

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00267/2020
With
MA/050/00193/2020

Reserved on: 07/01/2021
Pronounced on: 26/02/2021

C O R A M
HON'BLE MR. M.C. VERMA, JUDICIAL MEMBER
HON'BLE MR. SUNIL KUMAR SINHA, ADMINISTRATIVE MEMBER

Rajendra Prasad Rajak, S/o Late Shiv Narayan Lal, resident of Mansarovar Enclave, Flat No. 103, Mahua Ward, P.S.- Rupaspur, Patna.

.... Applicant.

By Advocate: - Mr. J.K. Karn

-Versus-

1. Union of India through the Secretary, Department of Posts, Dak Bhawan, New Delhi- 110001.
2. The Director General (Posts), Dak Bhawan, Sansad Marg, New Delhi- 110001.
3. The DDG(P), O/o Director General (Posts), Dak Bhawan, Sansad Marg, New Delhi-110001.
4. The Director (Staff), Director General (Posts), Dak Bhawan, Sansad Marg, New Delhi-110001.
5. The Chief Postmaster General, Bihar Circle, Patna- 800001.
6. The Director of Postal Services (Hq.), O/o Chief Postmaster General, Bihar Circle, Patna- 800001.
7. The Vigilance Officer, O/o the Chief Postmaster General, Bihar Circle, Patna-800001.
8. The Sr. Superintendent of Post Offices, Patna Division, Patna- 800004.

.... Respondents.

By Advocate(s): - Mr. H.P. Singh

O R D E R

Per S.K. Sinha, A.M:- Applicant has preferred this OA against continuation of disciplinary proceeding which was initiated against him in

February 2011 for alleged delinquency committed in 2005-06. The applicant has prayed for following reliefs in the OA:-

“ A. The erroneous Disciplinary Proceeding initiated against the applicant vide Memorandum dated 31.01.2011 served upon applicant on 02.02.2011, issued by Sr. Superintendent of Post Offices, Patna Division, as contained in Annexure - A/1, having no financial angle or loss to the Government but the same is being prolonged since last more than 9 years without any justification, may be quashed and set aside.

B. The respondent authorities may be directed to settle and finalise payment of the retiral benefits and final settlement of applicant at the earliest with all consequential benefits including statutory interests upon delayed payments.

C. The respondents may be directed to pay the applicant at least Rs. 5,00,000/- as cost of litigation and compensation towards his continuous harassment and immense mental torture.

D. Any other relief/reliefs as the applicant is entitled and your Lordships may deem fit and proper in the ends of justice.”

2. The applicant, a Group ‘C’ employee of Postal department, while posted as ASPM, Patna City SO, was placed under suspension on 21.08.2009 with a departmental proceeding under contemplation. The suspension was revoked on 16.11.2009 and charge memorandum for disciplinary proceeding (Annexure A/1) was served in February, 2011 alleging failure to observe the departmental rules and procedures relating premature closure of MIS accounts. Earlier, in 2007, a criminal case was registered against the applicant for the same charges but he was acquitted in the judicial trial on September 9, 2014 as he reached a compromise with the complainants. The applicant retired from Government service on 31.01.2012 on superannuation. After retirement of the applicant the

disciplinary proceeding was dealt under Rule 9 of CCS (Pension) Rules, 1972. The IO submitted the Inquiry Report in 2015 and the applicant also submitted his representation, however, a de-novo inquiry was ordered due to some shortcoming in the inquiry and the de-novo inquiry was completed in 2018. As, no final order was passed by the Disciplinary Authority despite more than one year after submission of his representation the applicant submitted representation to the Assistant Accounts Officer and other authorities. When these representations produced no result, he preferred the OA.

3. The applicant in his pleading has questioned the rationale of continuing with the departmental inquiry after acquittal in the criminal case on same allegations. He has also pleaded that holding of departmental proceeding with such inordinate delay was against the settled rules and alleged that the respondents were delaying the departmental inquiry in a motivated manner and referred to the order for de-novo inquiry more than two years after the first Inquiry Report was submitted. The applicant has referred to Hon'ble Supreme Court judgment in **Kartar Singh Vs. State of Punjab (1994) 3 SCC 569** in which Hon'ble Supreme Court held that right of a speedy trial was a fundamental right. He also refers to the Supreme Court judgment in **P.V. Mahadevan Vs M.D., Tamilnadu Housing Board.**

4. The applicant filed a 'Supplementary Application' on 30.07.2020 informing that he had been shared the advice of UPSC proposing penalty of 20% cut in the pension for two years (Annexure R/7) in the departmental proceeding pending against him. The Ministry of

Communication while sharing the UPSC advise vide their letter dated 30.06.2020 directed him to submit representation (Annexure A/12). The applicant informed that in his representation he requested the Respondents to keep the advice of UPSC in abeyance till final decision in the OA.

