

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1596/95 198-1996
TA No. 1632/95
1687/95 and
1705/95

DATE OF DECISION 19.12.95

S/ Shri V C Pande, Shri Ramaji Sharma; Applicant (s)
Shri R P Jeshu, and G.S. Bajpai
Karajewale & Co Advocate for the Applicant (s)

Versus

Union of India, Respondent (s)

~~Asst. Secy. Sh. A. G. Joseph~~ Other Advocate for the Respondent (s)

~~Sh. M. Chandrasekhar, Addl Secy. to Govt.~~
CORAM: Sh. V. S. R. Krishna,

The Hon'ble Mr. A. V. Haridasan, VC (??)

The Hon'ble Mr. K. M. Muniamma, Member (A)

- ✓ 1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? Yes

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1596/95

O.A. No. 1632/95

O.A. No. 1687/95

and

O.A. No. 1705/95

New Delhi this the 26th Day of March 1996.

Hon'ble Shri A.V. Haridasan, Vice Chairman (J)

Hon'ble Shri K. Muthukumar, Member (A)

I.

O.A. No. 1596/95

Shri V.C. Pande,
IAS (Retd.),
S/o Shri P.D. Pande,
Former Cabinet Secretary,
C-17/4, SFS Flats,
New Delhi-110 017.

Applicant

-(By Advocate: Karanjawala & Company)

Vs

Union of India,
through the Secretary to the Govt. of India,
Ministry of Personnel, Public Grievances and
Pension,
(Department of Personnel and Training),
North Block, New Delhi-110 001.

Respondent

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

II.

O.A.No. 1632/95

Shri Shiromani Sharma,
IAS (Retd.),
C-15 Surya Nagar,
Ghaziabad - 201011

Applicant

(By Advocate: Shri Ashok Desai, Sr. Advocate
alongwith

Shri Arun Jetley, Sr. Advocate,
Shri Arvind Nigam, Advocate,
Shri Pallav Shishodia, Advocate,
Shri R.N. Karanjawala, Advocate,
Mrs. Nandini Gore, Advocate,
Ms. Savita Krishnamurty, Advocate,
Mrs. Vibha Sharma, Advocate,
Shri Vivek Sharma, Advocate)

Vs

Union of India,
through the Secretary to the Govt. of India,
Ministry of Personnel, Public Grievances and
Pension,
(Department of Personnel and Training),
North Block, New Delhi-110 001. Respondent

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

III. O.A. No. 1687/95

Shri R.P. Joshi,
IPS (Retd.),
Former Director,
Intelligence Bureau,
257 Indira Nagar, Phase I,
Dehra Dun-248 006. Applicant

(By Advocate: Shri Ashok Desai, Sr. Advocate
alongwith
Shri Arun Jetley, Sr. Advocate
Shri Arvind Nigam, Advocate,
Shri Pallav Shishodia, Advocate,
Shri R.N. Karanjawala, Advocate,
Mrs. Nandini Gore, Advocate,
Ms. Savita Krishnamurthy, Advocate,
Mrs. Vibha Sharma, Advocate,
Shri Vivek Sharma, Advocate)

Vs

Union of India,
through Secretary to Government of India,
Ministry of Home Affairs,
North Block,
New Delhi-110 001. Respondent

(By Advocate: Shri M. Chandrashekhra,
Additional Solicitor General,
alongwith
Shri V.S.R. Krishna, Advocate)

IV. O.A.No. 1705/95

Shri G.S. Bajpai,
S/o Shri B.D. Bajpai,
former Secretary (Security),
B-35 Nirala Nagar,
Lucknow-226020. Applicant

(By Advocate: Shri Ashok Desai, Sr. Advocate
Shri Arun Jaitley, Sr., Advocate,
Shri Arvind Nigam, Advocate,
Shri B.R. Pradhan, Advocate,
Shri Vivek Sharma, Advocate)

Union of India,
through Secretary to the Govt. of India,
Cabinet Secretariat,
Bikaner House (Annexe),
Shahjahan Road,
New Delhi-110 001

Respondent

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

O R D E R

Hon'ble Shri A.V. Haridasan, Vice Chairman (J)

These four original applications came to be filed under similar circumstances, present similar facts and involve common question of Law. Therefore, they are being considered jointly. Applicants in OA No. 1596/95 and OA No. 1632/95 were members of the Indian Administrative Services, the applicant in OA No. 1687/95 was Member of the Indian Police Service and applicant in OA No. 1705/95 was a member of the Research and Analysis Service. Each of them has in the respective application challenged the departmental proceedings instituted by serving of chargesheet long after retirement.

2. The historical back drop which led to the issuance of the chargesheets against these applicants can be briefly stated thus:- when late Prime Minister of India Smt. Indira Gandhi was assassinated it was felt that the security arrangement available till then for the protection of the Prime Minister was inadequate.

(13)

Accepting the recommendations of Shri Birbal Nath Committee which was endorsed by the Thakkar Commission a Special Protection Group (hereinafter called SPG) was constituted by an executive order in 1985. Later in 1988 the Special Protection Group Act, 1988 (SPG Act for short) was passed by the Parliament codifying the constitution, nature and functions of the SPG. According to the provisions of the SPG Act the SPG was responsible for the proximate protection of the incumbent Prime Minister and the members of the family of Prime Minister until the Act was amended in the year 1991. As a consequence of the electoral defeat of the Congress Party in 1989 Late Shri Rajiv Gandhi vacated the office of the Prime Minister on 29.11.1989. Though he demitted the office of Prime Minister the assessment by intelligence agencies showed that the threat to the life of Shri Rajiv Gandhi remained very serious. As former Prime Minister to Shri Rajiv Gandhi was not entitled the protection of the SPG as per the provision of the SPG Act providing alternative effective arrangements for his security was under consideration. Pending decision in the matter he continued to get SPG protection. On 4.12.1989 a meeting was held by Shri T.N. Seshan the then Cabinet Secretary-cum-Secretary (Security) in which the need for fresh threat assessment in regard to the Prime Minister Shri V.P. Singh and to Shri Rajiv Gandhi was felt on 14.12.1989. Shri T.N. Seshan sent a note to the

~

(1A)

Prime Minister pertaining to the security of Prime Minister and Rajiv Gandhi, Proposing certain security measures for Rajiv Gandhi while in Delhi and indicating certain arrangements that had to be made by the State Governments while he would be on tour outside the capital. On this note the Prime Minister indicated that a Cabinet note might be put up. While so on 23.12.1989 Shri V.C. Pande, the applicant in OA No. 1596/95 took over as Cabinet Secretary and thereafter Shri G.S. Bajpai, the applicant in OA No. 1705/95 took over as Secretary (Security). The intelligence report in respect of threat assessment on Rajiv Gandhi by the R&AW was received on 9.12.1989 and by the IB on 3.1.1990. After considering these reports at a meeting held in the Chamber of the Secretary (Security) on 4.1.1990 the Draft Cabinet note was finalised. In the note it was suggested that arrangements for security of Shri Rajiv Gandhi outside Delhi should be the responsibility of the State Government. This note was approved by the Cabinet Secretary and the same was placed before the Cabinet on 30.1.1990. The Cabinet took a decision accordingly and SPG cover for Shri Rajiv Gandhi was withdrawn by the orders of the Government of India, Ministry of Home Affairs dated 3.2.1990. The National Front Government headed by Shri V.P. Singh having stepped down on 10.11.1990, the Janta Dal(s) Government headed by Chandrasekhar with support from outside by the

✓

(15)

Congress took over the Government of India. The Chandrasekhar Government also fell on 6.3.1991. The security arrangement for Shri Rajiv Gandhi continued to be as per Cabinet decision taken on 30.1.1990. The Election Commission notified the General Elections to Lok Sabha and also to some of the State Assemblies between 20th and 26th May 1991.

