



**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

O. A. No. 882 OF 2011

Cuttack, this the 12 day of September 2016

CORAM

HON'BLE MR. ASHOK KUMAR PATNAIK, MEMBER (JUDL.)

HON'BLE MS. JAYA DAS GUPTA, MEMBER (ADMN.)

.....

Prodip Kumar Mitra, son of Late Ananda May Mitra, aged about 63 years, worked as Lower Division Clerk in the office of the Directorate General of Commercial Intelligence and Statistics, 1, Council House Street, Kolkata-700001 and residing at Flat No. 4, Loknath Apartment, 2 Government Colony, Post Office Makhia, District-Hooghly.

.....Applicant

Versus

1. Union of India service through the Secretary to the Government of India, Ministry of Commerce & Industry, Uyg Bhavan, New Delhi-110 011.
2. The Directorate General of Commercial Intelligence and Statistics, 1, Council House Street, Kolkata-700001.
3. The Senior Accounts Officer, Government of India, Regional Pay and Accounts Office, Ministry of Commerce, 1, Council House Street, Kolkata-700001.

.....Respondents

For the Applicant : Mr. T.Maity, Counsel

For the Respondents : Mr. M.Bhattacharyya, Counsel

ORDER

A.K.PATNAIK, JUDICIAL MEMBER:

As we could understand from the pleadings of the respective parties and arguments advanced in support thereof is that

the applicant was a Lower Division Clerk in the Office of the Directorate General of Commercial Intelligence and Statistics, Kolkata. A Memorandum of charge was issued to him under Rule 14 of the CCS (CCA) Rules, 1965 on 31st January, 2005 at Annexure-A/1, containing two Articles of Charges, giving the applicant an opportunity to submit his reply within ten days. The charges are as under:

"Article-I

That the said Shri Pradip Kumar Mitra, while functioning as Lower Division Clerk, Directorate General of Commercial Intelligence and Statistics (DGCI&S), 1, Council House Street, Kolkata-700 001 during the period 10-12 August, 1996 has submitted a false letter addressed to the DPDO, Kolkata forging the signature of ex Head of Office, DGCI&S, 1 Council House Street, Kolkata-700 001.

Article-II

That during the aforesaid period and while functioning in the aforesaid office the said Shri Pradip Kumar Mitra has submitted a false certificate to the Office of the DPDO, Kolkata."

1(a) One month thereafter i.e. on 28.02.2005 the applicant retired from service on reaching the age of superannuation. As it appears from the record, no reply was submitted by the applicant to the aforesaid Memorandum of charges within the prescribed period given to him. However, as it appears, he submitted a representation on 09.12.2005 which was about one year from the date of the charge sheet, virtually as against the delay in settling his retirement claim. The Respondents in the memorandum dated 9th January, 2006 dealt with the said reply of written statement of the applicant and advised

Will

him to submit again his written statement to the charges issued to him way back on 31st January, 2005. It further appears that after lapse of three and half years, the respondents vide letter dated 13th July, 2009 furnished a copy of the enquiry report dated 21.09.2007 giving an opportunity to the applicant to submit his written statement of defence to the report of the IO. The relevant portion of the report of the IO dated 21.09.2007 reads as under:

"Shri P.K.Mitra along with Shri Pal who assisted him, appeared for deposition before the undersigned on 14.09.2007 at 11.00 A.M. The Inquiry commenced at 11.10 A.M. At the outset, the Charged Officer was asked whether he has confidence upon the Inquiry Officer. On receipt affirmative reply from the CO, enquiry proceed. Thereafter, the Charged Officer was asked whether he had received all the documents pertaining to Charges against him under Enquiry, particularly, Articles of charges, documents on the basis of which charges had been made. He replied that all the documents, including Memoranda on show Cause notice, charge sheet etc. Had been received by him and he has no demand for any new document for defence of his case. The undersigned as Inquiry Officer proceeded to take up each Article of imputations and directed the Presenting Officer to read out each Article of misconducts of Shri P.K.Mitra along with requisite documents on the basis of which imputations had been framed. The CO admitted and accepted all the charges under case without any fear, pressure and influence of any Senior Officers of this Directorate. The enclosed proceedings of the inquiry in details as recorded in Daily Order Sheet No.3 which were signed by the presenting Officer, the Charged Officer and his nominated Assistant and also by the undersigned will amply demonstrate that the Charged Officer has unequivocally and clearly admitted and accepted the Charges framed under Article I and Article II. The CO has

Alle

further withdrawn his allegation against the Office as made in his letter dated 09.12.2005.

The inquiry has been held under mutual trust, faith and without any wrangle, rankle whatsoever.

