D.N. Keshava Murthy Vs. Jt. Development Commissioner and

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Court : Central Administrative Tribunal CAT

Decided On : Sep-13-2000

Reported in : (2003)(1)SLJ396CAT

Judge : G R Rao, G a S.K.

Appellant : D.N. Keshava Murthy

Respondent : Jt. Development Commissioner and

Judgement :

1. The applicant was issued with a Memorandum of Charge relating to the alleged demand and acceptance of illegal gratification of Rs. 2,500/- from one Shri Govindan, while functioning as the Deputy Director (Glass and Ceramics), Small Industries Service Institute (Sl SI), Madras, (the Institute for short) during May, 1993. In the statement of the Article of Charge it was mentioned that on 12.5,1993 he demanded illegal gratification of Rs. 3,000/- from Shri K. Govindan as a motive for forwarding his project report to the Bank for availing loan and further that in pursuance thereof on 14.5.1993 the applicant again demanded and accepted the illegal gratification of Rs. 2,500/ - from the said K.Govindan abusing thereby his official position and thus failed to maintain absolute integrity and devotion to duty and conducted himself in a manner unbecoming of a Government servant violating the provisions of Rule 3(1) of Civil Services (Conduct) Rules, 1964 (Conduct Rules for short). Attached to the Memorandum of Charge, a statement of imputation of misconduct in support of the Article of Charge was also made available to the applicant. Besides, a list of documents by which the Article of Charge was

proposed to be sustained, a list of material objects and a list of witnesses by whom the Article of Charges was proposed to be proved, were also attached of Charge was dated 1/ 8.9.1994 (Annexure A-1 of the O.A).

2. Finally, the Disciplinary Authority (DA) that is, the Joint Development Commissioner (SISI) & the Chief Vigilance Officer, in his order dated 13.5.1997, seen at Annexure-A2, communicated to the applicant the order of the President of India in exercise of the powers under Rule 9(1) of the CCS (Pension) Rules, 1972 to the effect that 50% of the monthly pension otherwise admissible to the applicant would be withheld on a permanent basis and further that the entire amount of gratuity admissible to him would also be withheld. The said communication at Annexure-A2 had narrated the history of the case and referred to the charge framed against the applicant, his denial of the charge, the submission of the report of the Inquiry Authority (IA), the representation submitted by the applicant in response to the report of enquiry, the gist of the advice of the UPSC, consideration of the report of the IA and other records in the light of the submissions made by the applicant together with the advice of the UPSC and had finally recorded the decision of the President of India of accepting the findings of the IA and the advice of the UPSC and his coming to the conclusion that the applicant as the ex-Deputy Director had demanded and accepted an illegal gratification of Rs. 2,500/- from K. Govindan on 14.5.1993. Thereafter the operative part of the order of the President mentioned above as recorded in Annexure-A2.

3. The applicant then approached this Bench in O.A. No. 293/1997 which was decided on 16.3.1998. It is significant that in paragraph-3 of the order of this Bench in that O.A. it was observed as follows:- "Though the learned counsel for the applicant first contended that the continuation of the disciplinary proceedings after the applicant retired from service without the approval of the President was invalid, later he did not press this contention in view of the legal provisions and authorities pointed out by the learned Counsel for the respondents.

He submitted that he challenges the impugned order only on the ground that the advice of the UPSC which had been relied on by the DA to pass the impugned order has not been furnished to him and he had no opportunity to put forth his say regarding the advice of the UPSC." The Bench also took note of the fact that it is not disputed that the advice received from the UPSC had not been furnished to the applicant before the DA passed the impugned order at Annexure-A2 and that the copy was furnished to the applicant only along with the copy of the said order. The Bench, after considering the pleadings on both sides and discussing certain case laws, allowed the O.A. No. 293/1997 quashing the impugned order at Annexure-A4 therein, which is the same as the aforesaid Annexure-A2 in the present O.A. However, the Bench directed the applicant to give his representation, if any, with regard to the advice of the UPSC which he had already received and only the respondents to then pass the appropriate final order.

