWR, Hubballi.

3. Chief Workshop Manager
Hubballi Workshop,
South Western Railway,
Gadag Road,
Hubballi : 580 020.

....Respondents

(By Shri J. Bhaskar Reddy, Railway Standing Counsel)

ORDER (ORAL)

DR. K.B. SURESH, MEMBER (J):

Heard. The matter is in a very small compass. The facts of the issue are very clear from the order of Hon'ble High Court of Karnataka in Writ Petition No. 15852/1998 dated 27.08.2001 and we quote from paragraph 2 to paragraph 10 of the judgment of the Hon'ble High Court:

"2. The first respondent was working in Railways and he retired from service as a Stores Superintendent, on 30-7-1992 on attaining the age of superannuation. When he was working as Depot Store Keeper, Hubli, he was trapped in a bribe case and a charge memo dated 27/28/7/1987 was issued by the Disciplinary Authority charging him with a grave misconduct [of taking a bribe] under the Railway Servants [Discipline & Appeal] Rules, 1968. The charge is extracted below:

"That the said Shri Norman Fernandez while functioning as Depot Stores Keeper Gr. II, South Central Railway, Hubli during the period between June, 1986 and March, 1987 committed gross official misconduct and failed to maintain absolute integrity and devotion to duty in as much as he with the active assistance/connivance of Sri Ananda Rao Bebzanub Kallakuntla, Stores Khalasi, General Stores Depot, Hubli made Shri B.C. Kotaiah s/o Shri Picheiah r/o No. 46/2, Gandhiwada, Hubli to believe that all necessary steps are being taken by Shri Norman Fernandez for his employment in the Railways and taking advantage of the said situation, demanded a sum of Rs.6,000/- during June, 1986 as illegal gratification from Shri B C Kotaiah as a motive or reward for doing favour in the matter of securing employment to the said Shri Kotaiah in the Railways. In furtherance of the said demand Shri Norman Fernandez accepted illegal gratification of Rs.4,000/- from the said Shri B.C. Kotaiah during the period between July, 1986 and December, 1986. Shri Norman Fernandez demanded and accepted illegal gratification of Rs.500/- from Shri B.C. Kotaiah around 1.35 PM on 20-3-87 at his residence Railway Quarter No. UBL-316/A, Brook Road, Hubli as a motive or reward for showing favour to the said Shri B.C. Kotaiah in the matter of getting employment to him in the Railways. The misconduct on the part of Shri Norman Fernandez are detailed in the imputations of misconduct vide Annexure II and thereby Shri Norman Fernandez contravened Rule 3(1)(i)(ii)(iii) of Railway Services (Conduct) Rules, 1966.

3. The Enquiry Officer appointed to enquire into the charges against the first respondent, submitted a report holding that the charges are proved. The report was made available to the first respondent for making his representation. After considering the report and the representation dated 16-2-1993 submitted by first respondent and after consultation with the Union Public Service Commission under Article 320(3)(c) of the Constitution, the President accepted that the charges leveled against the first respondent were proved to the following extent.

“(a) that the first respondent induced Sri. Kotaiah to believe that he could get him appointed in the Railway; and

(b) that the first respondent demanded and accepted Rs.500/- as a bribe from Kotaiah on 20-3-1987”

4. The charge relating to demand of Rs.6,000/- and acceptance of Rs.4000/- from Kotaiah between July 1986 to December, 1986 was held to be not proved. The President after taking into account all aspects of the case, decided under Rule 2308 of Indian Railway Establishment Code Vol. II (Rule 9 of Railway Services (Pension) Rules, 1993) to impose 100 percent cut in pension which is admissible to the first respondent on a permanent basis. The imposition of said penalty was communicated to first respondent by order dated 23-11-1994. Along with the said order, a copy of the UPSC Advice dated 9-11-1994 was also furnished.

