

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 20.09.2012

+ **W.P.(C) 8245/2008**

PROF. P.N. BHAT

... Petitioner

versus

UNION OF INDIA & ORS.

... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr A.K. Behera, Mr Sanjeev

For the Respondent : Mr S.S. Lingwal

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. The petitioner is aggrieved by the order dated 07.07.2008 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A No. 3155/2002. The petitioner joined as Director and Vice Chancellor of IVRI, Izatnagar, UP on 01.05.1984 initially for a five-year term. This was extended by another five years by an order dated 08.11.1988. The petitioner was placed under suspension on 17.05.1990 and a show cause notice was issued to him on 27.06.1990 comprising of 97 allegations relating to the period 1984-1989. The petitioner submitted a reply. However, a charge

memo was issued to the petitioner on 22.12.1993 containing 13 articles of charge. Thereafter, the Inquiry Officer was appointed and the inquiry proceedings were conducted. This culminated in the Inquiry Officer's report of 31.07.1997 wherein the Inquiry Officer held that none of the 13 articles of charge were proved. On 31.10.1997 the petitioner retired on attaining the age of superannuation. The disciplinary proceedings continued under Rule 9 of the CCS (Pension) Rules, 1972.

2. After four years, that is, on 24.08.2001 the disciplinary authority issued a disagreement note with respect to Articles 4, 5 (partly) and 7 of the charges. The disagreement note as well as a copy of the Inquiry Officer's Report were supplied to the petitioner for his reply. After all that was over, the disciplinary authority, by virtue of the order dated 19.09.2002, imposed a penalty of 25% cut in pension. The petitioner was aggrieved by that order passed by the disciplinary authority and therefore he filed an application under section 19 of the Administrative Tribunals Act, 1985 being O.A. No. 3155/2002 which was dismissed by virtue of the impugned order dated 07.07.2008. The petitioner is before us being aggrieved by that order.

3. The learned counsel for the petitioner raised two contentions before us. His first and primary contention was that the disciplinary proceedings

were continued under Rule 9 of the CCS (Pension) Rules 1972 and that a cut in pension could only be imposed on the petitioner if there was a finding of grave misconduct or negligence by the disciplinary authority. Since there was no such finding of grave misconduct or negligence in the disciplinary authority's order, there could not have been any penalty imposing a cut in pension. For this proposition, the learned counsel for the petitioner has placed reliance on the Supreme Court decision in the case of **D.V. Kapoor v. Union of India & Ors:** (1990) 4 SCC 314. He also placed reliance on a decision of the Division Bench of this court in the case of **Union of India & Ors. v T.P. Venugopal:** 148 (2008) Delhi Law Times 433 (DB).

4. The second point urged by Mr Behera, who appeared on behalf of the petitioner, was that even a case of misconduct, what to speak of grave misconduct, has not been made out against the petitioner.

5. However, as mentioned above, the main point urged by the learned counsel for the petitioner was that since a finding of grave misconduct has not been returned by the disciplinary authority, there could not have been any order imposing a cut in pension as that would be contrary to the specific provisions of Rule 9 of the CCS (Pension) Rules, 1972.

6. The learned counsel for the respondent submitted that the finding of

the disciplinary authority clearly indicates that Articles 4, 5 (partly) and 7 of the charges have been established and that they amount to misconduct. According to him, since there has been procedural irregularity in the purchase of the Fermenter and the Image Analysis System it would amount to grave misconduct. Consequently, he submitted that the decision of the Tribunal ought not to be interfered with. He also sought to place reliance on the decision of a Division Bench in the case of **UOI & Ors v. Dr V.T. Prabhakaran**: W.P. (C) 2292/2010 decided on 26.07.2010. He submitted that the expression 'grave misconduct' has been explained in detail in that decision. He also submitted that the disciplinary authority has, in any event, returned a clear finding of misconduct and therefore the second point urged on the part of the petitioner is clearly untenable.

7. At the outset, we may point out that the decision relied upon by the learned counsel for the respondent in the case of **UOI & Ors. v. Dr. V.T. Prabhakaran**, is actually a decision in two separate cases. One case was of **Dr. V.T. Prabhakaran** and the other was of **The Secretary, Ministry of Urban Development v. Shri Tej Ram**: (W.P. (C) No. 559/2010). Both these decisions were disposed of by a common judgment. Insofar as the case of **Dr. V.T. Prabhakaran** is concerned, the stage at which the respondent

therein (**Dr V.T. Prabhakaran**) approached the Tribunal was when, after the indictment in the Inquiry Officer's report, the Disciplinary Authority served the report upon the said Dr. V.T. Prabhakaran. Instead of submitting his representation, the said Dr. V.T. Prabhakaran rushed to the Tribunal alleging that, since the Inquiry Officer had not held that the misdemeanour amounted to 'grave misconduct', the proceedings ought to be terminated. The Tribunal, in that case, agreed with the view espoused on behalf of Dr. Prabhakaran "ignoring the plea of the petitioner that the disciplinary authority had yet to take a decision". The arguments before the Division Bench, as would be apparent from paragraph 12 of the said decision, centered on the issue as to :-