4. It is seen from Annexure-A4 dated 25.3.1998 that the applicant submitted the representation accordingly. We observe that in that representation the applicant had alleged that the department conducted a perfunctory enquiry in which it failed to fulfill the provisions of Rule 14 CCS (CCA) Rules, 1965 (CCA Rules for short) in every aspect to defeat the purpose of justice, that it was true that he had received a sum of Rs. 2,500/-, but it was certainly not for any favour in his official capacity towards Shri Govindan and only to oblige one Shri Muralidharan on whose behalf and at whose instance he accepted the amount, that the department did not give any weightage to the deposition of the Defence witness Shri Koti Reddy, who was one of the 2 Defence witnesses even thought it was in his favour, that the charge itself was vague, that the finding of the IA on the charge of demanding and accepting the illegal gratification of Rs. 2,500/- was only based on probabilities and not on any concrete fact, that the IA in the report had fully dwelt upon imagination and had let loose his theme of probabilities, that the IA seemed to have done more work on guessing things rather than enquiring into the actual facts based on the support of documentary evidence and witnesses, that the applicant in these circumstances had nothing to disprove because the IA had nothing to prove, that the IA had no right to disbelieve the evidence of the defence witness who had deposed in his favour by stating that Shri T.R.C. Muralidharan did in fact request him to receive Rs. 2,500/- on his behalf from Govindan since Muralidharan would not be in station, that it was ridiculous to see that the IA did not want to believe that Shri Muralidharan had requested him to collect the sum of Rs. 2,500/- from Govindan for reason of his on, which he could not establish in the enquiry but went

on to bring in the theories against the above facts, which remains a theory without being proved, that the IA did not want to believe that all this was the handiwork of Shri Muralidharan who wanted to wreck his vengeance on the applicant for the policy decisions of the department to stop the gem-cutting training programmes by which Shri Muralidharan was being benefitted with huge amounts which policy was conceived by the applicant according to Shri Muralidharan, that with the aid of Shri Govindan, Shri Muralidharan laid a trap and made the CBI to believe that he was to receive a particular sum for illegal gratification, that it was also funny to note that a person who sought bribe and thirsted after money gave a concession to the person, who gave the bribe and returned back a part of the sum, in this case a sum of Rs. 500/- which certainly was not a less amount, that the IA in fact had not succeeded in proving the charge against the applicant since there was no misconduct on his part and further that the applicant was only discharging a personal favour to Muralidharan who was very closely associated in the department in his capacity as a Secretary, Gem Cutting Institute, that the UPSC had not appreciated his point but had endorsed the IA's report blanketly thereby discharging a very serious duty in a lighter manner rather mechanically without applying its mind on the contentions and points by fully tilting towards the IA's report and that it was only on this material that the President of India had acted. At the end of that representation, seen at Annexure-A4, the applicant specifically stated that as directed by this Bench by its order dated 16.3.1993 in O.A. No. 293/1997 he had made the representation against the UPSC report and requested the DA, i.e., the Joint Development Commissioner, to appreciate his point of view and set aside the order of punishment of withholding 50% of monthly pension and the full amount of DCRG payable to him.

5. The impugned order dated 17.2.1999 seen at Annexure-A5 was passed thereafter by the Joint Development Commissioner (SISI) & Vigilance Officer, O/O Development Commissioner (SISI), to whom the representation at Annexure-A4 had been addressed.

6. We notice that in the impugned order at Annexure-A5, apart from what was stated by the Joint Development Commissioner (SISI) and Vigilance Officer, O/O Development Commissioner (SISI), earlierin Annexure-A2 dated 13.5.1997, which

was impugned in the earlier O.A. No. 293/1997, a reference has been made to the order passed by this Bench in the said O.A the fact that as per the direction of this Bench in that O.A, the applicant had made the representation dated 25.3.1998. In the operative part of the impugned order it is stated that the DA has considered the said representation dated 25.3.1998, the records of the enquiry, the facts and circumstances of the case and the advice of the UPSC. It then states that on such consideration, the President has come to the conclusion that the applicant demanded and accepted the illegal gratification of Rs. 2,500/- from Govindan on 14.5.1993 and further that the President is of the view that ends of justice would be met in this case if 50% of the monthly pension otherwise admissible to the applicant is withheld on a permanent basis and similarly the entire amount of gratuity admissible to him is also withheld. The impugned order finally states that the President, therefore, has ordered the imposition of penalty of withholding 50% of the pension on a permanent basis and withholding the entire gratuity amount due to the applicant.