3. Shri Rajiv Gandhi started for election campaign for Congress Party in Bhubaneshwar, Visakhapatnam and Tamil Nadu on 20.5.1991 in a private aircraft. While walking towards the rostrum at the meeting place in Sriperumbudur (Tamil Nadu) on 21.5.1991 at 10 PM a bomb exploded killing Rajiv Gandhi and several others near to him instantaneously and causing injuries to many others. Alarmed by the calamities the Government of India by order dated 27.5.1991 appointed a Commission headed by Hon'ble Justice J.S. Verma under the Commission of Enquiries Act 1952 here in after referred to as Justice Verma Commission. The important terms of reference were a) whether the assassination of Shri Rajiv Gandhi could have been averted and whether there were lapses or dereliction of duty in this regard on the part of any of the individuals responsible for his security and b) the deficiencies, if any, in the security system and arrangements as prescribed or operated in practice which might have contributed to the assassination.

✓

(16)

The Commission issued notices to 47 persons who might be affected by the findings of the Commission, took evidence and submitted its report on 12.6.1992. The applicants in these cases were not served with notices under Section 8(B) of the Commission of Inquiries Act, 1952. In the report of Justice Verma Commission there was a finding that there was a failure on the part of the Central Government to provide to Shri Rajiv Gandhi suitable alternative cover for his proximate security after the withdrawal of the SPG Cover as a result of Central Government's decision dated 30.1.1990 in spite of the felt need as evident from the IB Report and that there are lapses or dereliction of duties on the part of the Central Government which were contributory factors but for which the assassination of Shri Rajiv Gandhi could have been averted. The Government of India after studying the Report of the Commission placed before the Houses of Parliament on 23.12.1992 an Action Taken Report in which it was observed that the Government did not share the perception of the Commission on the lapses attributed to the Central Government and the IB. Later on in May 1993 the Home Minister made a statement in the Parliament that as certain observations had been made in Justice Verma's Commission Report regarding certain Central Government officers the Government have obtained

✓

(17)

explanations of those officers and that those found guilty would not be spared. However, by then none of the applicants were called upon to submit any explanation. It was thereafter that the impugned chargesheet in these cases were served on the applicants.

4. Having given the brief historical background now we will refer the facts of the individual cases:

5. Shri V.C. Pande, the applicant in OA No. 1596/95 was a Member of the Indian Administrative Service belonging to the Rajasthan Cadre. He took over as Cabinet Secretary on 23.12.1989 held the post till 11.12.1990 and was thereafter shifted as Secretary Inter-State Council and retired on 22.12.1992 on completion of his extended term of service. He was served with the Memorandum of Charges dated 4.5.1995 informing him that an inquiry under Rule 8 of All India Services (Discipline & Appeal) Rules 1969, read with rule 6(1)(b) of the All-India Services (Death-cum-Retirement Benefit) Rules 1958 would be held against him as sanction thereto ^{was} accorded by the Central Government under rule 6(1)(b) of the All-India Service (Death-cum-Retirement Benefit) Rules 1958 and directing him to submit within 10 days a written statement of his defence and to state whether he desired to be heard in

m

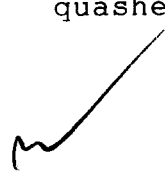
(18)

person. Annexed to the Memorandum was copy of a note ~~submitted~~ prepared by the applicant dated 30.1.1990 and the Statement of Article of Charge and Statement of Imputations. The Article of Charge after making a reference to the observations of Justice Verma Commission in his Report regarding the lapses and dereliction of duties on the part of the Central Government, it ~~was~~ alleged that the applicant while functioning as Cabinet Secretary during the period from 23.12.1989 to 11.12.1990 committed an act of grave misconduct and negligence inasmuch as he recorded a note on 30.1.1990 addressed to the then Prime Minister in which he conveyed that he himself had approved that the security arrangements of Shri Rajiv Gandhi outside Delhi should be left to the State Governments concerned that the said note made absolutely no mention of the very grave threat which Shri Rajiv Gandhi faced to his life from various militant/terrorist group inimical to him as also the facts that there had been no reduction in the threat perception even after Shri Rajiv Gandhi demitted the office of Prime Minister on 2.12.1989 and that he acted beyond his jurisdiction as he was not competent to take such a decision. It was also alleged that there was a total lack of objective assessment and sincerity of purpose on the part of Shri Pande

✓

(19)

while dealing with this important issue, & that Verma Commission had termed the reasons spelt out in the note of 30.1.1990 as 'tenuous' and that the decision was prompted ^{more} by lack of proper perception or the requisite will than the difficulties stated therein and therefore Shri V.C. Pande had exhibited grave misconduct reflected in lack of devotion in the duty and contravening Rule 3(1) of the All India Services (Conduct) Rules, 1968. On receipt of the Memorandum the applicant made repeated requests to the respondent for supply of certain documents to enable him to prepare his written Statement of Defence, but he was informed by letter dated 22.8.1995 that his request for supply of documents at that stage was not acceded to and he was directed to submit his written Statement of Defence latest by 11.9.1995. Aggrieved by the initiation of the departmental proceeding against him and the rejection of his request for supply of documents, Shri V.C. Pande filed his application praying that the Order No. 106/4/95-AVD.I dated 4.5.1995 according sanction for institution of "major departmental proceedings" under rule 6(1)(b)(i) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 and Memorandum No. 106/4/95-AVD.I dated 4.5.1995 along with the Article of Charge and the Statement of Imputation of misconduct/misbehaviour may be quashed, that the rule 6(1)(b)(i)(ii) and (iii) of




