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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 1871/2003

This the 20th day of April, 2004

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HON'BLE SH. KULDIP SINGH, MEMBER (J)
HON'BLE SH. S.A.SINGH, MEMBER (A)

Sh. R.K.Choudhary,
Sr. Accounts Officer (Retd.)
S/o Late Barati Choudhary,
R/o E-025, Richmond Park,
DLF City, Phase-V,
Gurgaon-122002
Haryana.

(By Advocate: Sh. Vikas Singh)

Versus

1. Union of India
Ministry of Defence (Finance Division),
through Secretary,
South Block,
New Delhi-110001.
2. Controller General of Defence Accounts,
West Block-V, R.K.Puram,
New Delhi-110066.

(By Advocate: Sh. K.C.D.Gangwani and
Mrs. Promila Safaya)

O R D E R

By Sh. Kuldip Singh, Member (J)

Applicant has assailed an order dated 19.2.2003 whereby the President has upheld the order passed by the disciplinary authority awarding penalty of compulsory retirement from service with a cut in pension for 5 years to the applicant. Applicant has also challenged order dated 2.1.98 whereby the disciplinary authority had imposed a penalty of compulsory retirement upon the applicant.

2. The facts in brief as alleged by the applicant are that the applicant was issued a chargesheet dated 9.7.93 under Rule 14 of the CCS (CCA) Rules whereby an enquiry was supposed to be held against the applicant on the following charges. That
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the applicant had committed gross misconduct inasmuch as he while serving in different capacities in the offices of Controller of Defence Accounts between 1976 and 1985 had acquired assets disproportionately by dubious means and after calculating his income, expenditure and assets, the applicant was found in possession of assets to the tune of Rs.5,45,063/- which is not commensurate with his known source of income. Applicant therefore failed to maintain absolute integrity and thereby contravened Rule 3 (1)(i) of the CCS (Conduct) Rules, 1964.

3. Applicant submitted the reply which was not found satisfactory, so enquiry was held. The enquiry officer returned its finding holding the applicant guilty of the charge alleged on the basis of which the disciplinary authority passed the impugned order imposing penalty upon the applicant. Applicant filed an appeal and the appellate authority, i.e., the President of India upheld the order of disciplinary authority holding the applicant guilty and passed an order of compulsory retirement with cut of 10% in pension for a period of 5 years. In the grounds to challenge the order of penalty, applicant submitted that the chargesheet drawn against the applicant was initiated on the basis of anonymous letter a copy of which had not been supplied to the applicant. It is also submitted that the entire procedure followed while conducting the enquiry had been in gross violation of law as unassailable evidence placed on record by the applicant was ignored by the enquiry officer as well as by the disciplinary authority as well as appellate authority. It is also stated that penalty imposed upon the applicant is unjustified.

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4. It is further stated that enquiry officer had acted in prejudicial manner towards the applicant as he has failed to see to relevant documents which substantiated the claim of the applicant. It is also submitted that no charges of fraud, misuse of office position has been levied against the applicant. There are gross discrepancies in calculation of actual income of the applicant.

5. It is also stated that the enquiry officer had in a malafide manner confined the check period to 10 years, i.e. 1976 to 1985 whereas CBI while investigating the case had conducted the check for a period of 15 years and thereafter conducting the complete investigation CBI did not find any case and submitted the report. It is further stated that since the raid had been conducted on 29/30.11.1990 and the assets of that date were taken into consideration, so the check period taken into account should have been till 1990 but it has been deliberately and mischievously reduced to 1985 which indicate malafide intentions on the part of the enquiry officer. Thus, it is submitted that there are glaring irregularities in the enquiry proceedings which calls for that the impugned order should be quashed.

6. Respondents are contesting the OA. Respondents in their reply pleaded that the impugned order issued by the President had been issued by the President of India after consulting UPSC and it is, however, stated that it was decided that the penalty of compulsory retirement imposed upon the applicant was not excessive and 10% cut in pension for a period of 5 years has been set aside in terms of Rule 29 of CCS (CCA) Rules, 1965. Respondents also pleaded that as regards the

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correctness of truth of charges is concerned the Court has no jurisdiction, Court can interfere only if the charges framed show that there is no misconduct but the Court has no jurisdiction to go into the correctness and truthness of the charges. It is also stated that the report of the check mentioned in FIR cannot be compared with check period from 1976-1990 to 1976 to 1985 which was taken up after completion of investigation and after consideration of the report of the investigating officer, the representation given by the applicant had been examined at length and no ground had been found in favour of the applicant.