7. The applicant has challenged the impugned order dated 17.2.1999 at Annexure-A5, in the present O.A. principally on the grounds that the imposition of the penalty above mentioned is illegal and unjust, that the entire enquiry bristles with technical lacunae, legal infirmity and factual inaccuracies, that the charge-sheet was issued in November 1994 and the departmental enquiry ought to have been completed before the applicant retired on superannuation on 31.10.1995, that there is no automatic continuation of enquiry after retirement relating to the charge for the period prior to retirement without the specific sanction of the President of India in terms of the Rule 9 of CCS (Pension) Rules as interpreted by the Hon'ble Gauhati High Court, that Rule 9 of CCS (Pension) Rules prescribes that the President has a right to withhold or withdraw pension if there is a grave misconduct or financial loss to the Government, that, therefore, for continuing the enquiry after the retirement of the applicant a decision ought to have been taken as to whether the alleged misconduct would constitute a grave misconduct warranting its continuation even after the retirement of Government servant, that the allegation against the applicant being one of acceptance of bribe, the ingredients of (a) Demand (b) Acceptance and (c) Showing or promising to show undue favour ought to have been proved in the light of preponderance of probabilities, that in the

present case those ingredients have not been so proved, that the report of the IA is perverse, that the entire enquiry proceedings suffer from several technical lacunae and legal infirmities denying reasonable opportunity to the applicant, that prerecorded statements of witnesses obtained behind the back of the applicant were treated as read and they were not asked what transpired in the enquiry thus prejudicing the case of the applicant, that the enquiry report of the IA does not comply with the requirements of provisions 14 of the CCS (CCA) Rules and the procedure laid down under Rule 14 of the Rules, and finally that the procedure laid down under Rule 14 of those rules had not been observed strictly as a result of which substantial prejudice has been caused to the application in the matter. The applicant has also urged the grounds that the correctness of decision-making and procedural propriety in the proceedings is sacrosanct which the respondents have violated in this case. Similarly, he has alleged that any violation of the CCS (CCA) Rules amounts to a denial of a reasonable opportunity since those rules are nothing but the embodiment and expansion of the principles of natural justice, that the DA has not passed a speaking order and his order is a bald, cryptic, authoritarian and unreasoned order, that none of the contentions urged by the applicant in his representation dated 25.3.1998 has been considered by the DA, that the punishment imposed is extremely harsh and thoroughly disproportionate to the gravity of the alleged misconduct and that since the earlier order of the DA passing the punishment of withholding 50% of pension on permanent basis and withholding the full gratuity was quashed by the Tribunal in its order dated 16.3.1998, the applicant should thereafter have been paid full pension and gratuity due to him as the earlier punishment order was not in existence as that time.

"(i) To call for records leading to the issue of Order No. 1 (14)/93-Vig dated 17.2.1999 at Annexure-5, and on perusal to quash the same as illegal and unjust.

(ii) To direct the respondents to release the full pension and full gratuity forthwith with interest at 18% per annum from the date it is actually due to the applicant till the final payment.

9. As regards the allegations of denial of a reasonable opportunity to him during the enquiry and the infirmities of the enquiry proceedings, on a careful perusal of