5. The respondents contested the OA and filed WS in which they pleaded that the allegation against the applicant was of serious nature as he had allowed premature closure of MIS accounts without due authorization and thus violated the related departmental guidelines. The Inquiry Officer held the applicant guilty of the charges in the departmental proceeding. Government suffered a loss amounting to Rs. 60,151/. The delay in the departmental proceeding was mainly on account of the procedural requirements of Rule 9 of CCS (Pension) Rules, 1972 under which the departmental proceeding was dealt after the applicant's retirement. During scrutiny of the records before referring them for Presidential order some shortcomings were observed and de-novo inquiry from the stage of statement of CO was ordered under Rule 14 (16) of the CCS (CCA) Rules, 1965. In the de-novo proceeding also the charges were fully proved. The proceeding records were sent by the Ministry of Communication as required under Rule-9 to UPSC for advice. The UPSC after detailed examination, proposed a penalty of withholding 20% of monthly pension for a period of two years and further direction to release the applicant gratuity if not required to be withheld in any other case. The respondents pleaded that with the UPSC submitting its advice on

punishment, the departmental proceeding had come to an end and the main ground for filing OA has been lost.

6. After admission, we heard the learned counsels for both the sides.

7. The applicant filed MA No. 193/2020 on 12.11.2020 after receiving the Presidential order imposing the penalty as advised by UPSC. He prayed in the MA to include the following in the OA at para 8 e as :-

“e. Order dated 18-09-2020, issued under the signature of Director (VP) Division, Government of India, Ministry of Communications, Department of Posts, VP Division, Dak Bhawan, Sansad Marg, New Delhi, as contained in Annexure- A/14 may be quashed and set aside, whereby the applicant has been imposed punishment of withholding of his 20% of monthly pension for a period of two years.”

The learned counsel for the respondents Shri H.P. Singh took preliminary objection to the prayer in the MA. It was decided to hear the prayer in MA along with OA. During the final hearing, we heard the rival counsels on MA as well as the OA.

8. During final hearing, Shri J.K. Karn, learned counsel for the applicant assailed the continuation of departmental proceeding after 14-15 years of the incident and 8 years of retirement of the applicant. He referred to the judgement of Hon'ble Supreme Court in the case of **P. V. Mahadevan Vs. M.D. Tamilnadu Housing Board.** Ld. Counsel further mentioned that the applicant is 68 years of age and his retiral benefits including DCRG and commutation amount had been withheld and regular pension had also not been settled. Besides facing pecuniary hardships the applicant was getting humiliated and mentally torture because of the ongoing proceeding. He also raised the issue that when an OA pending before the Tribunal how

presidential order could be passed as it violated Section 19(4) of the Administrative Tribunal Act, 1985. He referred to some judgements of the Co-ordinate benches in case involving violation of Section 19(4) of the AT Act.

9. Shri H.P. Singh, learned Sr. Standing Counsel for the respondents averred that the OA was preferred against the protracted disciplinary proceeding and main relief prayed for in the OA was quashing and setting aside the disciplinary proceeding. With issuance of the order of President the departmental proceeding now stands concluded. The grounds for which the OA was filed has now ceased to exist and hence, the OA has become infructuous. The learned counsel mentioned that the charges against the applicant were of serious nature. It involved dereliction of duties leading to loss of Government finance to the tune of Rs 60,151/- . Hence, the departmental proceeding had to be taken to its logical end. He stated that delay in the departmental proceeding was mainly on account of procedural requirements. He maintained that the OA deserved to be dismissed.

10. Going through the rival submissions, the pleadings and other materials on record, we find that the main issues which need to be adjudicated in this case are:

- a. Whether the protracted departmental proceeding was in accordance with the rules and settled principle of law; and
- b. Whether the order of President passed in the departmental proceeding was in violation of Section 19(4) of the A T Act, 1985.

