

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.
T.A. No.

126/97

198

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DATE OF DECISION 11-7-97

Shri K.C. Brahmachary Applicant (s)

Shri V.K. Rao Advocate for the Applicant (s)

Versus

N.C.T. of Delhi Respondent (s)

Shri Rajendra Prasad Advocat for the Respondent (s)

CORAM: Hon'ble Dr. Jose P. Verghese, VC (J)

Hon'ble Shri S.P. Biswas, M(A)

The Hon'ble Mr.

The Hon'ble Mr.

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

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

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 126/97

New Delhi this the 11th Day of July 1997

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)
Hon'ble Dr. S.P. Biswas, Member (A)

Shri K.C. Brahmachary,
Son of Late Dr. K.K. Brahmachary,
E-815, Chittaranjan Park,
New Delhi

Petitioner

(By Advocate: Shri V.K. Rao)

-Versus-

1. The Chief Secretary,
Government of National Capital
Territory of Delhi,
5, Shamnath Marg,
Delhi-110 054.
 2. Union of India
through
Secretary, Ministry of Home Affairs,
North Block ,
New Delhi.
 3. The Director (CPS).
Ministry of Home Affairs,
Government of India,
North Block,
New Delhi
- Respondents

(By Advocate: Shri Rajindra Pandita)

ORDER

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)

There is no charm left any more, submits the petitioner, in the Government service except to await for the pensionary and other retiral benefits. But it is precisely that what is denied to the petitioner in the present case. Whether such denial is justified or illegal is the short question involved in this case.

2. The petitioner was a Member of Delhi Administration Subordinate Service (hereinafter referred to DASS) and after a long successful service superannuated on 31.10.1993. Just four days prior to

his retirement he received a chargesheet containing certain allegations of loss of government property pertaining to a period between 1968 to 1974 and petitioner was allowed to retire with this tag of pending enquiry. The retiral benefits were withdrawn, according to the respondents, under the rules and the submission today is no final order is forthcoming evenafter about four years of superannuation in the pending disciplinary proceedings.

3. In the year 1994, the petitioner approached this Court by way of an O.A. vide OA No. 468/94, alleging that the chargesheet issued just before his retirement is only with an intention to vitimise and harass the applicant and to deny the retiral benefits. It was pointed out to the Court that the allegations in the chargesheet pertains to certain assessment orders passed by the applicant in his capacity as a Sales Tax Officer, and the re-assessment order passed subsequently was read out to the Court to show that the charges alleged in the Articles does not amount to be any misconduct. It was also pointed out to the Court that the Inquiry Officer had exonerated him from these charges, yet this Court decided not to interfere with the disciplinary proceedings at the stage of chargesheet and allowed the disciplinary proceedings to continue under Clause (2)(a) of Rule 9 of C.O.S. (Pension) Rules. 1972. It was pointed out by the Court that since the applicant had retired and he shall be hard hit if the proceedings of the Inquiry are not concluded at the earliest by non-payment of other terminal benefits, and in the interest of

justice and fair play, the respondents should conclude the Inquiry as expeditiously as possible. Another three years passed by..

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4. This order was passed on 9.3.1994 and the present O.A was filed in January 1997 and after a show cause notice reply was filed by the respondents who are again seeking further six months time for the disciplinary authority to pass the final order.

5. The suggestion to conclude the inquiry as expeditiously as possible given in March 1994 compelled the petitioner to file a Contempt of Court Proceedings vide C.P. 82/96 in O.A. 468/94, but on the basis of a statement by the respondents that they have done all in their power to carry out the orders, the notices were discharged and the CP proceedings disposed of on 11.10.1996. The request of the respondents, therefore, in the circumstances is that this Court may dispose of this OA as well, by granting another six months' time for passing the final order and the respondents undertakes to do so within the agreed period of six months.

6. The learned counsel for the petitioner, on the other hand, submitted that this is a fit case where the allegations of harassment, victimization and the intention to delay payment of retiral benefits stand proved. He also pointed out that the Inquiry Officer Shri R. Raghu Raman subsequently concluded the Inquiry and held that Shri Brahmachary, the petitioner, is not guilty of the charges levelled

against him vide chargesheet dated 11.10.1993 issued by the disciplinary authority. In view of this and in the circumstances of the case, to give another long rope to the respondents can in no way construed to be in the interest of justice. On the contrary the continuation of the Inquiry under clause (2)(a) of Rule 9 of the CCS Pension Rules, 1972, itself is untenable and a declaration be issued, quashing the chargesheet in the circumstances of the case.

7. We see considerable force in the submission of the petitioner. Under the rules, it was contended, the disciplinary proceedings initiated under the CCS(CCA) Rules can be continued after the superannuation of the petitioner only under Clause (2)(a) of Rule 9 of the CCS Pension Rules, 1972. Clause (2)(a) is reproduced herebelow:

"(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service."