the records, we find that the applicant was granted more than a reasonable opportunity to go through the documents and materials on which the department proposed to rely to substantiate the charge against him and that on receipt of the specific communication dated 24.5.1995 from the IA, that is, the Commissioner for Departmental Enquiries, Central Vigilance Commission, in his response dated 25.5.1995 thereto the applicant stated, inter alia, as follows:-"With reference to the order sheet issued by the enquiry officer dated 24.5.1995 at Madras, the CBI has given all documents and statements of witnesses, except items listed at Sl. No. 11 & 12 of the Annexure-III of the Charge-sheet. They say they will be given to me shortly. The following prosecution witnesses including I.O. of the CBI are to be cross examined: In the same communication he also cited 2 defence witnesses and requested that the statement dated 15.9.1994 filed by him to the Memorandum of Charge dated 8.9.1994 (Annexure-A1) should also be perused by the I.O.10. We see from the depositions of the witnesses, maintained as part of the records, that Shri S. Balakrishnan, M. Sundaranjan, K. Govindan, Ramakrishnan, T. Inbakumar, the Sub Inspector of Police, Special Branch, Arulando, the Inspector of Police, CBI, Madras and T.R.Muralidharan, alias Diamond Murali, not only confirmed before the IA the photo copies of the statements which they had given earlier, but were specially examined-in-chief and thereafter cross-examined by the applicant himself during the Departmental Inquiry, Similarly G. Kamala Kannan was examined-in-chief as DW-1 and there was no cross-examination of this witness. Incidentally, the said witnesses, that is, G. Kamala Kannan, Chief Executive, Iron and Steel Times, Madras, specifically denied that there was any talk between him and S. Balakrishnan about any commission to be paid to Balakrishnan in case the machinery was purchased from them and that he had only discussed with Balakrishnan the performance of their machinery and the advantage of buying it. He further confirmed in his evidence that it was against the policy of their company to offer any such commission. The other Defence witness, i.e., DW-2, Koti Reddy, SIPO, SISI, Nagpur, on whose evidence the applicant has relied considerably, stated as follows during his cross-examination:- "As I stated earlier, I cannot recall the exact conversion between Shri Murthy (the applicant - added by us) and Shri Muralidharan regarding the amount of Rs. 2,500. However, lot of things were being discussed between two of them and I had only overhead a few things, including the conversation the said amount. The gist of whatever I had heard about the said amount is that Shri Murlidharan had told Shri Murthy that Shri Govindan will come to Shri Murthy and give Rs. 2,500/- as Shri Murlidharan himself will be out of station on 14.5.1993. I cannot recall the details of other conversation relating to this issue.......................I do not remember whether Shri Murafidharan had told Shri Murthy on 12.5.1993 as to when will he collect the money from Shri Govindan and also as to what was the urgency of the money being collected by Shri Murthy from Shri Govindan in the absence of Shri Muralidharan." We also observe that the applicant had specifically chosen not to seek the assistance of any other person to help him conduct his case before the Inquiry Authority.

11. From the report of the enquiry submitted by the IA dated 18.12.1995, it is evident that the IA did not rely on the evidence of any of the witnesses cited by the department, who was not cross-examined by the applicant. Merely taking on record the statements of certain other witnesses, which were not objected to by the applicant, even after he had examined those statements, cannot be considered as an irregularity causing prejudice to the applicant in the prosecution of his case before the IA in these circumstances. The reasoning adopted by the IA in coming to his findings based on the evidence discussed by him as seen from the enquiry report, doubtless refers to the probability of the main defence taken by the applicant, i.e., that he had merely demanded and collected the amount of Rs. 2,5,00/- as requested by Muralidharan from Govindan on 14.5.1993, when according to the applicant himself there had already been considerable bad blood between him and Murlidharan. We do not find anything wrong about the finding of the IA arrived at in the process that the paid defence of the applicant was not at all probable and further that in the light of the evidence of other witnesses, who had been cross-examined by the applicant, the charge against the applicant was proved. We must also point out that it is well-established that the Tribunal is not required to reassess the evidence in a Departmental Inquiry in any great detail. We are satisfied that the IA has conducted the enquiry proceedings in a fair and just manner, that during the proceedings reasonable opportunity was extended to the applicant to prosecute his case and further that there has been no irregularity committed during the proceedings which can be held to have caused any

prejudice to the case of the applicant. We also find that the findings of the IA are based on adequate evidence and analysis thereof. We also take note of the other well-established position that any procedural lapse per se which on examination is found not to have caused any prejudice does not vitiate the Departmental Inquiry. The enquiry proceedings, in our considered view, therefore, cannot be faulted at all.

12. The grounds taken by the applicant to impugne the order dated 17.2.1999 at Annexure-A5 that the DA has not applied his mind has not been found by us as tenable. That is so for the reason that the DA has specifically referred to the detailed report of the IA and the advice tendered by the UPSC. We have discussed the report of the IA already.

We find that the report of the UPSC is again very elaborate and discusses the findings of the IA and the defence taken by the IA in response to the report of the enquiry. Essentially, UPSC also has not found the main defence taken by the applicant as probable at all in the light of the evidence tendered before the IA. We also observe that in the representation made by the applicant dated 25.3.1998 at Annexure-A4, no new ground, other than the bald allegation that the UPSC had not appreciated his point but had endorsed the IA's report blanketly, was taken by the applicant. The DA has considered the report of the UPSC in that context once again. Thus, the DA in paragraph-5 of the impugned order has held as follows:- "The allegation of the charged officer that he was falsely implicated by Murlidharan in this case due to animosity is not borne out even by evidence of a circumstantial nature". Finally, the President of India based on the consideration of the record of enquiry, the facts and circumstances of the case and the advice of UPSC has come to the conclusion that the charge of demanding and accepting the illegal gratification of Rs. 2,500/- against the applicant has been proved. In our opinion, in this situation it cannot be held that there has been no application of mind on the part of the DA or of the President of India to the grounds, urged by the applicant in his representation at Annexure-A4, which were relevant for coming to that conclusion. Contrary to a mere assertion made on behalf of the applicant and in the absence of any authority cited in this behalf, we hold that there is no legal requirement, nor has any such requirement been laid down by any competent judicial authority, that all grounds urged in a representation, whether they have been considered already or not, and whether they are relevant or not, must be considered by the DA in the context of departmental proceedings. We cannot find fault with the impugned order on that score.

