

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

(19)

O.A.No.680/2001
with
O.A.No.196/2001

Hon'ble Shri V.K.Majotra, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 26th day of April, 2002

O.A.No.680/2001:

P.D.Sharma
s/o Shri J.D.Sharma, R/o 1690,
Gulabi Bagh, Delhi Admin. flats,
Delhi - 110 007
Ex. Dy. Registrar Cooperative Societies.. Applicant
(By Advocate: Shri M.K.Gupta)

Vs.

The Govt. of N.C.T.
through
The Chief Secretary
Govt. of N.C.T., Delhi
New Delhi. ... Respondent

(By Advocate: Mrs. Avnish Ahlawat)

with

O.A.No.196/2001:

P.D.Sharma
s/o Sh. J.D.Sharma
r/o 1690, Delhi Administration Flats
Gulabi Bagh
Delhi - 110 007. ... Applicant

(By Advocate: Shri M.K.Gupta)

Vs.

1. Chief Secretary
Govt. of National Capital Territory of Delhi
New Delhi.
2. The Registrar Co-operative Societies
Govt. of NCT of Delhi
Parliament Street
New Delhi. ... Respondents

(By Advocate: Mrs. Avnish Ahlawat)

O R D E R

By Shanker Raju, M(J):

Applicant, who retired on superannuation, has challenged suspension and disciplinary proceedings initiated against him. As the matters involves common question of fact and law, the same are being disposed of by this common order:

2. Applicant, in OA No.680/2001, who was a member of DANICS while working as Deputy Registrar, Cooperative Societies retired on superannuation on 31.12.2000, has assailed Confidential Memorandum issued by the respondents 29.12.2000 whereby disciplinary proceedings under Rule 14 of the CCS (CCA) Rules, 1965 has been initiated against him on the following Articles of Charges:

Article-I

That the said Shri P.D.Sharma while functioning as Deputy Registrar during the period November, 2000 committed gross misconduct in as much as in blatant violation of administrative instructions as well as usurping the powers of Jt. Registrar, Co-operative Societies and also transgressing his jurisdiction as such, he passed an award No.F.108/JR/GH/98-99/1609-10 dated 30.11.2000 in the case of Shri Sanjay Kansal, Claim petitioner Vs. Vikrant CGHS Ltd.

Article - II

That the said Shri P.D.Sharma while functioning in the aforesaid capacity during the relevant period committed gross misconduct in as much as in blatant administrative instructions as well as usurping the powers of Jt. Registrar, Co-operative Societies and also transgressing his jurisdiction he passed an award No.F.109/JR/GH/98-99/1611-12 dated 30.11.2000 in the case of Shri K.C.Gupta, Claim Petitioner Vs. Vikrant Co-operative Group Housing Society Ltd.

The above acts on the part of Shri P.D.Sharma, Deputy Registrar, Co-operative Societies is a reflection of

(2)

lacking professional integrity and conduct unbecoming of a government servant thereby violating the provisions of Rule 3 of the CCS (Conduct) Rules, 1964.

3. Learned counsel for applicant in this OA has stated that though the date of superannuation of the applicant was in the Afternoon of 31.12.2000 as Deputy Registrar Co-operative Societies, Govt. of NCT, Delhi but as he relinquished the charge of post in the Afternoon of 29.12.2000 and despite his presence in the office, the Memorandum dated 29.12.2000 should have been conveniently served on the same day. Applicant, who was out of station for two days, i.e., 30th and 31st December, 2000 along with family, on 1.1.2001 found impugned order pasted at the entry of his gate. It is also stated that the memorandum has not been issued on the approval of the Lt. Governor, who is an appointing authority. The aforesaid Memorandum was served upon the applicant after his retirement, the same is not sustainable in the eyes of law as well in view of the decision of the Principal Bench in OA 126/97 dated 1.7.1997. It is also stated that the Memorandum was signed and issued just before the due date of his retirement of the applicant. As the applicant received the memorandum on 1.1.2001 himself, the relationship of master and servant between the respondents and the applicant ceased to exist for invoking the rules of discipline and the impugned order should have been passed in the name of President under Rule 9 of the CCS (Pension) Rules, 1972. It is also stated that memorandum was not served upon him validly. According to him chargesheet issued four days prior to superannuation shall have to be treated as one issued under Rule 2(a).

