

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 04.10.2012

+ **W.P.(C) 245/2012**

UNION OF INDIA & ORS.

... Petitioners

versus

R.P.SHARMA (RTD.)

... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. R.C. Gautam and Mr. H.P. Gautam

For the Respondent : None

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition is directed against the order dated 7.7.2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 3139/2010. The main issue that arises for consideration is whether the petitioner could have imposed the penalty of 10% cut in pension for five years in so far as the respondent is concerned. The Tribunal, by virtue of the impugned order, came to the conclusion that such an order could not be passed inasmuch as the pre-condition for imposing an order of cut in pension of there being 'grave misconduct' had not been established.

2. The respondent had joined the Department of Posts in Agra Postal Division on 18th February, 1972. He retired on 31st July, 2006 after about 34 years of service. Just six days prior to his retirement, i.e., on 25th July, 2006, the petitioner served the charge sheet on the respondent under Rule 14 of CCS (CCA) Rules, 1965 which contained two articles of charge. The said two articles of charge are as under :-

“ARTICLE-I

Shri R.P. Sharma, while working as SPM R.B.S. College Post Office Agra on 26.2.2004 failed to follow prescribed procedure in conversion of RB.S. College Post Office Joint (B) MIS A/Cs. No.83279, 83288, 83289, 83290 and 83361 into a single A/C violating provisions mentioned in para (1) and Rule 72(2) of Post Office SB Manual Vol.I. By this act, the said Shri R.P. Sharma also exhibited lack of integrity and act of unbecoming of a Govt. Servant thereby contravening Rule 3(1) (i) & (iii) of CCS (Conduct) Rules, 1964.

ARTICLE-II

Shri R.P. Sharma, while working as SPM R.B.S. College Post Office Agra on 26.2.2004 also failed to follow prescribed procedure in accepting/allowing nomination in R.B.S. College Post Office MIS A/cs No.83279, 83288, 83289, 83290 and 83361 violating provision of Rule 22 of Post SB Manual Vol revised vide DG (Post) letter No.113-1/2002 SB dated 13.12.2002 and 110-23/2001-SB dated 7.1.2003 and 4.2.2003. By this act, the said Shri

R.P. Sharma also exhibited lack of integrity and act of unbecoming of a Govt. Servant thereby contravening Rule 3(1)(i) & (iii) of CCS (Conduct) Rules, 1964.”

3. The Inquiry Officer submitted his report dated 25th May, 2007 wherein, he came to the conclusion that neither of the Articles of charge were proved. The Disciplinary Authority disagreed with the view of the Inquiry Officer and penned a disagreement note on 21st June, 2007. The same was sent to the respondent along with the Inquiry Officer’s report. The respondent submitted his representation on 5th July, 2007. The Disciplinary Authority(the President) after considering the records of the inquiry, findings of the Inquiry Officer, submissions made by the charged officer and all the facts and circumstances, came to the conclusion that a suitable penalty be imposed on the charged officer and accordingly, the case records were referred to the UPSC for its advice. The UPSC submitted its advice on 17th February, 2010. The UPSC found that Article-I of the charge was not proved but that Article-II of the Charge was proved against the charged officer. In the end, the UPSC concluded as under:-

“4. In the light of their observations and findings as discussed above, the Commission note that the charges established against the CO constitute grave misconduct on his part and consider that the ends of justice would be met in this case if 10% (ten per cent)

of monthly pension otherwise admissible to Shri R.P. Sharma, the CO, is withheld for a period of 5 (five) years, and further the gratuity admissible to him should be released if no otherwise required. They advise accordingly.”

4. Although several issues were argued before the Tribunal including the issue of whether the Disagreement Note of the Disciplinary Authority was in accord with Rule 15(2) of the CCS (CCA) Rules, 1965, the main issue was whether there was any finding of grave misconduct against the respondent.

Rule 9(1) of the CCS (Pension) Rules, 1972 reads as under:-

“9. Right of President to withhold or withdraw pension

(1) The President reserves to himself the right to 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.”

