

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. NO. 91/2002

NEW DELHI THIS 31.....DAY OF ~~FEBRUARY~~ ^{October} 2002

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Kundan Lal - TO 3404
(Retired Sr. Supervisor Telephones)
I-448, Karampura,
New Delhi

.....Applicant

(By Sh. S N Anand, Advocate)

VERSUS

1. Union of India through Secretary,
Department of Telecom,
Ministry of Communications
Sanchar Bhawan, 20, Ashoka Road,
New Delhi - 110001
2. The Chief General Manager,
Northern Telecom Region,
Kidwai bhawan, new Delhi - 110050
3. The Chief General Manager,
Mahanagar Telephone Nigam Limited,
Khurshid Lal Bhawan, New Delhi -110050
4. The Director (Vigilance)
Ministry of Communications,
Department of Telecom,
Dak Bhawan, Sansad Marg,
New Delhi.

.....Respondents.

(By Shri V K Rao, Advocate)

ORDER (ORAL)

Denial of the pensionary benefits to the applicant on the basis of an event, which had taken place six years before the inst^{itu}tion of disciplinary proceedings, is the matter of challenge in this O.A.

2. Heard S/Shri S N Anand and V K Rao, learned counsel for the applicant and the respondents respectively.

3. The applicant (Sh. Kundan Lal) who was working as Sr. Supervisor (Telephone) Karol Bagh Exchange of MTNL, was placed under suspension on 7.4.95, in connection with a CBI case. He retired on superannuation on 31.1.96, while remaining still under suspension. Except for provisional pension he has not been given any of the benefits due to him. No case for prosecution was made out against him. Still on 16.3.2000, more than five years after of the charge sheet by the CBI Department had issued a Charge Sheet to him which was cancelled on 5.7.2000. On 28.11.2001, Presidential Order has ben issued, deeming to continue the disciplinary proceeding) allegedly initiated against the applicant, when in fact no such charge sheet, had in fact been issued; even six years after the issue of the CBI Charge sheet on 14.2.95. Repeated representation of the applicant from 1999 - 2001, did not yield any response leading to the filing of this OA.

4. Grounds raised in this OA are that:-

- a) withholding of retiral benefits for more than six years from the date of superannuation was illegal;
- b) respondents were attempting to take advantage of their inaction in not issuing the proceedings within four years of the date of superannuation of the applicant;
- c) disciplinary proceedings should have been issued within four yeas from the alleged event;
- d) action of the respondent's were in violation of CCS(Pension) Rules, 1972 and various decisions of the Hon'ble Supreme Court;
- e) pension was not a bounty but an accused fundamental right which should not have been denied on erroneous grounds and ;
- f) the applicant was entitled for the release with 18% interest ; of all the pensionary dues, illegally held back. All the above pleas were forcefully reiterated by Sh.

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Anand, learned counsel who also sought to rely upon a number of decisions by the Hon'ble Supreme Court and the Tribunal, viz.

State of Bihar & others Vs Mohd Idris Ansari
1995. Supp (3) SCC 561

State of UP and Another Vs Shri Krishna Pandey 1996 (9) SCC 395]

K. G. Samotra Vs UOI 1993 (2) SLJ (CAT) 585]

V C Pandey & Others Vs UOI [1996 (3) SLJ (CAT) 104].

5. According to the learned counsel, reading of Rule 9(2)(b) (i) & (ii) of the CCS(Pension) Rules along with the above decision, would show that proceedings cannot be initiated against a retiree, in respect of an event which had taken place, more than four years earlier and such an action being illegal. Withholding of the pensionary benefits was totally illegal and deserved to be set aside.

6. In the reply filed on behalf of the respondents' and reiterated by Sh. V K Rao, learned counsel it is pointed out that the application was totally misconceived. The applicant was harping on the point that the charge sheet against the applicant who is a retiree, had been issued more than four years after the alleged event of misconduct and cannot therefore be legally acceptable, in terms of Rule 9 of the CCS (Pension) Rules, totally forgetting that the same is ^{fully} ~~entirely~~ taken care of by Rule 9(6) whereunder the proceedings are deemed to be initiated once the charge sheet has been issued or from the date of suspension whichever is earlier. The applicant was under deemed suspension, following his detention for more than 48 hours, since 30.9.95, during the pendency of which the applicant had retired. That being the case, the issuance of the charge sheet, on 16.3.2000, cancelled thereafter with liberty, and re-issued after the Presidential sanction was obtained on

28.11.2001 was fully protected by Rule 9(6) of the CCS (Pension) Rules, 1972. Applicant's plea, therefore, that his pensionary dues have been illegally withheld has no basis, argues Shri Rao.

