

OA No. 291/299/2019 with MA No. 291/13/2020

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/299/2019
with
MISC. APPLICATION NO. 291/13/2020

Order reserved on 25.01.2021

DATE OF ORDER: 03.02.2021

CORAM

HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER

Khem Chand Khatri S/o Sh. Gopal Das Khatri, Age-60 years, R/o Q.R. No. 410/02 Nirman Vihar Phase-I, MES Officers Accommodation, Army area, Jaipur. Retired on 30.04.2019 on superannuation while working AE (civil), in the office of Chief Engineer, Head Quarters, Jaipur Zone, MES, Power House Road, Bani Park, Jaipur-302006. Group B, Mob. 9328849239.

....Applicant

Shri Mukesh Agarwal, counsel for applicant (through Video Conferencing).

VERSUS

1. Union of India through the Secretary, Ministry of Defence, South Block, New Delhi – 110011.
2. Director General (Personnel), Engineer-in-Chief's Branch, Integrated HQ of MOD (Army), Kashmir House, Rajaji Marg, New Delhi – 110011.
3. Chief Engineer, HQ, South Western Command, PIN-908546, C/o 56 APO.
4. Chief Engineer, Head Quarters, Jaipur Zone, MES, Power House Road, Bani Park, Jaipur-302006.

5. Chief Engineer, HQ Bathinda Zone, PIN-900484 C/o
56 APO.

....Respondents

Shri Anand Sharma, counsel for respondents (through
Video Conferencing).

ORDER

Per: Hina P. Shah, Judicial Member

The present Original Application has been filed by
the applicant under Section 19 of the Administrative
Tribunals Act, 1985 for the following reliefs:-

- "i) by an appropriate order or direction, the impugned memorandum of charge sheet dated 27.04.2019 received on 29.04.2019 (Annexure A/1) and consequential disciplinary proceedings may kindly be quash and set aside with all consequential benefits.
- (ii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- (iii) That the costs of this application may be awarded."

2. The brief facts of the case, as stated by the applicant, are that he was initially appointed as Superintendent B/R Grade II on 07.02.1987 and posted at GE (P) Jodhpur and thereafter posted at several places including Jaipur. His service record was

clean but was served with a Memorandum of charge sheet dated 27.04.2019, just one day prior to his retirement i.e. 29.04.2019 on his superannuation i.e 30.04.2019, for the incident during which the applicant was posted as JE (Civil) at Kanasar from 30.08.2003 to 04.09.2007, which is 11 years back. During that period, under the guidance of GE/AGE, he has supervised several projects as per the prescribed specifications mentioned which was approved by the competent authority. It is further clarified that after completion of work, on satisfaction and verification by the higher authorities, payments were made to the contractor and nothing was found adverse against the applicant. All of a sudden, he was served with a show cause notice dated 01.12.2014 (Annexure A/3) stating that while working as AGE B/R GE (A) Bhuj, Technical Board of Officers have investigated and found lapses at Kanasar for the period from 09.01.2003 to 09.05.2007 and that the applicant failed to discharge his duties which resulted in poor quality of work and was asked to give explanation for the same. He was not supplied with the copy of so called Technical Board's report on the basis of which action was taken. Thereafter, no action was taken and again vide letter

dated 06.12.2016, the applicant was informed that Court of Inquiry was convened by Headquarters (HQ) 10 Corps vide letter dated 01.07.2016 to investigate into the lapses/irregularities. In pursuance of the said letter, the applicant was present for the court of inquiry and his statement was recorded. It is further stated that as the applicant had completed 30 years of service and considering his clean record, the respondents, in pursuance of order dated 25.10.2017, allowed 3rd MACP to the applicant in the pay scale of Rs. 9300-34800 in PB-2 with GP-5400/- w.e.f 07.02.2017 vide HQ CE Jaipur PTO dated 01.06.2018. Vide order dated 06.10.2017, the applicant was transferred from HQ CE Bathinda Zone, Bathinda to HQ CE Jaipur Zone, Jaipur and in Para 21 of the movement order dated 03.03.2018 (Annexure A/8), it was certified that the officer is not involved in disciplinary case/ court of inquiry/SPEs case. It was further stated that after vigilance clearance vide order dated 19.09.2018, the respondents have processed the pension papers of the applicant since applicant was going to retire on his superannuation on 30.04.2019. Hurriedly, respondents served a Show Cause Notice dated 10.04.2019 upon the applicant