(20)

the All India Services (Death-cum-Retirement Benefits) Rules, 1958 may be declared vague, arbitrary and ultra vires Articles 14 of the Constitution of India and struck down ~~the same~~ and that the respondents may be directed to pay him a sum of Rs. 50 lakhs as compensation for the grave mental agony and harassment suffered by the applicant on account of the service of the impugned chargesheet or to pay exemplary cost. It is alleged in the application that as the applicant retired from service on 22.12.1992 and as the chargesheet was served on him on 4.5.1995 in regard to some alleged misconduct committed by him during the period from 23.12.1990 to 11.12.1990 while he was functioning as Cabinet Secretary, the initiation of departmental proceedings in respect of an event which took place beyond the period of four years prior to the date of institution of the proceedings is barred in view of the provisions contained in Rule 6 of All India Services (Death-cum-Retirement Benefits) Rules 1958; that the sanction accorded for initiation of major departmental proceedings against the applicant is defective ~~and therefore involved~~ as no major penalty can be imposed on him after his retirement; that as the alleged action of the applicant has not resulted in any pecuniary loss

m

(21)

to the State no action for withholding the pension of the applicant under Rule 6(1)(b)(i) of the All India Services (Death-cum-Retirement Benefits), Rules 1958 can be validly initiated against him; ^{that} inasmuch as the expression grave misconduct appearing in Rule 6(1)(b) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 is not defined and as the provisions enables the Government to initiate disciplinary proceedings against a retired member of the service in respect of an event which took place within four years of the institution thereto is arbitrary, unlawful and opposed to the provisions contained in article 14 of the Constitution, the Rule is liable to be struck down; that the alleged misconduct of the applicant being only approving a Cabinet note which does not amount to any decision cannot be considered as a misconduct much less a grave misconduct exposing him to disciplinary proceedings after his retirement; that no action could be validly initiated against the applicant on the basis of any observation made in Justice Verma Commission Report as the applicant was not served with a notice by the said Commission as required under Section 8(B) of the Commission of Inquiries Act, 1952 and that the initiation of the disciplinary proceedings against the applicant by the Government deviating from its



(22)


stand taken in the Action Taken Report placed before the Houses of Parliament that the Government did not share the perception of Justice Verma Commission that there has been failure on the part of the Central Government to provide effective alternative protection to late Shri Rajiv Gandhi after withdrawing SPG cover to ^{and the action} him/was not vitiated by malafides as the same became necessary for the Government in the wake of defection in the Congress Party; that the denial to the applicant of the copies of the documents required by him for preparation of written Statement of Defence amounts to denial of principles of natural justice and that for all these reasons the impugned disciplinary proceedings are liable to be struck down.

6. The applicant in OA No. 1632/95 Shri Shiromanni Sharma was the Member of the Indian Administrative Service belonging to the UP Cadre. He retired from service on 31.7.1991. He took over as Home Secretary to the Govt. of India on 29.12.1989 and served as such upto 20.3.1990. Long after his retirement on 31.7.1991 he was served with the Memorandum No. 106/4/95-AVD.I dated 4.5.1995 according sanction for institution of major departmental proceedings under Rukle 6(1)(b))i) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 and the Memorandum with the same number and date containing a chargesheet and Statement of

~

(23)

Imputations in regard to certain misconduct. It was alleged in the Article of Charge after making reference to certain observations of Government by Justice Verma Commission in his Report that Shri Shiromani Sharma while functioning as the Union Home Secretary from 29.12.1989 to 20.3.1990 committed an act of grave misconduct and negligence in as much as he failed to give guidance/directions to the intelligence agencies to formulate proposals for the security of Shri Rajiv Gandhi which could have totally matched/synchronised with the actual threat perceptions especially in the context of the note sent by the Additional Director, IB to him on 3.1.1990 and the decision taken in the meeting held under the chairmanship of Secretary(Security) on 4.1.1990 and that the aforesaid act of omission and commission exhibited grave misconduct reflected in lack of devotion to duty and thereby contravened the provisions of Rule 3(1) of the All India Services (Conduct) Rules, 1968. The applicant after receipt of the Memorandum sent a letter to the respondent stating that for various reasons explained therein the sanction accorded for initiation of the departmental proceedings against the applicant was illegal and had also requested for supply of certain documents to enable him to prepare his Statement of Defence and to file the same without prejudice to his other contentions. The respondent directed the



(24)

applicant to submit his written Settlement of Defence by 11.9.1995 positively and did not mention anything about his request for supply of documents nor did they meet the contentions raised by him regarding the validity of the sanction. In these circumstances the applicant had filed this application seeking to quash the impugned memoranda. It has been alleged in the application that the proceedings initiated against the applicant is barred by time, that the imputations do not come out to any misconduct, that Justice Verma Commission Report cannot be relied on for initiation of departmental proceedings against him as he was not served with the notice under Section 8(B) of the Commission of Inquiries Act by the said Commission; that as the issue^{of} lapses on the Government officials seems to have been reopened in the wake of defection in the ruling Party and resignation of Shri Arjun Singh from the Cabinet on 24.12.1994, the action against the applicant is vitiated by ~~the~~ malafides and therefore the impugned Memoranda are liable to be struck off.

7. The applicant in OA No. 1687/95 Shri R.P. Joshi was a Member of the Indian Police Service of the U.P. Cadre. He was elevated to the post of Director, Intelligence Bureau on 30.12.1989 and he continued in this post till 12.12.1990. He retired on superannuation on 31.3.1991. The applicant was served with a Memorandum No. 26011/6/05-IPS.II dated 17.4.1995 proposing to


(25)

hold an enquiry against him under Rule 8 of All India Services (Discipline and Appeal) Rules 1969 read with Rule 6(1)(b) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 and was directed to submit within 10 days a written Statement of his Defence admitting or denying the Articles of Charge in his defence. The Statement of Article of Charges framed against the applicant reads follows:

"Shri R.P. Joshi, a Member of the Indian Police Service, borne on the cadre of Uttar Pradesh (Since retired), while function as Director, Intelligence Bureau during the period 30th December, 1989 to 12th December, 1990 committed an act of grave misconduct in as much as he failed to discharge his obligation of ensuring failproof security to Shri Rajiv Gandhi. Shri R.P. Joshi, particularly, failed on the following vital count:

Shri Rajiv Gandhi was the Prime Minister of India from 31st October, 1984 to 2nd December, 1989. Because of various actions taken by him against different terrorist outfits in the country, intelligence agencies assessed a very high security threat to his person. Since the incumbent Prime Minister invariably faces a very high security threat, proximate security to him was provided by a Special Protection Group (SPG) under the SPG Act, 1988. The SPG provides the best possible proximate security to a threatened VIP in India.

Even though Shri Rajiv Gandhi ceased to be Prime Minister after 2nd December, 1989, all the intelligence agencies had assessed that he continued to face the highest security threat to his life. Despite this, within 5 days of his taking over as Director, IB, i.e. on 3.1.90, he caused to be sent a note which led to the



(26)


withdrawal of SPG cover of Shri Gandhi without ensuring the security of Shri Gandhi matching with the actual threat perception. Instead, he suggested certain guidelines leaving the security of Shri Gandhi to the State Governments or the Union Territory Administration within whose jurisdiction he happened to be present. Shri Joshi knew that Shri Gandhi faced a very high degree of threat and the same had, in fact, remained intact even after he demitted the office of the Prime Minister. Provision of proximate security by the SPG which followed a drill of conducting Advance Security Liasion, creation of sterile zone, rostrum and access control to the person etc. would have definitely made the security failproof apart from matching perfectly with the actual threat perception that Shri Gandhi faced to his life. Some of the essential security steps like Advance Security Liasion, creation of sterile zone, effective monitoring of access control measures could have been implemented even by incorporation in the draft guidelines caused to be suggested by Shri Joshi, without resorting to the amendment of SPG Act. Although some alternative security cover was provided to Shri Rajiv Gandhi, it did not match with the actual threat perception faced by him. On account of his callous attitude, coupled with failure to grasp the seriousness that the situation warranted, Shri Joshi failed in the discharge of his duties as the Director, Intelligence Bureau on this vital count.

