

28

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

1. OA-86/98  
CP-19/99
2. CP-20/98 in  
OA No.21/97

New Delhi this the 19<sup>th</sup> day of October, 1999.

HON'BLE MR. V. RAJAGOPALA REDDY, VICE-CHAIRMAN (J)  
HON'BLE MRS. SHANTA SHASTRY, MEMBER (A)

OA-86/98

Ramesh Chand Sharma

...Applicant

(By Advocate Mr. Shyam Babu)

-Versus-

Director of Education & Anr.

...Respondents

(By Advocate Shri Rajinder Pandita)

CP-20/98 in  
OA-21/97

Ramesh Chand Sharma

...Petitioner

(By Advocate Shri Shyam Babu)

-Versus-

Ms. Satvir Silus, Director of  
Education & Others

...Respondents

(By Advocate Shri Rajinder Pandita)

1. To be referred to the Reporter or not? YES
2. To be circulated to other Benches of  
the Tribunal?

NO

(V. RAJAGOPALA REDDY)  
VICE-CHAIRMAN(J)

29

In The Central Administrative Tribunal  
Principal Bench

O.A.86/98  
in  
C.P.19/99

New Delhi this the 14<sup>th</sup> day of November, 1999.

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

Hon'ble Smt. Shanta Shastri, Member(A).

OA-86/98:

Ramesh Chander Sharma  
S/o Sh. Jagannath Sharma  
R/o 107, Srinagar, Shakurbasti,  
Delhi.  
(By Advocate Sh. Shyam Babu)

..... Applicant

versus

1. Director of Education  
Directorate of Education  
Old Secretariat,  
Delhi.

2. Dy. Director of Education  
(District West)  
Karampura New Moti nagar,  
New Delhi.

(By Advocate Sh. Rajinder Pandita)

..... Respondents

CP-19/99  
in  
OA-86/98

Ramesh Chander Sharma  
S/o Sh. J.P. Sharma  
R/o 107, Srinagar, Shakurbasti,  
Delhi.  
(By Advocate Shri Shyam Babu)

..... Applicant

Versus

1. Mrs. Archana Arora,  
Director of Education  
Directorate of Education  
Old Sectt. Delhi.

2. Mrs. Mohindra  
Dy. Director of Education (Distt. West)  
Karampura, New Motinagar,  
New Delhi.

..... Respondents

(By Advocate Sh. Rajinder Pandita)

*CPA*

(30)

ORDER(Oral)

By Reddy. J-

Heard the Learned counsel for the applicant and the Learned counsel for the respondents.

2. The OA and the CP arise out of the same set of facts. Hence they are disposed of by a common order.

OA-86/98:

3. The facts in the OA are started:

The applicant was a Teacher (TGT in the Govt. of NCTD, Delhi). His date of birth being 2.6.37 he was superannuated after attaining the age of sixty. He filed the OA-21/97 for seeking relief of all the pensionary benefits with interest. While disposing of the OA vide order dated 21.5.97, the Tribunal held that the applicant was entitled for all the retiral benefits, and directed the respondents to give him all the retiral benefits in accordance with rules, subject to any action that may be taken, before the date of retirement of the applicant.

4. It is the case of the applicant, that the respondents served the memo of charge on 2.7.97 which is filed as Annexure - A after his retirement on 30.6.97. In view of the said memo of charge of the applicant was not given the retirement benefits. It is the case of the applicant that as the charge was served only after his retirement, the action of the respondents in not releasing the retirement benefits in deliberate violation of the order of the Tribunal in OA-21/97. Earlier he filed CP-244/97

CAG

31

which was disposed of vide order dated 9.12.97 giving liberty to the applicant to agitate the issue as to the charge was issued after or before the applicant's retirement from service. It was stated by the ld. counsel for the respondents that in the above CP that most of the retiral benefits have been released to the applicant. He has also given an undertaking to communicate the said order within two weeks from the date of the order. The applicant filed the present OA challenging the charge dated 30.6.97, and for a direction for releasing all retiral benefits with interest.

5. It is contended by the learned counsel for the applicant Sh. Shyam Babu that the action of the respondents in the issue of the charge and proceeding with the enquiry is contrary to Rule 9(2)(b) of CCS(Pension)Rules, (for short Rules) as the charge has been received by the applicant only on 2.7.97 after the applicant has been retired from service. Hence, the charge is wholly incompetent and is liable to be set aside. It is also contended that the issuance of the charge and the action of the respondents in not paying the retirement benefits is contrary to the directions given by the Tribunal in OA-21/97.