7. The allegations of the applicant regarding his other sources of income such as plying taxi and income from LIC agency of his wife is also stated to have been considered by the authorities concerned. The claim of the applicant had been rejected by the authorities. It is also stated that there is no cause of violation of any procedural irregularities nor it is a case of any violation of principles of natural justice. Thus, it is submitted that there is no fault in the order passed by the authorities concerned and there is no case for judicial review of the impugned orders.

8. We have heard the learned counsel for the parties and have gone through the record. Counsel appearing for the applicant submitted that a serious prejudice has been caused to the applicant since the check period has been reduced from 1976-1990 to 1976 to 1985 and it has been done so with a malafide motive so that the true value of the assets be not taken as on the date when the investigation by the CBI was

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conducted or on the date when the raid was conducted rather the check period has been reduced to 5 years and earlier period.

9. In reply to this, counsel for respondents submitted that as per the Vigilance Manual check period has been confined to the period of 10 years and the authorities had taken note of the investigation report submitted by the investigation officer and after scrutinising the report of the investigation officer of the CBI, authority decided that the check period should be 1976-85 which is 10 years as per the Vigilance Manual itself. In our view also the fact that the check period has been reduced from 1976-90 to 1976-85 does not cause prejudice to the applicant in any manner because after 1985 he would have acquired more properties and whatever acquisition of assets he had made till 1985 that would be certainly less than what are the acquisition in the year 1990. The only question to be seen is whether the value of the property is taken up to the year 1985 or even while conducting the check period upto 1985 the value of property had been taken as that of 1990.

10. In this regard on going through the enquiry report, we find that the enquiry officer in his report had clearly given the details about the property acquired till 1985 and what was the sources of income from 1976-85 in the enquiry itself. Thus the check period has been confined only for a check period of 1976-85 and no prejudice has been caused to the applicant by reducing the check period from 1976-85. Counsel for applicant also submitted that the enquiry officer had not considered his income from agriculture as he was in possession of 13 acres of fertile land and he has lot of income from that

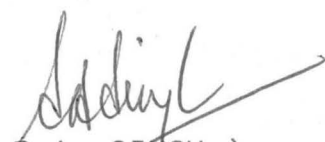
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also. But we find from the report of the enquiry officer that had dealt with the item relating to agricultural income and had also referred to a letter received from the revenue authorities about the same so it cannot be said that the income of the applicant from agricultural land has not been taken into consideration. Learned counsel for applicant then also referred that the reducing of the check period from 1990 to 1985 was deliberately done and that too at the behest of the investigating officer of the CBI. For this purpose, he also referred to para 4.9 of the counter affidavit where the respondents have stated that report of the check mentioned in the FIR be not compared with the check period from 1976-90 and 1976-85 as the same was taken after completion of investigation and on consideration of the report of the investigating officer, so there is nothing to suggest that the investigating officer had suggested that check period should be curtailed to 1985. It is only after going through the report of the investigating officer the disciplinary authority had confined the check period from 1976-85 which is the sole discretion of the disciplinary authority and which is in compliance with the Vigilance Manual as submitted by the respondents, so we do not find that any prejudice has been caused to the applicant by reducing this check period.

11. Applicant had also stated that enquiry officer had not analysed the evidence properly as he has added wrongly the cost of construction of house at Punaichak for water, sanitation and electrical works which cannot be taken into account.

12. Similarly applicant has also pointed out that the enquiry officer had not appreciated the evidences properly. In our view this contention of the applicant has no merits so long applicant was provided a full opportunity to defend his case in accordance with the rules. The appreciation of the evidence is a domain of the enquiry officer and this Court while sitting as a Court of judicial review cannot reappreciate the facts and evidences. It is only for the disciplinary authority or the appellate authority to appreciate the evidence and the facts. But this Court has only to see whether there is any fault in the process of arriving at any particular decision and not the decision itself. Since the applicant is unable to point out any fault in the process of arriving at a decision. On the contrary we find that sufficient evidence is available which is relevant for proving the charges against the applicant and on the basis of which applicant had been held guilty, so it cannot be said that it is a case of no evidence when the Court can interfere.

13. In view of above discussion, we find that there is no case for interference. OA is, therefore, dismissed.


(S.A. SINGH)
Member (A)


(KULDIP SINGH)
Member (J)

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