Shri R.P. Joshi by his aforesaid acts of omission and commission exhibited grave misconduct reflected in lack of devotion to duty and thereby contravened the provisions of Rule 3(i) of the All India Services (Conduct) Rules, 1968.

Aggrieved by the initiation of the disciplinary proceedings against the applicant, the applicant has filed this application seeking

(27)

to declare Rule 6(1)(b)(i), (ii) and (iii) of All India Rules Services (Death-cum-Retirement Benefit) Rules, 1958 as vague, arbitrary and ultra vires^{of} the Article 14 of the Constitution of India and to quash the impugned Memorandum No. 26011/6/95-IPS.II dated 17.4.1995 along with articles of charge and for a direction to the respondents to pay him a sum of Rs. 50 lakhs as compensation as exemplary cost. The applicant has alleged in the application that the note dated 30.1.1990 was prepared on the basis of a collective exercise and deliberation that the withdrawal of SPG cover to Shri Rajiv Gandhi was not on the basis of the said note, that it was the result of the Cabinet decision, that the initiation of the disciplinary proceedings against the applicant after he retired from service on the basis of an event which took place beyond the period of four years from the date of its initiation is barred in law, that the Rule 6(1)(b) (i), (ii) and (iii) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 is vague, arbitrary and unreasonable; that the disciplinary proceedings have been initiated against the applicant not for the purpose for which power was conferred on the Government but for exteneous and malafide reasons and that impugned proceedings may therefore be quashed.



(28)

8. Shri G.S.Bajpai, the applicant in OA No. 1705/95 commenced his career as a Member of the Indian Police Service in the year 1954. Subsequently he resigned from the IPS and joined the R&AW Services (RAS). On 1.1.1990 he assumed the Office as Secretary (Security) which post he held upto 7.6.1990. He retired from service on superannuation on 31.7.1991. He was served with an order dated 5.5.1995 by which sanction of the President was accorded under sub-clause (i) of clause (b) of sub-rule (2) of Rule 9 of the Central Civil Services (Pension) Rules, 1972 to initiate departmental proceedings against the applicant as it had been made to appear that the applicant while serving Secretary (Security) in the Cabinet Secretariat from 1.1.1990 to 7.6.1990 was at fault in not recommending/continuance of SPG cover to Shri Rajiv Gandhi which would have matched with the actual threat perception even if it meant amendment of SPG Act and directing that the said departmental proceedings should be conducted in accordance with the procedure laid down in Rule 14 and 15 of the CCS(CCA) Rules, 1965. A Memorandum of the same date and Articles of Charges; list of witnesses etc. were also communicated to the applicant. In the Articles of Charges after making observations to the Justice Verma Commission it was stated as follows:

(29)

2. That Shri G.S. Bajpai, RAS, 54 (Retired) during the period he functioned as Secretary (Security) from 1.1.1990 to 7.6.1990 presided over a meeting convened on 4.1.90 at 3.00 PM with officers of the Ministry of Home Affairs, Prime Minister's Office, I.B., Delhi Police, SPG and R&AW at which security arrangements for Shri Rajiv Gandhi former Prime Minister were discussed. At this meeting, it was noted that Shri Gandhi continued to face threat from Sikh extremists and some other hostile elements and that the fact that Shri Gandhi, despite having demitted the office of the Prime Minister, continued to face a high degree of threat, no steps were initiated by Shri Bajpai for providing a suitable alternative cover similar in capability as the SPG for the proximate security of Shri Rajiv Gandhi. Instead, the view was taken in the meeting chaired by Shri Bajpai on 4.1.90 that the SPG is statutorily responsible only for providing proximate security to the Prime Minister and Members of his immediate family and, therefore, the responsibility of providing protection to Shri Gandhi should be vested in the State Governments/Union Territory Administration concerned and the Ministry of Home Affairs should issue appropriate instructions keeping in view the very high level of threat faced by Shri Gandhi.
3. It is therefore clear that there was total failure and negligence on the part of Shri Bajpai, the then Secretary (Security) is not identifying a suitable alternative cover for the proximate security of Shri Rajiv Gandhi, former Prime Minister matching with the actual threat perception that Shri Gandhi faced from the various militant groups.

(30)

4. That Shri G.S. Bajpai by his aforesaid act of omission and commission exhibited grave misconduct and lack of devotion to duty and thereby contravened the provisions of Rule 3(i)(ii) and 3(2) of the Central Civil Services (Conduct) Rules, 1964.

Aggrieved by the impugned orders the applicant had filed this application seeking to set aside the sanction issued for initiating disciplinary proceedings against him and the Memorandum of Charges for a declaration that sub-rule (1) of Rule 9 of the CCS (Pension) Rules, 1972 is vague and arbitrary and ultra vires of Articles 14 and for a direction to the respondent to pay to the applicant a sum of Rs. 50 lakhs as compensation for the mental agony and harassment or exemplary cost. The applicant in the application has alleged that the respondents denied him adequate opportunities to defend as his request for supply of certain documents to enable

Contd.....22.

(31)

him to prepare a proper written statement of defence has been rejected by them that the Statement of Imputations do not constitute a misconduct as it was not within the powers of the applicant to amend the SPG Act, that the initiation of disciplinary proceedings against the applicant, a retired officer, after a period of four years from the date on which the alleged misconduct took place is barred by limitation, that the provisions of sub-clause (1) of Clause B of sub-rule (2) of Rule 9 of the CCS (Pension) Rules 1972 being vague are arbitrary and unsustainable, that the proceedings are vitiated by ~~the~~ malafide and for all these reasons the applicant is entitled to get the relief prayed for. In fact the applicant has made almost all the allegations made by the applicant in OA No. 1596/95.

9. In all these applications the respondents have filed reply statements opposing the grant of reliefs and refuting the allegations made in the application.

10. We have carefully perused the pleadings in these applications and have heard the arguments of Shri Ashok Desai, learned sr. counsel appearing for the applicants in OAs 1596/95, 1632/95 and 1687/95 and of Shri Vivek Sharma,



(32)

counsel of the applicant in OA 1705/95. We have also heard the arguments of Shri M. Chandrasekharan, the learned Additional Solicitor General appearing along with Shri V.S.R. Krishna for the respondents. Though a number of grounds have been raised in these applications Shri Ashok Desai and Shri Vivek Sharma pressed only the following grounds:

I. As the proceedings against the applicant in OA No. 1705/95 have been initiated after his retirement in accordance with the provisions contained in Rule 9 of the CCS (Pension) Rules 1972 and the provisions of Rules 14 and 15 of the CCS (CCA) Rules, 1965 and the proceedings against the applicants in the remaining applications are initiated after their retirement in accordance with Rule 6(1)(b) of the All India Services (Death-cum-retirement Benefits) Rules 1958 and Rule 8 of All India Services (Discipline and Appeal) Rules, 1969 the proceedings are barred by limitation as the alleged events constituting the misconduct in all these cases had taken place long prior to a period of four years from the date of institution of the proceedings.

