

Central Administrative Tribunal, Principal Bench
New Delhi

O.A. 202/96

New Delhi, this the 20th day of May, 1997

(25)

Hon'ble Dr. Jose P. Verghese, Vice Chairman, Member (J)
Hon'ble Mr. K Muthukumar, Member (A)

Dr. Ghanshyam Krishan Shukla,
S/O Shri Shanti Prasad Shukla,
R/O Village Dukh Haran Nath,
Gonda. Applicant.
(By Advocate Sh.Yunus Malik with Sh.V.K.Rao)

-Versus-

1. State of Uttar Pradesh through Secretary
Home Department, UP Shashan, Lucknow.
2. Union of India, through Secretary,
Ministry of Home Affairs, North Block,
New Delhi.
3. Director General of Police, U P, Lucknow.
.... Respondents.
(None for Respondent)

O R D E R (O R A L)

The applicant in this case was an IPS officer belonging to the batch of 70 and after being selected by UP Public Service Commission, he joined the Police Services. The applicant was superannuated on 30.6.88 and till that date, as far as the applicant is concerned nothing, untoward has taken place.

A few days before his retirement namely on 8.6.88, he proceeded on leave due to attend to his ailing mother who was ill and who in fact died on 2.7.88. On 24.6.89 all of a sudden he received an order from the respondents that the respondents are yet to take a final decision as to whether a departmental proceedings should be initiated against the applicant or not, and in view of the fact that the disciplinary proceedings thus are contemplated, till further orders, the proceedings of finalising his pension papers shall be deferred. Aggrieved by the

said order the applicant approached this Tribunal at Allahabad and the same was subsequently transferred to this Bench and it has come today for final disposal on the regular Board.

(26)

In pursuance to the notice issued by the Allahabad Bench the respondents had filed the reply and stated that they have already issued a chargesheet on 20.6.88 and they also allege that the same has been issued to him. The applicant in his rejoinder stated that he has come to know about the chargesheet only from the reply filed to the OA and he has never seen the same, prior to his retirement nor till the reply with the alleged chargesheet filed and copy served on him.

The Learned Counsel for the applicant submits that under the rules the chargesheet issued during leave has to be considered to have issued to him, only if, it is served upon him and his contention is that the chargesheet is never been served upon him and for all practical purposes there was no chargesheet at the time when he was superannuated. He also contended that in view of the decision of the Hon'ble Supreme Court the matter of UOI and Others Versus Janaki Raman, Institution of Departmental proceedings against the Civil servant commences only on the date on which the chargesheet is issued to him. That is to say, it can be stated that chargesheet is a departmental proceedings is considered to be pending against the applicant, only if the memorandum of charges are served on the applicant.

There is considerable ^{force} ~~affairs~~ in the submission of the applicant but in view of the order passed by the respondents on 24.1.89. It is superfluous to consider when was the chargesheet issued to the applicant or whether the charge has issued at all. The original order impugned in the OA namely one dated 24.6.89 and clearly shows that the respondents are yet to make a final

decision whether to proceed against the applicant or not. In view of the said statement we find that it is not necessary for us to look into the tact whether the chargesheet have been served on the applicant or whether the chargesheet was pending prior to his date of superannuation or not.

(27)

According to Rule 9 of the Pension Rules the respondents could have continued to initiate the departmental proceedings against the superannuated civil servant, provided the respondents obtained the appropriate sanction from the President. The said provision contained in Rule 9 of the Central Civil Services Rules 1972 are "pari materia" with the Rule 6 of All India Services Rules. The said provision indicates that the departmental proceedings, if not instituted when the Government servant was in service, whether before his retirement or during his re-employment ;

i) shall not be instituted save with the sanction from President.

ii) shall not be in respect of any event which took place more than 4 years before such institution.

The contention of the Learned Counsel for the applicant is that on both the counts the subsequent chargesheet after the date of superannuation is uncalled for. Firstly the required sanction of the President to issue chargehseet after the date of retirement has not been obtained, and secondly, the charge is more than 4 years prior to the date of superannuation. On perusal of the record we find and we are satisfied, that maintaining a disciplinary prosceedings in this case is contrary to these provisions and we have no hesitation to quash the order dated 21.9.89 and direct the respondents to grant all service

28

benefits available to the applicant as if no disciplinary proceedings have been initiated against him. The respondents shall comply with these orders within 4 months from the date of the receipt of this order. The Learned Counsel of the applicant submits that this being a case of '89, 4 months is a long period and their respondents may be directed to implement the order within the two months from the date of the receipt of this order. We notice that this matter has been on Board for quite sometime and not appeared yesterday even on the 2 call and even to day as well non appearance on behalf of the respondents. Taking into consideration that the respondents are not present today, 4 months from the proclamation of this order so that the respondents may not term that to this court by one and not implement the order in time. With these directions this OA is disposed of.



(K Muthukumar)
Member (A)


(Dr. Jose P. Verghese)
Vice Chairman (J)