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DATE OF DECISION 29.1.1987

Shri V. K. Gupta

Shri S.C.Gupta,

Versus

Union of India & Ors.

Shri P.H. Ramchandani,

CORAM :

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman

The Hon'ble Mr. Kaushal Kumar, Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether to be circulated to all the Benches ?

(Kaushal Kumar)
Member
29.1. 1987

(K. Madhava Reddy)
Chairman
29.1.1987

109

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN. NO. OA 19/86

Dated: 29.1.1987

Shri V.K. Gupta Applicant

Vs.

Union of India & Ors. Respondents

CORAM: Hon'ble Mr. Justice K. Madhava Reddy, Chairman
Hon'ble Mr. Kaushal Kumar, Member

For the Applicant — Shri S.C. Gupta, Sr. Counsel

For the Respondents Shri P.H. Ramchandani, Sr. Counsel.

(Judgement of the Bench delivered by Hon'ble Mr. Justice K. Madhava Reddy, Chairman)

This is an application under Section 19 of the Administrative Tribunals Act, 1985 calling in question the sanction accorded by the President of India in his Order No.5/11/Vig/81 dated 8.8.1985 to initiate Disciplinary Proceedings against the applicant herein and seeking an order restraining the Respondents from taking Disciplinary Proceedings in pursuance thereof.

2. The applicant^{was} a Chief Engineer and was posted at MES Ordnance Factory, Itarsi, sometime in April 1978. He was promoted as Chief Engineer Level I at the very same place in April 1981. On attaining the age of superannuation he retired from the Military Engineering Service from the aforesaid post on 30.6.1982 with full pensionary benefits. Disciplinary Proceedings^{were} initiated against him in pursuance of the sanction accorded by the President on the following three articles of

109

charges communicated to him vide Memorandum No.5/11/
Vig/81 dated 9.8.1985:-

"

ARTICLE I

That the said Shri V.K.Gupta while being posted and functioning as Chief Engineer (Project) Itarsi, during the period July 1978 to June 1982, failed to maintain absolute integrity and devotion to duty in as much as, in collusion with Shri Vimal Chand Chauradia of M/s.Vimal Enterprises, Itarsi, got the said firm provisionally enlisted and tenders issued in order to enable it to submit the tenders, knowing that the income tax clearance of the said firm was not valid. The said Shri V.K. Gupta in furtherance of his inclination towards the said firm not only failed to supervise the construction of overhead tank in Ordnance Factory of Itarsi but also ignored the complaints of his subordinate officers against the said contractor. He allowed the said contractor to execute the construction of the overhead water tank by using sub-standard material against the specifications in the contract due to which the overhead tank collapsed on 9.9.81.

ARTICLE II

That the said Shri V.K.Gupta, in collusion with Shri Vimal Chand Chauradia of M/s.Vimal Enterprises, Itarsi, approved the upgradation of the said firm from class B to class A, consequent to which the tenders were issued to the said firm. He allowed the said firm to use sub-standard material in the construction of building No.607 at MES Compound, Itarsi, after awarding the contract to them. He also failed to supervise the construction work and ignored the complaints of his subordinate officers against the said contractor in the execution of the said contract, consequent to which the building No.607 collapsed on 30.12.1981 killing 5 labourers working at the site.

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ARTICLE III

That the said Shri V.K.Gupta, in collusion with M/s.Jain Rolling Mills, Ghaziabad introduced the said firm to compete for the contract for conversion of billets into finished steel. He, due to the oblique motive, entertained the request of the said firm to be included in the award of the contract after finalisation of the supply order on M/s. Sharda Industry and M/s.Rajesh Steel Industry both of Nagpur whose rates were found to be lowest. He placed supply orders on the said firm M/s.Jain Rolling Mills without the specific instructions from Engineer-in-Chief. He further issued Essentiality Certificate in favour of that firm which enabled the said firm to lift joists and channels of various sizes from the Steel Authority of India Ltd.

