

**Central Administrative Tribunal
Principal Bench**

OA No.964/2016

With

OA No.299/2017

OA No.447/2017

OA No.557/2017

OA No.791/2017

OA No.4092/2017

New Delhi, this the 8th day of May, 2019

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

I. OA No.964/2016

B.P. Mahaur, Aged 74 years,
S/o late Shri Ved Ram Mahaur,
Retired DANIC officer from
Govt. of NCT of Delhi
R/o C-7/202, Sector-8, Rohini,
Delhi-110085.

...Applicant

(By Advocates : Shri Yogesh Sharma with Ms. Sonika Gill)

Versus

1. Union of India through
The Secretary,
Govt. of India, Ministry of Home Affairs,
North Block, New Delhi.
2. The Under Secretary to the Govt. of India,
Govt. of India, Ministry of Home Affairs,
North Block, New Delhi.
3. The Chief Secretary,
Govt. of NCT of Delhi,
Delhi Secretariat, Players Building,
I.P. Estate, New Delhi.

4. The Union Public Service Commission,
 Through the Chairman,
 Shahjahan Road, New Delhi.

...Respondents

(By Advocates : Dr. Ch. Shamsuddin Khan and Ms. Alka Sharma)

II. OA No.299/2017

B.P. Mahaur, Aged 75 years,
 S/o Late Shri Ved Ram Mahaur,
 Retired from the post of Assistant Commissioner,
 While working in Govt. of NCT of Delhi,
 R/o C-7/202, Sector-8, Rohini,
 Delhi-110085.

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 Through the Chairman,
 Shahjahan Road, New Delhi.

...Respondents

(By Advocates : Shri S.K. Tripathi for Shri Gyanendra Singh and Ms. Alka Sharma)

III. OA No.447/2017

B.P. Mahaur, Aged 75 years,
 S/o late Shri Ved Ram Mahaur,
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(By Advocates : Shri S.M.Zulfiqar Alam and Ms.Alka
 Sharma)

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 Through the Chairman,
 Shahjahan Road, New Delhi.

...Respondents

(By Advocates : Ms. Alka Sharma, Dr. Ch. Shamsuddin Khan and Shri S.K. Tripathi for Shri Gyanendra Singh)

VI. OA No.4092/2017

B.P. Mahaur, Aged 76 years,
 S/o late Shri Ved Ram Mahaur,
 Retired DANICS Officer,
 (Group-B Gazetted), from
 Govt. of NCT of Delhi

R/o C-7/202, Sector-8, Rohini,
 Delhi-110085.

...Applicant

(By Advocates : Shri Yogesh Sharma with Ms. Sonika Gill)

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...Respondents

(By Advocates : Shri Saurabh Chadda with Shri Rohit Bhagat, Shri Paras Sachdeva Shri Akshay Singh)

ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman :-

This is the second batch of OAs filed by the applicant herein.

2. The applicant joined the service of the Delhi Administration as UDC in the year 1964. He earned promotions to the posts of Head Clerk, Superintendent, Assistant Collector (Sales Tax), Sales Tax Officer, and Assistant Registrar (Arbitration). By the time he retired from the service on 30.11.2001, he was holding the post of Assistant Commissioner.

3. Two months before his retirement, the applicant was issued as many as six charge memos dated 22.06.2001, 27.06.2001, 12.07.2001, 19.07.2001, 20.08.2001 and 12.11.2001. In all of them, the allegation was that while performing his duties as Sales Tax Officer in the year 1995-96, he issued several forms to the traders without proper verification and that in turn resulted in the evasion of sales tax. It was also alleged that he did not verify the eligibility of the concerned traders to be issued those forms. The common feature in all the charge sheets was that (a) the applicant acted in a negligent manner in issuing the forms and taking other steps and that; (b) he acted in connivance with the respective traders.

4. The applicant submitted replies to all the charge memos. In all of them, he raised certain common pleas such as that disciplinary proceedings were initiated at a belated stage and that there is no truth in the allegations. Not satisfied with the explanations offered by the applicant, the Disciplinary Authority (for short, DA) appointed the Inquiry Officers in the respective proceedings.

