

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

...

OA No. 100/2003

New Delhi. this the 5th day of December. 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.A. Singh, Member (A)

Shri Ajay Kumar Goyal.
s/o Sh. Jai Gopal Goyal.
57-B. Block-D.
Kanchanjanga Apartments.
Sector -53. NOIDA - 201 301
(Uttar Pradesh).

..Applicant

(By Advocate: Shri V.S.R. Krishna)

Versus

Union of India through

1. The Cabinet Secretary.
Government of India.
Rashtrapati Bhawan.
New Delhi - 110 001.
2. The Secretary (R)
Cabinet Secretariat.
Government of India.
Room No. 7. Bikaner House Annexe,
Shahjahan Road,
New Delhi - 110 011.
3. The Special Secretary (SR).
Cabinet Secretariat.
Government of India,
Room No. 7. Bikaner House Annexe,
Shahjahan Road,
New Delhi - 110 011.
4. The Director of Accounts.
Cabinet Secretariat.
East Block No. IX, Level 7.
R.K. Puram.
New Delhi - 110 066.
5. Shri C.V. Avdhani.
Principal Accountant General (Audit).
R/o D-3, Haddows Road.
Chennai. Tamil Nadu.
6. Smt. Sunita Bhardwaj.
Dy. Director of Accounts.
East Block No. IX, Level 7,
R.K. Puram.
New Delhi - 110 066.

...Respondents

(By Advocate: Shri Madhav Panikar)

O R D E R

Justice V.S. Aggarwal -

Applicant (Ajay Kumar Goval) was a Senior Auditor in the office of Director of Accounts, Cabinet Secretariat. He seeks quashing of the orders passed by the disciplinary authority dated 23.3.2001 and the appellate authority dated 27.7.2001 and of the revising authority dated 28.8.2002 besides the report of the inquiry officer.

2. The applicant was charged in the departmental proceedings which were initiated on 25/27.4.2000. There were four articles of charge. They were long drawn but genesis of the same is as under :-

"Art.I

Willfully withholding/ suppressing information regarding receipt of pensionary benefits i.e. EPF, gratuity, leave encashment and insurance received by his father as far back as 1997. He failed to maintain absolute integrity as the motive was to gain undue benefits from the Govt. for his parents.

Art.II

Submitted false declaration i.e. parents were wholly dependent on him/that his parents were residing with him/that their monthly income was less than Rs.500/- per month and that his mother owned a house. He thus failed to maintain absolute integrity as motive was to gain undue benefits from Govt. for his parents.

Art.III

Refused to submit employers certificate in respect of his father in 1997 and to mislead Adm. he submitted a fraudulent certificate stating that his father had received no pensionary benefits despite



the fact that his father received Gratuity, EPF, Insurance and Leave encashment. He thus exhibited lack of absolute integrity as motive was to gain undue benefits for his parents.

Art. IV

Though not admissible he submitted medical claims for Rs.12872 and requested for medical advance for Rs.19,600/- (Rs.24,500 actually claimed) for his father's treatment and availed LTC for parents."

The applicant had contested the same. The inquiry officer returned the findings against the applicant. The disciplinary authority agreed with the said findings and recorded that the applicant had submitted false documents to mislead the administration which is a serious misconduct. Penalty of compulsory retirement was imposed on the applicant. He preferred an appeal. The Special Secretary to the Government of India who was the appellate authority recorded:-

"And whereas on careful examination of the issues involved in the appeal made by Shri Goyal dated 10 May 2001 and on perusal of all the relevant records of the case made available, and now therefore keeping in view the facts and circumstances of the case, and having carefully pondered over all the issues raised in the aforesaid appeal vis-a-vis relevant records, the Appellate Authority has come to the conclusion that the penalty of compulsory retirement imposed on Shri Ajay Kumar Goyal is too severe and too harsh and as such Shri A.K. Goyal does not deserve such punishment. Therefore this is an apt case which deserves a reduction of punishment since the punishment is disproportionate to the omissions and commission committed by Shri A.K. Goyal which do not prove lack of absolute integrity of his unbecoming of a Government servant. The Appellate Authority therefore confirm that ends of

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justice would be met by reinstatement of Shri A.K.Goyal to Government service and further commuting the punishment of Compulsory Retirement awarded by the Disciplinary Authority to one of reduction to a lower stage in the time scale of pay for a period of two years with further directions that the government servant will not earn increments during the period of such reduction and on expiry of the two years, the reduction will not have the effect of postponing the future increments of his pay in accordance with Rule 11(v) of the CCS (CCA) Rules, 1965".