The said Shri V.K. Gupta by his aforesaid acts exhibited lack of integrity and devotion to duty and thereby contravened the provisions of Rule 3(1)(i) and (ii) of Central Civil Services (Conduct) Rules, 1964. "

3. In order to appreciate the contentions raised in this application, it would also be necessary to read the Statement of Imputation of Misconduct in support of Articles of Charge framed against the applicant, which reads as under:-

" ARTICLE I

Shri V.K. Gupta was posted as Chief Engineer (Project) Itarsi during the period July 78 to June, 1982. He, in collusion with M/s.Vimal Enterprises, Itarsi, awarded a contract to construct Over-head water tank in the Ordnance Factory, Itarsi of 681 Kilo-litre capacity. The contract was awarded to Shri Vimal Chand Chauradia of M/s.Vimal Enterprises although this firm was not enlisted on the MES list of the approved contractors. The firm was approved to be enlisted provisionally and tenders were issued to this firm. At the time of issue of tenders on 21.11.79 the Income-tax Clearance Certificate of this firm was not valid. Contractor

13/12

started execution of work on 29.7.80 and the same was required to be completed on 28.1.81. During construction test cubes were required to be cast out of the concrete being used and tested to ascertain the strength of the said cubes for 7 & 28 days and the test results were required to be perused by the contractor in the construction. As per standing orders, six samples of concrete test cubes i.e. 3 numbers for testing for 7 days strength and 3 numbers for testing for 28 days strength were required to be cast and tested for every concreting day. The said casting was done only three times during the 33 days period of construction. The contractor did not leave the four openings in the bottom dom for the insertion of pipes. Later on, he, without bringing this fact to the notice of Engineer-in-Charge, cut open the four holes bigger in diameter to those of the C.I. Pipes due to which the safety of structure was endangered.

It was found that Shri Vimal Chand Chauradia did not execute the work as per specifications and used sub-standard materials in the construction as against the specifications given in the tender. Shri V.K. Gupta failed to supervise the work properly and also ignored the complaints of subordinate officers due to which the contractor executed the work disobeying the instructions resulting in the collapse of over-head tank on 9.9.81.

ARTICLE II

Shri V.K.Gupta, while functioning as Chief Engineer(P) Itarsi had also, in collusion with Shri Vimal Chand Chauradia of M/s.Vimal Enterprises, Itarsi, awarded contract to the said firm for construction of various buildings including building No.607 at MES Compound, Itarsi. The firm M/s.Vimal Enterprises was upgraded from Class 'B' to 'A' and tenders were issued to this firm. The contractor was required to execute the work as per his specification given in the tender. The contractor did not execute the work as per specifications and also used sub-standard materials in the execution of work as found out by the expert after examination of the materials. Shri V.K.Gupta failed to supervise the construction work and had ignored the complaints of its subordinate

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413

officers. On account of lack of supervision and use of sub-standard materials by the contractor, the roof of building No.607 collapsed on 30.12.81 and 5 labourers were killed who were working in the premises.

