CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD

OA/020/01547/2015

Date of CAV : 29.11.2021

Date of Pronouncement : 05.01.2022

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr.B.V.Sudhakar, Admn. Member

J.Kanaka Durga
W/o Late J.Uma Maheswara Rao,
Aged about 59 years, R/o D.No.19-139,
Murali Nagar, JuluriVari Street, Kanuru,
Krishna District, Andhra Pradesh.

(Amendment carried out as per order dt.3.9.21
in MA No.494/2021) ...Applicant

(By Advocate : Dr.A.Raghu Kumar)

Vs.

1. Union of India rep by the
Comptroller & Auditor General of India,
9, Deendayal Upadhyay Marg, New Delhi-24.

2.The Deputy Comptroller & Auditor General
Of India, O/o Comptroller & Auditor General of India,
9, Deendayal Upadhyay Marg, New Delhi-24.

3.The Principal Accountant General (G& SSA),
Andhra Pradesh & Telangana State, Saifabad,
Hyderabad. ....Respondents

(By Advocate: Mr.K.Ajay Kumar, SC for IA & AD)

ORDER
(As per Hon'ble Mr. B.V.Sudhakar, Admin. Member)

Through Video Conferencing:

2. The OA is filed in regard to imposition of penalty of compulsory retirement on the original applicant Sri J. Umamaheshwara Rao who passed away during the pendency of the OA.

3. Brief facts of the case are that the applicant while working as Assistant Audit Officer (for short "AAO") one Sri M. Vidyasagar filed a false complaint with the police claiming that the applicant took Rs.5.0 lakhs for providing a job as Audit Officer, resulting in registering of FIR No. 14/2013. The matter was compromised before the Lok Adalat on 30.05.2013 and yet the respondents initiated disciplinary action resulting in imposition of penalty of compulsory retirement on 01.07.2015. Appeal preferred was rejected on 30.09.2015. Aggrieved, the OA is filed.

With the death of the applicant during the pendency of the OA, his wife has been brought on record as legal representative by amending the OA. However, for convenience, the late employee is referred to as "applicant".

4. The contentions of the applicant are that he is not competent to provide the job of Audit Officer. The complainant has stated that he has deposited an amount of Rs.3.60 lakhs in different accounts of the applicant in 2011, whereas the complaint was lodged on 07.01.2013. Therefore, the

complaint is a motivated one. The actual fact being that the applicant befriended the Principal of the Govt. Junior College for Boys, Godavarikhani (Sri M. Lingaiah) while undertaking Audit and as a friendly gesture, applicant gave Rs.4.00 Lakhs as a loan to Mr. Lingaiah to perform marriage of his daughter. With the intervention of the Association of Principals, Sri M. Lingaiah repaid the loan in parts in 2011. However, Sri M. Lingaiah instigated his nephew Sri M. Vidyasagar to lodge a false complaint by using the pay-in slips while depositing part amounts in the applicant's account. The complainant is related to a Sr. Police officer and he has brought undue pressure on the applicant. On the advice of friends, applicant agreed for a compromise before the Lok Adalat by paying Rs.2.5 lakhs to the defacto complainant, resulting in the withdrawal of the complaint on 30.05.2013 (Annexure A-III). Despite settlement of the dispute before the Lok Adalat, respondents issued the charge memo dt.20.12.2013 with two articles of charge. Respondents relied only on the evidence of the Sub Inspector of Police of Saifabad Police Station. The applicant has been subjected to double jeopardy. No inquiry has been conducted by the Police. Complainant has filed different versions of the complaint at different intervals of time before the Police. The inquiry officer did not appreciate the contentions of the applicant. Disciplinary authority mechanically imposed a disproportionate penalty of compulsory retirement on 1.7.2015. Principles of natural justice have been violated. Articles 14, 16 & 311 of the Constitution of India have been infringed and the penalty imposed is illegal and arbitrary. Disciplinary authority and the appellate authority have relied on the unfounded conclusions of the inquiry officer.

5. Respondents in their reply statement state that the police informed about the complaint registered in Crime No. 14/2013 against the applicant for promising a job to the complainant Sri M. Vidyasagar and cheating him by taking Rs.5.00 lakhs. When questioned, applicant informed that he did not know the complainant and that no criminal proceedings were instituted against him in the court. Consequently, respondents were not kept informed. However, when police was approached to verify the veracity of the applicant's version, it was reported that the applicant was arrested on 30.05.2013 and when produced before the Court, the issue was compromised by Lok Adalat with the applicant paying Rs.2.5 lakhs towards final settlement in case No. 543/2013. Taking cognizance of the facts stated, charge sheet was issued on 20.12.2013 and after due inquiry, penalty of compulsory retirement was imposed on 01.07.2015 and confirmed by the appellate authority on 30.09.2015. Applicant promising a job is unlawful irrespective of the fact whether he is competent or not. The gap between depositing the amount and lodging the police complaint is because the complainant only after being deprived of the promised benefit has lodged the complaint. The audit of the Govt. Junior College for Boys was not conducted in 2009-10 as claimed by the applicant, but in 2006. Applicant has not submitted any evidence to prove that he has advanced any money as loan to Sri M. Lingaiah nor was he introduced before police or during the disciplinary inquiry. The applicant has given five different account numbers