5. Explanation (b) following Rule 8(5) of the CCS (Pension) Rules reads as under:-

“(b) 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 or the security of the State.

6. The Tribunal considered the question whether, even if Article-II of the charge stood established against the charged officer, it would amount to ‘grave misconduct’? In doing so, the Tribunal examined the above extracted Rules as also decisions of the Supreme Court including the decision in the case of **D.V. Kapoor Vs. Union of India: 1990 (4) SCC 314.**

Finally, the Tribunal concluded as under:-

“22. It is noted that the act of commission or omission must be intentional or willful (mens rea). The nature of misconduct must be serious and grave. The misconduct like corruption, embezzlement, causing financial loss, Criminal offence, moral turpitude and the like can be termed as “grave”. But error of judgment, supervisory lapse, inadvertent negligence, delay in taking action not causing any financial loss and not getting nomination cannot be construed as “grave misconduct.”

23. Thus the cited Rule and judicial pronouncements cast the responsibility on the President to hold the pensioner guilty of grave

misconduct or negligence for which the findings in the departmental enquiry must be assessed to reach the conclusion that the misconduct or negligence is grave. In the present case, the IO held both charges as “not proved” and the Disciplinary Authority disagreeing with the said findings issued the note which on consideration we found to have violated the Rule 15(2) of the CCS (CCA) Rules. Ultimately, the UPSC in its advice found the Article-I of the charge as “not proved” and the Article-II of the charge as “proved”. In para 10 of this order, we have reproduced the Charge-II, as per which the Applicant failed to follow prescribed procedure in accepting/allowing nomination in 5 MIS accounts. This is a procedural lapse. There is no evidence to prove his lack of integrity or financial loss to the Respondents. Such negligence has been explained by the Applicant in his reply which is relevant but not properly appreciated. There is no misappropriation by the Applicant, nor there is any financial loss to the Department or to the customers and holders of the said MIS Accounts. What best could have been done in such a procedural lapse would have been to impose a minor penalty. That could have been possible when he was in service but not after his retirement. In our considered opinion, the Applicant committed a simple misconduct but not grave misconduct. By no stretch of imagination the procedural lapse committed by the Applicant can be termed as grave misconduct. We find that UPSC has in a casual and routine manner advised the President that the charge in Article-II is a misconduct of grave nature which was followed simply by the President. This approach, in our opinion, is arbitrary and non-application of mind. Hence, we find that the penalty order dated 17.3.2010 passed by the President is legally not sustainable and deserves to be quashed. From the above, it can be seen that the Tribunal noted that the UPSC in a casual and routine manner advised the President that Article 2 of the charge amounted to

misconduct of a grave nature which was also simply followed by the President (Disciplinary Authority).”

(underlining added)

7. We agree with the observation of the Tribunal that the UPSC has dealt with the issue of ‘grave misconduct’ in a very casual and mechanical manner. There is no discussion as to how the alleged misconduct under Article-II of the charge could be regarded as ‘grave misconduct’ within the meaning of Explanation (b) after Rule 8(5) of the CCS(Pension) Rules, 1972. Consequently, we agree with the finding of the Tribunal that a case of ‘grave misconduct’ has not been made out. And, unless that is made out, there can be no order of cut in pension under Rule 9(1) of the CCS (Pension) Rules, 1972. We have taken a similar view in Professor **P.N. Bhat Vs. UOI and Ors.**; WP(C) No. 8245/2008 decided on 20th September, 2012. We have held that until and unless there is a clear finding of ‘grave misconduct’, the provisions of Rule 9 of the CCS (Pension) Rules, 1972 cannot be invoked.

8. Thus, without going into the issue of whether the Disagreement Note of the Disciplinary Authority did or did not conform to the requirement of law in so far as Rule 15(2) of the CCS (CCA) Rules, 1965 is concerned, on this ground alone, the cut in pension cannot be sustained.

9. The Tribunal has rightly set aside the said penalty order.
10. The writ petition is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

OCTOBER 04, 2012

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