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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.750/2001

New Delhi this the 27th day of July, 2001.

HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Dr. P.C. Rai,
Retd. Additional Director General,
S/o late Sh. Dr. B.B. Rai,
R/o 531-A, Sector-III, R.K. Puram,
New Delhi. -Applicant

(By Advocate Shri D.R. Gupta)

-Versus-

Union of India through
Secretary to the Govt. of India,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi. -Respondent

(By Advocate Shri Madhav Panikar)

O R D E R

By Mr. Shanker Raju, Member (J):

The applicant who retired as Additional Director General of Health Services on 31.10.95 has assailed a charge-sheet issued to him on accord of sanction by the President under Rule 9 of the CCS (Pension) Rules, 1972 (for short, Pension Rules) in respect of the charges beyond four years of the alleged date of event in violation of proviso 2 (b) (ii) to Rule 9 ibid. The brief relevant facts of the case are that at the relevant time the applicant was posted as Medical Superintendent of Safdarjung Hospital. By an order issued by the respondents on 26.5.91, circulated among the Government hospitals it has been alleged against the applicant that he has placed indent of Medical Store Organisation (MSO) for supply of I.V. Fluids in equal instalments commencing from September 1992 to 31.3.93 in violation of the directions issued by the Government at higher rates in comparison with the rates quoted by the other reputed firms, thereby causing loss to

the tune of Rs.50,00,000/- (Rupees fifty laces) to the Government. The applicant had retired on 31.10.1995 but the proceedings have been drawn against him after the accord of approval by the President only on 31.12.96 and that too on the misconduct which had been alleged to have been committed prior to four years from the date of issuance of the charge-sheet. The applicant by taking resort to proviso 2 (b) (ii) to Rule 9 of the Pension Rules stated that though after retirement a departmental proceeding can be instituted against a Government servant for a grave misconduct but the same shall not be in respect of any event which has taken place more than four years before such institution. Placing reliance on the decision of the Apex Court in State of U.P. & Anr. v. Shri Krishna Pandey, 1996 (9) SCC 395 it is contended that the enquiry ordered even for embezzlement after four years of the retirement of the government servant is not legally sustainable. The learned counsel of the applicant has also placed reliance on the decision of the Tribunal in V.C. Pande & Ors. v. Union of India, 1996 (3) AISLJ 104 to contend that the word 'event' under Rule 9 of the Pension Rules pertains to subsequent misconduct and if it is beyond four years from the date of the chargesheet the same is not sustainable in the eye of law. In this background while referring to the chargesheet it is contended that the applicant had retired on 31.10.95 and a chargesheet has been issued on an illegal accord of permission by the President on an allegation pertaining to September, 1992 on 31.12.96, which falls beyond four years from the alleged misconduct. As such the chargesheet is without jurisdiction and is not sustainable in the eye of law. It has also been contended that the enquiry has been

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inordinately delayed as pertaining to the allegations of 1991 the enquiry has been initiated only in the year 1996 and the delay has not been validly explained, which is inordinate and vitiates the chargesheet. It is also alleged that the applicant has been made a scape goat and has not committed any misconduct to warrant any sort of punishment.

2. On the other hand, strongly rebutting the contentions of the applicant the learned counsel of the respondents Shri Madhav Panikar stated that there has not been any inordinate delay in issuing the chargesheet as the memorandum was issued after four years of the incident because the enquiry report of the CBI on the basis of which the memo was issued was itself received a day after the applicant retired. The same was processed with the Ministry and Central Vigilance Commission before the approval of the disciplinary authority was issued by the memo dated 31.12.96. It is also stated that though the enquiry report was furnished by the then Additional Secretary Health in July, 1994 indicting the applicant but the same has been sent for further necessary action to probe and identify the alleged lapse on the part of the applicant. In this background and by referring to the decision of Apex Court in Secretary to Government, Prohibition and Excise Department v. L. Srinivasan, JT 1996 (3) SC 202 it is contended that charges relating to the embezzlement etc. the chargesheet cannot be set aside on account of delay in initiation. The learned counsel of the applicant has stated that as a Medical Superintendent it was incumbent upon the applicant to have properly used the financial resources allocated to him for the financial

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year 1992-93 but he blatantly misused the same and unmindful of the directions of the Government, misused the fund and placed indent for purchase of I.V. Fluids in defiance of the directions incurred loss of around Rs.50/- lacs to the Government. It is also stated by drawing our attention to the chargesheet issued that there has been a reference against the applicant of placing indent on 23.7.92 to MSO pertaining to the period September, 1992 to 31.3.93 for which the details have been furnished in the charge-sheet. In this background it is stated that as the alleged misconduct pertained to the year 1993 the chargesheet issued to the applicant and permission accorded under Rule 9 of the Pension Rules is legally valid and the event for which the applicant has been charged falls within four years of the issuance of the chargesheet.

