

Central Administrative Tribunal
Principal Bench

OA No. 3017 of 2003

New Delhi, this the 13th day of August, 2004.

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.K. Naik, Member (A)

Dr. C.V. Sharma s/o late Dr. B.M. Sharma and
Retired Scientific Officer 'SF'
Department of Atomic Energy,
Atomic Minerals Division,
Northern Region, New Delhi and
R/o 119A, Pocket A,
Sukhdev Vihar, New Delhi - 25.Applicant

(By Advocate: Shri Gyan Prakash)

-Versus-

1. Union of India through
Secretary,
Department of Atomic Energy,
Govt. of India, Anushakti Bhawan,
C.S.M. Marg, Mumbai - 400 001.
2. The Director,
Atomic Minerals Division,
AMD Complex, Begumpet,
Hyderabad- 500 016.
3. Dr. R.K. Malhotra,
Enquiry Officer,
C/o Atomic Minerals Division,
Department of Atomic Energy,
AMD Complex, Begumpet,
Hyderabad- 500 016.Respondents

(By Advocate: Shri Madhav Paniker)

O R D E R (ORAL)

By Justice V.S. Aggarwal:

The applicant superannuated on 28.2.1993. A few days before he superannuated, the applicant was served with the following articles of charge:

"Article - I

Dr. C.V. Sharma, while functioning as Scientific Officer in the Northern Region, Atomic Minerals Division was elected as the President of the DAE Employees' Cooperative Thrift & Credit Society Ltd., New Delhi (a Society registered under the Delhi Cooperative Societies Act, 1972).

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2. The said Dr. Sharma in the capacity as the President of the Society in collusion with other office bearers of the said Society had misappropriated the funds of the Society to the extent of 2.13 lakhs approximately. The misappropriation of the Society's funds as aforesaid was during the period from 1.7.1988 to 30.9.1991. The said Dr. Sharma while holding the position of the President had not maintain absolute integrity in regulating the funds of the said Society thereby, shown lack of trustworthiness in the management of its funds. This act on the part of the said Dr. Sharma is considered as unbecoming of a government servant.

Article-II

Since there is a discrepancy between the opening and closing balances as on 1.7.1988 (balance as per Balance-sheet as on 30.6.1988: Rs. 5,615.66 ps. whereas, the balance as per the Cash Book was Rs. 7,106.66 ps.), the accounts of the said Society for the period prior to 1.7.1988 was checked at random. The examination of the records further reveals that certain payments amounting to Rs. 10,200/- made to the members of the said Society as loans reflected in the Cash Book were not entered in the Personal Ledgers. The said Dr. Sharma had since signed the cheques, was responsible for the amounts misappropriated during his tenure as the President of the Society.

2. While examining the accounts of the said Society, it is also observed that these payments of Rs. 10,200/- were shown in the Cash Book as payments made to the members, who have expired and whose cases were not settled."

2. The enquiry officer had been appointed who had returned his findings against the applicant. The Union Public Service Commission had also been consulted and it advised penalty of 15% cut in the monthly pension of the applicant for a period of five years. The advice of the Union Public Service Commission was accepted by the disciplinary authority.

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3. By virtue of the present application, the applicant seeks to assail the penalty order and also the question as to whether, in the facts sub rule (2) of Rule 9 of the Central Civil Services (Pension) Rules, 1972 could be enforced or not?

4. In the present case, as would be seen hereinafter, it becomes unnecessary for us to deal with the second question. This is for the reason that our attention had been drawn to certain findings of the enquiry officer. It appears herein that one part of the allegations that the applicant, in his capacity as President of the Society, was responsible for the funds of Rs. 42,061/- which had not been reconciled, had been taken up and that accounts were not maintained in a proper manner. This was taken up by the enquiry officer on 15.4.1996. The Presenting Officer wanted sometime to come back with better details. On 12.7.1996 once again charge was not taken up by the Presenting Officer and same was the position on 28.8.1996 and 29.8.1996. Thereafter the charge seemingly had not been taken up but the enquiry officer returned the findings that this amount has not yet been reconciled for which the applicant and Tejpal Singh alongwith others are collectively and equally responsible.

5. On the strength of these facts, the learned counsel contended that when the charge had not been taken up, finding could not have been returned against

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the applicant because a reasonable opportunity had not been granted to him.

6. Article 311 of the Constitution gives a valuable right to a delinquent and that is of reasonable opportunity to contest. Otherwise also this must flow from the principle of fair play that a reasonable opportunity has to be granted. When the charge had not been taken up indeed, the enquiry officer merely on basis of the brief of the Presenting Officer could not hold the applicant responsible for it.

7. Same is the position pertaining to the article of charge against the applicant whereby it was alleged against him that while functioning as President of the Society, certain amounts had been drawn through self cheques and cash receipts of the Society from the employees of Nuclear Power Corporation. When the matter had been taken up, the Presenting Officer wanted time to establish the relevant facts. The charge was not taken up on 12.7.1996 and again on 28.8.1996 and 29.8.1996. Suddenly, once again on basis of the Presenting Officer's brief and other brief that was presented, the findings had been arrived at that the same stood proved on propensity of probabilities.

8. We do not dispute that on propensity of probabilities in a disciplinary proceeding, finding can be arrived at, but as the record indicates that the charge had not been taken up for regular hearing, we

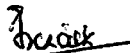
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reiterate that a reasonable opportunity to contest has not been granted to the applicant.

9. The disciplinary authority had accepted the finding, as they stand but has not cared to dissect the same. Since it is within the domain of the disciplinary authority to pass the appropriate order of penalty and to disagree, if it so thinks appropriate, at this stage, it becomes unnecessary for this Tribunal to proceed and express any opinion, which may be embarrassing for either side.

10. Resultantly, on this short ground, we allow the present application and quash the impugned order and direct that disciplinary authority may, in accordance with law proceed and pass a fresh order, if deemed appropriate.



(S.K.Naik)
Member (A)

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(V.S. Aggarwal)
Chairman