CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1518/98.

New Delhi, this the 18th day of March, 1999.

Hon'ble Mr. V. Rajagopala Reddy, Vice-Chairman(J)
Hon'ble Mr. K. Muthukumar, Member(A)

Shri K.K. Khanna,
Chief Engineer (Retd.),
A-1/85, Safdarjung Enclave,
New Delhi. ...Applicant

(By Advocate Shri V.S.R. Krishna)

Versus

Union of India through
the Secretary,
M/o Urban Affairs & Employment,
Nirman Bhawan,
New Delhi. ...Respondents

(By Advocate Shri Madhav Panikar)

ORDER

By Hon'ble Mr. V. Rajagopala Reddy, Vice-Chairman(J)

The applicant joined in CPWD as an Engineer during 1962. While he was working as Chief Engineer a chargesheet has been served with a charge memo dated 26.2.98 for the alleged misconduct under CCS Rules, 1964, alleging that he had sanctioned an exorbitant rate to the contractor for stone work and even after it was brought to his notice that the rates were exorbitant the payments were continued to be made. But later in 1996 he himself revised the rates. The misconduct resulted in overpayment of Rs.9,72,984/- to the contractor. An enquiry was sought to be held against him and the applicant was directed to submit his written defence. The applicant submits that the enquiry itself is ex facie without jurisdiction and also barred by limitation.

2. It is the case of the applicant that the sanctioning of the rates to the contractor at the rate of Rs.14.78 CmM on 5.11.92 for a quantity of 71,900 CmM, having taken place four years prior to the charge, the departmental proceedings under Rule 9 (2) (b) (ii) of the CCS (Pension) Rules and as the applicant was superannuated on 30.9.96, the chargesheet would be void and time barred. The charge memo is, therefore, liable to be quashed.

3. The respondents filed the counter and contested the case. The short point, therefore, arises for our consideration in this case is whether the charge memo is barred by limitation and is, therefore, liable to be quashed on the ground that it was issued contrary to the mandatory rule 9 (2) (b) (ii) of CCS (Pension) Rules, 1972. It is necessary to examine the charge memo and the articles of charge. In pursuance of the sanction accorded by the President of India as per the CCS (Pension) Rules, 1972 the departmental enquiry was instituted against the applicant. The charge is contained in the statement of articles. It is useful to extract statement of article I of charge which is as follows:

> "The said Shri K.K. Khanna, in the first instance, sanctioned an exorbitant rate of Rs.14.78 per Cm.M for a quantity of 71,900 cm.M for the extra item "Extra for stone work sunk or moulded in cornices (red/white sand stone)" in the Extra Item Statement No.IX of the said work on 5.11.92 and the payments at the exorbitant rate were continued to be made to the contractor eventhough it was brought to his notice by the Chief Technical Examiner's organisation in May, 1994, that the rates were exorbitant on

20th Sept., 1996, he himself modified the earlier sanctioned rate to Rs.2.55 per Cm.M and reduced the payable quantity to 35,175.83 Cm.M The sanction of the exorbitant rates and excess quantity by the said Shri K.K. Khanna led to an overpayment of Rs.9,72,984/- to the contractor.

Thus, by his above act, the said Shri K.K. Khanna failed to maintain absolute integrity and exhibited lack of devotion to duty thereby contravening Rules 3(1)(ii) of the CCS (Conduct) Rules, 1964."

4. The substance of the charge is that the applicant who was a Chief Engineer, since retired, sanctioned a stone work at the rate of Rs.14/78 Cm.M for a quantity of 71,900 Cm.M. which was an exorbitannt rate and though it was brought to his notice by the Chief Technical Examiner in May 1994 that the rates were exorbitant he continued to pay at the same rate without modifying the rates. However, on 20.9.96 he himself modified the rate to Rs.2.55 per Cm.M. Thus it was urged that the sanction of exorbitant rate was to the knowledge of the applicant and he was, therefore, responsible for overpayment of Rs.9,72,984/- to the contractor. Rule 9 (2)(b)(i) and (ii) of the CCS (Pension) Rules are extracted below:-

"(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment,

(i) Shall not be instituted 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 institution,"

The above rules contemplate that the departmental proceedings should not be instituted in respect of an event which took place more than four years prior to such institution when the employee was retired.

