

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2578/2003

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New Delhi this the 4th day of June, 2004.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

HON'BLE MR. R.K. UPADHYAYA, MEMBER (ADMINISTRATIVE)

M.P. Gupta

-Applicant

(By Advocate Shri D.P. Sharma)

-Versus-

Union of India & Ors.

-Respondents

(By Advocate Shri R.N. Singh)

1. To be referred to the Reporters or not? YES/NO Yes
2. To be circulated to other Benches of the Tribunal? Yes Yes

S. Raju
(Shanker Raju)
Member (Judicial)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.2578 OF 2003

New Delhi, this the 4th day of *June*, 2004

HON'BLE SHRI SHANKER RAJU, JUDICIAL MEMBER
HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

M.P. Gupta S/o Late Shri Ram Prasad
Retd. Asstt. Postmaster Etah (U.P.) (Group "C")
R/o Dwarikauri,
Agra Road Etah (U.P.)

....Applicant

(By Advocate : Shri D.P. Sharma)

Versus

1. Union of India
through Secretary,
Ministry of Communication and I.T.
Department of Posts,
Dak Bhawan, Sansad Marg,
New Delhi-110001.
2. The Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi-110011.
3. The Superintendent Postoffices,
Etah Division Etah.

.....Respondents

(By Advocate : Shri R.N. Singh)

O R D E R

SHRI SHANKER RAJU, JUDICIAL MEMBER :-

Applicant impugns respondents' order dated 28.5.2003 whereby under Rule 9 of the CCS (Pension) Rules (hereinafter referred to as 'Rules') on the advise of Union Public Service Commission, the President has forfeited monthly pension of the applicant on permanent basis. However, gratuity has been released in full. Quashing of the aforesaid order with all consequential benefits has been sought.

2. Undisputed facts of the case are that applicant has been proceeded against during his service tenure in a disciplinary proceedings under



Rule 14 of the CCS (CCA) Rules, 1965 on the following allegations:-

"Statement of articles of charge framed against Shri M.P. Gupta APM Etah HO.

ARTICLE - I

Shri M.P. Gupta while working as SB Counter Asstt. at Postoffice Collectorate compound Etah on 2.9.97, opened as SB A/C No.9703418 in the name of Shri Kaptan Singh S/o Shri Bhawani Prasad, 108, Nai Basti Etah with the initial deposit of Rs.40.00, whereas there was no such person on the address of alleged depositor of SB A/C No.9703418. The depositor of the said a/c has been shown to have been introduced by Shri Man Singh, 138, Nai Basti Etah, the depositor of SB A/C No.9902201 standing at sub postoffice Partialigate Etah, whereas there was no such person on the address of introducer. Thus it is alleged that the said account was opened in the bogus name of the depositor, duly introduced by a bogus named person. In the said SB A/C No.9703418 opened in such a bogus named depositor, the amount of cheque no.951430 for Rs.13930 was deposited on 8.9.98 and on the very day, a withdrawal of Rs.13900.00 was made. It is alleged that the said Shri M.P. Gupta, while opening the SB A/C No.9703418, failed to get the depositor introduced by a respectable person known to the Post Office or by a depositor who had a active account in his name at Collectorate compound Post Office Etah, with the result that the amount of the above cheque in the name of Shri Kaptan Singh S/o Shri Bhawani Prasad Village Nagla Lakshman Postoffice Garhi Bendula Distt. Etah was misappropriated. As such it is alleged that the said Shri M.P. Gupta infringed the Rule 23(2)(vi) of P.O. SB Manual Vol.I read with D.G.-Post letter no.35-38/90-SB dated 22.11.90. It is further alleged that the said Shri M.P. Gupta failed to maintain absolute integrity and devotion to duty and thereby violated the provisions of Rule 3(1)(i)(ii) of CCS (Conduct) Rules, 1964.

ARTICLE-II

The said Shri M.P. Gupta while working as SB counter Asstt. at Post Office Collectorate Compound Etah on 18.8.97 opened an SB A/C No.9703405 in the name of Rameshwar Dayal S/o Shri Hori Lal R/o village Kurina Postoffice Begore Distt.