ARTICLE III

Shri V.K.Gupta received an Introductory Letter dated 7.6.78 of M/s.Jain Rolling Mills, Ghaziabad. He initiated the letter on 3.7.78 and gave the same to Sh.M.V.Adiapak with a direction to issue tender enquiry to M/s.Jain Rolling Mills. Quotations were called for from 5 firms including M/s.Jain Rolling Mills, Ghaziabad, for conversion of billets into finished steel. 4 firms had submitted their quotations and on the basis of the comparative statement the rates of M/s.Sharda Industry and M/s.Rajesh Steel Industry both of Nagpur were lowest. The orders were placed on M/s.Sharda Industry. The firm requested the Chief Engineer(Project) for arranging inspection of the material in respect of supply order placed on them. In the meantime, another letter dated 5.12.80 was received from M/s.Jain Rolling Mills, Ghaziabad, and on the basis of the letter, Contract Agreement was entered into between Chief Engineer(Project) Itarsi and M/s.Jain Rolling Mills Ghaziabad from 16.12.80. The firm M/s.Jain Rolling Mills had quoted the same rate on which the contract was awarded to M/s.Sharda Industry. It was found that during the period 16.12.80 to 15.12.81, 15 supply orders of quantity of 22 M.Tons of steel were placed on M/s.Jain Rolling Mills, Ghaziabad. These orders were placed against forward delivery of steel. During the period 6.8.81 to 15.12.81, 14 supply orders were also placed on this firm under the signature of Shri V.K.Gupta and through these supply orders, 770 M. Tons of finished steel were placed on M/s.Jain Rolling Mills, Ghaziabad. The said Shri V.K.Gupta was not competent to entertain any offer after finalisation of supply orders and negotiate with any other firm without the specific instruction of E-in-C. He, due to oblique motive, introduced M/s.Jain Rolling Mills and placed supply orders against forward delivery of steel.

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It was also found that Essentiality Certificate in favour of the firm was issued as a result of which Sh. V.K.Gupta was instrumental in getting the finished steel for the firm in the form of joists and channels of various sizes from the Steel Authority of India Ltd. branch as well as offices at Nagpur, Bhilai, Indore and Ghaziabad. He also issued an authorisation letter in favour of Shri Rakesh Kumar Jain, an employee of M/s.Jain Rolling Mills, Ghaziabad to receive materials for and on behalf of him and materials such as joists and channels were received by employee of the firm.

By the aforesaid acts, Shri V.K.Gupta exhibited lack of integrity and devotion to duty and contravened Rule 3(1)(i) & (ii) of Central Civil Services(Conduct) Rules, 1964."

4. - The sanction accorded by the President of India to institute Disciplinary Proceedings against the applicant is challenged as being in contravention of Rule 9 of the Central Civil Services Pension Rules 1972(hereinafter referred to as " Pension Rules" for short) which so far as is relevant to our present purpose reads as under:-

"9(1) The President reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from pension 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 his 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 pension shall not be reduced below the amount of rupees sixty per mensem.

(2) (a)

(b) The departmental proceedings, if not

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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.

- (3)
- (4)
- (5)
- (6) "

5. The contention of the applicant is that the articles of charges framed against him are in respect of events which took place more than 4 years before the institution of the Disciplinary Proceedings. In view of the limitation imposed by sub clause (ii) of clause (b) of sub-Rule (2) of Rule 9 of the Pension Rules, no disciplinary proceedings can be initiated against a pensioner in respect of events which took place more than 4 years prior to the initiation of such proceedings. He also contends that the charges do not relate to any "grave misconduct or negligence" within the meaning of Rule 9(1) of the Pension Rules and when no charges were levelled and no Disciplinary Proceedings were initiated against him before he retired on attaining the age of superannuation, no such proceedings can be initiated against him after he became a pensioner.

6. It is a common ground that no Disciplinary Proceedings ^{were initiated} in respect of an event which occurred more than 4 years prior to the institution of these proceedings.

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These proceedings were instituted against the applicant on 9.8.1985. If the events in respect of which the charges are framed relate to a period anterior to 8.8.1981 then such proceedings would be barred by sub clause(ii) of clause (b) of sub Rule(2) of Rule 92 of the Pension Rules. If we agree with the contention of the applicant that the events in respect of which charges are levelled against him occurred beyond 4 years of the institution of the Disciplinary Proceedings, it would be unnecessary to go into the further contention of the applicant that the charges framed against him are not in respect of the grave misconduct or negligence. Any discussion in that behalf would be wholly academic and it would be unnecessary for us to go into the same.