5. Feeling aggrieved, the first respondent challenged the said order before the C.A.T. Bangalore Bench in O.A. No. 2117 of 1995. The Tribunal, by order dated 3-12-1997 allowing the application in part. It held that all materials on the basis of which punishment is imposed on a delinquent employee should be made available to him, so that he can give an effective representation for consideration before imposition of punishment; that in this case, the advice of UPSC was an additional material which has been taken into account by the Disciplinary Authority, in addition to the Enquiry Report, for arriving at the conclusion regarding guilt and in imposing punishment; that therefore it was mandatory that a copy of the said advice of UPSC ought to have been furnished to the employee before imposing the penalty and failure to do so amounted violation of principles of natural justice. Hence, purporting to follow the decision of the Supreme Court in *MANAGING DIRECTOR, ECIL, HYDERABAD VS. B. KARNAKAR* (AIR 1994 SC 1074) and several decisions of CAT reported in 1994 (27) ATC 378, 1995 (30) ATC 328, 1996 (32) ATC 563 and 1996 (34) ATC 446, the Tribunal quashed the order dated 23-11-1994 reserving liberty to the Disciplinary Authority to furnish the copy of the UPSC Advice recommendation to the first respondent and seek his specific explanation with reference to the same and then take a final decision in accordance with law. Feeling aggrieved, the petitioners have filed this petition challenging the said decision of the Tribunal.

6. We may at this stage, refer to the decision of the Constitution Bench in *ECIL's* case referred by the petitioners before us. In that decision, the Supreme Court held as follows:

“(i) The employee is entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject. What is dispensed with under Article 311 is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the Enquiry Officer.

(ii) Whenever the service rules contemplates an inquiry before a punishment is awarded, and when the Enquiry Officer is not the Disciplinary Authority, the employee will have the right to receive the Enquiry Officer's report notwithstanding the nature of punishment.

(iii) Failure of the employee to ask for the report, cannot be construed as waiver of his right. Whether, the employee asks for the report or not, the report has to be furnished to him.

(iv) The law laid down in Union of India vs. Mohd. Ramzan Khan (AIR 1991 SC 471) is applicable to employees in all establishments whether Government or non-Government, public or private. The ratio in Ramzan Khan is prospective and is to be applied only to those orders of punishment which are passed by the Disciplinary Authority after 20th November, 1990.

(v) Whether prejudice has been caused to the employee on account of the denial of the report to him has to be considered on the facts and circumstances of each case. The relief to be granted to the employee would depend on the actual consequence of denial of the report.

7. Thus what is required to be furnished to the employee is the Enquiry Report and not an advice of UPSC obtained by the Disciplinary Authority before passing an order imposing punishment. The advice of UPSC is not binding on the Government being purely advisory in nature. In fact failure to consult UPSC in such matter will not invalidate the action. The Government may consult the UPSC even after receiving the representation from employee in response to the Enquiry Report. Therefore, the opinion or Advice obtained by the Disciplinary Authority from the U.P.S.C. can not be considered as a 'material' on the basis of which the Disciplinary Authority decides whether the employee has committed misconduct or not. The Supreme Court had occasion to consider the effect of the advice given by the U.P.S.C. under Article 320 (3) (c) in *A.N. D'SILVA VS. UNION OF INDIA* (AIR 1962 SC 1130). The Supreme Court held that the consultation prescribed by the said sub-

clause is only to afford proper assistance to Government in assessing the guilt or otherwise of the delinquent employee as well as the suitability of the penalty to be imposed.

8. *In view of it, the decision of the Tribunal that the advice given by UPSC under Article 320 (3) (c) is a material akin to the enquiry report given by the Enquiry Officer on the basis of which finding regarding guilt is given or punishment is imposed, is not in accordance with the decision of the Supreme Court. In this context, reference may also be made to Rule 28 of the Railway Servants (Discipline and Appeal) Rules, 1968 which reads as follows:*

“28. Supply of copy of Commission’s advice:

Wherever the Commission is consulted as provided in these rules, a copy of the advice by the Commission and, where such advice has not been accepted, also a brief statement of the reasons for such non-acceptance, shall be furnished to the Railway servant concerned along with a copy of the order passed in the case, by the authority making the order.”

