

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment Reserved On: 19th August, 2010
Judgment Delivered On: 30th August, 2010

+ **W.P.(C) NO.8918/2004**

THE DIRECTOR OF ACCOUNTS AND ORS...Petitioners
Through: Mr.Maninder Singh, Senior
Advocate with
Mr.Gaurav Sharma and
Mr.J.P.Karunakaran, Advocates

versus

AJAY KUMAR GOYAL & ORS. Respondents
Through: Mr.Arati Mahajan, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. In the year 1997 respondent No.1 was holding the post of a Senior Auditor on regular basis under the Cabinet Secretariat and was entitled to the benefits under the Central Civil Services (Medical Attendance) Rules 1944 which entitled him to avail medical facilities not only for self but even persons dependent upon him.
2. On 7.1.1997 respondent No.1 applied for declaring his parents as his dependents. He informed that his father had retired under Uttar Pradesh State Road Transport Corporation (herein after referred as UPSRTC) as a booking clerk on 31.12.1996. He specifically informed that UPSRTC had no

pension scheme or any other retirement benefit and hence his father availed none. Therefore, he sought his parents to be recorded in the official records as his dependents.

3. Responding to his application dated 7.1.1997 respondent No.1 was called upon vide letter dated 10.1.1997 to obtain a certificate from UPSRTC certifying that his father got no benefits on retirement. The respondent was informed that this was the requirement of the rules applicable pertaining to benefit which his parents could have as his dependents under the CGHS scheme.

4. Vide reply dated 16.1.1997 respondent No.1 reaffirmed that his father had received no pensionary benefits and requested that the office could verify the said fact from UPSRTC. Respondent No.1 was advised to submit a declaration to the effect that the monthly income of his parents did not exceed Rs.500/- and in response thereto respondent No.1 furnished a declaration as under:-

“Declaration

It is hereby declared that my father and mother are residing with me at my residence at 2613/1 Shadipur Mandir wali Gali No.4 New Delhi-110008 after retirement of my father and their monthly income from all sources does not exceed Rs500/- per month.

Dated 4.2.97 (Ajay Kumar Goyal)
Sr. Auditor”

5. On 3.8.1998 respondent No.1 sought reimbursement of medical expenses in sum of Rs.12,872/- towards expenses incurred by him on the medical treatment of his father. While scrutinizing the bill a discrepancy was found in the residential address furnished by respondent No.1 pertaining to his parents. Whereas he had disclosed the address to be 41 Maliyan Mohalla,

Dehradun, UP, which was entered in the official record, while claiming medical reimbursement the address shown was 81 Tilak Road, Dehradun, UP.

6. Sensing something amiss, the petitioner wrote a letter dated 10.6.1999 to the Accounts General Audit-II, UP in which information was sought whether father of respondent No.1 got pensionary benefits. On 11.6.1999 respondent No.1 was called upon to furnish details of ownership of the two properties at Dehradun.

7. In response respondent No.1 informed that the first property at Dehradun was taken on rent and that the second was owned by his mother. He reiterated vide reply dated 1.7.1999 that his father was neither a pensioner nor had received any retiral benefits. Along with the letter he furnished a certificate under the signatures of one Mr.P.C.Jugran, Assistant Regional Manger, UPSRTC, which reads as under:-

“TO WHOM IT MAY CONCERN

It is certified that Shri Jai Gopal Goyal senior clerk (retd.) has not getting any pension and post retirement benefits from the department as his cadre was not pensionable.

Sd/-

(P.C.JUGRAN)

To Shri Jai Gopal Goyal Assistant Regional Manger”

8. Vide letter dated 1.7.1999 respondent No.1 was directed to submit necessary documents in relation to the certificate above referred to and in particular was required to submit details pertaining to DCRG, CPF and leave encashment received by his father at the time of retirement.