II. Rules 6(1)(b)(i), (ii) and (iii) of All India Services (Death-cum-Retirement Benefits)

(33)

Rules 1958 and sub-rule (1) of Rule 9 of the CCS (Pension) Rules 1972 are vague and therefore ultra vires of Article 14 of the Constitution in as much as the expression "grave misconduct" appearing in these rules is not defined and the said provisions being vulnerable and liable for mis-interpretation resulting in harassment of retired civil servants even after their retirement from service.

III. The action on the part of the respondents in initiating departmental proceedings against the applicants in these cases basing on the observations in the Report of Justice Verma Commission is unsustainable in law, in view of the fact that Justice Verma Commission had not given the applicants any notice as required under Rule 8 B of the Commission of Inquiries Act.

IV. Even if the imputations contained in the Memo of Charges and in the Statement of Imputations of misconduct in all these cases are taken to be factually correct, they do not spell out any misconduct much less grave misconduct warranting initiation of departmental proceedings against the applicants and for this reason the impugned Memoranda of Charges are liable to be quashed.

V. As the Government in its Action Taken Report placed before the Houses of Parliament stated they did not share the perception of

n

(34)

Justice Verma Commission that there have been failure on the part of the Central Government and its officers to provide adequate security to late Shri Rajiv Gandhi and in the SPG protection was available only to the incumbent Prime Minister, the decision to take departmental proceedings against these applicants at a later stage was motivated by some ulterior motive in the wake of the defection in the Congress Party and resignation of Shri Arjun Singh, the Minister for Human Resources for Development and therefore this action amounts to a fraud on power and thus liable to be quashed.

11. We shall deal with these points one after the other.

12. Shri V.C. Pande, the applicant in OA No. 1596/95 retired on 22.12.1992. The Memorandum of Charges issued to him dated 4.5.1995, the material allegation against him in the Memorandum of Charges reads thus:

3. "Shri V.C. Pande, a member of the IAS borne on the cadre of Rajasthan (since retired) while functioning as the Cabinet Secretary, during the period from 23.12.89 to 11.12.90, committed an act of grave misconduct and negligence in as much as he recorded a note on 30.01.90 addressed to the then Prime Minister through which Shri Pande conveyed that he himself had "approved" that the security arrangements of Shri Gandhi outside Delhi should be left to the State

(35)

Governments concerned. The aforesaid note made absolutely no mention of the very grave threat that Shri Gandhi faced to his life from various militant/terrorist group inimical to him as also the fact that there had been no reduction in the threat perception even after Shri Gandhi demitted the office of Prime Minister on 02.12.89. Moreover, Shri Pande acted beyond his jurisdiction as he was not competent to take such a decision. There was a total lack of objective assessment and sincerity of purpose on the part of Shri Pande while dealing with this important issue. The Verma Commission had also termed the reasons spelt out in the note of 30.01.90 as tenuous and that the decision was prompted by lack of proper perception or the requisite will than the difficulties stated in the note.

4. Shri V.C. Pande by his aforesaid act of omission, exhibited grave misconduct effected in lack of devotion to duty and thereby contravened the provisions of Rule 3(1) of the All India Services (Conduct) Rules, 1968.

13. Shri Shiromani Sharma, the applicant in OA No.1632/95 retired from service on 31.7.1991. The order according sanction to initiate departmental proceedings against Shri Sharma was issued on 4.5.1995 and the Memorandum of Charges was issued on the same date. The material allegations against Shri Sharma in the Article of Charge reads thus:

3. "Shri Shiromani Sharma, a member of the IAS borne on the cadre of U.P. (Since retired), while functioning as Union Home Secretary, during the period from 29.12.89 to 20.3.90 committed an act of grave misconduct and negligence in as much as he failed to give

(36)

guidance/directions to the intelligence agencies to formulate proposals for the security of Shri Rajiv Gandhi which would have totally matched/synchronised with the actual threat perceptions especially in the context of the note sent by the Additional Director, IB to him on 3.1.90 and the decisions taken in the meeting held under the chairmanship of Secretary (Security) on 4.1.90, copy of the minutes of which were sent to him by the Cabinet Secretariat. Shri Sharma was fully aware of the very grave threat that Shri Gandhi faced to his life on account of reports received by him to this effect from intelligence agencies. However, Shri Sharma chose to remain passive for reasons best known to him.

4. Shri Shiromani Sharma by his aforesaid act of omission and commission, exhibited grave misconduct reflected in lack of devotion to duty and thereby contravened the provisions of Rule 3(1) of the All India Services (Conduct) Rules, 1968."

14. Shri R.P. Joshi, IPS, the applicant in OA No. 1687/95 retired from service on 31.3.1991. The Memorandum of Charges as per sanction accorded for initiating the departmental proceedings against him under Rule 6(1)(b) of All India Services (Death-cum-Retirement Benefits) Rules 1958 were issued to him on 17.4.1995. The material allegations against Shri Joshi in the Article of Charge are that -

"He as a Member of the IPS borne in the cadre of UP (Since retired) while functioning as Director, Intelligence Bureau, during the period 30.12.89 to 12.12.90

(37)

committed an act of grave misconduct in as much as he failed to discharge his obligation of ensuring failproof security to Shri Rajiv Gandhi."

15. Shri G.S. Bajpai, the applicant in OA No. 1705/95 retired from service on 31.7.1991. The Memorandum proposing to hold an enquiry against him pursuant to the sanction accorded by the President under Rule 9 of the Central Civil Services (Pension) Rules, 1972 and the Memorandum of Charges was issued to him on 5.5.1995, the material allegations against Shri Bajpai contained in the Article of Charge reads as follows:

2. That Shri G.S. Bajpai, RAS, 54 (Retired) during the period he functioned as Secretary (Security) from 1.1.1990 to 7.6.1990 presided over a meeting convened on 4.1.90 at 3.00 p.m. with officers of the Ministry of Home Affairs, Prime Minister's office, I.B., Delhi Police, SPG and R&AW at which security arrangements for Shri Rajiv Gandhi, former Prime Minister were discussed. At this meeting, it was noted that Shri Gandhi continued to face threat from Sikh extremists and some other hostile elements and that the threat to his security was very high. While admitting the fact that Shri Gandhi, despite having demitted the office of the Prime Minister, continued to face a high degree of threat, no steps were initiated by Shri Bajpai for providing a suitable alternative cover similar in capability as the SPG for the proximate security of Shri Rajiv

38

Gandhi. Instead, the view was taken in the meeting chaired by Shri Bajpai on 4.1.90 that the SPG is statutorily responsible only for providing proximate security to the Prime Minister and Members of his immediate family and, therefore, the responsibility of providing protection to Shri Gandhi should be vested in the State Governments/Union Territory Administration concerned and the Ministry of Home Affairs should issue appropriate instructions keeping in view the very high level of threat faced by Shri Gandhi.

3. It is therefore clear that there was total failure and negligence on the part of Shri Bajpai, the then Secretary (Security) in not identifying a suitable alternative cover for the proximate security of Shri Rajiv Gandhi, former Prime Minister matching with the actual threat perception and Shri Gandhi faced from the various militant groups.