7. We, therefore, propose to consider at the outset whether the events referred to in the articles of charges occurred at any time after 8.8.1981. We will take up the articles of charges in the order in which the learned counsel have addressed their arguments. Article III which was taken up first relates to awarding of a contract to M/s. Jain Rolling Mills, Ghaziabad and issuance of Essentiality Certificate to that firm which enabled that firm to lift joists and channels of various sizes from the Steel Authority of India Ltd. From the record placed before us, it is clear that the contract in question was awarded to M/s. Jain Rolling Mills and signed on 16.12.1980. Orders were placed for supply of joists and channels under this contract. Essentiality Certificate had to be issued to comply with the orders placed between 16.12.1980 and 15.12.1981 and supplies were made by M/s. Jain Rolling Mills accordingly. So far as the contract is concerned, it was awarded to M/s. Jain Rolling Mills long before 8.8.1981. That event

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occurred more than 4 years prior to the institution of the Disciplinary Proceedings and in view of Rule 9(2)(b) cannot form the subject matter of any enquiry against a pensioner. Even assuming that some illegality or irregularity had been committed in awarding the contract or that it was awarded on account of any dishonest motives and the applicant could be charged with misconduct, as the applicant had retired from service that cannot form the subject matter of an enquiry 4 years after the event. So long as the contract subsisted it had to be performed by both the parties to the contract, that is the Government and the contractor; otherwise they would be guilty of breach of the contract and would be liable for damages. Having entered into a contract, so long^{as}/that contract subsisted, whether it was the applicant or someone else he had no option but to place orders with that company for supply of joists and channels and had to issue Essentiality Certificate. Dishonouring the contract would have exposed the Government to a claim for damages. Placing order in compliance of a subsisting contract cannot be obviously termed as misconduct. In fact it was obligatory for the applicant to place orders for supply only with that company and none else. Thus the 3rd charge is in respect of an event which occurred more than 4 years before the institution of the Disciplinary Proceedings and in respect of acts or omissions which could never be termed as misconduct or negligence.

8. The second charge relates to the construction of building No.607 at MES Compound, Itarsi by Shri Vimal Chand Chauradia of M/s.Vimal Enterprises using sub-standard material. The allegation is that due to lack of supervision over the construction work by the applicant and due to use of sub-standard material and ignoring the complaints of subordinate officers against

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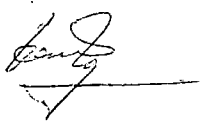
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the said contractor regarding execution of the said work, roof of building No.607 collapsed on 30.12.1981 killing 5 labourers working at the site. The imputation of misconduct under this charge is that the roof of the building collapsed on 30.12.1981 and not about any other structure. The event of collapse of roof undoubtedly falls within 4 years of the institution of the Departmental Proceedings. The case of the applicant is that the roof collapsed during the concreting work and not because of violation of any specifications or use of sub-standard material. In fact as ^{per} the contract the material used, that is, cement and steel was supplied by the Department. During the period of shuttering and laying of roof, the applicant was on Earned Leave from 16.12.81 to 30.12.81. He returned to the station only on hearing about the collapse of the roof on the morning of 30.12.1981. There is some controversy as to whether he was actually away from the station on leave as claimed by him from 16.12.81 to 31.12.81. The applicant states that he left Itarsi on 20.12.81 for Delhi to attend a meeting of the Indian Standards Institution of which he is a member. Though there is nothing on record to substantiate that he left Itarsi on 20.12.1981 for Delhi, it is a common ground that from 23.12.81 onwards the applicant went on leave upto 1.1.1982 but he actually returned to Itarsi on 30.12.81 on hearing about the collapse of the roof.

9. Before us is produced a "Site Order Book Part-II C.A. No.: CEPIT/70 of 80-81.

Name of work : Provn.of Certain Tech and other Bldgs. at Itarsi.