5. In all the inquiries, the Inquiry Officers submitted reports holding that the allegations as to the negligence in discharge of the duties are proved but not the one as to 'connivance'. In respect of four charge memos, the DA issued disagreement notes, taking the view that the allegation as to the connivance can also be taken as proved. In the remaining two, no disagreement note was issued but punishment was imposed in the form of withholding of 30% and 20% of the pension respectively, for a period of five years and both punishments were directed to run concurrently.

6. The applicant offered his remarks to the DA on the disagreement note. Not satisfied with the same, the DA arrived at the conclusion that the charge against the applicant was proved. As required under Rule 9 of the CCS (Pension) Rules, he forwarded the same to the UPSC for their advice. After receiving the advice, the DA proceeded to pass orders.

7. In the proceedings initiated through Charge Memo dated 20.12.2012, the penalty of withholding of 100%

monthly pension and gratuity on permanent basis was imposed. The same penalty was imposed in respect of proceedings initiated through charge memo dated 06.09.2016. In respect of the remaining two charges, separate penalties of withholding of 25% monthly pension for a period of two years and five years respectively were imposed.

7. The applicant filed OA Nos.4289/2012, 4290/2012, 618/2013, 619/2013, 783/2013 and 3173/2013, challenging the individual orders of punishment. The applicant raised various grounds before this Tribunal, such as that the disciplinary proceedings were initiated at belated stage, the disagreement was not valid *inasmuch* as it was issued by an authority not vested with the powers and that it was not tentative in nature, and that the advice tendered by the UPSC, was not communicated to the him.

8. Respondents filed separate counter affidavits opposing the OAs. All the OAs except the OA No.3173/2013 were allowed through a common judgment dated 22.07.2014, following the judgment of the Hon'ble

Supreme Court in ***Union of India Vs. S.K. Kapoor***

(2011) 4 SCC 589 and other judgments on the subject. It was held that the imposition of punishment without furnishing the copy of the advice tendered by the UPSC is illegal. Liberty was given to the DA to pass fresh orders. OA No.3173/2013 was allowed on the same lines through a separate order dated 03.02.2017.

9. Availing the liberty given by the Tribunal, the DA furnished the copies of the advice tendered by the UPSC in the individual cases, and the applicant submitted representations. On consideration of the same, the authority passed separate orders dated 19.01.2016, 08.11.2016, 06.09.2016, 28.01.2016, 27.09.2016 and 20.06.2017 respectively, virtually reiterating the punishment imposed in the earlier orders.

10. In this batch of OAs, the orders referred to above are challenged.

11. The applicant has virtually repeated the grounds pleaded by him in the earlier batch of OAs. In addition to

that, it is stated that the occasion for imposition of punishment in the form of withholding of pension in its entirety or part would arise, if only, an employee is found guilty of “grave misconduct or negligence” mentioned in rule 9 of the Pension Rules, and that in his case, there was no mention about the gravity of misconduct or negligence in the charge memo. The applicant further contends that assuming that the charge memo was issued at a time when he was in service, even at the subsequent stages, there is no allegation or finding as to the gravity of the misconduct or negligence, and in that view of the matter, entire proceedings become untenable, in view of the clear prohibition contained under Rule 9. Other grounds are also pleaded.

12. Respondents filed separate counter affidavits opposing the OAs. It is stated that except the ground relating to failure to furnish the advice tendered by the UPSC, all other grounds were dealt with by the Tribunal and were rejected, and it is not open to him to raise them at this stage. It is stated that the gravity of the misconduct on the part of the applicant was noticed by

the DA as well as by the UPSC in its detailed advice and accordingly punishment was imposed.

13. We heard Shri Yogesh Sharma with Ms. Sonika Gill, learned counsel for applicant and Shri Saurabh Chadda, Dr. Ch. Shamsuddin Khan, Ms. Alka Sharma, Shri S.K. Tripathi for Shri Gyanendra Singh and Shri Zulfiqar Alam, learned counsel for respondents.