to receive the purported loan amounts advanced by him, which goes to prove that the complaint is not motivated. Compromise before the Lok Adalat supports this assertion. Applicant did not intimate about being arrested by Police. Applicant took leave on 30.05.2013 with leave address shown as Vijayawada though the purpose was to appear before the court at Hyderabad. Applicant has taken DDs on 27.05.2013 before appearing in the court as per applicant's response dt. 04.08.2014, thereby disproving the applicant's feigned ignorance of the likely court proceedings. Applicant confirmed before the Inquiry Officer that the compromise was effected by intervention of elders and therefore, completion of court proceeding in no time is not a cohesive argument. The applicant has not raised any objection about citing the Sub Inspector/ Investigation Officer as witness during the inquiry. Applicant was awarded personal hearing by disciplinary authority on 06.03.2014 and in the said hearing, applicant submitted that he has misrepresented the facts to the respondents. In the statement of defence dt. 08.01.2014, applicant has admitted that Sri Lingaiah has deposited the amounts whereas in his representation it was denied that neither Sri Lingaiah nor the complainant deposited the amount. The complainant mentioning about offer of two different posts does not materially affect the allegation of illegal gratification.

Applicant filed a rejoinder pleading that he has erroneously mentioned the audit year as 2009 to the police authorities since he was in mental shock. Mr. Lingaiah is the mastermind behind the complainant and therefore, producing him is impractical. In 2009, only Rs.25,000 could be deposited from outside stations and therefore, 5 accounts were provided. During cross-examination, Sub Inspector has confirmed that no investigation was undertaken with respect to the complaint lodged. Applicant was physically threatened by the complainant and further, to avoid arrest/ suspension, applicant preferred compromise. Applicant did go over to Vijayawada on applying leave after the matter was resolved in Lok Adalat. Respondents stating that he admitted about misrepresenting facts during the personal hearing is baseless. Deposits were made in Applicant's account by different people in cash and one deposit by cheque by an unknown person. As the applicant was not detained beyond 48 hours, it was not necessary to keep the respondents informed.

6. Heard both the counsel and perused the pleadings on record.

7(I) The dispute is about imposition of penalty of compulsory retirement on the applicant. The facts of the case reveal that the applicant while working as AAO conducted the audit of the Govt. Junior College for Boys, Godavarikhani. Applicant claims that he has befriended Sri M. Lingaiah, Principal of the College and for performing the marriage of his daughter, a sum of Rs.4.0 lakhs was advanced as loan. When pressed for repayment of the loan by approaching the Principal's Union, part amount of Rs.3.60 lakhs was deposited in the Bank Accounts related to the applicant. Instead of repaying the balance amount, Sri Lingaiah instigated his cousin Sri M. Vidyasagar, who is alleged to be well connected to the Police authorities, to file a false police complaint leading to registering of FIR No. 14/2013.

However, to avoid any arrest that would culminate in suspension, Applicant on the advice of elders/ friends agreed for a compromise by paying Rs.2.5 lakhs to the complainant. Accordingly Lok Adalat proceedings dt. 30.05.2013 were issued. When the matter was brought to the notice of the respondents by the Police, applicant was questioned about the incident and since full details were not forthcoming, a further report was obtained from the Police and thereupon, charge memo dt. 20.12.2013 was issued containing two articles of charge. The same are reproduced hereunder:

*"**Article-1***

That the said Sri J. Uma Maheswara Rao, Assistant Audit Officer, while working in the Office of the Principal Accountant General (G & SSA), Andhra Pradesh, Hyderabad was accused in a 'cheating' case registered in Saifabad Police Station, Hyderabad, in Crime No. 14/2013 under Section 420 of the Indian Penal Code, based on a complaint lodged by one Sri Mekala Vidya Sagar.

Sri J. Uma Maheswara Rao, during the Lo-Adalat convened on 30.05.2013, agreed to pay the compromised amount of Rs.2,50,000/- towards full and final settlement, to the complainant, Sri Mekala Vidya Sagar.

Information obtained from the Police confirms that amounts totaling Rs.3,40,000/- (Rupees three lakhs forty thousand) were credited by Sri Mekala Vidya Sagar into the accounts maintained by Sri J. Uma Maheswara Rao and Ms. K. Surekha as a consideration in-lieu of the promise made Sri J. Uma MaheswaraRao to provide employment in this department. Further, Police informed that Sri J. Uma Maheswara Rao collected Rs.1,60,000/- in cash from the complainant, Sri Mekala Vidya Sagar. A promise to provide employment in public service for a monetary consideration in unlawful.