3. The applicant in his rejoinder has reiterated his contentions and stated that the misconduct alleged against him is of placing indent, which is admittedly, of 29.1.92 and as such the chargesheet issued on 31.12.96 is time barred and against Rule 9 (2) (b) (ii) of CCS Rules ibid.

4. We have carefully considered the rival contentions of the parties and perused the material on record. The issue to be resolved in the present OA is whether the chargesheet issued to the applicant on 31.12.96 and approval accorded by the President to deal the applicant departmentally in a disciplinary proceeding after his retirement on the allegations pertaining to beyond four years of the event is legally tenable or not? We find from the article of charge that the applicant has been charged

for a misconduct of placing orders for purchase of I.V. Fluids with M/S Super Bazar during 1991-92 violating the Government of India's instructions, resulting in loss to the Government. In the statement of imputation of misconduct it is alleged that the applicant has placed an indent on 23.7.92 for supply of I.V. Fluids from September, 1992 to 31.3.93 and the supply continued till 31.12.92. We have also perused the enquiry report of the Additional Secretary (Health) where the allegations against the applicant were of placing an indent on 23.7.92 for supply of I.V. Fluids from September, 1992 to march 1993 and the supply was continued till 31.12.92. The resort of the learned counsel for the respondents that the applicant as a Medical Superintendent was responsible for proper use of financial resources allocated to him for the financial year 1992-93 and his failure to properly manage the same and in defiance to the directions of the Government had caused financial loss to the Government and this budget allocation was upto March, 1993 would of no avail to them to indicate that as the budgetary allocation was upto March 1993 and the indent has been placed for supply of I.V. Fluids upto 31.3.93 would have led a misconduct pertaining to the year 1993 and as it falls within the four years from the date of issuance of the chargesheet the proceedings are legally tenable and in accordance with Rule 9 of the Pension rules. If one has to regard to the decision of this Court in V.C. Pande's case (supra) wherein the expression "event" has been explained in context to hold an enquiry against the government servant after retirement. The following observations have been made therein:

"The word "Event" is used in sub-clause (ii) of proviso (a) to sub-rule (b) of Rule 43 interpreting the above Rule and the proviso, the Hon'ble Supreme Court has held in unambiguous terms that before the power under Rule 43 (b) could be exercised in connection with the alleged misconduct of a Government it must be shown that in departmental proceedings or judicial proceedings the concerned Government servant is found guilty of grave misconduct. This is also subject to the rider that such departmental proceedings should have been in respect of a misconduct which took place not more than 4 years before the institution of such proceedings. Shri Desai seeking support from the above observation of the Hon'ble Supreme Court argued that it is meaningless to argue that the word "Event" used in Rule 6 of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 and Rule 9 of the CCS (Pension) Rules, 1972 is different from the act or omission which constituted misconduct and that irrespective of act or omission constituting misconduct an enquiry can be validly held under Rule 6 of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 or under Rule 9 of the CCS (Pension) Rules, 1972, if some event takes place after any length of time which could be related to the Act or Omission committed while the pensioner was in service to initiate departmental action under the said provisions against a retired civil servant if the date of the event is within four years of the initiation of the departmental proceedings. We find considerable force in this argument. It is in accordance with the dictate of the public policy that officials who were found to have been guilty of grave misconduct during their service should be proceeded against even if the misconduct come to light after their retirement, that provision is made for taking action under these rules, but it is again recognising the public policy that after retirement of a Government servant he should not be haunted indefinitely by the ghosts of his actions and inactions during the service thereby disturbing, his peace and tranquility in the evening of his life that a period of limitation of four years has been prescribed in the respective rules for initiating departmental proceedings in regard to the misconduct committed by him reckoning from the date on which the event constituting the misconduct occurred. If the word "Event" employed in Rule 6 of All India Services (Death-cum-Retirement Benefits) Rules, 1958 and Rule 9 of the CCS (Pension) Rules, 1972 is given a meaning as attempted to be given by the ld. Addl. Solicitor General then the period of four years stipulated in the said provisions would be rendered nugatory and a sword of Damocles would be hanging over the neck of every pensioner indefinitely which is likely to