1. Report of Presenting Officer,
2. Daily Order Sheet No. 1, 2 and 3 in bunch.

Sd/-

Signature of Inquiry
Officer/21.09.2007"

1(b) It also appears that UPSC advice was sought by the Respondents and a copy of the advice rendered by the UPSC dated 18.12.2009 is placed on record at Annexure-A/5. But it is not forthcoming as to whether the UPSC advice was supplied to the applicant in advance giving him an opportunity to submit his reply, as required under Rules and law. Be that as it may, the relevant portion of the UPSC advice is quoted hereunder:

"6. The Commission further note that the Inquiry Authority held both the charges as proved and a copy of the IO's report was supplied to the CO to enable him to present his case. The Commission also observe that the CO had admitted and accepted both the charges and required that the case may be considered sympathetically as he is a heart patient and on the verge of retirement. However, in view of the above analysis and acceptance of both the charges by the CO himself, the Commission conclude that no further comments are required to be offered and that both the charges are undoubtedly proved.

7. In light of their findings as discussed above and after taking into account all other aspects of the case, the Commission consider that ends of justice would be met if penalty of withholding of 100% of monthly pension otherwise admissible to the CO for five years

Will

and further withholding of 100% of gratuity on permanent basis admissible to him is imposed on Shri Prodip Kumar Mitra, the Charged Officer. The Commission advise accordingly."

1(c) Whether the applicant submitted any reply to the report of the IO or to the advice of the UPSC, if at all, supplied to him is not known. However, vide Memorandum dated 15th June, 2010, the Director General, Directorate General of Commercial Intelligence and Statistics, Kolkata intimated the Applicant as under:

" MEMORANDUM dated 15th June, 2010

Whereas a charge sheet was issued to Shri Prodip Kumar Mitra, LDC vide Memorandum No. 3 (26)/84-Estt.I dated 31st January, 2005 under rule 14 of CCS (CCA) Rules, 1965.

And whereas, an Inquiry conducted on 14.09.07 as per Rule 14 of CCS (CCA) Rules, 1965 and all the charges accepted unconditionally by Shri P.K.Mitra, Retd. LDC.

And whereupon, the undersigned forwarded all related papers in connection with the charges and findings thereon to the Disciplinary Authority.

In exercise of the power conferred by Article 351-A (Rule 9), the President of India is pleased to award Major Penalty to Shri P.K.Mitra Retd. LDC by withholding 100% of monthly pension otherwise admissible to him for a period of five years w.e.f. 1.5.10 and further withholding 100% gratuity on permanent basis."

1(d) As against the above, the applicant preferred this Original Application under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"a) To pass an appropriate order directing upon the respondent authority to quash and/or set aside the

will

impugned Charge Sheet dated 31.01.2005 along with Articles of Charges against the applicant and memo dated 9.1.2006 issued by the respondent authority in respect of certain allegations in respect of mismatching of signature of the authority along with certificate produced by the applicant being Annexure-A/1 of this Original application;

b) To pass an appropriate order directing upon the respondent authority to quash and/or set aside the impugned office memo dated 9.1.2006 along with Enquiry Report dated 13th July, 2009 being Annexure-A/3 and A/4 of the original application;

c) To pass an appropriate order directing upon the respondent authority to quash and/or set aside the impugned advice of Union Public Service Commission dated 18.12.2009 for imposing major penalty for withholding the 100% monthly pension for 5 years and further withholding 100% of gratuity on permanent basis which is beyond jurisdiction of Union Public Service Commission, since your applicant was belonged to Group C employee, the Union Public Service Commission cannot take such a decision beyond their own jurisdiction vide Annexure-A/5 of this original application;

d) To pass an appropriate order directing upon the respondent authority to quash and/or set aside the impugned office memo dated 15th June, 2010 along with Award of the President of India for withholding the 100% monthly pension for 5 years and further withholding 100% of gratuity on permanent basis against the applicant;

e) To pass an appropriate order directing upon the respondent authority to release entire retiral benefit as well as pensionary benefits in favour of the applicant within a time bound period along with iup to date interest by quashing and/or setting aside the Award of the president of India which was made on the advice of the Union Public Service Commission after setting aside and/or quashing the memos which has been issued by the authority concerned against your applicant."

WLL

2. The Respondents have filed their reply in which it has been stated that the charge sheet was issued under Rule 14 of the CCS (CCA) Rules, 1965 while the applicant was in service. As in the meantime the applicant retired from service, therefore, the proceedings were dealt into in accordance with Rule 9 of the CCS (Pension) Rules, 1972. The applicant has unequivocally and candidly admitted his guilty before the IO and has prayed for his exoneration. Accordingly, the IO concluded the enquiry and submitted his reply. In accordance with the rules, advice of the UPSC was sought before imposition of punishment. Thereafter, the applicant was imposed with the punishment vide order dated 15th June, 2010. The entire proceedings were conducted and concluded in accordance with Rules and in compliance with the principles of anural justice. Accordingly, the Respondents have prayed for dismissal of this OA.

3. Ms. T.Maity, the leered Counsel for the Applicant and Ms.M.Bhattacharyya, the learned counsel appearing for the Respondents have reiterated the stand taken in their respective pleadings and having heard them at length, we have also perused the records with their aid and assistance.