5. It is, therefore, contended by the learned counsel for the applicant that since the employee was retired and the event relating to the misconduct occurred in 1992, the departmental proceedings cannot be initiated in 1998 as the event would be beyond four years from such institution. On the other hand, it is contended by the learned counsel for the respondents that the original sanction of 1992, continuing the payment on the same rates even after the Chief Technical Examiner's letter in May, 1994 and the revised rates sanctioned by the applicant himself in 1996 are linked together and they would constitute the entire charge against the applicant. The department came to know of the misconduct only in 1996 when the rate was revised to Rs.2.55 per cm.M from 14.78 per cm.M that the rates originally sanctioned in 1992 were exorbitant which resulted in overpayment of about 9,72,984/- to the contractor. It was, therefore, contended that the charge does not relate to the single event of sanctioning the rates in 1992. Let us not consider the rival contentions. Three events occured in 1992, 1994 and 1996 and those three events are shown in the charge as being the misconduct. It is true that the original sanction of the work was made in November, 1992 and the payments at that rate were being made

since then. But it is also true that the applicant continued to pay the same rate till 20.9.96 even after the Chief Technical Examiner brought to his notice in May, 1994 that the rates were exorbitant. Only then he revised the rates to Rs.2.55 per Cm.M. to Rs,14.78 per Cm.M. Thus, the misconduct continued upto 20.9.96. Rule 9 (2) (b) (ii) prescribes the institution of the departmental enquiry in respect of an event which took place more than four years before the institution. These three events constitute an integral part of the charge. ~~Even if~~ the misconduct of the respondent~~s is~~ should be taken ~~to have been~~ as the integral part of the charge, it should be noticed, as contended by the learned counsel for the respodnents that only when he revised the rates the department woke up and started making an enquiry into the matter and thereafter the disciplinary proceedings were instituted in 1998. The disciplinary proceedings, therefore, are well within the period four years. We are of the view that the charge is not barred by limitation as stipulated in Rule 9 (2) (b)(ii) of the CCS (Pension) Rules, 1972.

6. The contention of the learned counsel is, therefore, rejected. The learned counsel referred to us the decision of this Tribunal in V.C. Pande, IAS & Ors. v. Union of India & Ors.(1996) 34 ATC 214. This case deals with the question of limitation under Rule 2 (b) (ii) of the CCS (Pension) Rules with respect to the event of the withdrawal of Special Protection Group security cover from late Rajiv Gandhi, ex-Prime Minister. The departmental

proceedings initiated in May, 1995. The Tribunal held that the proceedings were time barred because they were beyond the period of four years reckoned from January, 1990. It was observed that assassination of ex Prime Minister which took place on 21.5.1991 should not be treated as the 'event' within the meaning of the above rule. The Tribunal on an elaborate consideration of the interpretation of the Rules and the meaning of the word 'event' and relying upon the judgement of the Supreme Court in 1995 (L&S) SCC 1086 held that the word 'event' should relate only to the misconduct alleged to have been committed and not any consequential event that happened subsequent to the misconduct. We are afraid this decision will not be of any assistance to the applicant. In our case the facts clearly point out that the three instances occurred in 1992, 1994 and 1996 together constitute the charge particularly the action of the applicant in continuing the payment of the rates till 1996 which brought the respondents to their senses to go into the action of the applicant. We are, therefore, of the view that the proceedings are not violated by the ground of delay or by any other ground.

7. No other ground is urged before us by the learned counsel.

8. We direct the respondents to proceed with the enquiry, if not already commenced.

expeditiously. The O.A. is dismissed. In the circumstances of the case no order as to costs.

(K. Muthukumar)
Member(A)

(V. Rajagopala Reddy)
Vice-Chairman(J)

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