Name of Contractor: M/s.Vimal Enterprises " in which the instructions given by the Engineer in Chief from day to day in respect of work under his charge are noted for being carried out by the Contractor. This book contains



a column for the Engineer-in-Chief to record instructions under his signature. In next column of that book the contractor is required to affix his signature in token of having noted the instructions and undertaking to carry out the same. Remarks, if any, by the Engineer-in-Chief after compliance of the instructions are required to be noted in the other column. In that book on 26.12.1981 with respect to the work in question, the Engineer-in-Chief noted his instructions to the Contractor as under:-

" In bldg No.604/^{some}ballies in roof shuttering are not straight. Please replace them or strengthen by additional support."

On the same day the contractor noted these instructions and affixed his signature in the relevant column as under:-

" Noted for compliance"-. .

10. This book is produced by the Respondents themselves.

11. Another book which is known as "Works Diary" maintained and signed by the Works Engineer and the contractor or his authorised agent for the period 27.10.81 to 8.1.82 is also placed on record by the Respondents themselves. From the record produced before us the Respondents unequivocally establish that the frame work for laying ^{the} roof commenced on 17.12.81. The Engineer-in-Chief was visiting , checking the work and noting the progress and giving instructions to be complied with by the Contractor. On 21.12.81 the Engineer-in-Chief suggested some reinforcement to the frame work. Shuttering work commenced on 21.12.81. Even

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on that day he directed reinforcement of frame work. He reiterated it on 22.12.81 and 23.12.81. Even on 26.12.81 the reinforcement was instructed. The slab was being laid on 30.12.1981 when the roof collapsed. As noted in the "Works Diary" the shuttering work, appears to have been completed at 11.5 AM. From the contemporaneous^{record}/of the execution of the work maintained in the official course of business, by and on behalf of the Department itself establishes that the shuttering work and a part of the centering was done after the applicant left Itarsi on L.T.C. The shuttering work itself commenced a few days after the applicant left Itarsi and was completed only on 30.12.1981 around 11 O'clock. The laying of the roof slab commenced thereafter and was completed at 12.00 Noon when it collapsed. During this period the applicant was on leave. It is contended by the Respondents that if the height of the roof is above 3 to 4 meters, steel props adjustable or otherwise should be adopted with adequate lateral and diagonal braces and the applicant ought to have ~~been~~ noticed that instead of steel, the contractor had used wooden supports and according given appropriate instructions. Failure to do so amounts to gross negligence and misconduct. Reliance for this contention is placed on Engineer-in-Chief's Technical Instruction No.1 of 1977 issued by the Army Headquarters Engineer-in-Chief's Branch New Delhi.

12. Shri S.C.Gupta, the learned counsel for the applicant however contends that these specifications which came into force under Military Engineer Services Standard Schedule of Rates, 1980 Part I do not govern the present case. But even these specifications permit the use of wooden centering and option is given to the contractor

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to use steel. However it is the Military Engineer Services Standard Schedule of Rates Part I Specifications, which came into force in 1975 are the specifications that govern the contract in question.

13. The Military Engineer Services Standard Schedule of Rates (1975) (Part-I Specifications) lays down that "These general rules shall be applicable to all Sections to the extent the context permits and are intended to supplement the provision in the particular section. In case of any discrepancy the provision in the particular section shall take precedence." Under the terms of the contract, it is these specifications that govern the contract in question. That being so any instructions issued by the Army Engineer in Chief which are at variance with these specifications cannot prevail. Section 4 of the Specifications which deals with the 'Concrete work' prescribes in para 4.3.7.1 of that Section dealing with Form Work as under: -

- " The design of the forms shall be such as to comply generally with the following conditions:-
- (a).....
 - (b) Supports shall be so fixed on timber bearers, as not to sink or cause injury to any work beneath the lower end.
 - (c)
 - (d) Forms shall be so constructed as to be removable in sections by unscrewing or otherwise loosening them without hammering or levering with force. Only wedges, clamps, bolts or screws shall be used. Nails may be used where permitted by the E.I.C.
 - (e) to (l)
 - (m) Where the concrete is exposed to view, the forms shall be wrought on the inside surface and treated as above each time they are used. Alternatively, the contractor may line the formwork with

plywood or make use of steel forms, without extra cost to the Government."