13. On behalf of the applicant the interpretation of certain provisions, similar to those of the Rule 9 of the CCS (Pension) Rules, 1972, given by the Hon'ble Gauhati High Court, has been relied upon.

That decision of the Hon'ble High Court at Gauhati rendered in the case of G.K. Pukan v. State of Assam, which admittedly was not rendered in a case under the CCS (Pension) Rules, has been quoted in this context extensively in the O. A. With due humility on our part, we must point out that Rule 9 of the CCS (Pension) Rules, 1972 (the Pension Rules for short) are required to be interpreted following the well-established rules of interpretation, i.e., that the framers of the Rule ordinarily want to convey the meanings of all the words and expressions used in the Rule and that normally an intention contrary to the meaning of those words and expressions cannot be deemed to have been implied in the Rule. No prior permission of the President under the provisions of Rule 9(2)(a) has been envisaged nor even implied, whereas under the provisions of Rule 9(2)(b)(i) the said prior permission is laid down as a requirement if the Government servant has already retired. The relevant provisions of Rule 9 of the CCS (Pension) Rules, mentioned above, read as follows:- 9(1) The President reserves to himself the right of 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 pension shall not be reduced below the amount of rupees three hundred and seventy five per mensem.

9 (2)(a) The departmental proceedings referred to in Sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) The departmental proceedings, if not instituted while the Government servant was in service whether before his retirement, or during his re-employment, - (ii) shall not be in respect of any event which took place more than four years before such institution, and (iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service." (emphasis supplied) We notice that the validity of the above provisions itself has not been challenged by the applicant. Further, we are unable to agree with the learned Counsel for the applicant that the ratio of the decision of the Hon'ble High Court at Gauhati mentioned above in a similar case is binding or even persuasive in the present case inspite of the specific provisions of the Rule 9 of the Pension quoted by us above. As is evident from the provisions of Rule 9(2)(a) of the Pension Rules quoted verbatim above, the continuation of the departmental proceedings, instituted while the Government servant was in service, are deemed to be proceedings under Rule 9(1) of the Pension Rules and are required to be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service for the purpose of the said Sub-rule (1) of Rule 9 of the Pension Rules. We also observe that these latter provisions refer specifically to the situation where the pensioner is found guilty of a grave misconduct in the departmental proceedings, inter alia. There can be no denying the fact that the demand and acceptance of illegal gratification, when so proved, definitely constitutes a grave misconduct. Any other interpretation of grave misconduct in this context, in our opinion, is not warranted. The only other requirement is that when the said departmental proceedings are concluded after retirement of the Government servant, if the authority, which instituted the departmental proceedings, is subordinate to the President, the report recording the findings of that authority is required to be submitted to the President. There is no allegation that the latter parts of the above prescribed procedure have not been followed in the present case.

14. As regards the case law laid down by the Delhi High Court in the case of O.P. Gupta v. Union of India, 1981(3) SLR 778, mentioned in the O.A. and relied upon by the applicant, it is evident that what the Hon'ble Delhi High Court has held there is that "In case of an event more than 4 years old on date of retirement, a departmental proceeding cannot be continued after retirement under Rule 9(2) of the Pension Rules, 1972." (Underlined by us) The applicant has not even seriously contended that the said ratio is applicable in the facts and circumstances of his case. On the other hand, it is admitted by the applicant that the alleged incident, based on which the charge was framed against him, took place on 14.5.1993 and that he retired as a Deputy Director of the Department on 31.10.1995. Thus it is obvious that the event which became the subject matter for the departmental enquiry instituted by the competent authority against the applicant did take place less than 4 years prior to the date of his retirement. We, therefore, hold that the continuance of the departmental proceedings aforesaid, even after his retirement, cannot be held as invalid, even if, the ratio of the case law laid down by the Hon' ble Delhi High Court is adopted in this case.

