

**Central Administrative Tribunal
Ernakulam Bench**

OA 180/00432/2017

Wednesday, this the 9th day of December, 2020

CORAM

Hon'ble Mr.P.Madhavan, Judicial Member

Hon'ble Mr.K.V.Eapen, Administrative Member

K.C. Sasidhara Kurup, aged 60 years
S/o. Late Chellappan Nair,,
Retired General Manager (Marketing),
Head Office, North Eastern Regional Agricultural
Marketing Corporation Limited
(A Government of India Enterprise)
Guwahati-781005, Assam, India,
residing at Kariyaplatu House,
Kuttamperur P.O., Alleppey-689 623.

Applicant

(Advocate: Mr. Sajith Kumar)

versus

1. North Eastern Regional Agricultural Marketing Corporation Limited (A Government of India Enterprise) represented by its MD KAMRUP Guwahati-781 005, Assam, India.
2. The Managing Director, NERAMAC, 9-Rajbari Path, GS Road, Guwahati-781 005.
3. The Director, Directorate of Agriculture, Government of Assam, Khanapara, Guwahati-781 022.

Respondents

(Advocate: Mr.P.G.Jayan)

The OA having been heard on 2nd December, 2020, this Tribunal delivered the following order on 9.12.2020:

ORDER

By P.Madhavan, Judicial Member

This is an OA filed seeking the following reliefs:

(i) Quash Annexure A1, A2 and A4.

(ii) Direct the respondents to drop all proceedings against the applicant and release the consequential benefits including gratuity and leave encashment.

2. The applicant's case is that he was working as General Manager in North Eastern Regional Agricultural Marketing Corporation Limited (NERAMC), a Government of India Enterprise. While so, he retired from service on 30.11.2016. According to the applicant, he was having an unblemished service record and he was present in the office till 6 p.m., on 30.11.2016. On the next working day i.e., on 2.12.2016, a messenger came from the respondents' office and handed over Annexure A1 & A2 charge memo to him. According to the applicant, the said procedure is incorrect and since he had already retired from service, the respondents are not entitled to proceed against him with the disciplinary proceedings as stated in A1 & A2. According to the applicant, the respondents have not paid retirement benefits to him till date. No inquiry or investigation has taken place till the date of his retirement and not even a statement was taken from him before initiating the inquiry. He also categorically denied the allegations made in the charge memo issued as A1 & A2. A copy of the defense statement given by him on 19.12.2016 is produced as Annexure A5 and A6. He filed a request through email to permit him to inspect the records but it was not given and the same is marked as Annexure A7. His representation through email is marked as Annexure A8.

3. The main ground urged by the applicant in this case is that the issuance of A1

& A2 charge memo after his retirement is highly unjust and arbitrary. The service rules of the Corporation do not clearly mention the time of retirement. Therefore, on relieving from duty, an employee will have to be considered as retired as he ceases to be an employee for all purposes. The Conduct Rules of the Corporation also prohibit initiation of departmental proceedings against retired employees.

4. Respondents entered appearance and filed a detailed statement denying the averments in the OA. According to the respondents, a Committee under the Chairmanship of Sri R.P.Gurung, Independent Director, NERAMC Ltd had found a prima facie case against the applicant and the applicant was issued the charge memo on 30.11.2016. The said charge memo was served on the applicant on 30.11.2016 but the applicant refused to give an acknowledgment to it on the same day. According to the respondents, one Satish Chandra Dubedi was appointed as Inquiry Authority and one D.Endow was appointed as Presenting Officer to the inquiry. The inquiry was held in between 13.6.2017 and 26.8.2017. The inquiry authority had submitted its inquiry report on the charge memo issued on 30.11.2016. According to the respondents, the applicant cannot be considered as a person of unblemished record during his tenure. The Board of Directors of NERAMC Ltd in its 114th Board Meeting held on 30.9.2013 had held the applicant prima facie responsible for defalcation of Rs.1.72 crore with the gross negligence and intentional well planned fraud case. The Chief Vigilance Officer had also given his opinion that immediate disciplinary action needed to be taken against the applicant. A true copy of the Minutes of the 114th Board Meeting dated 30.9.2013 is produced as Annexure R3. According to the respondents, copies of the charge memo were given to the applicant in his chamber on 30.11.2016 but the applicant did not give an acknowledgment stating that he will give the same on the next day. No retirement function was held at NERAMC office on that day.