In the agreement signed between the contractor and the Government, it is these specifications that are incorporated and not the instructions contained in the Manual issued by the Engineer in Chief which are relied upon by the learned counsel for the Respondents. This conclusively establishes that the former and not the later govern the contract. These specifications permit use of timber or wood and do not enjoin the contractor to necessarily use steel. The contention of the Respondents that if the applicant had inspected the site, he would have noticed the wooden supports and he could have instructed the contractor to use steel supports and failure to do so amounts to negligence cannot be upheld. Further as per the standing instructions the Engineer-in-Chief is not required to visit the work site everyday. The work for laying the roof started after 23.12.1981 after the applicant left the station. Under the standing instructions for the grant of contracts and execution of works, supervision of the works under execution, certification of the various stages of the work and completion of the work and payments for the work done, there are a hierarchy of officers with the Assistant Garrison Engineer(A.G.E) at the bottom with Garrison Engineer (G.E.) immediately above him and Chief Works Engineer(C.W.E) corresponding to a Suptding Engineer above both of AGE & G.E. and the Chief Engineer(CE) at the apex. The centering and shuttering is certified by the Engineer in Charge who is ^{the} Garrison Engineer(GE) without that certificate the work of laying the roof could not be commenced when the applicant had left. Admittedly, in any case by 23.12.1981, the centering itself was not fully laid when the Engineer-in-Charge

had noted deficiency in the centering and gave instructions to rectify the defects. Whether the instructions were carried out and whether shuttering was done properly or not is a matter for which the applicant who was the Chief Engineer away from the station on L.T.C. could not be held responsible. The roof collapsed even during the process of laying not because of any defect in the concrete columns but because of defective centering or shuttering which cannot be termed as misconduct or negligence much less grave negligence on the part of the applicant, who admittedly being away from the headquarters during that period had never certified and had no occasion to certify for laying the roof. This article of charge, therefore, falls to the ground as it relates to an event which occurred either more than 4 years before the Disciplinary Proceedings were started ^{or is} in respect of the events with reference to which the applicant cannot be charged with misconduct or negligence.

14. Now we move to Charge No.1 which relates to the construction of a overhead tank in Ordnance Factory at Itarsi by Shri Vimal Chand Chauradia of M/s.Vimal Enterprises. The allegation is that the applicant got the said firm provisionally enlisted and issued tender forms to enable it to submit the tenders knowing full well that the income tax clearance certificate issued to that firm was not valid. The tender forms were issued on 21.11.79. The work itself started on 29.7.80 and it was to be completed on 28.1.81. The event of issuing tender forms, awarding the contract and allowing the contractor to commence work all occurred more than 4 years prior to the institution of Disciplinary Proceedings and, therefore, cannot be made the subject matter of any Disciplinary Proceedings against the applicant who is a pensioner. The further charge is that the applicant failed to supervise the construction of the overhead tank and also ignored the complaints of the subordinate officers that the contractor was using

24

sub-standard material as a result of which the tank collapsed on 9.9.1981. In the statement of imputation of misconduct in support of this article of charge the allegation is "that during the construction test cubes were required to be cast and tested out of the concrete being used to ascertain the strength of the said cubes for 7 & 28 days and the test results were required to be perused by the contractor in the construction. As per standing orders, six samples of concrete test cubes i.e. 3 numbers for testing for 7 days strength and 3 numbers for testing for 28 days strength were required to be cast and tested for every concreting day. The said casting was done only three times during the 33 days' period of construction. The contractor did not leave the four openings in the bottom dome for the insertion of pipes. Later on, without bringing this fact to the notice of Engineer-in-Chief he cut open four holes bigger in diameter to those of the C.I. Pipes due to which the safety of structure was endangered." It is also alleged that "the contractor did not execute the work as per specifications given in the tender".