without supplying report of technical board of officers and court of inquiry report. Applicant replied to the show cause notice on 18.04.2019 and asked to provide certain documents which were crucial for the charges levelled against him. No documents were supplied to him and in a hurrucane manner in violation of principles of natural justice, arbitrarily served a memorandum of charge sheet dated 27.04.2019 received on 29.04.2019 under Rule 14 of CCS (CCA) Rules, 1965, regarding 11 years old allegations, when he was due to retire on 30.04.2019. He filed his reply to the same on 10.05.2019 denying the charges. Thus, the applicant was forced to approach this Tribunal for quashing and setting aside the impugned charge sheet dated 27.04.2019 received on 29.04.2019 (Annexure A/1) as well as consequential disciplinary proceedings with all consequential benefits.

3. After issue of notices, the respondents filed their reply stating that the applicant while posted as JE (Civ) of GE (P) Kanasar during the period Oct. 2003 to Sept. 2007 was found blameworthy by the technical board of officers as well as staff court of enquiry

during the investigation of the irregularities in execution of work order under CA No. CE BTZ 01/2004-05, CE BTZ 02/2004-5 and CE BTZ 22/2004-05. These works are under premature structural distress and defective workmanship work executed by him during his tenure are not found proper as per CA provisions and standard engineering practices which resulted into poor quality of work under his execution. Thus, applicant had failed to maintain devotion to duty, which amounts to misconduct for imposition of major penalty in violation of Rule 3 (1) (ii) of CCS (Conduct) Rules, 1964. Accordingly, respondent No. 3 served a charge sheet dated 27.04.2019 under Rule 14 of the CCS (CCA) Rules 1965 along with letter dated 29.04.2019. It was further stated that as the applicant was about to retire on 30.04.2019, the procedure adopted in the case of the applicant was as per SOP on the subject, thus, the action of the respondents was just and proper as there was no delay or hurricane manner involved in the case.

4. We have heard the learned counsels for the parties at length through Video Conferencing and examined

the pleadings minutely as well as the judgments cited by the parties.

5. The applicant besides reiterating his submissions further added that the memorandum of charge sheet dated 27.04.2019 has been issued against the applicant, which was served upon him on 29.04.2019 after a lapse of more than 12 years just one day prior to his retirement i.e. 30.04.2019, under Rule 14 of the CCS (CCA) Rules, 1965. Initiation of disciplinary proceedings, after a lapse of time, are violative of principles of natural justice as observed by the Hon'ble Apex Court time and again. Charge-sheet is issued to the applicant being a lowest officer in rank and not on any one else though he had followed the instructions of the higher authorities and they had approved the same. The applicant had asked the respondents to supply the documents on the basis of which he has been charge sheeted but he was not provided the court of officers' report. No opportunity of hearing was provided to the applicant during technical board of officers' investigation in 2016. Though court of inquiry recommended disciplinary action against nine army officers but only the applicant has been charge

sheeted. Though in the Court of Inquiry, it was proved that there is faulty planning at the level of Chief Engineer, Bathinda Zone and Commander Works Engineer and faulty drafting of contracts by the then Director of Contracts, no action is taken against them as most of them have retired but only the Applicant who is lowest in rank has been penalised. It was further stated that though the charges are interconnected but respondents have wrongly shown the same as interdependent which can be seen from their reply to para 4.11 at Page 96. The respondents only to harass the applicant have charge sheeted him one day prior to his retirement on superannuation i.e. 30.04.2019 for the reasons best known to them. The applicant, therefore, states that such act of the respondents is against the principles of natural justice and in violation of Articles 14 and 16 of the Constitution of India. Therefore, being aggrieved by the arbitrary action of the respondents, the applicant has filed the present Original Application.

6. The respondents reiterated their stand and stated that action was required to be taken as the applicant was about to retire on 30.04.2019 and, therefore, for

his lapses he was served with a charge sheet which is as per rules and there is no delay nor any violation of principles of natural justice. The action of the respondents, thus, cannot be said to be illegal or arbitrary. The respondents relied on the judgment of the Hon'ble Apex Court in the case of **Deputy Registrar, Co-operative Societies, Faizabad vs. Sachindra Nath Pandey & Ors.**, reported in 1995 (4) SLR 17, wherein it is held that where there is commencement of disciplinary proceedings after about 16 years from the date of incident, Department alone cannot be held to be responsible for the delay and that proceedings cannot be quashed.