9. In response respondent No.1 admitted that his father received EPF in sum of Rs.2.2 lakhs, gratuity in sum of Rs.96,000/- and leave encashment in sum of Rs.11,000/-. He

volunteered that his mother was the owner of a residential property in Dehradun.

10. Responding to the query sought from the Accounts General Audit-II Uttar Pradesh, vide letter dated 9.7.1999 the petitioner was informed by the Accounts General Audit-II that the father of respondent No.1 was not a pension beneficiary but was a member of the Employees' Provident Fund Scheme and had received the benefit there-under from the Employees' Provident Fund Commissioner and had additionally received gratuity in sum of Rs.96,826.15 on 16.12.1997, leave encashment in sum of Rs.11,632/- on 16.6.1997 and Group Insurance Scheme Rs.9717/- on 15.9.1997.

11. As regards the clarification sought with reference to the certificate purportedly bearing the signatures of Shri P.C.Jugran, Assistant Regional Manager, contents whereof we have noted in para 7 above, it was informed to the petitioner that Shri P.C.Jugran had not issued the certificate in question. Enclosed with the letter dated 9.7.1999 was a hand-written query and a handwritten clarification, the query being addressed to Shri P.C.Jugran by Shri R.C.Verma, Senior Audit Officer and the clarification given in response by Shri P.C.Jugran in which penning the date 9.7.1997 P.C.Jugran wrote that no such certificate has been issued by him to Jai Prakash Goyal. The word Prakash stands scored off and above the same the word 'Gopal' has been written.

12. Noting that there was a cutting and an overwriting as described above i.e. the word '*Prakash*' scored off and the word '*Gopal*' written, the petitioner sought a clarification vide letter dated 6.9.1999 requiring it to be clarified either by means of a certification from Shri P.C.Jugran that he had carried out the correction or in the alternative a fresh certificate to be obtained.

13. The Accountant General Audit-II,UP responded vide letter dated 14.9.1999 and informed as under:-

"Dear Sir,

Dated:14.9.1999

In continuation to my DO letter and telecon. Thereafter dated 9.7.1999, as desired by you a statement from Shri P.C.Jugran, Assistant Regional Manager, Dehradun, denying having given any certificate regarding the non-payment of retirement benefits to Shri Jai Gopal Goyal."

14. Enclosed with the letter dated 14.9.1999 is a certificate dated 10.7.1999 issued by P.C.Jugran certifying that he had not issued any certificate to anybody regarding non-payment of any retirement benefits to Shri Jai Gopal Goyal.

15. Prima facie it was apparent that respondent No.1 had attempted to cheat his employer and gain illegal monetary benefit by declaring his parents to be dependent upon him for the reason as per rules applicable if monthly income of his parents exceeded Rs.500/- they could not be dependent upon him and the monetary benefits received by his father, if invested even in a fixed deposit would have yielded a monthly income in excess of Rs.500/-. It was decided to initiate disciplinary proceedings against respondent No.1. On 25.4.2000 a charge-sheet was issued to him for major penalty imputing him of the misconduct and misbehaviour under Rule 14 of the CCA(CCS) Rules, 1965. Four articles of charge were alleged against him as under:-

"Article I

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

Article 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 the motive was to gain undue benefits from the government for his parents.

Article III

Refused to submit employers certificate in respect of his father in 1997 and to mislead administration 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 the motive was to gain undue benefits from the government for his parents.

Article IV

Though not admissible he submitted medical claim for Rs.12,872/- and requested for medical advance for Rs.19,600/- (Rs.24,500/- actually claimed) for his father's treatment and availed LTC for parents."

16. Inquiry officer was appointed who submitted a report on 26.12.2000 in which he held respondent No.1 guilty of all the charges. After complying with the procedures of law the disciplinary authority inflicted the penalty of compulsory retirement upon respondent No.1. Appeal preferred by respondent No.1 partially succeeded when vide order dated 21.7.2001 the appellate authority reduced the penalty to reduction to a lower stage in the time scale of pay for a period of two years during which period respondent No.1 was to earn no increment and the reduction was not to have effect on the future increments of pay after two years.