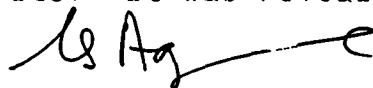
Accordingly, the penalty was reduced i.e. the pay of the applicant was reduced by three stages from Rs.6050/- to Rs.5600/- in the scale of pay of Rs.5000-8000 for a period of two years with effect from the date of his resuming the duties. It was directed that the applicant would not earn increments of pay during the period of reduction and that on expiry of the period of two years, the reduction would not have the effect of postponing his future increments of pay. The revisionary authority suo moto issued a notice to the applicant for enhancing the penalty and after considering the same, restored the order passed by the disciplinary authority of compulsory retirement of the applicant.

3. The application has been contested. The respondents pleaded that on 7.1.1997, the applicant applied to respondent No.4 for declaring his parents as his dependents. The father of the applicant had retired from the Uttar Pradesh State Road Transport



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Corporation (for short "the Corporation") in December 1996. He was directed by the office to clarify whether his father received any pensionary benefits from the Corporation. The applicant had denied receiving any pensionary benefits so far as his father was concerned and instead challenged the administration's right to seek this information. He stated that the administration should obtain the information from the Corporation. The applicant was advised to submit a declaration that his parents were residing with him at the address indicated by him and that their income from all sources did not exceed Rs.500 per month. The declaration was submitted. Subsequently in August 1998, the applicant submitted a bill for reimbursement of medical expenses of Rs.12.872/- incurred by him on medical treatment of his father. The same was scrutinised and it was found that while the home address as per record was shown as 41, Maliyan Mohalla, Dehradun, the address given in the medical papers was 81, Tilak Road, Dehradun. It was found that the applicant had given incorrect statement that his parents were living with him at Delhi. The applicant was asked to indicate the ownership details of the properties at Dehradun and his ration card. He submitted vague replies. He submitted a copy of the certificate given by the Assistant Regional Manager certifying that the father of the applicant was not getting any pension and post retirement benefits. It was revealed that the parents



of the applicant were not residing with him. It was in this back-drop that the charges referred to above were served and according to the respondents, this Tribunal should not, therefore, interfere with the disciplinary matter and the punishment awarded is not disproportionate to the alleged dereliction of duty/misconduct.

4. Though in the application, some other pleas had also been taken but during the course of submissions, the learned counsel for the applicant vehemently contented:-

(a) that on basis of allegations, no misconduct could be drawn against the applicant;and

(b)in any case, the penalty awarded is disproportionate to the alleged dereliction of duty and is unconscionable.

On behalf of the respondents, it was equally vehemently opposed. It was pointed that the applicant had misled the department and filed circulars which were not correct and had shown his parents to be dependent on him while in fact they were not with the sole purpose to get the medical reimbursement and other benefits. According to the learned counsel for the respondents, such like persons do not deserve to be retained and in fact the penalty of compulsory

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retirement. therefore. cannot be termed to be disproportionate to the misconduct besides the fact that this Tribunal should not interfere in the matter of imposing of penalties by the disciplinary authority.

5. So far as the first contention as to whether on basis of allegations. it would be a mis-conduct or not is concerned. we briefly may refer to the fact that under the Central Civil Services (Conduct) Rules. the expression "mis-conduct" by itself has not been defined. This has been obviously done in face of the fact that mis-conduct by itself is pragmatic with meanings. It can be a mis-conduct in the facts and circumstances of a particular case. An Attempt to define the expression would be an exercise which may not be successful. In normal circumstances. misconduct would mean something ^{emerging} from ill motives or acts of negligence. It may not be so in case of error of judgements or innocent mistakes.

6. The Supreme Court had considered this question in the case of **Union of India & Ors. v J.Ahmed.** AIR 1979 SC 1022. In the cited case. Shri J.Ahmed had joined the State Service. He was Deputy Commissioner and District Magistrate. There were large scale disturbances in the area. The acts of J.Ahmed in the enquiry were found to be misconduct. The Supreme Court looked at the charges and held that



they pertained to failure to take any effective preventive measures meaning thereby error in judgement in evaluating the developing situation. On the facts, it was held that it was not a mis-conduct. However, the Supreme Court did provide guide-lines as to what would be the mis-conduct. In paragraph 11, the Supreme Court held:-

"11. Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that that conduct which is blameworthy for the Government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see *Pearce v. Foster* (1886) 17 QBD 536 (at p. 542)). A disregard of an essential condition of the contract of service may constitute misconduct."