7. The question which requires to be adjudicated is whether the action of issuing charge sheet for lapses on the part of the applicant while working at Kanasar as JE (Civ.) from 09.01.2003 to 09.05.2007 was justified to be issued just one day prior to his retirement.

8. The facts as seen are that the applicant was served with a Show Cause Notice dated 01.12.2014, (Annexure A/3), while working as AGE B/R GE (A)

Bhuj. The incident relates way back to the period from 30.08.2003 to 04.09.2007 when the applicant remained posted as JE (Civil) at Kanasar. The allegation raised in the said notice was that a Technical Board of Officers was ordered to investigate the lapses in planning and execution of CA No. CEBTZ-22/04-05 : Provn of OTM accn for 27 AMN Coy at Kanasar and in the said act, the applicant was found blameworthy on account of lapses as he failed to discharge his duties as JE (Civ.), which has resulted in poor quality of work. Towards the said charge sheet which included a list of lapses, applicant was required to reply within 10 days but was not supplied with the crucial document i.e. the Technical Board of Officers' report, which was the basis for issuing the charge sheet. The applicant has supplied reply in detail to the said show cause notice clarifying his each lapse and also pointed that the work assigned was completed on 10 Oct. 2006 and defect liabilities expired on 09 Oct. 2007. It was further stated that when he was posted at Kansara, no defects were pointed out by the users/department. Also that there were no adverse remarks pointed to the applicant by his superiors / competent officers / PMG till the date of

receipt of said show cause notice. He further clarified that all work executed by him was as per contract provision and drawing. No deficiencies in work supervision were allowed by the applicant as per contract provision and drawing. It is seen that for nearly two years, respondents were silent and no steps were taken whatsoever. Thereafter, respondents vide letter dated 06.12.2016 called the applicant as a witness in a Court of Inquiry convened vide letter dated 01.07.2016 to investigate into the irregularities / lapses in the work executed during the period 2003 to 2007 i.e. after 9 years from the date of completion of work. The applicant appeared before the said inquiry and his statement was recorded by the Court of Inquiry, which has been supplied to him along with the charge sheet.

9. In the meantime as the applicant completed 30 years of service, he was allowed 3rd MACP vide order dated 25.10.2017 (Annexure A/6) in the pay scale 9300-34800 in PB-2 with Grade Pay Rs. 5400/- w.e.f 07.02.2017 vide HQ CE Jaipur PTO dated 01.06.2018. In the said order dated 25.10.2017, the following was clarified:-

"5. Before placing the officer in the higher grade pay, it shall be ensured that on effective date:

- (a) The officer was not under suspension.
- (b) No charge sheet had been issued to the officer and no disciplinary proceedings were pending against him.
- (c) No prosecution for a criminal charge was pending against him.
- (d) If the officer is under penalty period then the upgradation will be given only on expiry of the penalty period."

10. As seen, thereafter the applicant was transferred as per the Movement Order dated 2nd March 2018 (Annexure A/8) from HQ CE Bathinda Zone, Bathinda Mil Stn to HQ CE Jaipur Zone, Jaipur Mil Stn. In the said movement order, Clause 21 again clarified, which are as under: -

- "21. (a) Certified that the Offr is not involved in disciplinary case/court of inquiry/SPEs case.
- (b) His attention is drawn to CSR Art 189, if he fails to join his duty at new office by due date, he will not be entitled of pay and allowances and after a week's time he will have no lien on any appointment.
- (c) xxxxx"

But with an utter shock and surprise, respondents knowing that the applicant is going to retire on 30.04.2019 on superannuation, in a complete hurricane manner, served a Show Cause

Notice dated 10.04.2019, (Annexure A/9), only to the applicant. The applicant replied to the same on 18.04.2019, (Annexure A/11), stating that he should be given copy/access to the relevant documents including copy of conclusions/findings of TBO and COI, but no documents as such were supplied to him. Thereafter, respondents with supersonic speed, served a memorandum of charge sheet dated 27.04.2019 on 29.04.2019 at 4.55 pm as he was about to retire on 30.04.2019. It is to state that vide letter dated 13.05.2019, the respondent No. 3 served a letter dated 25.04.2019 issued by respondent No. 5 to inspect documents to file reply to the show cause notice which is nearly 13 days after serving the charge sheet.