17. But, taking suo moto cognizance of the misdemeanour and holding it to be a grave misdemeanour justifying removal of respondent No.1 from service, vide order dated 28.8.2002 the Revisional Authority re-imposed the penalty of compulsory retirement from service.

18. Aggrieved by the said order dated 28.8.2002 respondent No.1 filed OA No.100/2003 before the Central Administrative Tribunal praying that the order imposing penalty levied upon him by the disciplinary authority, the appellate authority and the revisional authority be quashed. He prayed that the charge-sheet and the report of the inquiry officer be set aside and he be reinstated in service with all consequential benefits.

19. A two-fold contention was urged before the Tribunal. Firstly, that the findings against him were perverse and illegal and in any case not justified on the evidence before the inquiry officer. Secondly, it was urged that the penalty of compulsory retirement was shockingly disproportionate.

20. Vide impugned judgment and order dated 5.12.2003 the Tribunal negated the plea of the respondent No.1 that there was no evidence to indict him pertaining to Article No.I, II and IV of the charge-sheet and confirmed the verdict of guilt against respondent No.1, but agreed with him with respect to Article III of the charge-sheet. The relevant findings returned by the Tribunal are in para 13 of the impugned decision which reads as under:-

“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 application 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.III would not be substantiated.”

21. Accordingly, the Tribunal concluded that the penalty imposed is shockingly disproportionate as there was no lack of integrity. The Tribunal accordingly called upon the disciplinary authority to pass a fresh order inflicting any penalty other than removal, dismissal or compulsory retirement from service.

22. The petitioners are aggrieved by the finding returned by the Tribunal pertaining to Article III of the charge-sheet.

23. For clarity of reasoning we reproduce Article III of the charge-sheet which reads as under:-

“Article III

Refused to submit employers certificate in respect of his father in 1997 and to mislead administration 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 the motive was to gain undue benefits from the government for his parents.”

24. A bare reading of the charge shows that the misdemeanour alleged is of producing and submitting a fraudulent certificate stating that his father had received no pensionary benefits despite the fact his father had received gratuity, EPF, insurance and leave encashment.

It is apparent that the certificate referred to was the one contents whereof have been noted by us in para 7 above.

25. The certificate in question has ostensibly been issued by Mr.P.C.Jugran, Assistant Regional Manager, UPSRTC, who, as noted in para 11 and para 14 above had clarified in writing dated 10.7.1997 that he had issued no such certificate. Thus, it became a matter of fact to be decided with reference to Article III of the charge whether the certificate submitted by the petitioner was a fabricated certificate.

26. Before dealing with the said issue, let us highlight the fact that respondent No.1 has not challenged the decision by the Tribunal confirming his guilt pertaining to Article I, Article II and Article IV of the charge-sheet. Needless to state the findings that he submitted a false declaration of his parents' being dependent upon him and that he withheld information of the various amounts which his father had received upon superannuation and his attempting to obtain Rs.12,872/- and seek further advance in sum of Rs.19,600/- from the government, which was beyond his entitlement, have attained finality.

27. Pertaining to the reasons given by the Tribunal in para 13 of the impugned decision, contents whereof have been noted in para 20 above, we find the reasoning of the Tribunal fairly strained. What the Tribunal says is that if P.C.Jugran gave the certificate on 10.7.1999 where was the question to continue with the correspondence till September 1999.

28. It is unfortunate that the Tribunal has not noted the correspondence exchanged and as noted by us in paras 6 to 14 above. Had the Tribunal done so it would have dawned upon the Tribunal that the certificate dated 10.7.1999 was enclosed by the Accountant General Audit-

II, UP under cover of his letter dated 14.9.1999 and this explains as to why the correspondence continued till the month of September 1999.