4. The institution of fresh departmental enquiry and continuation of departmental enquiry already instituted before retirement is governed by Rule 9 of the CCS (Pension) Rules, 1972. Rule 9(1) of the CCS (Pension) Rules, 1972 reads as under:-

Wll

"9. Right of President to withhold or withdraw pension (1) The President reserves to himself the right to withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement:

Provided that the Union Public Service Commission shall be consulted before any final orders are passed;

Provided further that where a part of pension is withheld or withdrawn, the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy-five."

5. The Hon'ble Supreme Court of India has held that Pension is not a bounty to be granted on the sweet will and pleasure of the Government. The Pensioner has a right of property in it. [Deokinandan Prasad v. State of Bihar, AIR 1971 SC 1409, State of Punjab v. K.R. Erry, AIR 1973 SC 834, State of Punjab v. Iqbal Singh, AIR 1976 SC 667, D.S. Nakra v. Union of India, AIR 1983 SC 130 and A.P. Srivastava v. Union of India, (1995) 6 SCC 227 and that it is earned for rendering a long service and is often described as deferred portion of payment for past services. It is in fact in the nature of social security plan providing for a superannuated government servant. [A.P. Srivastava v. Union of India, (1995) 6 SCC 227 and finally that the employees right to pension is a statutory right. The measure of deprivation therefore, must be correlative to or commensurate with the gravity of the grave

will

misconduct or irregularity, as it offends the right to assistance at the evening of his life as assured under Article 14 of the Constitution. (**D.V. Kapoor v. Union of India**, 1990 (3) SCR 697).

6. Further the Hon'ble Apex Court in **D.V. Kapoor v. Union of India**, 1990 (3) SCR 697, had held that under Rule 9, CCS (Pension) Rules, 1972 Withholding or withdrawing of pension, and recovery there from, is hedged with the condition precedent that a grave misconduct was committed, and the exercise of the power in this regard by the President is hedged with a condition precedent that a finding should be recorded, either in a departmental or judicial proceedings, that the pensioner had committed great misconduct or negligence, which was the subject of the charge against him.

7. Recording of reasons provides adequate protection and safeguard to the employee concerned. It is now well settled that reasons so recorded must be cogent and sufficient. Satisfaction to be arrived at by the disciplinary authority for the aforementioned purpose cannot be arbitrary. It must be based on objectivity- **Southern Railway Officers Association and Another Vrs Union of India and others** (2009) 2 SCC (L&S) 552 (paragraph 19).

8. In the instant case, we find that even though the applicant admitted his guilt still then it was bounden duty of the IO to submit the report in the form provided in the Rules. No specific finding recorded by the IO in his report as to whether the charges are

Will

proved or not whereas, in the advice tendered by the UPSC it has been observed that the IO held the charges are proved. The report of the IO is not only sketchy but also not in accordance with the Rules and law. Similar is the situation in so far as the order of punishment dated 15th June, 2010. The order of punishment is also not only ^{lacking in correctness} ~~lunatic~~ but also not in accordance with Rules so to say it has been issued in a most casual manner. The punishment of withholding 100% of monthly pension otherwise admissible to an employee for a period of five years and forfeiture of entire gratuity is a serious punishment which ought not to have been imposed without specific finding that the commission and omission committed by the applicant is so grave in nature ^{for} ~~imposition~~ of such punishment is warranted. We also find that the order of punishment is dated 15th June, 2010 whereas his pension has been withheld retrospectively with effect from 1st May, 2010.

9. In the above context, we feel that it is also justifiable to refer to the judgement of the Hon'ble Supreme Court (Three Judges Judgment) in the case of B.C. Chaturvedi vs. Union of India & Others [AIR 1996 SC 484, relevant portion of which is set out below:-

"18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The

WLL

High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

19. The Tribunal in this case held that the appellant had put in 30 years of service. He had brilliant academic record. He was successful in the competitive examination and was selected as a Class I Officer. He earned promotion after the disciplinary proceeding was initiated. It would be difficult to get a new job or to take a new profession after 50 years and he is "no longer fit to continue in government service". Accordingly, it substituted the punishment of dismissal from service to one of compulsory retirement imposed by the disciplinary authority. We find that the reasoning is wholly unsupportable. The reasons are not relevant nor germane to modify the punishment. In view of the gravity of the misconduct, namely, the appellant having been found to be in possession of assets disproportionate to the known source of his income, the interference with the imposition of punishment was wholly unwarranted. We find no merit in the main appeal which is accordingly dismissed with no order as to costs.

20. Consequently, the appeal of the Union of India is allowed. The order of the Tribunal modifying the punishment is set aside and that of the disciplinary authority is maintained. In the circumstances, parties to bear their own costs."

Valle

10. Accordingly, it is ordered that the case is remanded back to the Disciplinary Authority to review only the matter of penalty imposed, strictly as per Rule 9 of CCS(CCA) Rules, 1972, by way of a detailed speaking order as ordered by D.V. Kapoor (supra), mandatorily within three months of getting a certified copy of this order.

11. The matter is disposed of accordingly with the above direction. No order as to cost.

(Ms.Jaya Das Gupta)
Admn. Member

(A.K.Patnaik)
Judicial Member

RK/CM