7. I have carefully considered the matter. The point for determination in this case is a short one, i.e. as to whether the disciplinary proceedings initiated more than four years (in this OA six years) after the alleged event of misconduct is hit by Rule 9 (2) (b) of the CCS (Pension) Rules, so as to make the withholding of the retiral benefits illegal while the applicant fervently asserts that the delayed initiation of the proceedings are illegal, the respondents retreat the same, holding that the proceedings are saved by the explanation provided in Rule 9(6). The issue, therefore, revolves around the interpretation of the two sub rules of Rule 9 ibid. Rule 9 (2) (b) (i) and (ii) read as below:

"The departmental proceedings, if not initiated while the Government Servant was in service, whether before his retirement or during his re-employment:

- i) shall not be withheld save with the sanction of the President.
- ii) shall not be in respect of any event which took place more than four years before such initiation."

Obviously therefore for initiating the disciplinary proceedings against any retire Govt. Servant, Presidential Sanction is a must and the event in respect of which the proceedings are set in motion was relatable to any even which had occurred within four years immediately prior to the initiation of the proceedings.

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Thus read in ^{isolation} it would appear that the charge-sheet issued on 15.2.2002, on the strength of President Sanction of 28.4.2001, in place of the originally issued charge-sheet of 16.3.2000, is hit by the prohibition of Rule 9 (2) (b) (ii), and that the applicant would have a case. The fact, however, is that the above provision would have to be read with Rule 9 (6) *ibid*, which provides the necessary explanation Rule 9(6) states that for the purposes of Rule 9 departmental proceedings shall be deemed to have been initiated on the date on which the statement of charge is issued to the Government Servant or if the Government Servant had been placed under suspension from an earlier dated, from such earlier date. In the instant OA, the applicant had been placed under deemed suspension on 7.4.1995 during the pendency of which the applicant had retired on superannuation on 31.1.1996. Therefore, in his case, for the purposes of Rule 9, the proceedings have been withheld on 7.4.1995 itself. The said date was within six months from the date of filing of FIR by the CBI and therefore it cannot be stated that there has been a gap of more than four years between the alleged event and the initiation of proceedings, so as to attract the prohibition under Rule 9 (2) (b) (ii). During oral submission, learned counsel for the applicant raised the plea that while the deemed suspension was issued on 9.4.1995 when the applicant was still in service, the same lapsed ^{automatically} ~~on~~ on 31.1.96, with the retirement on superannuation of the applicant and therefore rule 9 (6) had no application. This agreement is being ^{referred to} ~~referred to~~ only to be rejected, as accepting it would mean, that retirement superannuation washes away all the guilt and taint attached to a Government Servant under cloud. It, therefore, follows that the disciplinary proceedings against the applicant has been

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correctly
~~earrily~~ initiated on 9.4.1995, when he was placed under deemed suspension in terms of Rule 10 of the CCS (CCA) Rules, and therefore *he* get the backing of Rule 9 (6) of the CCS (Pension) Rules, to get over the prohibition under Rule 9 (2) (b) (ii) *ibid*. I have also gone through all the decisions of the Hon'ble Supreme Court relied upon by the learned counsel for the applicant but they do not come to the assistant of the applicant, as the facts are different. All those decisions have held that delay in the institution of proceedings beyond four years from the alleged event of misconduct was bad, but none of them relate to any case, where the applicant/petitioner was a retired Government servant, already under suspension, at the time of his retirement on superannuation. This OA is clearly distinguishable from the cases mentioned and relied upon by the applicant. That being the case, *I had taken* the institution of disciplinary proceedings were not delayed and the same cannot be assailed on that ground. Be that as it may, I find that considerable time has gone by in this matter and the applicant has been denied his retiral benefits have been held back for a bit too long for comfort. I would *also* like to record that leave encashment would not fall strictly within the purview of pensionary benefits and withholding it, on the basis of the institution of the disciplinary proceedings was not correct. The applicant is correctly entitled for the release of that amount, without any further delay.

8. In the above view of the matter, I am fully convinced that the applicant has not made out any case for Tribunal's intervention. OA therefore fails, being bereft of any merit, and is accordingly dismissed. The respondents are however, advised to finalise the disciplinary proceedings, which have taken considerable time, making the

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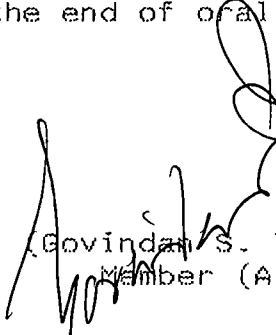
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applicant wait for release to the applicant. The amount of leave encashment, irregularly held back, within two months from the date of receipt of a copy of this order. No costs.

9. In view of the above MA No. 2047/2002 is disallowed.

10. Operative portion of the order was pronounced in the open court at the end of oral submission on 31.10.2002.


(Govindan S. Tampi)
Member (A)

Patwal/