6. Learned counsel for the respondents however, contends that the charge has been issued before the date of retirement of the applicant on 30.6.97 itself. It was also contended that this is neither contrary to rules nor any violation of the judgment of the Tribunal in OA-21/97(AN).

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7. We have given careful consideration of the arguments advanced by the learned counsel. Rule 9(2)(b) is the relevant provision which reads as below:

"9(b) the departmental proceedings, if not instituted while the Govt. 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."

8. From a reading of the rule, it is clear that the departmental proceedings shall be "instituted" before the Govt. servant retires. Sub rule 2(b) of Rule 9 employs the word "Institute". Learned counsel for the applicant submits that the word "institute" means an enquiry officer taking the cognizance of the charge. The charge memo has to be received by the official. Mere preparation of the charge or despatching charge memo to the charged official would not amount to instituting the proceedings. The word "institute" has come up for discussion in Suppiah Chettiar Vs. V.Chinnathurai & Ors. AIR 1957 Madras 216 where it was held that the word "institute" means as 'setting on foot an enquiry.' The dictionary meaning of the word "institute" was shown as to initiate an enquiry, beginning a proceeding in a court etc. On U.O.I. Vs. K.V. JANKIRAMAN - AIR 1991 SC 2010 the Hon'ble Judges of the SC, considering the question as to when disciplinary proceedings/criminal prosecution said to have been commenced, held that it is only when a charge memo in a disciplinary proceedings or a chargesheet in a criminal prosecution is issued to the employee. It is

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33

thus clear that unless the chargesheet is received by the applicant it cannot be said that the disciplinary proceedings are instituted. Mere despatch of the charge memo would not come within the meaning of the Rule 9(2)(b) of the rules.

9. In the present case, as mentioned supra, the charge though dated 30.6.97, according to the applicant it was delivered by registered post on 2.7.97 and this statement has not been controverted in the counter affidavit. We have perused the file showing the service of the charge memo that has been served upon the applicant. In the office note dated 10.12.97 it was stated that the chargesheet was issued on 30.6.97 but it is also stated that there was no record on the file to other test the chargesheet was issued to the applicant on 30.6.97 and it was received by the applicant only on 2.7.97. In the note [ated 13.1.98 it was clearly noted as answer to the query that though the competent authority issued the chargesheet on 30.6.97 and it was received by the charged official only on 2.7.97 which is also evident from the despatch register.

10. It is contended by the Ld. counsel for the respondents that the initially the chargesheet has been sent by Spl.Messenger but subsequently it has been sent by registered post. We have carefully gone through the entire counter affidavit. It is not the case of the respondents that it was initially sent by spl.messenger and applicant was not served by messenger but by registered post. Whatever it may be the fact is established that though the chargesheet was issued on 30.6.97 it was served and received by the applicant only on 2.7.97. It therefore follows, that the disciplinary proceedings were "instituted" on 2.7.97.

*[Signature]*

-6- (34)

The applicant retired on 30.6.97, it is not not permissible for the respondents to institute disciplinary proceedings on 2.7.97 as it contrary to the Rule 9(2)(b)(i) of Pension Rules. Thus the charge and the disciplinary proceedings are vitiated. They are also contrary to the judgment in OA-21/97.

11. It is contended by the ld.counsel for the respondents, placing reliance upon State of Haryana Vs. S.K.Singh JT 1999 3 SC 140 that it was not necessary for the charged official to accept the charge and the date of issue was the requirement under the rules. The issuance of notice for voluntary retirement only in Rule 5.32(B) Punjab Civil Service Rules came up for discussion. It was held that:

" At any time a Government employee has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority retire from service. However, a Government employee may make request in writing to the appointing authority to accept notice of less than three months giving reason therefore. On receipt of a request, the appointing authority may consider such request for the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the Government employee shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months."

12. We are now concerned, in the present case, about the "institution" of the disciplinary proceedings before an official's retirement from service and not the question of acceptance of any notice for voluntary retirement.

13. In the circumstances we are of the view that and the disciplinary proceedings have been initiated by the respondents after the applicant's retirement from service.

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35

Hence, the chargesheet is incompetent and is liable to be quashed. The respondents are directed to release of the retiral benefits to the applicant with interest at 12% from the date of issue of chargesheet, within 3 months from the date of receipt of a copy of this order.

14. The OA is accordingly allowed. No costs.

*Shanta*

(SMT. SHANTA SHASTRY)  
MEMBER(A)

*V. Rajagopala Reddy*

(V. RAJAGOPALA REDDY)  
VICE CHAIRMAN(J)