14. The applicant was in the service of the Delhi Administration for about 36 years. His acts and omissions as Sales Tax Officer, referable to the year 1995-96 came under lens, just before his retirement. One after the other, six charge memos were issued, the details of which have been furnished in the preceding paragraphs. A typical charge reads as under :-

**“STATEMENT OF ARTICLE OF CHARGE
FRAMED AGAINST Shri B.P. MAHAUR,
FORMERLY STO**

While working as STO in ward – 81, Sh. B.P. Mahaur, committed misconduct in as much as he had issued (82) ST-35 forms, (30) ST-1 forms and (05) 'C' forms to M/s Nikalson India Parwana Road, Jagatpuri, Delhi. The registration was granted to the dealer by Sh. J.N. Sharma

at Arya Samaj Gali, Sita Ram Bazaar, Delhi with liability and validity w.e.f. 15.05.97 in Ward – 19. The dealer shifted to the jurisdiction of Ward – 81 w.e.f. 19.05.98 and the shifting was confirmed by both the STI's of Ward-19 and Ward – 81. Immediately after shifting, the process of issuing of statutory forms was initiated by Sh. B.P. Mahaur. He also allowed diversified items for resale and manufacturing without obtaining any report from the lower functionaries. The forms were issued in quick succession. Due to the nefarious and dubious activities of the dealer and a helping hand given by Sh. B.P. Mahaur, the dealer caused heavy loss to the government revenue.

Shri B.P. Mahaur issued statutory forms to the dealer in contravention of order no.7 and 9 of 1995-96. As per this order, the form issuing authority is required to fill the form such as for which assessment year the forms so issued are to be utilised, stamps of the issuing authority as well as of the dealer, amount, items etc. The forms were issued without obtaining advance requirement from the dealer except once dated 12.08.98 when (17) ST-35 forms were issued. Except this, Sh. B.P. Mahaur issued blank forms to the dealer on each occasion. He had issued forms for more than once for a particular year and also failed to get the dealer surveyed in terms of circular no.7 and 9 of 1995-96.

Sh. B.P. Mahaur allowed diversified items for resale by way of amendment in the RC w.e.f. 4.7.98 without obtaining report from the lower functionary. He also ignored the storage facilities available with the dealer which was only about 100 sq.ft. He also failed to consider the economic condition of the dealer before

allowing amendments in the RCs and issuing of statutory forms.

Thus, Sh. B.P. Mahaur has not only shown negligence on his part and dereliction to duty in issuing statutory form and allowing good number of diversified items for resale and manufacturing to the above dealer which shows his active connivance with the dealer. He failed to maintain absolute integrity and thereby acted in a manner which is unbecoming of a government servant and his conduct was in violation of provisions of rule 3 of the CCS (Conduct) Rule, 1964.”

15. Except the particulars of the dealers and the number of forms etc., the charges in other cases were by and large, in the same tone and tenor. The applicant denied the charges and raised certain grounds. It has already been mentioned that the DA appointed Inquiry Officers and the reports were submitted in all of them. Barring minor variations in all the cases, findings are on the following lines :-

“In view of the above, it is established that Sh. B.P. Mahaur, Charged Officer had not performed his duties in accordance with the rules and instructions of the department and therefore, appears to have been negligent in the discharge of his duties.

It could not be found during the inquiry or proved by the P.O. that there was active connivance of Shri B.P.

Mahaur with the dealer and hence the charge of connivance with dealer is not established.”

16. From this, it is evident that the allegation as to the negligence was held proved but not one as to connivance. In the context of imposition of punishment, the allegation as to the connivance plays important role. Merely negligence by itself, may not be that much serious. On the one hand, an otherwise vigilant act, if tainted with allegation of connivance would not be in the interest of the department. Obviously realising that punishment cannot be imposed unless connivance is also proved, the DA issued disagreement notes in four cases. The applicant submitted his objections to that, and raised certain fundamental questions such as competence of the authority and the purport of the disagreement note. The DA considered the explanation and took the charges in their entirety, as proved and forwarded the matter to the UPSC. On its part, the UPSC tendered its advice in individual cases; and taking the same into account, the punishments as indicated in the preceding paragraphs were imposed.