".... whether to attract Rule 9, the report of the inquiry officer must hold that it is a case of grave misconduct or negligence or the memorandum issued by the disciplinary authority seeking the response to the report of the inquiry officer or the note of disagreement must allege that it was a case of grave misconduct or negligence or that it was sufficient that the order levying penalty so records."

(underlining added)

The argument on behalf of Dr. Prabhakaran was that unless the inquiry officer held it to be a case of grave misconduct, no further proceedings under Rule 9 of the CCS (Pension) Rules, 1972 could be continued. On the other

hand, the argument on behalf of the Union of India was that “the stage” of recording the finding that the misconduct was grave was when the disciplinary authority imposed the penalty and it was urged that, therefore, Dr. Prabhakaran’s application before the Tribunal was premature. The Division Bench agreed with the latter view. The ratio of the decision is encapsulated in paragraph 26 thereof which reads as under:-

“26. Thus, we hold that the correct principle of law is that the stage for the disciplinary authority to hold that it is a case of a grave misconduct is when the penalty, by way of cut in pension or gratuity is inflicted under Rule 9 of the Pension Rules, and at no prior stage....”

Therefore, no help can be taken by the respondent herein inasmuch as in the present case the disciplinary authority has already passed the order. The observation of the Division Bench, in the case of Dr. Prabhakaran, with regard to the meaning and scope of ‘grave misconduct’ are not part of the ratio as the court had already held that the stage for consideration as to whether the misdemeanour amounted to ‘grave misconduct’ or not had not been reached. That, however, does not concern us as in the present there is no finding of ‘grave misconduct’ in the Disciplinary Authority’s order. In any event, the present case is distinct and different from Dr. Prabhakaran’s

case.

8. Insofar as the other case, that is, the case of **Shri Tej Ram** (W.P.(C) No. 559/2010) is concerned, the facts were that the Inquiry Officer had exonerated the charged officer but, the disciplinary authority dis-agreed with the findings of the inquiry officer. The note of disagreement was forwarded to the charged officer and after receiving his response, the disciplinary authority held him guilty of misconduct and imposed the penalty of 10% cut in pension for five years. There was, however, no finding at that the charged officer was guilty of “grave misconduct”. In this back drop, the Division Bench, by virtue of the said decision, held as under:-

“ 37. As regards WP(C)No. 559/2010 we note that while passing the order imposing the cut in pension the disciplinary authority has not returned a finding that the misconduct proved is grave misconduct and neither has the appellate authorities so found, no case is made out to interfere with the findings returned by the Tribunal.....”

From the above extract it is obvious that the Division Bench did not wish to interfere with the findings returned by the Tribunal particularly in view of the fact that the disciplinary authority had not returned a finding that the misconduct proved amounted to ‘grave misconduct’. The appellate authority had also not returned any such finding. We fail to see as to how

the said decision of the Division Bench dated 26.07.2010 is of any help to the respondent. On the contrary, it supports the petitioner. As no finding of 'grave misconduct' was returned either by the Disciplinary Authority or the Appellate Authority, the Division Bench agreed with the Tribunal which held that in the absence of any such finding the penalty of cut in pension could not be justified.

9. The Supreme Court in **D.V. Kapoor** (*supra*) has clearly brought out a distinction between misconduct on the one hand and grave misconduct on the other in the following manner:-

“4. At page 190-D (SCC p. 327, para 36)¹ it is stated that pension as a retirement benefit is in consonance with and furtherance of the goals of the Constitution. The goals for which pension is paid themselves give a fillip and push to the policy of setting up a welfare State because by pension the socialist goal of security from cradle to grave is assured at least when it is most needed and least available, namely in the fall of life. Therefore, when a government employee is sought to be deprived of his pensionary right which he had earned while rendering services under the State, such a deprivation must be in accordance with law. Rule 9(1) of the Rules provides thus:

“9. (1) The President reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the government, if, in any departmental or judicial

¹ D.S. Nakara v. Union of India: (1983) 1 SCC 305

proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his 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 pension shall not be reduced below the amount of rupees sixty per mensem.”

