

(2005) 01 KL CK 0051

In the High Court Of Kerala

Case No : Writ Petition (C) 28674 of 2003

Union of India and Others

APPELLANT

Vs

V. Mohandas and Another

RESPONDENT

Date of Decision : 25-01-2005

Acts Referred:

Constitution of India, 1950 — Article 41

Citation : (2006) 106 FLR 791 : (2005) 1 ILR (Ker) 748 : (2005) 1 KLJ 693 : (2005) 2 KLT 534 : (2005) 2 LLJ 538

Hon'ble Judges : M.N. Krishnan, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : John Varghese SCGSC, for the Appellant; C.S. Gopalakrishnan Nair, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—First respondent herein had retired from service as Deputy Commissioner, Central Excise on 28-2-2001. After his retirement an order dated 26-3-2002 was passed by the President imposing penalty of 15% cut-in-monthly pension in exercise of the powers conferred under Rule 9 of Central Civil Services (Pension) Rules. Aggrieved by the said order first respondent filed OA. 332 of 2002 which was allowed by the Tribunal and the order was set aside. Aggrieved by the same this writ petition has been preferred by the Union of India and others. Respondent was functioning as Assistant Collector of Central Excise, Kurnool Division of Hyderabad Collectorate, while so, disciplinary proceedings were initiated against him under Rule 14 of the CCS (CCA) Rules, 1965 on various charges including the charge that while he was working as Assistant Collector during the period from 29-1-1990 to 7-1-1994 he had approved classification lists and price lists in favour of M/s. Premier Det-Chem Pvt. Ltd., manufacturing detergent cakes sought concessional rate of duty on the basis of documents. It was alleged that the respondent had failed to verify authenticity of the documents. All the four charges enquired into by the enquiry officer who had

submitted a report holding that Article I, II and III of the charges were not proved and Article IV was partly proved. President had issued a show cause notice to the respondent proposing to disagree with the finding of the enquiry officer on Article I of the charge on the ground that the respondent could have enquired and made investigation before approving the classification list and therefore he had not applied his mind properly before approving the classification list and that the enquiry officer has not appreciated the evidence properly. Respondent submitted a detailed reply to the show cause notice explaining that the Range Superintendent having recommended the approval of the classification list, the same was approved as was done generally, because personal verification by the Assistant Collector was not necessary and practicable in all cases and that the clandestine manufacture of branded detergent cakes and removal not being in any way the result of the approval of the classification list, there was no scope for entering a different finding on article of charge No. 1. Disciplinary Authority, namely, the President on consideration of the enquiry report, the submission of the respondent and the advice of the Union Public Service Commission held that Article I of the charge substantially proved and Article IV of the charge partly proved. Union Public Service Commission had advised that the ends of justice would be met if a penalty of 15% cut in pension is imposed on the respondent for a period of two years. President accepted the recommendation of the Union Public Service Commission and held that the respondent was substantially guilty of Article I of the charge and Article IV of the charge partly by order dated 26-3-2002 imposing on the respondent 15% cut in monthly pension.

2. We fully endorse the view of the Tribunal that President had not properly applied Rule 9 of the Central Civil Services (Pension) Rules while imposing 15% cut in monthly pension from the respondent after his retirement. President has mainly relied upon the recommendation of the UPSC. We may refer to the recommendation dated 30-3-2001. Relevant portion of the same reads as follows:

In view of the above, the Commission hold that gross negligence of the CO is clearly established though no malafides have either been alleged in the charge sheet nor established during the inquiry.

The Commission observe that on attaining the age of superannuation, the CO has retired from service on 28-2-2001. Therefore the penalty tentatively proposed by the DA reduction of pay of the CO to a lower stage for a period upto 28-2-2000, without adversely affecting his pension, cannot be imposed at this stage. Moreover, the case has been submitted to the Commission on 27-11-2000 and therefore, the question of imposing a penalty with retrospective effect does not arise.

In the light of the findings as discussed above and after taking into account all other aspects relevant to the case, the Commission consider that ends of justice would be met in this case if a penalty of 15% cut in pension is imposed upon the CO for a period of 2 years. They advise accordingly.

The above report was accepted by the President and had ordered to impose penalty of 15% cut in monthly pension. We may point out that Union Public Service Commission had found that it would not be possible to impose penalty of reduction of pay of the CO to a lower stage for a period upto 28-2-2000 on the basis of the various charges levelled against him, if he was in service. If that be the case we fail to see how a major penalty of 15% cut in monthly pension for a period of two years on the respondent be imposed after retirement. If no minor penalty can be imposed on the respondent had he been in service, we fail to see how a major penalty can be imposed on him after retirement. Union Public Service Commission in our view, has misdirected itself in recommending the imposition of penalty of 15% cut in monthly pension on a retired employee. Further we are also of the view that the President has not properly applied Rule 9 of the Central Civil Service (Pension) Rules. The said provision is extracted below for easy reference:

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 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.

We are of the view the above mentioned provision would apply only if the pensioner is found guilty of grave misconduct or negligence during the period of his service. According to the enquiry officer, the only charge found proved partly was Article IV of the charges which is a technical lapse. Union Public Service Commission had also found that there was no malafides on the part of the officer nor there was any ill motive or dishonest intention. There was no allegation that he had indulged in a corrupt practice. The fault, in our view, is only minor technical lapse which was established under Article IV of the charges. We may in this connection refer to the decision of the apex court in D.V. Kapoor Vs. Union of India and others, wherein the apex court examined the scope of rule 9(1) of the Central Civil Service Conduct rules. Referring to the above mentioned provisions the apex court held as follows:

As seen the exercise of the power of 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/-.

Apex Court further stated that the employee's right to pension is a statutory right. The measure of deprivation therefore, must be correlative to or commensurate with the gravity of the grave misconduct or irregularity as it offends the right to assistance at the evening of his life as assured under Article 41 of the Constitution. The impugned order discloses that the President withheld on permanent basis the payment of gratuity in addition to pension. We are of the view the principle laid down by the apex court is squarely applicable to this case. This is a case where the finding of the enquiry officer is that there was no grave misconduct or negligence on the part of the officer in discharging his duty. Even the Union Public Service Commission has specifically found that no malafides have either been alleged in the charge sheet nor established during the enquiry. Under such circumstance we are in agreement with the order of the Tribunal that the order imposing 15% cut in pension on the respondent for a period of two years cannot be sustained.

Writ petition lacks merits and the same would stand dismissed.