4. That Shri G.S. Bajpai by his aforesaid act of omission and commission exhibited grave misconduct and lack of devotion to duty and thereby contravened the provisions of Rule 3(i)(ii) and 3(2) of the Central Civil Services (Conduct) Rules, 1964.

16. It would be evident from what is stated above ~~in this paragraph~~ that the act of misconduct alleged to have been committed by each one of the four applicants dated more than four years prior to the dates on which the Memoranda of Charges were issued against the applicants. The counsel of the applicant in OA No. 1705/95 argued that in as much as the event constituting the misconduct as alleged in the Memorandum of Charge issued to Shri G.S. Bajpai who retired

(39)

from service on 31.7.1991 related to the period between 1.1.1990 to 7.6.1990.; When Shri Bajpai functioned as Secretary (Security) with particular reference to the meeting held on 4.1.1990, the proceedings are totally barred by limitation in view of the embargo in sub-clause (1) of clause (b) of sub-rule (2) of Rule 9 of Central Civil Services (Pension) Rules, 1972. Sub-clause (1) and (2) of clause (b) of sub-rule (2) of Rule 9 reads as follows:

"(b) The department 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; and....."

Shri Sharma argued that the alleged event which constituted the misconduct in the case of Shri G.S.Bajpai having occurred more than four years prior to the date on which this Memorandum was issued viz., 4.5.1995 during the period when Shri Bajpai has functioned as Secretary (Security) i.e. between 1.1.1990 to 7.6.1990, the power for according sanction for taking departmental proceedings against him for the said misconduct

(40)

and to initiate the proceedings had become barred on the date on which the Memoranda were issued to Shri Bajpai.

17. Shri Ashok Desai, the learned counsel for the applicant in OA Nos. 1596/95, 1632/95 and 1687/95 argued that as the Chargesheet in all these three cases were issued to the respective applicants after their retirement from service and the events which allegedly constituted the misconduct in these cases occurred far beyond the period of four years from the date on which the Memoranda of Charges were issued in view of the provisions contained in Rule 6(1)(b) of the All India Services (Death-cum-Retirement Benefits), Rules 1958, the proceedings are barred by limitations. For a proper understanding of this argument it is profitable to extract the provisions of Rule 6 of the All India Services (Death-cum-Retirement Benefits) Rules 1958 which is reproduced as follows:

6. RECOVERY FROM PENSION.- (1) The Central Government reserves to itself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from pension of the whole or part of any pecuniary loss caused to the Central or a State Government, if the pensioner is found in a departmental or judicial proceeding to have been guilty of grave misconduct or to have caused pecuniary loss to the Central or a State Government by misconduct or negligence, during his service, including service rendered on re-employment after retirement.

Contd....31(a)

A1

Provided that no such order shall be passed without consulting the Union Public Service Commission.

Provided further that-

- (a) such departmental proceedings, if instituted while the pensioner was in service, whether before his retirement or during his re-employment, shall, after the final retirement of the pensioner, be deemed to be a proceeding under this sub-rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the pensioner had continued in service;
- (b) such departmental proceeding, if not instituted while the pensioner was in service, whether before his retirement or during his re-employment-
 - (i) shall not be instituted save with the sanction of the Central Government;
 - (ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and
 - (iii) shall be conducted by such authority and in such place or places as the Central Government may direct and in accordance with the procedure applicable to proceeding on which an order of dismissal from service may be made.
- (c) such judicial proceeding, if not instituted while the pensioner was in service, whether before his retirement or during his re-employment, shall not be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution.

EXPLANATION.- For the purpose of this rule

- (a) a departmental proceeding shall be deemed to be instituted when the charges framed against the pensioner are issued to him or, if he has been placed under suspension from an earlier date, on such date, and
- (b) a judicial proceeding shall be deemed to be instituted -
 - (i) in the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to the criminal court; and
 - (ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may, an application is made to a civil court.

42

(2) Where any departmental or judicial proceeding is instituted under sub-rule (1), or where a departmental proceeding is continued under clause (1) of the proviso thereto against an officer who has retired on attaining the age of compulsory retirement or otherwise, (he shall be sanctioned by the Government which instituted such proceedings), during the period coimmencing from the date of his retirement to the date on which, upon conclusion of such proceeding, final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service up to the date of retirement, or if he was under suspension on the date of retirement, up to the date immediately preceding the date on which he was placed under suspension; but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceedings and the issue of final orders thereon.

(Provided that where disciplinary proceeding has been instituted against a member of the Service before his retirement from service under Rule 10 of the All India Services (Discipline and Appeal) Rules, 1969, for imposing any of the penalties specified in clauses (i), (ii) and (iv) of sub-rule (1) of Rule 6 of the said rules and continuing such proceeding under sub-rule (1) of this rule after his retirement from service, the payment of gratuity or Death-cum-Retirement gratuity shall not be withheld.)

(3) Payment of provisional pension made under sub-rule (2) shall be adjusted against the final retirement benefits sanctioned to the pensioner upon conclusion of the aforesaid proceeding, but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period."

As it has been held by the Hon'ble Supreme Court in K.V. Jankiraman's case that the institution of departmental proceedings against a Civil Servant commences on the date on which the chargesheet is issued to him, it is not disputed by the learned counsel for the respondents that the institution of the departmental proceedings commenced only from the date on which the

(A3)

Memoranda of Charges were served on each of the applicants. That the misconduct was allegedly committed by each of the applicants during the period which they held the particular position and that the said periods were beyond a period of four years from the date on which the Memoranda of Charges were issued to each of the applicants also is not disputed by the learned counsel for the respondents. The arguments of Shri Chandrasekhran, the Additional Solicitor General appearing for the respondents to support the validity of the institution of the departmental proceedings against the four applicants in these cases ~~are~~ after the expiry of a period of four years from the date on which they committed the misconduct is that the period of limitation for institution of disciplinary proceedings is to be reckoned from the date on which the event occurred and not from the date on which the Act or Omission which constituted the misconduct ^{was} which the cause of the event was committed by the Civil Servants.

Referring to the word "Event" mentioned in Rule 6 of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 and Rule 9 of the CCS (Pension) Rules, 1972 Shri Chandrasekhran, Additional Solicitor General argued that the word "Event" in contradistinction to the word

m

AA

misconduct has been purposely used by the framers of the Rules so as to enable the Government to institute disciplinary proceedings against an officer even after his retirement, if as a result of some Act or Omission on his or her part while in service some event takes place subsequently. In support of this argument Shri Chandrasekharan invited our attention to the meaning of the word "Event" in Black's Law Dictionary Sixth Edition which reads as follows:

Event. The consequence of anything; the issue or outcome of an action as finally determined; that in which an action, operation, or series of operations, terminates. Noteworthy happening or occurrence. Something that happens.

Distinguished from an act in that an act is the product of the will whereas an event is an occurrence which takes place independent of the will such as an earthquake or flood.