11. On perusal of pleadings, it is clear that towards the incident, which took place during the period 2003 to 2007, just at the verge of retirement i.e. one day prior to his retirement, the applicant was served with a charge sheet. It is clear that vide memorandum of charge sheet dated 27.04.2019, disciplinary proceedings under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules,

1965 have been initiated against the applicant after a lapse of over 12 years. This hurricane approach of the respondents is only with an intention to harass the applicant so that he can neither peacefully retire nor can he get his retiral benefits. It is clear that the applicant was only JE (Civ.) in rank and several officers above him under whose instructions, the applicant had carried out his duties, no action has been taken against them. He had performed his duties with due diligence as per the CA provisions and drawings approved by the competent authorities. Though from the order of the respondents dated 19.09.2018 it is clear that there was nothing adverse against the applicant as vigilance clearance was given to the applicant time and again. It is clear that such action of the respondents was only to harass the applicant and with one motive in their mind to withhold the applicant's retirement benefits; otherwise there was no reason to serve a charge sheet just one day prior to his retirement. This attitude of the respondents can give a mental shock to the employee concerned who must have planned for his retirement and getting a charge sheet at this juncture can not only ruin his life but also bring distress to his family.

The respondents have not given any satisfactory explanation for the inordinate delay in issuing charge memo. This protracted manner of the respondents in casually serving the charge sheet at the verge of retirement should be avoided not only in the interest of the Government employee but in public interest and also in the interests of inspiring the confidence in the minds of the Government employees. Therefore, we are of the view that it will be unfair to permit the departmental enquiry to be proceeded any further against the applicant as the same would be very prejudicial to the appellant. Also it is clear that principles of natural justice were violated time and again. The applicant was not given the documents as required by him, on the basis of which the charge sheet was given, within the time frame required to file his reply and after serving charge sheet after 13 days asking the applicant to inspect the documents which is clear violation of principles of natural justice.

12. It is clear that normally the Courts should not interfere in such matters and neither the charge sheet nor disciplinary proceedings should be allowed to take their course as per relevant rules but then if the

inordinate delay in conducting such proceedings is clear then in such cases Courts have to intervene to see that the delinquent employee gets justice. Thus, for the delay and conduct of respondents in serving the charge sheet, the delinquent employee cannot be made to suffer. Also the delinquent employee has a right to see that the disciplinary proceedings levelled against him are concluded expeditiously. We are in agreement with the judgments relied by the applicant on this aspect. The judgments of the Hon'ble Apex Court in the cases of **State of Madhya Pradesh vs. Bani Singh and Anr.**, reported in 1990 (Supp) SCC 738 as well as **P.V. Mahadevan vs. MD, T.N. Housing Board**, reported in (2005) 6 SCC 636 : 2005 SCC (L&S) 861, are very clear that the unexplained delay in conclusion of the disciplinary proceedings is an indication of prejudice caused to the employee and, therefore, the same require to be quashed. In the present case also it is seen that there is no acceptable explanation on the side of the respondents about the inordinate delay in initiating the disciplinary proceedings against the applicant and clear violation of principles of natural justice is seen time and again on their part. On the other hand, the judgment of the

Hon'ble Apex Court in the case of **Deputy Registrar, Co-operative Societies, Faizabad vs. Sachindra Nath Pandey & Ors.** (supra) relied by the respondents cannot be accepted as in that case the facts were that the officer could not be served in enquiry proceedings as he had been avoiding service and did not co-operate in the enquiry. In the present case, whenever the applicant was called, be it before Technical Board of Officers or Court of Inquiry, the applicant has always participated and on the other hand, respondents have failed in giving him relevant documents to justify his stand.

13. In the light of the discussions made above, we therefore, have no hesitation to quash and set aside the impugned memorandum of charge sheet dated 27.04.2019 and the consequential disciplinary proceedings against the applicant and, thus, the same are hereby quashed and set aside. Accordingly, the present Original Application is allowed. The respondents are directed to pass necessary orders in this regard and grant all retiral benefits at the earliest so that the applicant is not made to suffer any further in interest of justice. In view of quashing and setting

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aside of the said memorandum of charge-sheet as well as consequential disciplinary proceedings / orders, the applicant will be entitled to all consequential benefits.

No order as to costs.

14. In view of the order passed in the Original Application, the Misc. Application No. 291/13/2020 stands disposed of.

**(HINA P. SHAH)
JUDICIAL MEMBER**

**(DINESH SHARMA)
ADMINISTRATIVE MEMBER**

Kumawat