17. In the earlier batch of OAs, almost all the grounds raised by the applicant were dealt with, in some detail and the Tribunal was not impressed by them. The only ground that weighed with the Tribunal was that the orders of punishment were vitiated on account of failure of the respondents to furnish the copy of the advice of the UPSC. The relevant portion reads as under :-

“26. In the circumstances and for the aforesaid reasons, the OA 4289/2012 is allowed and the impugned penalty order dated 26.07.2012 is quashed and set aside. The applicant is permitted to submit his representation/objections if any against the UPSC advice, which was furnished to him along with the penalty order dated 26.07.2012, within two weeks from the date of receipt of a copy of this order, and the disciplinary authority may pass a speaking and reasoned order in accordance with law, within a reasonable period, preferably within four months there from. No costs.”

18. On the same lines, the other OAs were also allowed. Thereafter, the copies of the UPSC advice were furnished to the applicant and the punishments imposed earlier were repeated.

19. An aspect which becomes relevant at this stage is the very exercise of powers under Rule 9 of the CCS

(Pension) Rules, 1972. It is relevant to extract sub Rule 1 of Rule 9 which reads as under :-

“9. Right of President to withhold or withdraw pension

(1) The President reserves to himself the right of 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”

20. From this, it becomes clear that the occasion to withhold the pension or gratuity of a retired employee would arise, if only, he is found guilty of ‘grave’ misconduct or negligence.

21. We have carefully gone through every charge memo issued to the applicant. Nowhere the word ‘grave’ was employed, to qualify the allegation as to misconduct, negligence or connivance.

22. There may be an excuse for the respondents in not choosing to employ the word 'grave' since the charge sheets were issued before the applicant retired from service. However, once he retired from service, the entire proceedings are brought under the purview or umbrella of Rule 9 by operation of Sub Rule 2(a), which reads as under :-

"9.2(a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service :

23. Once the proceedings assumed the character of those under Rule 9, the DA is placed under obligation to ensure that they are continued, if only, there existed the element of gravity of misconduct or negligence. If that is not supplemented, the very continuation of proceedings under Rule 9 becomes untenable, if not questionable. The Rule making authority did not want a retired

employee to be exposed to the disciplinary proceedings or charges, which are not grave in nature.

24. In their advice, the UPSC did use the word 'grave' in the concluding portion. We are of the view that when there was no mention of gravity with reference to the misconduct or negligence either in the charge sheet or in the report of the Inquiry Officer or at any stage before the DA and thereby rule 9 of the Rules did not get attracted, the UPSC cannot take upon itself the task of bringing the proceedings under the cover of Rule 9. The advice is required to be only on the basis of the material before it. The UPSC cannot assume to itself, the power to supplement some missing links in the proceedings initiated against an employee. In this context, the proceedings suffered a serious flaw.

25. We are of the view that the applicant was alleged to have resorted to acts of misconduct repeatedly, as is evident from the number of proceedings initiated against him.

26. This is a second round of litigation. In the normal course, present set of the orders of punishment are to be set aside and either an exercise, in accordance with law needs to be undertaken afresh or a different course needs to be adopted. On the one hand, the loss sustained by the Government on account of acts and omissions cannot be ignored, and on the other hand, the legal rights that accrued to the applicant by operation of law, cannot be ignored.

27. We propose to strike the balance between the two, so that the entire episode is given a quietus. We are of the view that the penalty of withholding of 50% of the pension on permanent basis, in addition to the deductions already made vis-a-vis the applicant would meet the ends of justice and would also be in public interest. It is possible to state that this may not be legally accurate. However, there is no point in prolonging the litigation endlessly.

28. We, accordingly, allow the OAs in part, directing that the six impugned orders of punishment shall stand amalgamated into one, to the effect that :

- (a) the pension of the applicant shall be withheld to the extent of 50% permanently with effect from the date of this order;
- (b) the deductions already made under various orders at different stages shall hold good and shall not be liable to be reopened, and
- (c) the applicant shall be released the gratuity, if not already done.

29. This exercise shall be completed within a period of two months from the date of receipt of a certified copy of this order.

There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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