Etah with initial deposit of Rs.50.00. It is alleged that the said a/c was opened in the bogus name of the depositor as there was no person named Rameshwar Dayal S/o Shri Hori Lal at the address of the depositor. The depositor of the said A/C has been shown to have been introduced by Ramveer Singh R/o Village Kurina P.O. Begore Distt. Etah and w.r.to the introducer his SB A/C No.2106797 has been shown on SB-3 of SB A/C No.9703405, while this a/c does not stand opened at Postoffice Collectorate Compound. In the a/c no.9703405 opened in such a bogus name of depositor, the amount of draft for Rs.7000.00 was deposited on 21.8.97 and Rs.7000 was withdrawn on 23.8.97. It is alleged that the said Shri M.P. Gupta infringed the Rule No.23(2)(vi) of P.O. S.B.Manual Vol.I read with DG Post letter no.35-38/90-SB dated 22.11.90. It is further alleged that the said Shri M.P. Gupta failed to maintain absolute integrity and devotion to duty and thereby violated the provision of Rule 3(1)(i)(ii) of CCS (Conduct) Rules 1964.

ARTICLE-III

The said Shri M.P. Gupta while working as SB counter Asstt. at Postoffice Collectorate Compound, Etah on 15.9.97 opened an SB A/C No.9703428 in the name of Shri Indra Pal Singh S/o Shri Ram Singh Yadav 85 Hazipura Etah with the initial deposit of Rs.50.00. It is alleged that the said A/C was opened in the bogus name of the depositor as there was no such person at the address of the depositor. The depositor of the said A/C has been shown introduced by Smt. Krishna Kumari H.No.55 Hazipura Etah and with reference to the introducer her SB A/C No.9703424 has been shown on SB-3 of a/c no.9703428. SB A/C No.9703424 was opened at Postoffice Collectorate Compound Etah on 9.9.97 and the depositor of SB A/C No.9703424 was introduced by the depositor of SB A/C No.9902195 while the a/c no.9902195 does not stand opened at Collectorate Compound Postoffice. There are no persons at the address of depositors of SB A/C No.9703428, 9703424 and 9902195. It is alleged that the introducer of said SB A/C No.9703428 is also bogus. In the said SB A/C No.9703428 opened in such a bogus name of depositor, the amount of draft for Rs.5000.00 was deposited on 19.9.97 and Rs.5000.00 was withdrawn on 23.9.97. It is alleged that the said Shri M.P. Gupta infringed the Rule no.23(2)(vi) of P.O. SB Manual Vol.I read with DG Post letter no.35-38/90-SB dated 22.11.90. It is further alleged that the said Shri M.P. Gupta failed to maintain absolute integrity

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and devotion to duty and thereby violated the provision of Rule 3(1)(i)(ii) of CCS(Conduct) Rules 1964.

3. Applicant superannuated on attaining the age of retirement on 30.8.2000 and the proceedings had been deemed to be pending under Rule 9 of the Rules. On completion inquiry officer has held the applicant guilty of the charges. The disciplinary authority after affording an opportunity to the applicant had imposed 25% cut in the pension while recommending the case of the applicant to the Union Public Service Commission for its advise.

4. Union Public Service Commission vide its advise recommended forfeiture of monthly pension on permanent basis which has been agreed to by the President calminating into the impugned order giving rise to the present Original Application.

5. Learned counsel of the applicant though raised several contentions to assail the conduct of the disciplinary proceedings as also the impugned order. However, at the outset, learned counsel refers to Rule 9 of the CCS (Pension) Rules to contend that sine qua non for exercise of jurisdiction by the President in the proceedings continued post retirement recording of finding of either grave misconduct or grave negligence during the course of the disciplinary proceedings. As the aforesaid finding has not been recorded in the course of disciplinary proceedings, in view of the decision of the Apex Court in the case of

D.V. Kapoor Vs. Union of India, AIR 1990 SUPREME COURT 1923, the order passed by the President is void ab initio and cannot be sustained.

6. On the other hand, respondents learned counsel vehemently opposed the contentions of the of the applicant. According to him, the charge of wrong verification which led to fictitious account being opened shows connivance of the applicant in misappropriation. According to him, though there may not be a specific finding recorded in the disciplinary proceedings yet the charge alleged against the applicant shows violation of Rule 23 (2) (iv) of S.B. Manual and as the applicant has failed to maintain basic integrity and devotion to the duty violated the provisions of CCS (Conduct) Rules itself is a grave misconduct, as the inquiry officer has proved this charge in toto. This has to be treated as findings of grave misconduct and grave negligence.