5. The Counsel appearing for the applicant mainly contended that the applicant was not an employee of NERAMC when notice was served on him. The applicant retired on 30.11.2016 and he ceased to be an employee and subsequent service of notice is illegal and unjust. But the counsel for respondents contended that as per Rule 3 of NERAMC Conduct, Discipline and Appeal Rules, the applicant is deemed to be in the service of the Corporation till the conclusion of the inquiry proceedings initiated against him vide memo dated 30.11.2016. They have produced A4 order issued to the applicant on 30.11.2016. The counsel for the respondents also invited our attention to the decision of the Hon'ble Supreme Court in *Delhi Development Authority vs. H.C.Khurana* 1993 KHC 933 wherein the Apex Court has held that issue of a charge sheet means its dispatch to the Government servant. The act is complete the moment steps are taken for the purpose of framing charge sheet and dispatching it to the Government servant. The Hon'ble Supreme Court has observed that there is no need of proving the actual service on the Government servant in such cases. The contrary view would defeat the object by enabling the Government servant, if so inclined, to evade service and thereby frustrate the decision and get promotion in spite of that decision. Obviously, the contrary view cannot be taken.

6. We have carefully perused the records produced by both sides and we find that the charge memo issued to the applicant as A1 & A2 is clearly dated as 30.11.2016. As per the Conduct Rules, when a charge memo is issued and disciplinary proceedings are initiated, the applicant will be considered as in service till the proceedings are complete. The respondents had issued the charge memo on 30.11.2016 and it has to be presumed that the same was received by the applicant on the same day. Giving an acknowledgment on the next day will not prevent the respondents from continuing with the disciplinary proceedings. As per the reply

statement, it has come out that the inquiry is complete and the disciplinary proceedings has to be completed.

7. In view of the above situation, it is clear that there is no merit in the contention raised against the charge memo issued in this case. The respondents have conducted the inquiry and the inquiry proceedings are in the final stage.

8. In the circumstances, we are not inclined to interfere with the proceedings. We direct the respondents to complete the disciplinary proceedings within a period of two months from the date of receipt of a copy of this order. The OA is disposed of accordingly.

(K.V.Eapen)
Administrative Member

(P.Madhavan)
Judicial Member

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Annexures filed by the applicant:

Annexure A1: True copy of the charge sheet issued as per proceeding No. NERAMAC/VIG/2016-1023 dated 30/11/2016

Annexure A2: True copy of the charge sheet issued as per proceeding No. NERAMAC/VIG/2016-1024 dated 30.11.201

Annexure A3: True copy of the relevant pages of the Conduct, Discipline and Appeal Rules of NERAMAC.

Annexure A4: True copy of the order No. P&A/PER/B/3/83/1025 dated 30.11.2016 issued by the Personal & Administration Division of the 1st respondent.

Annexure A5: True copy of the written statement of defense dated 19.12.2016 submitted by the applicant to the 2nd respondent.

Annexure A6: True copy of the written statement of defense dated 19.12.2016 submitted by the applicant to the 2nd respondent.

Annexure A7: True copy of the request in email dated 1.12.2016 submitted by the applicant to the 2nd respondent.

Annexure A8: True copy of the email communication dated 6.1.2017, 20.1.2017, 21.3.2017 and 22.4.2017.

Annexures filed by the respondents:

Annexure R1: True copy of the statement of Sri Bijoy Bora, attendant.

Annexure R2: True copy of the extract from service book of KCS Kurup.

Annexure R3: True copy of the extract from the minutes of the 114th Board Meeting dated 30.9.2013.

Annexure R4: True copy of the order No. P&A/PER/B/3/83/1025, dated 30.11.2016.

Annexure R5: True copy of the order dated 21.09.2013.

Annexure R6: True copy of the guilty of all charges dated 7.10.2017.