

(AB)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No.2638/2003

New Delhi, this the 7th day of February, 2008

**HON'BLE MR. SHANKER RAJU, MEMBER (J)
HON'BLE MRS. NEENA RANJAN, MEMBER (A)**

A.P. Rawat
S/o Late Prayag Dass Rawat
Retd. SPM Jhansi City
C/o Shri Dinesh Kumar Mishra
Behind – CHAR Sampraday Ashram
Vrindaban (Mathura) 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.
2. The Senior Superintendent Postoffices
Jhansi Division – Jhansi. **Respondents**

(By Advocate: Shri S.M. Arif)

ORDER

By Mr. Shanker Raju, Member(J):

Retired Government servant impugns Presidential order dated 10.10.2002 imposing upon him a penalty of 15% cut in monthly pension for a period of three years.

2. Earlier the OA was allowed, on the ground of non-supply of

UPSC advice in case of disagreement, by an order dated 20.07.2004.



However, the Hon'ble High Court of Delhi in WP (C) No.16740-41/2004, in the light of the decision of the Apex Court in Union of India and Anr. v. T.V.Patel, (2007) 4 SCC 785, remanded the case back to the Tribunal for disposal on merits for consideration on the other grounds, which were not dealt earlier.

3. Applicant, an Assistant Post Master, has been proceeded against in a major penalty proceedings under Rule 14 of the CCS (CCA) Rules, 1965 on the allegations of failure to keep vigilance and proper control over the work of postal Clerk, Shri Jai Prakash Jatav and also for failure to prevent Government amount being irregularly maintained in the Log Book. The Inquiry Officer in his finding to Article-1 of the Charge has proved that the applicant has failed to exercise proper control and vigilance over the Clerk, Shri Jai Prakash Jatav but in respect of Article 2 of the Charge, the same was proved partially to the extent that the Log Book was asked to be filled up by the Counter Clerk.

4. On the basis of the findings, the matter was sent to the UPSC. The UPSC in its advice, on the ground of proved charge of lack of supervision, recommended pension cut which was ultimately agreed to by the President, giving rise to the present OA.

5. The learned counsel for the applicant states that on receipt of the charge-sheet the applicant has demanded certain relevant documents which were required for his defence. Though the documents have been agreed to by the inquiry officer yet have been denied by the disciplinary authority on the ground that the documents



are not traceable and destroyed but the supporting documents would be produced by the witnesses. Most of the witnesses have been dropped, non-supply of the documents required in defence, has deprived the applicant a reasonable opportunity which is in contravention of the principles of natural justice.

6. Shri D.P. Sharma, learned counsel for the applicant, states that it is obligated, as a condition precedent, upon the President, while imposing a post retirement penalty, that a finding of grave misconduct or grave negligence has been recorded in the departmental inquiry. As the departmental inquiry culminated with the inquiry report and no such finding has been recorded, the penalty imposed, for want of fulfillment of conditions precedent, is without jurisdiction. He further states that tentative conclusion of the President as well as the UPSC advice, a postscript to the inquiry report, cannot be treated as part of the departmental enquiry. A reliance has been placed on a decision of the Apex Court in D.V.Kapoor v. Union of India & Others, AIR 1990 SC 1923.

7. On the other hand, the respondents' counsel, Shri S.M.Arif, vehemently opposed the contentions and stated that the applicant having failed to supervise his Clerk, the President has come to the conclusion that on the proven misconduct applicant is liable to be imposed with a penalty of 15% cut in the monthly pension for a period of three years. As this finding has been arrived at tentatively by the President, while sending the recommendations to the UPSC, the

charge against the applicant of negligence of supervision facilitated commission of fraud by the subordinate, which is a grave misconduct.

8. In so far as the documents are concerned, it is stated that the documents have been denied to him on the ground that the same were not available.

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

10. From the record of the inquiry, i.e., inquiry report, the inquiry officer has recorded that the applicant has asked for certain documents and documents at Sl. No.1, 2, 3, 5, 6 and 7 have been allowed but the document at Sl. No.5 was not made available and regarding other documents, the documents have not been found relevant. In our considered view, once these documents have not been available and it has been decided that witnesses would produce the supporting documents, non-examination of witnesses has prejudiced the applicant in his defence during the inquiry. In a departmental inquiry, what is paramount is to enable the delinquent to effectively defend the charges with a reasonable opportunity. If the documents relied upon are mandated to be served upon the concerned, however, the documents, which are required in defence, and are in possession of the witnesses, the applicant should also be given to facilitate effective rebuttal of the charges. In the present case, since documents were earlier agreed to be served upon, non-supply of thereof has certainly prejudiced the case of the applicant,

which not only deprived him a reasonable opportunity to prepare his defence but also is in contravention of the principles of natural justice.

11. A Constitution Bench of the Apex Court in Tirlok Nath v. Union of India, 1967 SLR SC 759 has ruled that non-supply of defence documents vitiates the inquiry.

12. As per D.V.Kapoor's case (supra), it is incumbent upon the President, as a condition precedent, to record a finding of grave misconduct. In the cited case, the following observations have been made:

"6. 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/-.

7. 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 Art. 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."

13. A grave misconduct per se is not capable of precise definition. However, any negligence in performance of duties, which is not culpable, would not amount to any misconduct. Admittedly, the applicant has been charged and held guilty of lack of supervision. Charge of misappropriation has not been established against him, rather is proved against the Clerk. This is apparent from the fact that due to the act of the applicant, no loss has been found to have occurred to the Government. The tentative conclusion of the disciplinary authority as to the recovery ordered against the applicant has not been agreed to by the UPSC. The inquiry culminates with the inquiry report and there is no finding over grave misconduct or grave negligence against the applicant, as such condition precedent not being satisfied, the order passed by the President imposing a penalty of pension cut when misappropriation has been proved against the Clerk and only lack of supervision on the part of the applicant would not indicate its logic to establishment of either grave misconduct or grave negligence. On this count alone, punishment cannot be sustained in law.

14. Moreover, in the matter of either administrative functions or exercising of quasi-judicial when a thing is to be done in a particular manner, no other manner has to be adopted. This is trite law.

15. Apart from the foregoing legal reasons, we must observe that the counter clerk was able to misappropriate public funds because the system apparently allows this. Since there is no proper check in position, no amount of supervision can detect omission from the log book of deposits made by different agencies, in the absence of such systems. Presently, this can only be done if depositing agencies raise an alarm over its deposits not figuring in the account/pass book that the agency possesses. We would not be surprised if such cases are widespread in other parts of the country. This amounts to a major policy issue which the Secretary, Department of Posts, has to address.

16. In the instant case, for the foregoing reasons, the OA has to be allowed. Impugned order is set aside. Withheld pension along with arrears be released to the applicant within two months from the date of receipt of a copy of this order by respondents. No costs.

Neena Ranjan
(Mrs. Neena Ranjan)
Member (A)

S. Raju
(Shanker Raju)
Member (J)

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