Thus, Sri J. Uma Maheswara Rao, Assistant Audit Officer, with an intention to cheat, demanded and collected illegal gratification, and thereby exhibited lack of integrity and acted in a manner unbecoming of a Government Servant, violating Rules 3(1)(i) and 3(1)(iii) respectively of CCS (Conduct) Rules, 1964.

Article-2

That the said Sri J. Uma Maheswara Rao, Assistant Audit Officer, while working in the Office of the Principal Accountant General (G & SSA), Andhra Pradesh, Hyderabad was accused in a 'cheating' case registered in Saifabad Police Station, Hyderabad, in Crime No. 14/2013 under Section 420 of the Indian Penal Code, based on a complaint lodged by one Sri Mekala Vidya Sagar.

Sri J. Uma Maheswara Rao, Assistant Audit Officer, deliberately concealed the following facts:

1) that he knew the complainant, Sri Mekala Vidya Sagar;

2) that he surrendered before the police authorities followed by his arrest on 30.05.2013;

3) that he appeared in a Court of law;

4) that the case was compromised in the Lok Adalat;

5) that he agreed to pay Rs.2,50,000 in full and final settlement of the case with the complainant;

6) that the FIR was disposed of but not quashed;

7) that he had full information of the award by the Lok Adalat, which bears his signature, as against his statement that he had only oral information;

8) that he has not mentioned the ground on which he applied for Earned leave on 30.05.2013 and 31.05.2013, despite being aware of the fact that he was going to surrender himself at Saifabad Police Station, as he had applied for sanction of leave on 30.05.2013 itself;

9) that he had mentioned his leave address as "Vijayawada', despite knowing that he would be surrendering in the Saifabad Police Station, on the date of applying for sanction of earned leave.

Despite being aware of the compromise and also having signed the award in the Lok Adalat, Sri J. Uma Maheswara Rao, did not provide the information sought by this office even when directed to do so and further asked the office to procure the information from its end.

Thus, Sri J. Uma Maheswara Rao, Assistant Audit Officer, by his intentional concealment and suppression of material facts and providing false information to the office, has exhibited lack of integrity and indulged in acts unbecoming of a Government Servant and thereby, violated Rule 3(1)(i) and 3(1)(iii) of CCS (Conduct) Rules, 1964."

II. Article I relates to the Police complaint and the second one is about not informing the respondents about the incident. Respondents contest that the applicant has compromised professional conduct by having financial dealings with an auditee. Besides, suppressing information from the respondents is violation of Conduct Rules. Further, the audit was conducted in 2006 and not in 2009. Applicant has explained that by mistake he has informed the audit year as 2009 to the police by being in mental shock.

III. Applicant contends that the fear of suspension and arrest compelled the applicant to go in for compromise before the Lok Adalat. Besides, he was not detained in Police custody beyond 48 hours to keep the respondents informed as per rules, is one another averment of the applicant. Applicant claims that he did leave for Vijayawada on 30.05.2013 as scheduled after the hearing was completed in Lok Adalat. Five different accounts were given by the applicant, as amounts beyond Rs.25,000/- were not permitted to be deposited in the relevant year. Further, the applicant claims that he was being physically intimidated and therefore, had to compromise. Taking the Demand Drafts in advance before the Court hearing, as per the version of the Applicant, was at the instance of the elders to ensure early resolution to the dispute. Another claim of the applicant is that the Sub Inspector has during the cross examination confirmed that no investigation was undertaken in regard to the complaint. Besides, the complainant has given two versions namely that he was promised the post of Audit Officer once and Record Assistant on another occasion, by the applicant. This aspect, the applicant avers, was not viewed with all the seriousness it deserves for analyzing as to whether the complaint was genuine. Further, the applicant asserts that he did not admit to have misrepresented to the respondents, when he was given a personal hearing. One another pertinent averment made by the applicant is that he was directed to prove his innocence rather than the respondents proving the charges framed.

Producing Sri M. Lingaiah who is the cause of the dispute before Police / disciplinary inquiry is not feasible is one another pleading of the applicant in the rejoinder. The above pleadings of the applicant have been unanswered by way of filing an additional reply by the respondents.

IV. Therefore, we are of the view that the respondents need to examine the above contentions in order to ensure that no injustice is caused to the applicant. As pointed out by the applicant, though it is not mandatory to file a review petition, but given the fact that certain averments were made in the rejoinder, it would be apt to direct the legal representative of the applicant i.e. his wife, who has come on record in his place post his demise, to submit a petition to the respondents by submitting facts backed by rules and law, so that the respondents get an opportunity to examine the case afresh. We are conscious of the fact that the OA was instituted in 2015 and yet we have proposed to remit the case to the respondents so that the petitioning authority could look at the genuine concerns raised, in a justifiable manner and take an appropriate decision. The petition has to be submitted within 15 days from the date of the receipt of the order and the respondents are directed to dispose of the same within 3 months from the date of receipt of the petition in accordance with the rules and law.

V. With the above direction, the OA is disposed of, with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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