But Clause (2)(b) of Rule 9 of CCS Pension Rules, 1972 is intended to protect a Government servant from undesirable disciplinary proceedings instituted after superannuation. According to the said Rule no proceedings can be instituted without the sanction of the Preseident in case of an employee who is superannuated and such institution shall not be in

respect of any event that took place more than four years before such institutions. Clause (2)(b) of Rule 9 of CCS Pension Rules, 1972 is reproduced herebelow:

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- " (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, and
 - iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service."

8. Now the question is whether issuing a chargesheet in the year 1993, just four days prior to retirement on the basis of a charge-incident that took place during 1968 - 1975 i.e. to say much before four years, the period envisaged by the Rule, is justified for institution of disciplinary proceedings without the sanction of the President or not. If so, will it not be a colourable exercise of power at the instance of the respondents who maintains such disciplinary proceedings without obtaining the sanction of the President? In other words, will it not amount to permitting the respondents to hide behind Clause (2) (a) of Rule 9, to evade Clause (2) (b) of Rule 9 of the CCS Pension Rules, 1972? In our opinion, it would. If that is allowed that will defeat the very purpose of the Rule of Clause (2) (b) of Rule 9. We are also of the view that both the Clauses (2)(a) and (2)(b) of Rule 9 shall be read together and any

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chargesheet issued against the government servant who is just awaiting his superannuation should also be subject to scrutiny of Clause (2) (b)) of Rule 9 of CCS Pension Rules, 1972, and institution or continuation of disciplinary proceedings would be improper if instituted without obtaining the sanction of the President and without making sure the charge-incident is not stale by four years as stipulated by Clause (2) (b) of Rule 9. We have also held that in order to consider a departmental proceedings instituted before his retirement to be a deemed proceedings under this rule, it should be one instituted, well before the date of superannuation; if not, the conditions prescribed u/r 9(2)(b) shall also be construed to be applicable to such institution of departmental proceedings. Institution or continuation of departmental proceedings after superannuation should be governed by the whole of clause (2) of Rule 9, and not by clause (2) (a) of Rule 9 alone, i.e. by both clauses (2)(a) as well as 2(b) of Rule 9.

9. In the circumstances we uphold the contention of the counsel for the petitioner and state that in the peculiar circumstances of this case, the chargesheet issued just four days prior to superannuation of the petitioner shall not be treated merely as one under Clause (2)(a) of Rule 9 rather it shall be treated as one both (2)(a) and 2(b) of Rule 9 read together.

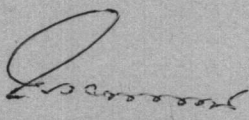
10. The question would then arise what would be a reasonable period for the respondents to issue a chargesheet so that it may not attract the rigour of Clause (2)(b) of Rule 9. In our opinion in case of an employee who has an unblemished career of 20 to 30 years, any chargesheet is to be issued on a charge instance of more than four years old should be done atleast six months before the date of superanuation. We would immediately clarify that this is only an opinion. In the absence of a particular rule or guideline from the respondents, the best course available would be to decide each case in the facts and circumstances of that case. (16)

11. We are persuaded to arrive at these findings in the light of the new philosophy adopted by the Hon'ble Supreme Court since 1983 when that Court in Nakara V. Union of India, A. 1983 SC 130 and Deokinandan V. State of Bihar (II) AIR 1983 SC 1134 held that pension payable to employees of the government is not a charity or bounty dependent on the sweat-will of the employer, as was thought during the British days, but is a deferred portion of compensation for past service of the employee. This view was further confirmed in another decision of the Hon'ble Supreme Court in the matter of A.I.R.B.R.O.A v. Union of India, A 1992 SC 767 (para 5). Thus, the Hon'ble Supreme Court had also held that arrears of pension which has thus accrued is a valuable right and property in the hands of a pensioner and not a matter of bounty. If it is wrongfully withheld or delayed, owing to the culpable negligence of an employee,

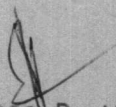
otherwise than in accordance with Rules, the employee, as well as the Government would be liable to penal interest for such negligence, vide State of Kerala Vs. Padmanabhan, AIR 1985 SC 356. (17)

12. In the circumstances the chargesheet issued against the petitioner in the year 1993, is quashed and the petitioner will be entitled to all consequential benefits.

13. The petitioner will also be entitled to all retiral benefits, not paid so far with an interest of 18% per annum. We are aware that 18% interest now awarded is normally awarded as punitive interest. Therefore, 50% of the interest amount may be recovered by the respondents from those officers who are found to be responsible for the decision to institute proceedings at belated stage and those responsible for delay in conducting the disciplinary proceedings. The respondents are at liberty to hold an internal inquiry at whatever level permissible under the rules and fix the liability of the officer concerned on its own. The O.A. is allowed, no order as to costs.


(S.P. Biswas)
Member (A)

Mittal


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