11. After retirement the applicant's case was required to be dealt under Rule 9 (1) of the CCS (Pension) Rules, 1972 which reads as under:-

"9. Right of President to withhold or withdraw pension

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement

Provided that the Union Public Service Commission shall be consulted before any final orders are passed :

Provided further that where a part of pension is withheld or withdrawn the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy-five per mensem."

As required, the UPSC was consulted before passing the final order.

12. On the issue of delay in conducting the departmental proceeding the applicant has put reliance on the order of Hon'ble Supreme Court in Appeal (civil) 4901 of 2005, P. V. Mahadevan Vs. M.D. Tamilnadu Housing Board, passed on 8th August 2005 quashing the charge memo for disciplinary proceeding against the appellant on the grounds of delay. The appellant in P.V. Mahadevan case had approached for legal remedy on the grounds of delay soon after initiation of the disciplinary action. In the present case, the disciplinary proceeding was initiated in 2011 for the alleged irregularity committed in 2005-2006 but the applicant approached the Tribunal in 2020 for the reasons best known to him.

13. Also, Hon'ble Apex Court in the P. V. Mahadevan case referred to the following observations of Hon'ble Supreme Court in **State of Andhra Pradesh Vs. N. Radhakrishnan** on 7th April 1988 :

“ It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all relevant factors and to balance and weight them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and has not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse consideration.”

14. The disciplinary proceeding in the instant case was initiated after of five years of alleged irregularities and it took further nine years in completing the process and awarding the punishment. Applicant has blamed the Respondents for delay in the disciplinary proceeding. He approached the Tribunal in June 2020, nine years after the initiation of the

disciplinary proceeding and eight years after own retirement. By that time, the case had been sent to the Ministry for the Presidential order and further to UPSC for advice. After issuance of the Presidential order we find no merit in the prayer for quashing the departmental proceeding on grounds of delay. After issuance of the Presidential order the departmental proceeding stands concluded and thus the main relief prayed for to quash the departmental proceeding has become infructuous.

15. The applicant's request in the MA No. 193/2020 to include the prayer to quash the Presidential order in the relief para as 8 (e) of the OA goes beyond the scope of OA. If allowed, the main relief para would change the entire nature of OA. In fact, it will contradict the main prayer in the OA. In view of these, we find the prayer in MA as untenable.

16. The applicant has questioned the legal validity of the order of President and averred that it was in violation of Section 19(4) of the A T Act, 1985 because it was passed during pendency of the instant OA. The applicant has referred to decisions of the coordinate benches of the Tribunal that during pendency of an OA, any decision or action towards redressal of grievance relating the subject-matter of the OA is a violation of Section 19(4) of the Act. The Section 19(4) of the AT Act reads as under.

“ 19.

(4) Where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject- matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representations in relation to such matter shall thereafter be entertained under such rules.”

17. The objective behind section 19(4) is to prevent confusion or complication which may arise from actions or decisions by other authorities on the subject matter of OA. This also puts a check on an applicant from exploring multiple avenues for relief and from choosing what suits him the most. In the instant case, the order of President has been issued as part of the Departmental Enquiry under Rule 9 of the CCS (Pension) Rules, 1972 and not as grievance redressal measure. A Departmental Enquiry commences with the filing of charge sheet and concludes with the imposition of punishment or dropping of or exoneration from charges. The imposition of punishment in a departmental enquiry can not be treated as redressal of grievance under Section 19(4) of the A.T. Act. If that were to be so, every alleged delinquent would approach the Court with a request to withhold further steps leading to award of punishment and defeat the objective of holding Departmental proceeding. Hence, the contention of the applicant that the order of President is in violation of section 19(4) of the A.T. Act is not in order.

18. In the OA the applicant also requested for release of withheld retiral benefits. The Presidential order has specifically mentioned that the withheld retiral benefits should be released if the same are not required to be withheld in any other case.

19. Based on the above discussions, we are of the view that the grounds adduced by the applicant for quashing the disciplinary proceeding is not in accordance with the Rules or settled law. After issuance of the order of President, the departmental proceeding stands concluded and the OA has

lost its ground. Keeping the entirety of facts in view, the OA is dismissed as infructuous. The prayer in the MA 193/2020 can not be allowed as OA itself has become infructuous. It is clarified that we have not expressed any view on the merit of the Presidential order. The applicant is at liberty to approach appropriate forum for relief in respect of the Presidential order. The MA is also accordingly dismissed.

20. No order as to cost.

**[Sunil Kumar Sinha]
Administrative Member**

Srk.

**[M.C. Verma]
Judicial Member**