

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.2233/2003

New Delhi this the 22nd day of April, 2004.

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri S.A. Singh, Member (A)

Prahlad Singh
S/o Late Sh. Prabhu Dayal
R/o H.No.895, Narela Main Road,
Alipur, Delhi-110036. ... Applicant

(By Advocate : Shri S.K. Gupta)

versus

1. Union of India,
Through Secretary,
Ministry of Human Resources &
Development, Shastri Bhawan,
New Delhi.
2. Director,
National Council of Educational
Research and Training,
Shri Aurobindo Marg,
New Delhi-110016.
3. Joint Director,
National Council of Educational
Research and Training,
Shri Aurobindo Marg,
New Delhi-110016.
4. Secretary,
National Council of Educational
Research and Training,
Shri Aurobindo Marg,
New Delhi-110016.
5. Shri T.P. Srivastava,
Inquiring Authority
C/o Secretary,
National Council of Educational
Research and Training,
Shri Aurobindo Marg,
New Delhi-110016. ... Respondents

(By Advocate: Shri R.K. Singh)

Order

Hon'ble Shri Shanker Raju, Member (J)

Applicant impugns respondents' order dated
23.4.2002 imposing upon him a penalty of compulsory

retirement with reduction of pensionary benefits to 1/3rd of the family pension as well as modified appellate order dated 16.11.2003, where alongwith compulsory retirement gratuity has been reduced to 1/3rd of the normal amount.

2. Briefly stated applicant while functioning as UDC in NCERT was travelling to Ajmer by Ahmedabad Mail on 17.3.2001 as a member of sports team. He consumed alcohol in the train with Sh. Mahinder Singh Dagar, Bearer from 10.30 p.m. to 1.30 a.m. and abused the family members of Shri Rakesh Tiwari, a Senior Public Prosecutor in Delhi Administration and also tried to outrage the modesty of his female family members. Accordingly, GRPF Guard arrested applicant. A case under Sections 145 and 146 of the Railway Act was registered. Later on admonition under the Probation of Offenders Act applicant was released. On an enquiry applicant was found guilty by the Enquiry Officer (EO). In response to his finding a major penalty was imposed, which was affirmed in appeal, giving rise to the present OA.

3. Learned counsel for applicant raised only two grounds to assail the punishment. First, according to him non-examination of applicant and failure of the EO to put evidence in the form of question in consonance with Rule 14 (18) of the CCS (CCA) Rules, 1968 vitiates the enquiry as well as the punishment.

4. Another plea taken by applicant is that under Rule 40 of the CCS (Pension) Rules, 1972 on compulsory retirement the competent authority to withhold gratuity or pension is only the President in consultation with the UPSC. As the orders have been passed by the Secretary as disciplinary authority and Joint Director the order of the appellate authority is without jurisdiction.

5. Placing reliance on a decision of the Apex court in D.V. Kapoor v. Union of India, AIR 1990 SC 1923 it is stated that gratuity cannot be withheld by way of penalty and before withholding gratuity as no show cause notice has been issued the enquiry is vitiated as well as the punishment order.

6. On the other hand, respondents' counsel produced the record of the disciplinary authority. According to him EO complied with the provisions of Rule 14 (18) of the Rules. Evidence and circumstances appearing against applicant have been put in the form of question but as applicant has refused to answer despite being offered he has not availed this opportunity.

7. In so far as Rule 40 is concerned, it is contended that as per Rule 40 the competent authority referred to is the authority empowered to order compulsory retirement. Sub rule (2) of Rule 40 would apply when the delinquent is a Group 'A' officer. The President would pass an order on its original side and in cases where the President acts as an appellate authority under Rule 27 of the Rules ibid or as a

reviewing authority. Under Rule 29 of the Rules in that event the UPSC is to be consulted. As applicant was compulsorily retired by the competent authority who is competent as well to order pension cut.

8. As regards decision of D.V. Kapoor it is stated that the same is in context of Rule 9 of the CCS (Pension) Rules, whereas Rule 40 applies in case a penalty of compulsory retirement is inflicted upon.

9. We have carefully considered the rival contentions of the parties and perused the material on record.

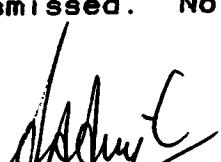
10. In so far as compliance of Rule 14 (18) is concerned, we find question on the basis of circumstances and evidence being put to applicant and it is only applicant who failed to avail this opportunity. As such, no violation of Rule 14 (18) is established to vitiate the proceedings.

11. As regards Rule 40 is concerned, sub Rule (1) of Rule 40 and sub rule (2) are two distinct provisions apply to different situations. Rule 40 applies when a government servant by way of penalty is compulsorily retired in that event the competent authority who has passed the order of penalty is competent to impose pension or gratuity cut, whereas the order passed by the President requires consultation with UPSC only while acting as an appointing authority of Group 'A' officer or in case of an appeal the appellate authority or reviewing authority. This is in consonance with rules 17 and 32 of the CCS (CCA) Rules.

1965, where an order passed by the President as disciplinary authority is preceded by consultation with UPSC. Admittedly, applicant is not a Group 'A' officer and the President is not his reviewing or appellate authority. In such an event pension or gratuity cut is to be imposed by the competent authority, which is the authority who passed the order of penalty. In the instant case undisputedly Secretary is the competent authority who passed the order of penalty is equally competent to impose pension/gratuity cut.

12. As regards decision in D.V. Kapoor's case (supra) is concerned, it relates to post retirement procedure in case of penalty of pension or gratuity cut. In that event the gratuity cannot be cut by way of penalty. This is the scope of rule 9 (1), which refers to only pension, whereas Rule 40^h not only provides cut in pension but also gratuity. As such by way of penalty Rule 40 can be invoked. The case of D.V. Kapoor (supra) is distinguishable and would have no application in cases where compulsory retirement has been imposed as a penalty. There is no need for a show cause notice as well.

13. In the result, for the foregoing reasons, OA is found bereft of merit and is accordingly dismissed. No costs.


(S.A. Singh)
Member (A)

'San.'


(Shanker Raju)
Member (J)