He has also to the meaning attributed to the word 'event' in The Law Lexicon, Reprint Edition 1987 Page - 405 which reads as follows:

Event. The consequence of anything, the issue, conclusion, and that in which an action, operation, or series of operations, terminates; issue, or success that follows doing anything; equivalent to "result"; the final success in an action, the final outcome and end of the

✓

A5

litigation; the outcome or the result of a trial or proceeding of which there may be more than one.

EVENT, INCIDENT, ACCIDENT, ADVENTURE, OCCURRENCE. These terms are expressive of what passes in the world, which is the sole signification of the term event, whilst to that of the other terms are annexed some accessory ideas; an incident is a personal event; an accidental event which happens by the way; an adventure is an extraordinary event; an occurrence an ordinary or domestic event.

On the basis of the above dictionary meaning to the word "Event" Shri Chandrasekhran argued that it is not the date on which the Act was committed or the Omission occurred but the date on which the resultant 'event' occurred for computing the period of four years., for the purpose of provisions of Rule 6 of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 and Rule 9 of the CCS (Pension) Rules, 1972, the event in all these cases for which departmental proceedings have been initiated against the applicants either under Rule 6 of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 or under Rule 9 of the CCS (Pension) Rules, 1972 is the unfortunate assassination of Shri Rajiv Gandhi on 21.5.1991

m

(Ab)

and not anything done or omitted to be done by any of these applicants on any dates during the period of their services though the event was a result thereof. ^{according to the counsel.} Therefore, according to Shri Chandrasekhran as the chargesheet in these cases have been issued well within the period of four years counting 21.5.1991 when the event occurred, the proceedings have been initiated well within the time prescribed in the rules.

18. Shri Ashok Desai, the learned senior counsel argued that it would be evident from the observations of their Lordships of the Hon'ble Supreme Court in the State of Bihar and others Vs. Mohd. Idirs Ansari reported in JT 1995(4) SC 134, ^{that} the word "Event" connotes ^{the act of} misconduct in the sense the word was used in Rule 43(b) of the Bihar Pension Rules. In that case the respondent in the Civil Appeal before the Hon'ble Supreme Court was awarded a penalty in a departmental proceedings for certain misconduct committed by him during the year 1986-87 by order dated 6.6.1992. The order of penalty having been challenged by the respondent before the Hon'ble High Court in CWJC No. 6696/92, the High Court quashed the order dated 6.6.1992 on the ground that the principles of natural justice were violated by the authorities when they passed the impugned order. However, the High Court had given ~~the~~ liberty to the State Government to proceed

~

(A7)

against the respondent afresh. The respondent retired on superannuation on 31.1.1993 till which date no action was taken by the State Government for initiating disciplinary action against him afresh. After his retirement on 17.7.1993 the respondent was required to submit an explanation regarding the irregularities committed by him. Before the said notice could be ^{further} processed ^{that} a show cause notice was issued to the respondent on 27.9.1993 intimating to him that as he had already retired from service and the period of charges was prior to four years no action could be taken against him under Rule 43(b) of the Rules and the State Government had decided to issue show cause notice ~~under Rule 43(b) of the Rules and the State Government had decided to issue show cause notice~~ under Rule 139 of the Rules. He was called upon to show cause as to why 70% of his pension could not be reduced. The appellant State had passed on the basis of that show cause notice a final order dated 13.12.1993 under Rule 139 (a) and (b) withholding of 70 per cent of the pension payable to the respondent. The respondent had in the mean time already filed Writ Petition No. 8535 of 1993 in the Patna High Court challenging the earlier notice dated 27.07.1993. The Writ Petition was subsequently amended challenging the order dated 27.9.1993 as also the order passed on 13.12.1993. The High

48

Court allowed the Writ Petition quashing these proceedings pursuant to the notice dated 17.3.1993 and 27.9.1993 and also the final order of the High Court that the appellant-State approached the Hon'ble Supreme Court. Rule 43(b) of the Bihar Pension reads as follows:

Rule 43(b)

"(b) The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement:

Provided that-

(a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment;

(i) shall not be instituted save with the sanction of the State Government;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

(iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made."

Considering the Rule position, the Hon'ble Supreme Court in paragraph 7 of its judgement which is reproduced below held:

"7. A mere look at these provisions shows that before the power under Rule 43(b) can be exercised in connection with the alleged misconduct of a retired Government servant, 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 shall have to be in respect of misconduct which took place not more than four years before the initiation of such proceedings. It is therefore apparent that no

49

departmental proceedings could have been initiated in 1993 against the respondent under 43(a) and (b), in connection with the alleged misconduct, as it alleged to have taken place in the year 1986-87. As the alleged misconduct by 1993 was at least six years old, Rule 43(b) was out of picture. Even the respondent authorities accepted this legal position when they issued notice dated 27.9.1993. It was clearly stated therein that no action can be taken under Rule 43(b) of the Rules as the period of charges has been old by more than four years. It is equally not possible for the authorities to rely on the earlier notice dated 17.10.1987 as proceedings pursuant to it were quashed by the High Court in Writ Petition 6696 of 1991 and only liberty reserved to the respondent was to start fresh proceedings. The High Court did not permit the respondent to resume the earlier departmental inquiry pursuant to the notice dated 17.10.1987 from the stage it got vitiated. The respondent also, therefore, did not rely upon the said notice dated 17.10.1987 but initiated fresh departmental inquiry by the impugned notice dated 27.9.1993. Consequently it is not open to the learned Advocate for the appellant to reply upon the said earlier notice dated 17.10.1987.

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 initiation of such proceedings. Shri Desai seeking support from the above observation of the Hon'ble Supreme

50

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 in 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 came to light after their retirement, 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

*that provision is made for taking action under these rules.,

(51)

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 Democles 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 four 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

(52)

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.

19. The arguments of the learned counsel of the applicants that Rule 6 (1)(b) (i), (ii) and (iii) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 of sub-rule of Rule 9 of the CCS (Pension) Rules, 1972 are vague, arbitrary and ultra vires of Article 14 of the Constitution of India does not appeal to us at all. There is no definition to the word grave misconduct not only in CCS (Pension) Rules and All India Services (Death-cum-Retirement Benefits) Rules, 1958 but also in CCS (Conduct) Rules and in the All India Services (Conduct) Rules ^{also.} The gravity of the misconduct is to be determined by the competent authority depending on the nature of the misconduct. Further as the impugned provisions in All India Services (Death-cum-Retirement Benefits) Rules 1958 and CCS (Pension) Rules, 1972 have been framed on the basis of a public policy that if ~~the~~ grave misconduct

(53)

committed by a pensioner while in service comes to light subsequent to his retirement, he should not be allowed to get away with it and to get the normal pension, sufficiently safe guarding the interest of the pensioners by prescribing a period of limitation for initiation of departmental proceedings. We do not find any merit in the challenge to the constitutionality of these Rules.

20. Shri Ashok Desai argued that as Justice Verma Commission had not issued any notice to any of the applicants in these four cases; the departmental proceedings initiated against them basing on the observations in the Report of the Commission are unsustainable in law. In support of this argument Shri Desai invited our attention to the ruling on the Madras High Court in N. Manoharan Vs. State of Tamil Nadu and another AIR 1981 Madras 147. In the case of Manoharan basing on the Report of the Commission wherein it was observed -

"a disciplinary proceeding against Shri Manoharan took part in the beating of the detenus on the night of 2nd February, 1976 in the ninth block.