5. Therefore, it is clear that the President reserves to himself the right to withhold or withdraw the whole pension or a part thereof whether permanently or for specified period. The President also is empowered to order recovery from a pensioner of the whole or part of any pecuniary loss caused to the government, if in any proceeding in the departmental enquiry or judicial proceedings the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement.

6. Rule 8(5), explanation (b) defines ‘grave misconduct’ thus:

“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 of the security of the State.”

7. In one of the decisions of the government as compiled by Swamy's *Pension Compilation*, (1987 edn.) it is stated that:

“Pensions are not in the nature of reward but there is a binding obligation on government which can be claimed as a right. Their forfeiture is only on resignation, removal or dismissal from service. After a pension is sanctioned its continuance depends on future good conduct, but it cannot be stopped or reduced for other reasons.”

8. It is seen that the President has reserved to himself the right to withhold pension in whole or in part thereof whether permanently or for specified period or he can recover from pension of the whole or part of any pecuniary loss caused by the government employee to the government subject to the minimum. The condition precedent is that in any departmental enquiry or the judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service of the original or on re-employment. The condition precedent thereto is that there should be a finding that the delinquent is guilty of grave misconduct or negligence in the discharge of public duty in office, as defined in Rule 8(5), Explanation (b) which is an inclusive definition, i.e. the scope is wide of the mark dependent on the facts and circumstances in a given case. Myriad situations may arise depending on the ingenuity with which misconduct or irregularity is committed. It is not necessary to further probe into the scope and meaning of the words ‘grave misconduct or negligence’ and under what circumstances the findings in this regard are held proved. It is suffice that charges in this case are that the appellant was guilty of wilful misconduct in not reporting to duty after his transfer from Indian High Commission at London to the office of External Affairs Ministry, Government of India, New Delhi. The Inquiry Officer found that though the appellant derelicted his duty to report to duty, it was not wilful for the reasons that he could not move due to his wife's illness and he recommended to sympathetically consider the case of the appellant and the President accepted this finding, but decided to

withhold gratuity and payment of pension in consultation with the Union Public Service Commission.

9. 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.

10. x x x x x

11. In view of the above facts and law that there is no finding that appellant did not commit grave misconduct as charged for, the exercise of the power is clearly illegal and in excess of jurisdiction as the condition precedent, grave misconduct was not proved. Accordingly the appeal is allowed and the impugned order dated November 24, 1981 is quashed, but in the circumstances parties are directed to bear their own costs.”

(underlining added)

Upon a reading of the above extracts from the Supreme Court decision in **D.V. Kapoor** (*supra*) it is apparent that in the absence of a finding of grave misconduct, the President does not have any 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. It is, therefore, clear that

the condition precedent for an order of cut in pension is that the pensioner must be found guilty of grave misconduct or negligence during the period of his service in a departmental inquiry or in a judicial proceeding.

10. We may also point out that a Division Bench of this court in the case of **T.P. Venugopal** (*supra*), following the decision of the Supreme Court in the case of **D.V. Kapoor** (*supra*), observed as under:-

“15. The findings which have come in the inquiry report against the respondent only indicate that the level of negligence of the respondent may not be as high or might not have been expected of him. None of the findings in the report anywhere indicate that respondent misconducted himself gravely or committed grave negligence in permitting his subordinates to introduce fraudulent documents, incomplete processing and passing the bills without proper verification. Simply because the respondent passed impugned bills on the same date does not constitute any grave misconduct on the part of respondent in handling the bills. May be that respondent passed those 10 alleged fraudulent claims in undue haste, but then this conduct of the respondent by itself does not prove charges of grave misconduct against him.

16. x x x x x

17. The Tribunal, therefore, rightly held that Inquiry Officer except recording the findings of conduct “unbecoming of a Government Servant” has not recorded reasons as well as the findings as to commission of grave misconduct or grave negligence by the respondent. We also find that in the Memorandum issued to the respondent under Rule 14 of the CCS (CCA) Rules, 1965, petitioner has not leveled any such allegations against the respondent of having committed himself

in such a manner so as to constitute grave misconduct or grave negligence and to invite penalty under Rule 3 of the CCS (CCA) Rules.”

Consequently, we are of the view that as there was no finding of grave misconduct there could be no question of ordering a cut in pension because the finding of grave misconduct was a condition precedent to the passing of such an order.

11. In these circumstances, we need not examine the other question raised by the learned counsel for the petitioner as to whether there was any misconduct at all or not? As there was no grave misconduct, there could be no order of cut in pension. The impugned order is set aside and so also the order dated 19.09.2002 of the disciplinary authority imposing a 25% cut in pension. The consequential benefits, in accordance with law, be granted to the petitioner within eight weeks.

12. The writ petition is allowed as above. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

SEPTEMBER 20, 2012
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