15. As established by the "Works Diary" all these items of work were completed before 8.8.1981 that is beyond the 4 years' period of limitation. In fact the framework was removed on 23.6.1981. The applicant went on commuted leave from 12.8.81 to 21.8.81 and the overhead tank collapsed on 9.9.81. As can be gathered from the "Works Diary" on and from 8.8.81 only the work of plastering the top and bottom of the tank was carried out. The plastering was also done from 9.8.81 to 20.8.81 and was inspected by the Engineer-in-Chief. The curing was done from 3.9.1981 onwards. The tank collapsed while it was being filled up with water for the purpose of testing after removing the scaffoldings.

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During this period the applicant was out of station on temporary duty. What collapsed was the tank and not its supporting pillars. For this collapse the applicant cannot be held responsible because this event took place more than 4 years before the institution of the Disciplinary Proceedings. 25


16. It is unfortunate that although a valuable tank and the roof of a huge structure collapsed, the work worth of several lakhs in each case more than Rs.70 to 80 lakhs the Departmental Proceedings were not instituted well within the time envisaged by Rule 9. It is stated that due to the C.B.I enquiry the proceedings could not be instituted. Even according to the Respondents, the Court of Enquiry was held in May 1982 and thereafter the matter was referred to the C.B.I for further action. Any enquiry instituted by the C.B.I is to initiate Disciplinary Proceedings and not to thwart them. How far the charges can be brought home to the applicant who was the Chief Engineer and who contends that he being a Chief Engineer is not responsible to look into the minute details of the execution of the works which are quite large in number and which are to be supervised by subordinate Engineering staff at every stage to ensure that they are executed in accordance with the specifications is a matter that should be enquired into. Where there is a hierarchy of officers whose duties are defined, it is necessary to determine the extent of the responsibility of each and determine whether there was any failure to discharge the duties and responsibilities promptly and whether the failure amounted to misconduct or negligence. But because ^{of} the statutory embargo laid down by Rule 9

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of the Pension Rules, no disciplinary proceedings can be initiated against a pensioner in respect of any event which took place more than 4 years prior to the initiation of such proceedings and failure to institute the proceedings within that period is coming in the way of the Disciplinary Proceedings. The Rule of Limitation knows no equity. Even for prosecution of offences under the Criminal Law, Section 468 of the CrPC prescribes a period of limitation. The Rule making authority has in our view advisedly prohibited initiation of any proceedings against pensioners under Rule 9 in respect of any event which may have occurred more than 4 years prior to the institution of the Disciplinary Proceedings so that they may live in peace after retirement. If any proceedings are not initiated in respect of a serious case of grave misconduct or negligence on the part of the one or the other officers it is because no proceedings are instituted within the time although they were suspected and partial enquiry was held well within the time. Time once it begins to run, runs remorselessly and inexorably both for the good, bad and the ugly and like death makes no distinction. While the Public Policy also dictates that public servants guilty of misconduct or negligence should be brought to book even after their retirement the very same policy dictates that any such proceedings should be instituted within a period of 4 years. A Damocles' sword should not be hanging over them for an indefinite period. For maintaining the purity of administration it is essential that those that are guilty of misconduct and negligence should not go unpunished; any proceedings for withholding or cutting the pension must be done in accordance with Rule 9; otherwise it would be arbitrary. In this case the bar of limitation which is a part of Rule 9 precludes any further action; that cannot be given a go bye.

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17. In the result, the Disciplinary Proceedings are quashed and the Respondents are restrained from proceeding further against the applicant in respect of the aforesaid charges. In this view of the matter, we do not wish to go into the other contentions raised by the applicant, namely that the charges framed, even if true, cannot be termed as relating to grave misconduct or negligence; and the allegations were made malafide for oblique motives. This application is accordingly allowed but in the circumstances we make no order as to costs.


(KAUSHAL KUMAR)
MEMBER 29.1.87


(K. MADHAVA REDDY)
CHAIRMAN 29.1.87