Under these circumstances, I am definitely of the opinion that the jail officials had a regular policy of beating every political detainee at the earliest possible opportunity on their admission and that such beating had been severe and merciless".

an

5A

A disciplinary proceeding against Shri Manoharan was ordered. The Commission had not issued a notice as required under Section 8 B of the Commission of Inquiries Act, 1952 to Shri Manoharan. On challenge of the departmental proceedings initiated solely on the basis of the said observations of the Commission, the Madras High Court held that no action could be taken purely on the basis of the findings of the Commission. In the case on hand though the observations of Justice Verma were mentioned in the chargesheet the departmental proceedings initiated against the applicants in these cases is not purely on the basis of the observations contained in the Report of the Commission but is on the basis of certain alleged misconduct. Therefore the challenge to the proceedings on this ground has no force.

21. Shri Ashok Desai and Shri Vivek Sharma argued that the allegations contained in the Statement of Imputations in a chargesheet in all these cases are such that even if they are factually correct, they would not constitute misconduct warranting initiation of departmental proceedings. Since according to the provisions of the SPG Act, the SPG at the relevant time was responsible for the security of the incumbent Prime Minister and the Members of his family alone, by stating these facts in the Cabinet
- ✓

55

Note Shri V.C. Pande, the applicant in O.A. No. 1596/95 cannot be held guilty of any misconduct and as the amendment of the SPG Act was not the responsibility of the applicants who were only bureaucrats the imputations contained in the various charges do not spell out any specific misconduct argued the learned counsel. The counsel also argued that once the Government in its Action Taken Report placed before the Houses of the Parliament has held that the observations contained in Justice Verma Commission Report alleging failure on the part of the Central Government could not be agreed upon by them, it is not proper to turn round and then chargesheet the applicants on the basis of the observations in the Report of the Commission. A reading of various chargesheets concerned in these cases would show that there has been allegations of certain shortcoming on the part of the applicants. Whether the allegations are true or not is something which the Tribunal cannot now be concerned with. It is for the disciplinary authority to take a decision in the matter if the inquiry can otherwise be validly held. In this context it will be worthwhile to remember the observations of the Hon'ble Supreme Court in Union of India and others Vs. Upendra Singh 1994 27 ATC 200 -

(56)

"In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court".

In the light of the above discussions we are of the considered view that the challenge to the validity of the proceedings on this ground has no force at all.

22. The last argument of the learned counsel as of the applicant was that the power to initiate departmental proceedings under Rule 6 of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 and Rule 9 of the CCS (Pension) Rules, 1972 enables the Government to withhold the pension either in full or in part permanently or for a specific period or to

(57)

recover pecuniary loss caused to the Government, if the pensioner is found guilty in a departmental or judicial proceedings guilty of grave misconduct, this power has to be exercised bonafide for the purpose for which the power is conferred on the State. Since the Government has in its Action Taken Report placed before the Houses of the Parliament disagreed with the observations of Justice Verma Commission that there has been failure on the part of the Central Government and its officers in affording adequate proximate security to the life of late Shri Rajiv Gandhi but for which his assassination could have been averted, the action on the part of the Central Government thereafter to deviate from this stand and to accuse the applicants with dereliction of duties and failure to afford sufficient protection to late Shri Rajiv Gandhi according to the learned counsel of the applicants was not bonafide but was resorted to as fraud on power in the wake of the defection in the Congress Party and accusation and counter accusations between the Groups in Congress Party. We do not find sufficient force in this argument. Even if the Government had in its Action Taken Report taken the stand that the observations contained in the Report of Justice Verma Commission were not acceptable to them, then it does not preclude them from changing the view if

58

certain new aspects of the case came to light which prompted them to take a different view. The Applicants have not been able to establish that this was not the case and that the decision to initiate disciplinary proceedings against the applicants was prompted by any ulterior motives.

23. In the result in the light of what is stated in paragraph 17 and 18 supra the impugned orders initiating disciplinary proceedings against the applicants in these cases have to be set aside on the ground of limitation. The prayer for declaring that Rule 6(1)(b) (i), (ii) and (iii) of All India Service (Death-cum-Retirement Benefits) Rules, 1958 and Rule 9 of CCS (Pension) Rules, 1972 is ultra vires has to be disallowed. The prayer for award of compensation to the tune of Rs. 50 lakhs in OAs cannot be granted in the facts and circumstances of the case. The applications are therefore disposed of as below:

O.A.No. 1596/95

The application is allowed in part and the Order No. 106/4/95-AVD.I dated 4.5.1995 according sanction for initiation of major departmental proceedings under Rule 6(1)(b)(i) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 and Memorandum No. 106/4/95-AVD.I dated 4.5.1995 along with the Articles of Charge and the Statement of Imputations of misconduct/misbehaviour issued by the Govt. of Ministry of Personnel, Public Grievances

(59)

and Pension (Department of Personnel and Training), New Delhi against the applicant are set aside as the proceedings have been initiated against the applicant after his retirement from service in respect of an event which occurred more than four years prior to its initiation. The remaining prayers in this application are disallowed. There is no order as to costs.

O.A. No. 1632/95

The application is allowed and the impugned order No.106/4/95-AVD.I dated 4.5.1995 according sanction for institution of major departmental proceedings under Rule 6(1)(b)(i) of the All India Services (Death-cum-Retirement Benefits) Rules and Memorandum No.: 106/4/95-AVD.I dated 4.5.95 Statement of Imputation misconduct/misbehaviour issued by the Govt. of India, Ministry of Personnel, Public Grievances and Pension (Department of Personnel & Training), New Delhi are quashed finding that the proceedings initiated against the applicant after his retirement from service in respect of an event which took place prior to more than a period of four years from the date of its institution is barred by limitation. There is no order as to costs.

O.A. No. 1687/95

The application is allowed in part and the impugned Memorandum Order No. 26011/6/95-IPS


✓


(60)

II dated 17.4.1995 alongwith articles of charge and/or imputations of misconduct/misbehaviour issued by the Govt. of India, Ministry of Home Affairs (Annexure "A-I") is hereby quashed and set aside on the ground that the same is barred by limitation. The remaining prayers in the application are rejected. There is no order as to costs.

O.A. No. 1705/95

The application is allowed in part and the Order No. 8/14/84-DOII dated 5.5.95 according sanction for institution of departmental proceedings under sub-clause (1) of clause (b) of sub-rule (2) of Rule 9 of CCS (Pension) Rules 1972 and Memorandum No. 8/14/84-DO II dated 5.5.95 along with the Article of Charge and the Statement of Imputation of misconduct/misbehaviour issued by the Government of India, Cabinet Secretariat, New Delhi against the applicant is quashed and set aside as the same is barred by limitation. The other reliefs prayed for in this application are not granted. There is no order as to costs.


(K. Muthukumar)
Member (A)


(A.V. Haridasan)
Vice Chairman (J)

Mittal