15. No other case law has been cited on behalf of the applicant to substantiate the above-mentioned major ground challenging the impugned order, i.e., that in all cases including those involving an alleged grave misconduct, departmental proceedings, which have commenced prior to the retirement of a Government servant, can be continued under Clause (a) of Sub-rule 2 of Rule 9 of the Pension Rules only with the prior approval of the President, even though that clause declares that such departmental proceedings shall "be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had

continued in service........." We are, therefore, unable to agree with the learned Counsel for the applicant that as contended by him even for continuance of the departmental proceedings referred to under the aforesaid Clause (a) Sub-rule 2 of Rule 9 of the CCS (Pension) Rules, such prior permission of the President is necessary as being implied in those provisions. In our opinion there is no support for that view, particularly, when the departmental proceedings instituted while the Government servant was in service are concerned with a charge of grave misconduct like the demand and acceptance of illegal gratification.

16. The learned Counsel for the applicant has also cited certain other case laws. They are mentioned and then discussed below in the context of the facts and circumstances of the present O.A:- (i) The decision of the Bangalore Bench of the Central Administrative Tribunal in A.S. Murthy v. Station Director, All India Radio and Ors., reported in (1990) 12 ATC 388.

(ii) The decision of the Hon'ble High Court of Karnataka in B.A. Bhat v. Syndicate Bank and Ors., reported in 1990-I LLJ 266.

(iii) The decision of the Hon'ble Supreme Court in Chief Secretary to Government of Andhra Pradesh, Hyderabad v. R. Veerabhadram, reported in 1992 SCC (L&S) 985.

(iv) The decision of the Hon'ble Supreme Court in Deputy Secretary to Government, Prohibition and Excise Department for ST. George, Madras v. A. Bappu, reported in 1996(1) SLR 178, and (v) The decision of the Hon'ble Court of Karnataka in Madhava Raja Rao v. General Manager (Personal Wing), Head Office, Canara Bank, Bangalore and Anr., reported in 1999(5) KLJ 428.

17. As regards the ratio in the decision cited at (i) above, i.e., the decision of the Bangalore Bench of the CAT in the case of A. S. Murthy v. Station Director, All India Radio and Ors., it has been held that there is a requirement for genuine application of mind of the Appellate Authority to the questions raised in the appeal and to record its order with reasons for the same. The paragraph-52 & 53 of that order of the Bangalore Bench of CAT dealing with this point is reproduced below: "52. The mere length of an order does not convert an order into a speaking order.

What makes a speaking order is the genuine application of mind of the authority to the appeal and then deciding the question raised thereto with reasons for the same. The substance of the order and not its form is decisive to decide whether an order is a speaking order.

53. The very first infirmity we notice in the order of the AA is that the questions are dealt in a rambling manner. But, more important is that the conclusion are not supported by reasons.

Lastly, the AA had not examined the appeal with due regard to the three essential requirements of Rule 27(2) of the Rules emphasised by the Supreme Court in Ramchander's case. From this we very reluctantly hold that the order of the AA is not a speaking order in the true sense of that term." 18. It is clear from a reading of the said order of the Bangalore Bench of CAT and in particular of the paragraphs cited above that the Bench there was specifically dealing with the duties cast upon the Appellate Authority in terms of Rule 22 (2) of the Railway Service (Discipline and Appeal) Rules, 1968. The fact and circumstances of that case also indicate that the Bench there was called upon to discuss and decide what constituted a speaking order which was laid down as a requirement for the Appellate Authority to comply with. In fact, in the previous paragraph-51 of that order the Bench discussed the observations of the Supreme Court in Ramchander's case reported in AIR 1986 SC 1173= 1986(2) SLJ 249 (SC), which again dealt specifically with the provisions of Rule 27 (2) of the CCS (CCA) Rules, 1965. What we have to point out in this context is that the provisions of Rule 27 (2) of the CCS (CCA) Rules, 1965 law down specifically the duties for the Appellate Authority while disposing of an appeal against the decision of a Disciplinary Authority. In the present case, the order passed by the President under the provisions of Rule 9 of the CCS (Pension) Rules, cannot be treated on par with an order passed by an Appellate Authority in disciplinary proceedings. We are, therefore, of the opinion that the ratio of the decision of this Bench in the above mentioned case is not applicable in the facts and circumstances of the present case.