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

8. Explanation to Rule 8 (5) of the Pension Rules defines grave misconduct as under:-

"EXPLANATION- In this rule,-

(a) the expression 'serious crime' includes a crime involving an offence under the Official Secrets Act, 1923 (19 of 1923);

(b) the expression 'grave misconduct' includes the communication or disclosure of any secret official code or

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password or any sketch, plan, model, article, note, document or information, such as is mentioned in Section 5 of the Official Secrets Act, 1923 (19 of 1923), (which was obtained while holding office under the Government) so as to prejudicially affect the interests of the general public or the security of the State."

9. Rule 9 of the Pension Rules is reproduced as under:-

"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:

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 (Rupees One thousand two hundred and seventy-five from 1.1.1996 - see GID below Rule 49) per mensem.]

(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:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment,-

(i) shall not be instituted save with the sanction of the President,

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) Deleted.

(4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 69 shall be sanctioned.

(5) Where the President decides not to withhold or withdraw pension but orders recovery a pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule,-

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted-

(i) in the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognizance, is made, and

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(ii) in the case of civil proceedings, on the date the plaint is presented in the Court."

10. The Apex Court in the case of D.V. Kapoor (supra) while dealing with the provisions of Rule 9 of the Pension Rules observed as under:-

"His further contention that the appellant must be found to have committed "grave misconduct" or "negligence" within the meaning of Rule 8(5)(2) of the Rules which alone gives power and jurisdiction to the authority to withhold by way of disciplinary measure the gratuity and payment of pension, Public employee holding a civil post or office under the State has a legitimate right to earn his pension at the evening of his life after retirement, be it on superannuation or voluntary retirement. It is not a bounty of the State. Equally too of gratuity, a statutory right, earned by him. Article 41 of the Constitution accords right to assistance at the old age or sickness or disablement. In D.S. Nakara v. Union of India (1983) 2 SCR 165: (AIR 1983 SC 130), the Constitution Bench of this Court held that pension is not only compensation for loyal service rendered in the past but also by the broader significance in that it is a social welfare measure rendering socio-economic justice by providing economic security in the fall of life when physical and mental prowess is obbing corresponding to ageing process and, therefore, one is required to fall back on savings. One such saving in kind is when one had given his best in the hey-day of life to his employer, in days of invalidity, economic security by way of periodical payment is assured. Therefore, it is a sort of stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus pension is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation for service rendered. In one sentence one can say that the most practical *raison d'être* for pension is the inability to provide for one self due to old age. One may live and avoid reemployment but not senility and penury if there is nothing to fall back upon.

At page 190-D (of SCR) : (at p.140, para 36 of AIR) it is stated that pension as a retirement benefit is in consonance with and furtherance of the goals of the Constitution. The goals for which pension is paid themselves give a fill up and push to the policy of setting up a welfare State because by pension the socialist goal of security from cradle to grave is assured at least when it is mostly needed and least available, namely in the fall of life. Therefore, when a Government employee is sought to be deprived of his pensionary right when he had earned while rendering services under the State, such a deprivation must be in accordance with law. Rule 9(1) of the rules provides thus:-

"The President reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pension 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 his 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 pension shall not be reduced below the amount of rupees sixty per mensem."

Therefore, it is clear that the President reserves to himself the right to withhold or withdraw the whole pension or a part thereof whether permanently or for specified period. The President also is empowered to order recovery from a pensioner of the whole or part of any pecuniary loss caused to the Government, if in any, proceeding in the departmental enquiry or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement.

Rule 8(5), explanation (b) defines 'grave misconduct' thus:-

"The expression 'grave misconduct' includes the communication or disclosure of any secret official code or password or any sketch, plan, model, article, note,

document or information, such as is mentioned in Section 5 of the Official Secrets Act, 1923 (19 of 1923) (which was obtained while holding office under the Government) so as to prejudicially affect the interests of the general public of the security of the State."

In one of the decisions of the Government as compiled by Swamy's Pension Compilation, 1987 Edition, it is stated that :-

"Pensions are not in the nature of reward but there is a binding obligation on Government which can be claimed as a right. Their forfeiture is only on resignation, removal or dismissal from service. After a pension is sanctioned its continuance depends on future good conduct, but it cannot be stopped or reduced for other reasons."