-14-

22

& (b) of the Rule 9 of the (Pension) Rules, 1972. Impugned order was issued by the Chief Secretary, Govt. of NCT, who is not the disciplinary authority, has no jurisdiction to issue the same as the applicant should have been treated as a pensioners vis-a-vis of a Govt. servant. It is further stated that as the applicant was discharging quasi judicial functions as Deputy Registrar of Cooperative Societies under the provisions of Delhi Co-Operative Societies Act, 1972, the jurisdiction of which has been conferred by the Lt. Governor, the Registrar of the Co-operative Society is not empowered to issue any directions. As such no misconduct is attributable to the applicant to warrant any disciplinary proceedings. It is in this background, it was stated that the applicant has sought for the documents from the file of Shri Harpreet Singh Sachdeva Vs. Shiv Bhola Co-operative Group Housing Society, wherein the Registrar had permitted the concerned Deputy Registrar to continue to discharge and deal with the case as quasi judicial authority and the order was passed subsequent to the so-called taking away the jurisdiction of Deputy Registrar on 11.4.2000. These documents have not been made available. Registrar can only distribute the work but he is neither competent to take away or confer the jurisdiction on any official. As the power is vested with the Lt. Governor only.

4. In OA No.196/2001, the applicant assails an order passed by the respondents on 29.12.2000 placing him under suspension on contemplation of disciplinary proceedings. Learned counsel for

applicant has stated that till 29.12.2000, nothing adverse was found against the applicant and was paid the entire amount of pay and allowances upto the month of December, 2000. Relationship between the respondents and applicant ceased to exist as he had relinquished the charge in the Afternoon of 29.12.2000. By virtue of the impugned order, the applicant treated to be a Government servant even after his retirement. The Suspension order ceased to end on 31.12.2000 and the same was not intentionally served upon the applicant despite his presence in the office upto 7 PM on 29.12.2000. This suspension has debarred him from getting any privilege and instead of salary he has to get subsistence allowance. As the applicant was on duty and enjoyed status attached to the post, the pay and allowances already drawn and paid to him cannot be converted into subsistence allowance. Being Saturday and Sunday on 30th and 31st December, 2000, applicant has not performed any duty. The continuation of impugned order beyond 31.12.2000 and its non-revocation is not legal as the suspension order was served upon him on 1.1.2001 after his superannuation, no retrospective effect can be given to such order. Applicant has contended that the order of suspension has been passed under Sub-rule (1) of Rule 10 of CCS (CCA) Rules, 1965, is without any jurisdiction. By referring to the Annexure-RA2 dated 29.12.2000, it is contended that he relinquished the charge at 2.00 PM on 29.12.2000 and as per OM dated 21.2.1977, the Government servant is not debarred from relinquishing the charge (de-facto) on the last working day of the month. He denies the alleged service of the impugned order and has stated that the

order of suspension was not available with them for service upto 7.40 PM on 29.12.2000 and could not be served on that day. It is stated that being a confidential memorandum, it should have been personally served upon the applicant. The revocation of suspension cannot be automatic and deemed and as per the Rules of suspension, the same is to be continued till its revocation or modification. Service of impugned order dated 29.12.2000 cannot be treated as deemed service on 29.12.2000 itself. Apart from it, suspension is to be resorted to prevent any interference by the delinquent employee by way of suppressing and manipulating the records, etc. As the applicant has already relinquished the charge on 29.12.2000, even this possibility was ruled out.