19. As regards the decision of the Hon'ble High Court of Karnataka in B.A. Bhat v. Syndicate Bank and Ors., it is seen that in paragraph-16 of that judgment, the

Hon'ble High Court has held as foliows:- "There is one more contention urged on behalf of the respondents that the petitioner cannot make it a condition precedent that he should be reinstated and back-wages must be paid before proceedings with the enquiry. This contention is also not well founded. On the quashing of the order of dismissal it becomes the bounden duty of the respondents to reinstate the petitioner back into service and restore the position which he enjoyed on the date the order of dismissal was passed. Bank has refused to reinstate the petitioner and pay him the back-wages. It wants to proceed with the enquiry without reinstating the petitioner and without paying him the back-wages which cannot be held to be permissible, because on the quashing of the order of dismissal the petitioner continues to be in service. He gets reinstated into the bank service and continuity of the service is also available to him. That being the legal consequence the bank cannot refuse to reinstate him and it cannot without reinstating insist upon proceedings with the enquiry." The ratio of the decision of the Hon'ble Court of Karnataka indicated in the above-mentioned paragraph, it has been argued by the learned Counsel for the applicant, is attracted in the present case to the extent that when this Bench in the earlier O.A. No. 293/ 1997 quashed the order at Annexure-A4 therein, which is the same as Annexure-A2 in the present O.A., the applicant should have been granted the full pension and the gratuity which was permissible in his case till the impugned decision dated 17.2.1999 at Annexure-A3 was taken. In this context we observe that the decision of this Bench in the previous O.A.No. 293/1997 rendered there was on 16.3.1998 and that the Annexure-A4 therein was quashed only on the procedural ground that the UPSC advice had not been given to the applicant before that advice was taken into account while passing that order at Annexure-A4. However, we find it very significant that at the same breadth this Bench in that previous O.A specifically observed that it was not disputed that the applicant had been furnished with a copy of the UPSC advice along with the final order. All that the Tribunal had been allowed there by way a right for the applicant was for him to give his representation, if any, with regard to the advice of the UPSC within one month from the date of that decision. The Bench had specifically ordered that if such a representation was given in time, the respondents ought to consider that representation and pass the appropriate orders and further that if no representation was given by the applicant within the time given, the respondents were free to proceed to pass final orders. From the language of the directions given by this Bench in that previous O.A., it is abundantly clear that the decision to withhold 50% of the pension on permanent basis in respect of the applicant and withholding of the full gratuity payable to him was not set aside on merits and that no fresh proceedings were required to be initiated by the respondents in that context. It was only a particular stage of the continuing proceedings which was found to be irregular and, therefore, that irregularity was required to be corrected by the respondents. In these circumstances, it is difficult for us to agree with the learned Counsel for the applicant that on the passing of that order of this Bench in the previous O.A. No. 293/97 on 16.3.1998, the applicant automatically (sic) became eligible for the payment of the full pension and entire amount of gratuity as was permissible in his case till another contrary decision was taken by the respondents. That would have been the case if as per the directions given by the Bench in the said previous O.A., fresh proceeding was required to be initiated as contemplated under Rule 9 of the CCS (Pension) Rules. That not being the case, we are of the considered opinion that the ratio of the judgment rendered by the Hon'ble High Court of Karnataka in the case of B.A. Bhat v. Syndicate Bank and Ors., on the point of reinstatement when the earlier order of dismissal is set aside is not applicable in the present case, where the continuance of the proceedings itself was not quashed by this Bench in the earlier O.A. In any case, when an earlier order of dismissal is set aside, the act of dismissal itself is set at naught. The only other alternative to dismissal logically being continuance. In service, the concerned employee was rightly considered to have been in service thereafter, particularly when there had been no actual or deemed suspension in that case. In the present case there was no such clear cut and single alternative; except that the eligibility for the applicant for permissible pension and gratuity was restored provisionaly but certainly not his right to payment thereof, when the continuing proceedings themselves were not quashed by the Tribunal in the previous O.A.20. In the judgment in case of the Chief Secretary to A.P. v. R.Veerabhadram, mentioned above, though the quashing of the enquiry proceedings which had been prolonged for over a decade by the Andhra Pradesh Administrative Tribunal was upheld by the Hon'ble Supreme Court, whether disciplinary proceedings can be continued after retirement, even where the event on which the charge was based took place beyond 4 years prior to the retirement, was left open as an issue by the Hon'ble Supreme Court. In fact, the decision of the Hon'ble Delhi High Court in O.P. Gupta v. Union of India, which as mentioned by us above has been relied upon by the learned Counsel for the applicant, was specifically referred to by the Hon'ble Supreme Court in their judgment in the aforesaid Chief Secretary to Government of Andhra Pradesh, Hyderabad v. R. Veerabhadram. However, the Hon'ble Supreme Court there chose to leave the said legal issue involved in the decision of the Delhi High Court in O.P. Gupta's case as open. We, therefore, do not see how the ratio of the judgment of the Hon'ble Supreme Court in the case of Chief Secretary to Government of Andhra Pradesh, Hyderabad v. R. Veerabhadram is of any help for the applicant.