It is seen that the President has reserved to himself the right to withhold pension in whole or in part thereof whether permanently or for a specified period or he can recover from pension of the whole or part of any pecuniary loss caused by the Government employee to the Government subject to the minimum. The condition precedent is that in any departmental enquiry or the judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during period of his service of the original or on re-employment. The condition precedent thereto is that there should be a finding that the delinquent is guilty of grave misconduct or negligence in the discharge of public duty in office, as defined in Rule 8(5), explanation (b) which is an inclusive definition, i.e. the scope is wide of mark dependent on the facts or circumstances in a given case. Myriad situation may arise depending on the ingenuity with which misconduct or irregularity was committed. It is not necessary to further probe into the scope and meaning of the words grave misconduct or negligence and under what circumstances the findings in this regard are held proved. It is suffice that charges in the case are that the appellant was guilty of wilful misconduct in not reporting to duty after his transfer from Indian High Commission at London to the Office of External Affairs Ministry, Government of India, New Delhi. The Inquiry Officer found that though the appellant derelicted his duty to report to duty, it is not wilful for the reasons that he could not move due to his wife's illness and he recommended to sympathetically consider

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the case of the appellant and the President accepted this finding, but decided to withhold gratuity and payment of pension in consultation with the Union Public Service Commission.

As seen the exercise of the power by the President is hedged with a condition precedent that a finding should be recorded either in departmental enquiry or judicial proceedings that the pensioner committed grave misconduct or negligence in the discharge of his duty while in office subject of the charge. In the absence of such a finding the President is without authority of law to impose penalty of withholding pension as a measure of punishment either in whole or in part permanently or for a specified period or to order recovery of the pecuniary loss in whole or in part from the pension of the employee subject to minimum of Rs.60/-.

Rule 9 of the rules empowers the President only to withhold or withdraw pension permanently or for a specified period in whole or in part or to order recovery of pecuniary loss caused to the State in whole or in part subject to minimum. The employee's right to pension is a statutory right. The measure of deprivation, therefore, must be correlative to or commensurate with the gravity of the grave misconduct or irregularity as it offends the right to assistance at the evening of his life as assured under Article 41 of the Constitution. The impugned order discloses that the President withheld on permanent basis the payment of gratuity in addition to pension. The right to gratuity is also a statutory right. The appellant was not charged with nor was given an opportunity that his gratuity would be withheld as a measure of punishment. No provision of law has been brought to our notice under which the President is empowered to withhold gratuity as well, after his retirement as a measure of punishment. Therefore, the order to withhold the gratuity as a measure of penalty is obviously illegal and is devoid of jurisdiction.

In view of the above facts and law that there is no finding that appellant did commit grave misconduct as charged for, the exercise of the power is clearly illegal and in excess of jurisdiction as the condition precedent, grave misconduct was not proved. Accordingly, the appeal is allowed and the impugned order dated

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November 24, 1981 is quashed but in the circumstances parties are directed to bear their own costs."

11. If one has regard to the above, sine qua non for exercise of jurisdiction by the President under Rule 9 of the Pension Rules to impose penalty of either pension or gratuity cut is that there should have been a finding recorded in the inquiry to the effect that the retired Govt. servant has been found guilty of grave misconduct or grave negligence as a condition precedent. The Apex Court in the case of Chandra Kishore Jha Vs. Mahavir Prasad & Ors., JT 1999 Vol.7 SC 256, held that statute when provides anything to be done in a particular manner. It has to be done in that manner only and no other manner is to be adopted. Merely because the misconduct refers to lack of devotion to duty and violation to maintain absolute integrity does not absolve the respondents from discharging the mandate of from recording finding of grave misconduct or grave negligence. The aforesaid finding cannot be implied or deemed.

12. We have read and re-read the charges and the report of the inquiry officer wherein the inquiry officer has recorded his findings. We do not find specific findings either of grave misconduct or grave negligence. We cannot assume the role of inquiry officer to deduce such a finding from the misconduct. Finding should be apparent on the face of record being a condition precedent.

13. Having regard to the decision in the case of D.V. Kapoor (supra), we have examined the entire record. For want of a finding of either grave misconduct or grave negligence, the exercise undertaken by the President to impose upon the applicant a penalty of permanent forfeiture of monthly pension is without jurisdiction.

14. In the result, for the foregoing reasons, without adjudicating into other legal contentions of the applicant, we allow the present Original Application on the above ground alone. Resultantly, the impugned order dated 28.5.2003 is quashed and set aside. Respondents are directed to accord to the applicant his monthly pension from the date of his superannuation with arrears at simple interest of 9%. This exercise shall be completed within a period of three months from the date of receipt of a certified copy of this order. No costs.



(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER



(SHANKER RAJU)
JUDICIAL MEMBER

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