

Date of hearing: 16.11.2017      Date of Order:

**ORDER**

**Per Hon'ble Mr.S.N.Terdal, Member (J):**

This O.A. has been filed seeking the relief of setting aside the Charge Memo No.8-291/2004-Vig.II dated 21.3.2005 and the penalty order No.8-291/2004-Vig.II dated 22.2.2016.

2. Heard Mr.S.K.Sikidar, learned counsel for the Applicant and Mr.A.Chakraborty, learned Addl.C.G.S.C. for the Respondents, perused the pleadings and all the documents produced by both the parties.

3. The relevant facts of the case are that the Respondents initiated a Departmental Enquiry, under Rule 14 of the CCS (CCA) Rules, 1965, against the Applicant with the following Article of Charge:-

**Article**

That the said Shri M.N. Khan while posted and functioning as Director (OFC), Guwahati during the period 1996 to 1997 failed to maintain absolute integrity and devotion to duty and committed gross misconduct inasmuch as he had conducted test checking of the work done in sub-section 17 of Imphal-Moreh route of the Contractor Sri Babul Kalita before making the first & final bill. He failed to deduct the proportionate amount as per the deficiencies found by them

during their sample test check. He countersigned the bill first & final bill of Rs.26, 86,295.00, after deduction of 5% (i.e Rs.25,51,858.00) passed by Shri Ram Prasad, DE in sub-section 17 after conducting test check but failed to detect the non-availability of RCC protection and also failed to order for making of payment of rocky soil instead of hard soil which he himself found during the checking that no rocky soil is observed but approved the recommendation of Shri Ram Prasad, DE for deduction of 5% of the bill value stated above which is not adequate at all considering the magnitude of defects found during decking. He should have ordered to deduct the proportionate amount from the bill as per the deficiencies found by them during their checking, thus resulting in a huge pecuniary benefit to the Contractor.

Thus by his above acts, the said Shri M.N.Khan committed misconduct, failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in manner unbecoming of a Govt..Servant, thereby violated the provisions of Rule 3(1) (i) (ii), & (iii) of CCS(Conduct) Rules 1964.

By order and in the name of the President.”

4. The Departmental enquiry was held and the Enquiry officer submitted enquiry Report on 15.2.2010 holding that charge was not proved. On 09.9.2010 the Disciplinary authority issued a disagreement Memo, disagreeing with the Enquiry Report. The Applicant submitted

representation against the disagreement note on 30.10.2010. The Disciplinary Authority, vide order dated 22.2.2016 holding that charges are established sought the advice of UPSC. But however, in view of the order of the Hon'ble High Court of Delhi the final order was not passed and ultimately upon the dismissal of the Writ Petition filed by the Applicant, mainly Writ Petition (C) 324/2008 on 27.11.2015, the Disciplinary Authority after receipt of the advice of the UPSC imposed the penalty of "pension cut of 10% for a period of two years".

5. The learned counsel for the Applicant submitted that for the events which happened in 1996 the charge sheet was issued in 2005 after in-ordinate delay of nearly 8-9 years. As such, in view of the law laid down by the Hon'ble Supreme Court, in the case of **P.V.Mahadevan, Vs. M.D.Tamilnadu Housing Board reported in 20059(6) SCC 636**, the charge memo requires to be quashed. He also submitted that in view of the law laid down by the Hon'ble Supreme Court in the case of **Union of India and others Vs.S.K.Kapoor**, as the advice of the UPSC was not supplied to the Applicant before taking decision by the Disciplinary Authority, as such, there is violation of principles of natural justice. The law laid down by the Hon'ble Supreme

Court in the case of **P.V.Mahadevan, Vs .M.D.Tamilnadu Housing**

**Board reported in 20059(6) SCC 636** is extracted below:-

“In the circumstances, we are of the opinion that allowing the respondents to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and dispute integrity would cause unbearable mental agony and distress to the officer concerned. The protected disciplinary enquiry against a government employee should therefore, be avoided not only in the interests of the government employee, but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protected disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

6. In view of the facts of the case narrated above and in view of the law laid down in the Hon’ble Supreme Court extracted above, the Charge Memo and the consequential the penalty orders require to be set aside.

7. In the result O.A. is allowed. The impugned Charge Memo No.8-291/2004-Vig.II dated 21.3.2016 and the penalty order No.8-291/2004-Vig.II dated 22.2.2016 are set aside.

8. No order as to costs.

(S.N.TERDAL)  
JUDICIAL MEMBER

(MOHD HALEEM KHAN)  
ADMINISTRATIVE MEMBER

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