Similarly in the case of **State of Punjab and Others v Ram Singh**, AIR 1992 SC 2188, the respondent before the Supreme Court was a Constable gunman who after having heavy drink was seen roaming in the market with service revolver while he was on duty. When he was sent to the doctor for medical examination, he abused the medical officer. The question, therefore, of course was confined to the peculiar facts with which we are not presently concerned. The Supreme Court held that the mis-conduct would be there where there is moral turpitude involved or there is improper behaviour or forbidden acts. The findings of the



Supreme Court reads:-

"Thus. it could be seen that the word misconduct though not capable of precise definition, its reflection receive its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude. it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgement, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the terms occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order."

7. It is in the back-drop of these facts that we can look into the facts of the present case. In the preceding paragraphs, we have already referred in brief, the genesis of the charges that were framed against the applicant. It is not disputed that the father of the applicant was serving in the Corporation. He had superannuated. The applicant had applied and got the names of his parents included as his dependants. The respondents felt that this was an act unbecoming of a Government servant because he willfully withheld the information regarding receipt.

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of pensionary benefits i.e. Provident Fund, Gratuity, Leave Encashment and insurance by his father in the year 1997. He gave a false declaration that his parents were dependent upon him and refused to submit employer's certificate in respect of his father in 1997 and submitted medical claim for Rs.12,872/- for treatment of his father and also Leave Travelling Concession. It is not in dispute that in the later part of the year of 1997, the father of the applicant had received his dues from the Corporation.

8. The learned counsel for the applicant contended that the applicant's parents when his father retired had no source of income and, therefore, they were dependent upon him. He strongly relied upon the Government of India Ministry of Health Office Memorandum No.F.29-113/66-M.A. dated 20.5.1967 from Swamy's Medical Attendance Rules which reads:-

"2. **Dependency of parents** - It has been decided that the following criterion should be adopted for deciding whether parents may be deemed to be "wholly dependent/mainly dependent" upon the Government servant for purposes of eligibility to the concessions under the CS(MA) Rules, 1944 and orders issued thereunder, and the CGHS, respectively.

Such parents should be regarded as "wholly/mainly dependent" upon a Government servant who normally reside with the Government servant concerned and whose total monthly income does not exceed the pay plus dearness pay (where applicable) of the Government servant.

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subject to the maximum income including pension and pension equivalent of gratuity of the parents being Rs. 500 p.m.

EXPLANATION - (i) The declaration regarding the income and the residence of parents should be furnished by the Government servant concerned once in the beginning of every calendar year.

(ii) Lumpsum non-recurring income, e.g., Contributory Provident Fund benefits, Government of India Prize Bonds, Gratuity, Commuted Gratuity, Insurance benefits, etc., should not be regarded as Income for the purpose of this rule. Recurring monthly income from sources such as houses landholding, etc., etc., should, however, be taken into account for the purpose of assessing income.

These orders also apply to Central Government employees stationed or passing through Calcutta. The existing provisions in the CS (MA) Rules, 1944, and orders and the rules relating to the CGHS may be deemed to have been amended accordingly.

[G.I., M.H., O.M. No. F-29-113/66-M.A., dated the 20th May, 1967; and O.M. No. S.11011/7/86-CGHS(P), dated the 4th February, 1987]."

9. However, this Office Memorandum will not help the applicant because the same Manual indicates that the term "family" for the purpose of Central Civil Services (Medical Attendance) Rules, 1944 has undergone a change vide Government of India, Ministry of Health and Family Welfare Office Memorandum dated 31.12.1993. It clearly prescribes that the members of the family are to be treated as dependant only if their income from all sources including pension and pension equivalent of gratuity does not exceed Rs.500/-. The same is being reproduced below for the

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sake of facility:-

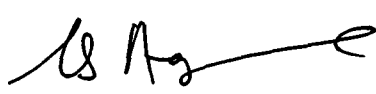
"1. **General conditions** - The term family for the purpose of the Central Services (Medical Attendance) Rules, 1944, shall mean a Government servant's wife or husband, as the case may be, and parents, sisters, widowed sisters, widowed daughters, minor brothers, children and step-children wholly dependent upon the Government servant.