5. On the other hand, respondents in reply to OA 680/2001 denied the contentions of the applicant and have stated that being an ad hoc entry grade officer, applicant was posted as Deputy Registrar. While functioning as such he invoked jurisdiction under Section 61 of the Delhi Co-operative Societies Act, 1972 to act as an Arbitrator in two cases. As per notification of the Lt. Governor dated 31.3.2000, DR is to exercise such powers as subject to general guide-lines superintendent and control of the Registrar and having no jurisdiction to deal with such a dispute, applicant has not complied with the orders of transferring the pending cases to the respective arbitration authority, despite the orders. Applicant without jurisdiction passed the awards. For which the

explanation of applicant was taken much before his retirement by a memorandum dated 29.12.2000, which was not responded to.

6. It is stated substantive post held by applicant was of Grade-I Officer of DASS, a feeder cadre to DANICS. As the applicant was to retire on 31.12.2000, and having relinquished the charge of the post of DR on 29.12.2000, as per OM dated 21.2.1977 issued by the Ministry of Defence under Rule 35 of the CCS (Pension) Rules, 1972 a Government servant who retires from service w.e.f. Afternoon of the last day of the month in which the retirement falls should formally relinquishes the charge of the afternoon of that day itself even if it happens to be closed holiday. As the applicant was not present, both on 30th and 31st December, 2000, and since it was not possible to effect the service of Memorandum dated 29.12.2000 it was pasted at the door of the residence of the applicant. Applicant also not sought any permission to leave the station before 31.12.2000. Without any jurisdiction he passed the awards and not responded to the memorandum the case was referred to competent authority and approval was accorded at 7.40 PM on 29.12.2000 by which time he left the office. The order of suspension and charge-sheet was sent to his residence but was refused by his son. It was sent through Speed Post as well as Registered post on 30.12.2000. Having sent an official to serve the same, son of the applicant refused to receive the same. Finding no alternative the same has been pasted

at his door. It is also stated that the retiral benefits of the applicant having been worked out but having regard to the disciplinary proceedings matter was reviewed and steps are being taken to grant provisional pension under Rule 69(1) of the CCS (Pension) rules, 1972. Disciplinary proceedings have been initiated against the applicant while he was in service and in that event the same is permissible under Rule 9 of the CCS (Pension) Rules. By referring to the decision of the Apex Court in State of Punjab Vs. Khemi Ram, AIR 1970 SC 214, it is contended that the word 'communicate' cannot be interpreted to mean that the order would become effective only on its receipt by the concerned servant unless the provision in question expressly so provides and it would take effect from the date of communication.

7. Respondents, in reply to OA No.196/2000, have denied the contentions of the applicant and have stated that for a misconduct the proceedings were contemplated as such the orders have been issued to him under suspension. As the applicant was not inducted into DANICS, Chief Secretary was the competent disciplinary authority of the applicant. As the service of the impugned order was refused, the same was pasted on the door of the residence of the applicant. It is also stated that the drawl of pay for the whole month cannot be taken to mean that there was nothing adverse against the applicant. The approval has been accorded by the competent authority on 29.12.2000 and as the applicant had left the office, he was served at his residence. The notices were to be served at his residence which he avoided.

and refused. Pay bills are prepared and presented to PAO fifteen days in advance as a general practice. It is only on 31.12.2000 that the relationship of master and servant ceased between the applicant and the respondents.

8. We have carefully considered the rival contentions of both the parties and perused the pleadings available on record. In our considered view applicant who has been apprised in the past and was not authorised to deal with arbitration under Section 61 of the Act ibid has without jurisdiction passed awards which constitutes a misconduct against him for which he was issued a show cause notice on 19.12.2000 but the same was not responded and the matter was ultimately referred to the competent authority on 27.12.2000 and the approval was served on 7.40 p.m. on 29.12.2000. An official of the department was deputed to serve the charge-sheet on the last known address of the applicant. The same was sent by speed post on 29.12.2000 at 2.00 p.m. and by registered post on 30.12.2000. When the officials of the respondents gone to serve upon the applicant the same was refused by the son of the applicant stating that his father is out of station. Ultimately notices have been pasted in presence of two witnesses. The contention of the applicant that as he relinquished the charge he ceases to have relationship of master and servant with the respondents is not correct. As per Govt. of India, Ministry of Finance OM dated 21.7.77 issued as a clarification under Rule 35 envisages that the Govt. servant shall retire from service with effect from the afternoon of last date of