29. Relevant would it be to note that the offending certificate was submitted by respondent No.1 under cover of his letter dated 1.7.1999 and this triggered the correspondence to verify the authenticity of the certificate submitted by respondent No.1 which bears the signature of P.C.Jugran and certifies that Shri Jai Gopal Goyal got no retirement benefits. The petitioner sent the said certificate for its authenticity to be certified by the Accounts General Audit-II, U.P. to which a response was given on 9.7.1999 that father of respondent No.1 had received some retiral benefits and that the certificate in question was not issued by Shri P.C.Jugran. Along with the said letter was enclosed a query by Shri R.C.Verma to Shri P.C.Jugran and the response of Shri P.C.Jugran with cuttings, facts noted by us in para 11 and 12 above. This required a clarification as to the cuttings and further certification from Shri P.C.Jugran. In response, as noted in para 13 above the Accountant General Audit-II sent a response on 14.9.1999 enclosing therewith a certificate dated 10.7.1999 under the signatures of Shri P.C.Jugran.

30. Thus, the first line of reasoning of the Tribunal in para 13 of the impugned decision is not only patently but is grossly erroneous.

31. As regards the second line of reasoning that Shri P.C.Jugran was not produced as a witness and hence the certificate in question cannot be read in evidence, suffice would it be to state that the onus was on respondent No.1 to prove the genuineness of the certificate.

32. That apart, the contents of the certificate are admittedly false. We reiterate that respondent No.1 has

not questioned the verdict against him pertaining to Article I, II and IV of the charge-sheet and indeed during arguments learned counsel for respondent No.1 conceded that respondent No.1's father received Rs.2.2 lakhs from the Employees' Provident Fund Commissioner, Rs.96,826.15 towards gratuity, Rs.11,632/- towards leave encashment and Rs.9,717/- under Group Insurance Scheme as terminal benefits. Thus, where is the scope to even remotely urge that the certificate in dispute is not a fabricated document. The presumption of it being fabricated can safely be premised on the ground that the beneficiary thereof is respondent No.1. He does not deny having submitted the certificate. He does not deny that the contents thereof are false. One can thus premise the conclusion on the reasoning that one can presume that the beneficiary is the author of the certificate and hence the same is fabricated.

33. We see no scope for the finding that the penalty was shockingly disproportionate even if we remove from the verdict of guilt the indictment as per Article III of the charge-sheet. But, as held by us, Article III of the charge stands fully established and thus we need to speak no more.

34. We are not impressed with the argument of learned counsel for respondent No.1 that indisputably he received no medical reimbursement and hence the penalty to be levied cannot be compulsory retirement for that would be too shockingly disproportionate.

35. It cannot be ignored that respondent No.1 was working in the Accounts Department where honesty in financial matters has to be of the highest order. The respondent No.1 has tried to obtain monetary gains by dubious means and we cannot countenance an argument

that for an Accountant matter of honesty and selflessness, which are values too precious to be sacrificed, on the altar of *petty monetary gains*, the said values have to be sacrificed. In an unreported decision in Crl.Appeal No.1027/2002 Charanjit Lamba vs. Commanding Officer decided by the Supreme Court on 6.7.2010, a Major in the Indian Army found guilty of improperly claiming reimbursement in sum of Rs.16,589.30/- on account of moving household luggage was held liable to be punished for removal from service. It was held that the financial impropriety was a serious matter bordering on moral turpitude. We may only add that for a person dealing with finances honesty is the first virtue and breach thereof would result in a loss of confidence by the employer justifying services to be terminated.

36. The writ petition is allowed. Impugned judgment and order dated 5.12.2003 is quashed. OA No.100/2003 is dismissed. The penalty inflicted upon the respondent by the Revisional Authority is restored.

37. Though the conduct of respondent No.1 justifies cost to be imposed upon him, but we refrain from doing so as he has suffered enough and having lost his job may have no money to make good the cost.

(PRADEEP NANDRAJOG)
JUDGE

(MOOL CHAND GARG)
JUDGE

AUGUST 30, 2010

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