The Rule requires a copy of the advice given by U.P.S.C. to be furnished to the delinquent employee not with the Enquiry report but with the order imposing punishment. The order dated 23-11-1994 informing the petitioner about the punishment clearly states that a copy of the advice dated 9-11-1994 from UPSC is enclosed. Thus, there is no procedural irregularity or violation of principles of natural justice in not furnishing a copy of the advice of the U.P.S.C. to the first respondent, when furnishing the copy of the enquiry report.

9. *Learned counsel for the first respondent submitted that the punishment is disproportionately excessive as it denies the first respondent the entire pension permanently. On the other hand, the learned Standing Counsel for the Railways submitted that as the charge is serious and one relating to bribery, punishment cannot be said to be excessive. On the facts and circumstances, we do not find it a proper case to interfere with the punishment imposed. But we feel that if the petitioner makes an application for compassionate allowance under the Railway Pension Rules, the petitioners may consider the same sympathetically keeping in view the long service rendered by the first respondent before his retirement.*

10. *The petition is therefore allowed and the order dated 3-12-1997 of the Central Administrative Tribunal in O.S. No. 2117 of 1995 is set aside. Consequently OA No. 2117/1995 on the file of CAT, Bangalore Bench is dismissed, subject to the observation in para 9 above.”*

2. In this matter the Hon'ble High Court had categorically held that even though it will not interfere with the order of the Tribunal the order was passed that should the applicant apply then under Rule 65 and 67 a compassionate allowance can be considered to be given to him. When the adjudicator had held so and no appeals followed it, it has become final and concrete.

3. Now the case of the respondents is that in the interregnum the government employee passed away and his widow has applied for family pension. Therefore how to regulate the family pension is the question.

4. At this point of time we do not know what prevented the applicant from approaching the Court earlier but since the Hon'ble Apex Court had held that pension is not a bounty and it will not attract limitation, at least from the point of application it must be held to be relevant. Therefore we now hold that the applicant will be eligible for compassionate allowance on the date of her application.

5. In this case, Rule 75 sub clause (2) (c) says that "after retirement from service and was on the date of death in receipt of pension, or compassionate allowance, referred to in Chapter V, other than the pension referred to in rule 53".

6. Therefore we declare and hold that the applicant is eligible for notional grant of compassionate allowance on the date of her application as the legal heir of the dead government employee and pension to be regulated on that basis and granted to her along with arrears from the date of her application.

The compassionate allowance may be notionally fixed and on this basis the family pension to be fixed and granted from the date of applicant's application. This may be done within three months' time.

7. The OA is allowed to this extent. No order as to costs.

(K. N. SHRIVASTAVA)
MEMBER (A)

(DR. K.B. SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No.170/00090/2017

Annexure A-1: Copy of Service Certificate dated 02.07.1993

Annexure A-2: Copy of the Central Administrative Tribunal, Bangalore Bench Order dated 07.04.1994 in OA No. 324/1994

Annexure A-3: Copy of the order No. SWR /P.500/Non-Gaz/NDF dated 06.06.2017

Annexure A-4: Copy of Central Administrative Tribunal order dated 03.12.1997 in OA No. 2117/1995

Annexure A-5: Copy of the UPSC advice dated 09.11.1994

Annexure A-6: Copy of the representation submitted by the applicant's husband.

Annexure A-7: Copy of the communication No. PB/P 93/UBL/NDF dated 28.11.1994

Annexure A-8: Copy of the Hon'ble High Court of Karnataka order dated 27.08.2001 in Writ Petition No. 15852/1998

Annexure A-9: Copy of the communication No.L/P.500 dated 17.05.2017 from Chief Workshop Manager, Hubli Workshop

Annexure A-10: Copy of death certificate of the applicant's husband.

Annexure A-11: Copy of the written statement submitted by the applicant's husband with reference to charge memo.

Annexure A-12: Copy of the letter dated 21.01.1998 from applicant's husband to the DCOS GSD Hubballi

Annexure A-13: Copy of the representation dated 21.03.2017 submitted by the applicant to SWR Headquarters Hubballi.

Annexure A-14: Copy of the Hon'ble High Court of Gujarat judgment dated 03.02.2006 in Special Civil Application No. 1547/2006.

Annexures with reply statement:

Nil