month in which his retirement falls and should relinquish formal charge in the afternoon of that date even if it is a holiday. Applicant though has stated that he has relinquished the charge on 29.12.2000 which has been acknowledged but having regard to the fact that on 18.1.2001 the applicant has handed over 23 files pertaining to various inquiries and statement of the concerned officer was recorded on 17.1.2000 itself shows that the applicant has not handed over all the files etc. Apart from it, even if it is the last day of service on which the retirement falls an officer remains a Government servant till then and can be validly served with the memo. of disciplinary proceeding.

9. As regards the contention that no actual service has been effected upon the applicant of the impugned memo and having not received the same till he retired on superannuation on 31.12.2000 the enquiry cannot be deemed to be an enquiry under Rule 14. As per Rule 9 (2) (b) (i) the applicant being a pensioner the enquiry should have been instituted with the sanction of the President. As no sanction has been taken the same is liable to be set aside. We do not agree with this contention, as the decision of the Apex Court in State of Punjab v. Khemi Ram, AIR 1970 SC 214 rules that the communication of the impugned order is essential and not its actual receipt. If the communication has been sent to the concerned person the authority making such an order would not be in a position to modify the same. It goes out of the control of the authority and once the order is issued and sent to the concerned Government servant it must

be held to have been communicated to him; no matter when it is received. On record it is shown that the memo was sent to the applicant by postal communication on 29.12.2000 and also through messenger on 30.12.2000 as well as registered AD. It was pasted at the gate of the residence of the applicant in presence of witnesses. In our considered view, having regard to the ratio cited above, as the charge memo has been validly communicated the same amounts to service upon the applicant. The ratio of the decision of the Principal Bench in Brahmacharya K.C. v. Chief Secretary, Territory of Delhi & Others, OA No.126/1997 decided on 1.7.97 would have no application in the facts and circumstances of the present case.

10. When the service of the memo is effected by its communication before 31.12.2000 the date of retirement on superannuation of the applicant and having regard to the clarification in Rule 35 of the Pension Rules ibid we hold that the disciplinary proceeding was instituted against the applicant while he was in service before his retirement and is deemed to be a proceeding under rule-9 and the same can be continued and concluded by the authority by which the same were commenced. We do not find any legal infirmity in the proceedings initiated against the applicant.

11. As regards challenge to the suspension is concerned, we find that it is admitted that the order of suspension was approved by the competent authority and the orders have been issued on 29.12.2000. The same have been communicated through registered post as

well as speed post at his residence. Authorities are within their right to resort to Rule 10 of the CCS (CCA) Rules, 1965 to place the applicant under suspension and having regard to the clarification to Rule 35 ibid the applicant was still in service as a government servant having relationship of master and servant with the respondents. Merely because he relinquished the charge without handing over files etc. with him on 29.10.2000 would not vitiate the order of suspension as the applicant had retired on superannuation on 31.12.2000 and the suspension was communicated to him which is a deemed service. As the suspension was on account of the misconduct of the applicant of dealing with the disputes without jurisdiction there is no infirmity in the order passed by the respondents.

12. As regards the plea of the applicant that he has already been paid his salary upto 31.12.2000 and the suspension would be operate retrospectively, we find that these pay bills are prepared and presented to the PAO office 15 days in advance. Any recovery from pay can be made at any stage. As the applicant was in Govt. service at the time of suspension, i.e., upto 31.12.2000 and having retained the files there exists likelihood of his tempering with the record, as such the suspension resorted to was justified.

13. In the result and having regard to the reasons recorded above, we do not find any infirmity in the orders passed by the respondents. Accordingly these OAs are found bereft of merit and are dismissed. No costs.

Let a copy of this order be placed in the OA

No.196/2001.

S. Raju
(Shanker Raju)
Member(J)

rao/san.

V.K.Majotra
(V.K.Majotra)
Member(A)