



**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 904/2017

New Delhi, this the 28th day of January, 2020

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A.K. Bishnoi, Member (A)**

S.K. Kaushik,
Retired Assistant Accounts Officer,
Group-B,
Aged 66 years,
S/o Shri Chandan Singh,
R/o H.No.376/22, Chaurhi Gali,
Nehru Park, Bahadurgarh,
Distt. Jhajjar, Haryana.

.. Applicant

(By Advocate : Shri M.K. Bhardwaj)

Versus

1. Delhi Development Authority,
Through its Chairman,
Raj Niwas, Delhi.
2. The Vice Chairman,
Delhi Development Authority,
Vikas Sadan, INA Market,
New Delhi.
3. The Commissioner (P),
Delhi Development Authority,
Vikas Sadan, INA Market,
New Delhi.

.. Respondents

(By Advocate : Shri Vaibhav Agnihotri with
Ms. Ashita Chhibber)



O R D E R (ORAL)

Justice L. Narasimha Reddy, Chairman

The applicant was working as Assistant Accounts Officer (AAO) in the Delhi Development Authority (DDA). A Criminal case was registered against him and some other employees of the DDA, on 29.01.1998, alleging acts of conspiracy, fraud and negligence. It was later numbered as CC No.97/11 in the Court of Special Judge (PC Act), CBI-08, Central District, Delhi. The applicant retired from the service on 30.11.2010, on attaining the age of superannuation. The Criminal Court delivered its judgment on 07.11.2014. It was held that the prosecution failed to prove its case against the applicant beyond reasonable doubt. At the same time, the Court directed initiation of disciplinary proceedings against the applicant.

2. The applicant filed Crl.M.C. No.1118/2015 in the Hon'ble High Court of Delhi. That was disposed of on 31.03.2016, refusing to interfere with the direction issued by the Trial Court, for initiation of the



disciplinary proceedings against the applicant. Accordingly, the Disciplinary Authority (DA) issued Charge Memorandum dated 01.02.2017 to the applicant, under Rule 9 of the CCS (Pension) Rules. The same is challenged in this O.A.

3. The applicant contends that he retired from service way back on 30.11.2010, and issuance of a charge memorandum seven years thereafter, is totally impermissible in law, particularly, in view of the prohibition contained in Clause 9(2)(b)(ii) of CCS (Pension) Rules. He further contends that the allegations made against him in the criminal case, on the one hand, and in the Charge Memorandum, on the other hand, are one and the same; and once the Criminal Court held that the prosecution failed to prove the charge against him, it is totally impermissible in law, to issue charge memorandum, with the same allegations. Other grounds are also urged.

4. Respondents filed counter affidavit opposing the O.A. It is stated that the necessity and occasion for issuing the Charge Memorandum dated 01.02.2017



arose, on account of the specific observation made, and direction issued, by the Criminal Court in CC No.97/11. It is stated that the bar against the initiation of disciplinary proceedings under Rule 9(2)(b)(ii) would not apply in the instant case, in view of the direction issued by the Criminal Court. It is also stated that the parameters for deciding the criminal case, on the one hand, and the disciplinary proceedings, on the other hand, are totally different; and the plea raised by the applicant cannot be countenanced.

5. We heard Shri M.K. Bhardwaj, learned counsel for the applicant and Shri Vaibhav Agnihotri with Ms. Ashita Chhibber, learned counsel for the respondents, at length.

6. It is no doubt true that the applicant retired from service on 30.11.2010 and the Charge Memorandum was issued on 01.02.2017. Rule 9(2)(b)(ii) prohibits initiation of disciplinary proceedings against a retired employee, in relation to any matter, which is more than four years old. Viewed in that context, the Charge Memorandum cannot be countenanced. What, however,



makes the present case substantially different, is the observation made, if not, the direction issued, by the Criminal Court, in CC No.97/11. After discussing the matter at length, the Court observed as under:

“The case investigated by CBI may only be the tip of the Iceberg and a special audit by an independent agency may only be able to ascertain in case there are any further cases in which the deposit of the cost of flats may not have been made in accordance with rules. I accordingly direct that a special audit be got conducted by Vice Chairman, DDA in respect of the deposits made by the allottees towards the payments of cost of flats in respect of the SFS Scheme, 1996 by an independent agency to rule out any further cases wherein the payments may not have been deposited in accordance with law. It may also be noticed that even the AAO (S.K. Kaushik) and AO (V.P. Anand) were expected to take due steps for proper verification of such huge payments which should not have been left entirely in the hands of a Dealing Assistant which resulted in a scam of such a nature and reflects gross negligence of duty on their part even though the conspiracy has not been proved against them beyond reasonable doubt. The processing of documents in the Management Section by Dealing Assistant including applications for condonation of delay in some of the cases and consequent issuance of possession letters after approval from the concerned Assistant Director without bothering to check the authenticity of applicants in most of the cases also reflects gross negligence on the part of Gurnam Chand (Dealing Assistant). In view of above, departmental action be initiated against concerned officials Shri S.K. Kaushik AAO, Shri V.P. Anand AO and Gurnam Chand Dealing Assistant for the gross negligence of duty on their part. Also, necessary administrative guidelines be issued by Vice Chairman, DDA to



ensure proper cross-checking and verification of challans submitted for payment of cost of the flats at level of AAO/AO to avoid repetition of similar scam.”

7. The Court expressed its serious concern about the happenings in the DDA and, accordingly, directed initiation of the disciplinary proceedings. It is also necessary to note that specific mention was made about the order passed by the Criminal Court, in the Charge Memorandum itself. It reads as under:

“The Hon’ble Trial Court in its judgment dt. 07.11.14 ordered that in view of above, Departmental Action be initiated against concerned officials S/Sh. V.P. Anand, AO (Retd.), S.K. Kaushik, AAO (Retd.) & Gurnam Chand, Assistant (Retd.) for the gross negligence of duty on their part. Shri V.P. Anand superannuated, Shri S.K. Kaushik, AAO (Retd.)/DDA superannuated from the services of DDA on 30.11.2010.”

8. In the context of reckoning limitation or the time stipulated under Rule 9(2)(b)(ii), sub-rule 6 of Rule 9 lays down certain parameters. The disciplinary proceedings can be said to have been initiated, only when a charge memorandum is issued or when an employee is placed under suspension. In addition to that, the judicial proceedings deemed to have been instituted in the criminal proceedings from the date, on



which the complaint or report of the officer, of which the Magistrate takes cognizance.

9. Admittedly, the criminal proceedings were pending against the applicant, even while he was in service. They terminated only on 07.11.2014, with a direction that the disciplinary proceedings be initiated. Viewed in that context, the Charge Memorandum is nothing but the continuation of the criminal proceedings, which are clearly saved under Rule 9 itself, from operation of the bar contained in Rule 9(2)(b)(ii).

10. The plea of the applicant that even from the date of the judgment of the Criminal Court, the Charge Memorandum is far belated, almost by three years, is countenanced by the respondents, by referring to the fact that the applicant filed a Crl.M.C.No.1118/2015 before the Hon'ble High Court and that was decided only on 31.03.2016. If that is taken into account, it cannot be said that there was any undue delay on the part of the respondents, in issuing the Charge



Memorandum. Therefore, the Charge Memorandum is not barred under Rule 9(2)(b)(ii).

11. It is thus evident that the proceedings are initiated in compliance with the specific direction issued by the Criminal Court, which in turn was affirmed by the Hon'ble High Court. In a way, failure to issue the Charge Memorandum would have been an illegality, if not contempt, on the part of the respondents.

12. Similar issue was raised before us in O.A. No.866/2017. That was also a case pertaining to an employee of the DDA. The O.A. was dismissed.

13. We do not find any basis to interfere with the impugned Charge Memorandum. Accordingly, the O.A. is dismissed, leaving it open to the applicant to raise all his contentions before the IO as well as DA. Interim order dated 20.03.2017 passed in the O.A. shall stand vacated. There shall be no order as to costs.

(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/jyoti/