NOTE-1. The members of the family are treated as dependent only if their income from all sources including pension and pension equivalent of gratuity does not exceed Rs. 500 p.m. The condition of dependency both in the case of the husband or the wife of the Government servant has been dispensed with.

NOTE-2. The residential condition for members of families of a Government servant having been waived, family members may have medical attendance and treatment even if they do not stay with the Government servant.

Age-limits of dependent son/daughter - It has been decided as indicated below for dependents of Government servants/pensioners for the purpose of availing medical facilities under CS(MA) Rules, 1944 and CGHS Rules --

- (i) Son Till starts earning or attaining the age 25 years, whichever is earlier.
- (ii) Daughter .. Till starts earning or gets married, whichever is earlier, irrespective of the age-limit.
- (iii) Son suffering from any permanent disability of any kind (Physical or mental) Irrespective of age-limit.



The orders will be effective from the date of issue."

10. Still, the learned counsel contended that when the applicant applied and added the name of his parents as his dependants at that time, the father of the applicant had not received any dues. We have no hesitation in rejecting the same for the reason that if temporarily for a few months, the father of the applicant was waiting for his pensionary benefits to be paid that will not make his parents dependant upon him. After all the father of the applicant knew that the dues were going to be paid. It transpired during the the course of submissions that the parents of the applicant had even a house in Dehradun. By no stretch of imagination, therefore, it can be taken that their monthly income would be less than Rs.500/-. To that extent, therefore, the applicant indeed must be held to have misconducted himself.

11. Not only that, even after the father of the applicant received the dues, the applicant submitted the leave Travel Concession bill and the medical reimbursement of his father. We, therefore, have no hesitation in rejecting the first plea of the applicant in this regard that as a whole no misconduct is drawn.

12. However, the learned counsel for the applicant contended that the applicant had submitted

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the certificate of the officer which was fake. It was clarified that Shri P.C.Jugran who had given the certificate on 10.7.1999 stated that he had not given such a certificate that the applicant's father had not received the pensionary benefits.

13. Our attention was drawn to the fact that the certificate of 10.7.1999 purported to have been given by Shri P.C.Jugran whereby he called the same to be incorrect cannot be accepted. We find that so far this plea of the applicant is concerned, it has substance. The said certificate of Shri P.C.Jugran is dated 10.7.1999. Perusal of the record reveals that the respondents were verifying about it and it was felt on 14.9.1999 that this certificate was being forwarded. We fail to understand that when the certificate had already been obtained on 10.7.1999 why the correspondence continued till September 1999 and even the respondents were writing earlier in September about this certificate. The applicant, therefore, was justified in concluding that when Shri P.C.Jugran was not produced, this certificate cannot be accepted on its face value and we hold that this particular certificate of Shri P.C.Jugran cannot be read in evidence. To that extent the charge that was framed particularly article of charge No.3 would not be substantiated.

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14. Reverting back to the second question, we are conscious of the fact that the penalty that has to be awarded is a fact which falls within the domain of the disciplinary authority. In judicial review, this Tribunal will not go into the said controversy. In the case of **B.C. Chaturvedi v. Union of India and Others**, JT 1995 (8) SC 65, the Supreme Court held that while exercising power of judicial review, this Tribunal cannot substitute its own conclusions on penalty and impose some other penalty. However, if the penalty imposed shocks the conscience of this Tribunal, it would be appropriate to mould the relief and the Tribunal even may direct the disciplinary authority to reconsider the penalty imposed.

15. In the present case before us, we are conscious of the said legal proposition. The fact that prompts us to interfere is that the appellate authority thought it appropriate that it was not a case where the penalty of compulsory retirement would be justified. It was found that it was not proved that there was absolute lack of integrity or unbecoming of a Government servant on the part of the applicant. This intervening penalty that was imposed was subsequently enhanced. This intervening order prompts us to conclude that it was a proper case to reconsider the matter. However, for the reasons we have already recorded above, the certificate relied upon pertaining to the clarification given by Shri



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P.C.Jugran of 10.7.1999 cannot be taken to be duly proved or wholly genuine. It is these facts that prompt us to conclude that the penalty is totally unconscionable.


16. Resultantly, we dispose of the present application with the following directions:-

- (a) the penalty of compulsory retirement is quashed;
and
- (b) the disciplinary authority may take note of the facts and impose any other penalty i.e. other than removal, dismissal or compulsory retirement.

No costs.


(S.A. Singh)
Member (A)

/sns/


(V.S. Aggarwal)
Chairman