fall at any moment contingent on happening of a remote consequence of his actions or inactions in the forgotten past while he was in harness. This according to us could not have been the intention of the Rule Makers when they prescribe a time limit of our years from the date of the event constituting the misconduct to the initiation of the departmental proceedings against a retired civil servant. Moreover, it is not an event but a misconduct for which a government servant or a pensioner can be found guilty of. The event must be one constituting the misconduct. Therefore, we have no doubt in our mind that the word "Event" used in Rule 6 of the All India Services (Death-cum-Retirement Benefits) Rules, 9 of the CCS (Pension) Rules, 1972 means the act or omission constituting the misconduct. Since in all these four cases the acts or omissions attributed to each of the applicants related to the dates more than four years prior to the dates on which departmental proceedings under the relevant rules were initiated against each of them, we are of the considerable view that the proceedings cannot be sustained as they are barred by limitation."

5. In the background of what has been stated above, we have applied our mind to the facts of the case and we find that in the chargesheet what has been alleged against the applicant is a misconduct of placing an indent in violation of the Government orders and this has been admittedly done, according to the respondents, by the applicant on 23.7.92. It is also admitted on record that after 3.12.92 no supply was made by MSO and as such there is no question of any incurring loss by the Government after this date. The true import and tenor of the article of charges is an alleged misconduct of placing indent which has taken place in July, 1992, as alleged by the applicant. Assuming, without admitting, that the loss incurred by the Government is to be seen as a misconduct against the applicant the same continue till 3.12.92 when the MSO had stopped supply of I.V. Fluids. The Government had incurred loss upto this period. What is more important is not the subsequent event but it is the misconduct which has been alleged against the applicant of placing an indent in

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July, 1992. As the chargesheet, as admitted by the respondents in para 4.6-A is issued after four years of the incident of placing an indent by the applicant the same clearly falls beyond four years of the alleged misconduct or misconduct levelled against the applicant and in view of the rule 9 (2) (b) (ii) the same shall not be instituted and in the event which took place more than four years of instituting the proceedings. taking the date of placing indent on 23.7.92 or in the alternative assuming without admitting the same to be 3.12.92 upto which the supply has been made by the MSO and taking it to be the crucial date of misconduct the same falls beyond four years before the chargesheet issued on 31.12.96 as such we have no hesitation to hold that the same has been issued in utter defiance of Rule 9 (2) (b) (ii) ibid. In this view of ours we are fortified by the ratio of the Apex Court in Shri Krishna Pandey's case (supra) and the decision of the Tribunal in V.C. Pande's case (supra). It is not the intention of the Government to indefinitely hang a sword of Damocles over the neck of a pensioner and as such the prescription of the time limit of four years has been inducted in the rules as a public policy. As the order of the President is without jurisdiction and in defiance to the rules, referred to above, the same is prone to judicial review, even at the inter-locutory stage as per the ratio of the Apex Court in Union of India & Others v. Upendra Singh, 1994 (24) ATC 200.

6. It would be a futile exercise to go into the other contentions of the applicant regarding delay in institution of the disciplinary proceedings.

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7. In the result and having regard to the discussion made above, we hold that the chargesheet issued to the applicant is pertaining to the misconduct which falls beyond four years and in respect of an event which has taken place beyond four years of the institution of such proceedings and the permission accorded by the President to issue the chargesheet is per se illegal and is liable to be set aside. We accordingly set aside the charge memo dated 31.12.96 as well as the decision of the respondents confirming the same dated 14.3.2000. The applicant shall be entitled to all the consequential benefits. The aforesaid directions shall be complied with by the respondents within a period of two months from the date of receipt of a copy of this order. No costs.

• S. Raju

(Shanker Raju)
Member(J)

'San.'

Govindan S. Tampli
Member(A)