It is certainly not the case of the applicant that the enquiry proceedings in the present case have been delayed unduly. In fact, it is on record and is undisputed that the departmental proceedings were initiated on 8.9.1994 and the Annexure-A2 order was issued on 13.5.1977. In a case involving CBI investigation, involving the charge of demanding and accepting illegal gratification, warranting consultation with the UPSC, and involving compliance with other requirements where the President had to take a decision, the time taken in the proceedings in the present case cannot be considered as too long nor can the proceedings be considered as having been delayed unconscionably.

21. In the decision of the Hon'ble Supreme Court in the case of Deputy Secretary to Government, Prohibition and Excise Department, Madras v.A. Bappu, all that has been laid down is that when an enquiry has already been initiated and is pending, there is no bar against the department completing the enquiry, though the department was not free to initiate a fresh enquiry if such an enquiry was not pending. The Hon'ble Supreme Court also directed in that case, which involved merely the examination of the allegation that a fake school certificate for the qualification of the respondent for entry into service was produced, that the said pending departmental enquiry had to be completed within six months. We fail to understand how the ratio of this judgment of the Hon'ble Supreme Court is relevant in the present case. It cannot be said that under the order of this Bench

given in the previous O.A. No. 293/1997, the proceedings which had already been initiated against the applicant were brought to an end and, therefore, following the ratio of the judgment of the Hon'ble Supreme Court in the aforesaid case of Deputy Secretary to Government Prohibition and Excise Department, Madras v. A. Bappu, it was not open to the respondents to institute a fresh departmental proceeding. On the contrary, as we have already pointed out, this Bench had specifically held that from the stage of receipt of the advice of the UPSC, further proceedings could be continued if the applicant were to make a representation within one month from the date of decision of this Bench in that earlier O.A. Nor can it be said with any good reason that after the applicant made that representation dated 25.3.1998 in the case against him involving illegal gratification, on which there was the requirement of obtaining the orders of the President under Rule 9 of the CCS (Pension) Rules, the pending proceedings ought to have been completed by the respondents within a period of 6 months from April, 1998. No such hard and fast rule can be held to be operative in the present case.

22. In paragraph-3 of the judgment of the Hon'ble High Court of Karnataka in Madhava Raja Rao v. Chief Manager (Personnel Wing). Head Office, Canara Bank, Bangalore, it has been observed as follows:- "Forming of opinion as contemplated under the aforesaid Regulation cannot be mere ritual or a formality. It is true that the Disciplinary Authority is not obliged to assign detailed reasons for agreeing with the Inquiring Authority, but, it is equally true that the Disciplinary Authority before imposing the penalty should be shown to have applied its own mind to the fact and circumstances of the case before forming an opinion for imposition of the penalty." As we discussed above, the Disciplinary Authouty has passed an order which does indicate that it has applied its mind to the main defence advanced by the applicant against the findings recorded by the IA and has held that the said defence was not at all probable. Paragraph-5 of the aforesaid judgment of the Hon'ble High Court of Karnataka then deals with the nature of consideration that is required to be given at the level of the Appellate Authority. We have already pointed out that for the purpose of imposing the penalty under Rule 9 of the CCS (Pension) Rules, neither the DA nor the President acts as an Appellate Authority. We are, therefore, of the opinion that the

requirements that the Appellate Authority is required to comply with as prescribed in various case laws, including the case law laid down by the Hon'ble High Court of Karnataka in Madhava Raja Rao v. General Manager (Personnel Wing), Head Office, Canara Bank, Bangalore, are not applicable.

23. For the reasons discussed in detail above, we are unable to persuade ourselves that the O.A. has any merits or that any of the reliefs sought by the applicant as cited above can be granted. In the result, the O.A is dismissed. No costs.