

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 1539/2004

New Delhi this the 20th day of August, 2004

Hon'ble Mr.Justice V.S.Agarwal, Chairman
Hon'ble Mr. S.A. Singh, Member (A)

Dr. M.Khalilullah,
S/0 Late M.Kalimullah,
R/0 2 Ring Road, Lajpat Nagar-IV,
New Delhi-110024

...Applicant

(By Advocate Shri Vivek Singh)

VERSUS

1. The Union of India,
through the Secretary to the Govt.
Ministry of Health & Family Welfare,
Govt.of India, Nirman Bhawan,
New Delhi.
2. Dr.R.K.Srivastava,
Inquiry Officer,
Additional Director General,
Directorate General of Health Services,
Govt.of India, Nirman Bhawan,
New Delhi.

..Respondents

(By Advocate Shri Madhav Panikar)

O R D E R

Hon'ble Shri S.A. Singh, Member (A)

The applicant superannuated from the post of Director, G.B.Pant Hospital, Delhi with effect from 30.6.1995. On 24.8.1998 he received a letter from the Principal Secretary, (Health and Family Welfare), Govt. of N.C.T. of Delhi asking him to furnish explanation as to why responsibility should not be fixed for the negligence causing excessive purchases of Sponge Stone and misuse of public funds, within a week. On 2.9.1998 the applicant replied to this letter requesting for supply of certain documents in order to enable him to file an effective reply as he had retired almost four years back. No reply was received by the applicant and memorandum



dated 16.6.1999 was issued after having obtained the sanction of the President under Rule 9 of the Central Civil Services (Pension) Rules, 1972 for instituting the Departmental proceeding against the applicant for the following imputations of misconduct in support of the articles of charge which reads:

“ Article 1

An indent for purchase of 1000 boxes each of spongestone was placed by three departments of the GB Pant Hospital, namely, OT-I, II and III, on the Stores Section of the Hospital during 1994-95. The concumption of spongestone in these three departments never exceeded 100 boxes per year. This clearly establish that the three departments had over-intended this article.

Stores Section after merely consolidating the demands received from the 3 departments, sent the requisition in the proforma to the Puschase Section mentioning that 175 boxes were in stock.

Since, the value of the article requisitioned exceeded Rs.1 lakh which was beyond the purchase power of the Hospital, placed intends on DGS& D, Madras with the approval of Director, GB Pant Hospital on 7.2.95 vide notes at page 3/Notes in File No. 82-81 (19)/GBP/PS/94-95. Thereafter, purchase of 3000 boxes of spongestone was made through DGS&D under A/t No.219/2636/21-02-95/M.3/2445/CCOASD dated 22.6.95.

The Director, GB Pant Hospital, without excercising proper check, whatsoever, viz. the quantity already in stock, the level of consumption, reasons/justification for a sudden 10 fold increase in the demand to ensure that the purchase was not unduly excessive etc. By this action, Dr. Mohd. Khalliluah failed to maintain devotion to duty and acted in a manner unbecoming of a Government servant contravening thereby the provisions of Rules 3(1)(ii) and 3 (1)(iii) of the CCS (Conduct) Rules, 1964.”

On 18.6.1999 the applicant sought various papers to file written statement and defend himself effectively. Since no reply was received, he again filed a representation seeking documents on 21.6.1999. Without supplying these documents, the disciplinary authority vide its order dated 27.7.2000 appointed one Mr. R.Ashok as Enquiry Officer to hold the enquiry against the applicant, who had been charged without having any proceeding taken place by appointing one Dr. O.N.Krishan as the enquiry officer vide order dated 10.11.2000. Again one Dr. R.K. Navalakha was appointed as the enquiry officer in place of Dr. O.N.Krishan. On 9.7.2002 Dr. Sudhir Chandra was appointed as the enquiry officer without any proceeding having taken place. Again one Dr. R.K.Srivastava was appointed as the enquiry officer in place of Dr. Sudhir

Chandra vide order dated 4.9.2002 without any proceeding having taken place. In this order it was mentioned that the proceeding initiated against Dr. Sushil Kumar, one of the co-delinquent was dropped. On 20.5.2004, the applicant was informed by the enquiry officer that it was proposed to hold a preliminary enquiry at 11.AM on 25.5.2004.

2. The applicant has filed the present OA aggrieved by the fact that the authorities had considered the representation of Dr.Sushil Kumar and dropped the proceedings against him whereas he had been denied the opportunity of making such a representation as his requests for the documents for preparing a reply have been ignored and enquiry is proposed to be conducted.

3. The applicant has prayed that the departmental proceedings initiated against him vide Memo. dated 16.6.1999 be quashed and to direct the respondents to drop the departmental proceeding being held against him vide letter dated 20.5.2004 of respondent No.2. The applicant has taken the ground that the initiation of departmental proceedings against him is in violation of Rule 9 of the Central Civil Services (Pension) Rules, 1972 as these have taken place four years after the alleged incident had occurred and hence barred by limitation. Applicant had approved and accorded sanction to the purchase on 7.2.1995 , thereafter he superannuated on 30.6.1995 and the Memo. of charge is dated 16.6.1999 hence more than four years after the alleged incident.

4. The applicant has also pleaded that the proceeding is liable to be quashed because of inordinate delay in conducting the proceeding which is not on account of the applicant. The memo. of charge is dated 16.6.1999 and the applicant immediately replied on 18.6.1999 and sought documents but he did not hear anything for approximately 5 years instead letter dated 20.5.2004 was issued by the Enquiry Officer/Respondent No.2 informing that a preliminary hearing is scheduled for 25.5.2004.

5. Moreover the applicant had given sanction to the purchase of 3000 boxes of Sponge Stone and not committed any grave misconduct as no loss was caused to the Government. There

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is no allegation that the applicant had either acted unreasonable or in a malafide manner for personal gain.

6. Needless to say that the respondents have contested the claim of the applicant stating that the applicant had approved the purchase of Sponge Stone without checking the quantity in stock, the level of consumption in previous years and the reasons/justification for a sudden ten fold increase in the demand. The final order was placed on 22.6.1995 to DGS&D and the applicant had retired on 30.6.1995. Therefore, he was responsible for the excess procurement of Sponge Stone. The respondents could initiate the proceedings before 22.6.1995. The sanction of the President of India was issued on 14.6.1999 as such the proceedings are not barred by limitation under Rule 9 of the CCS (Pension) Rules, 1972.

7. Due to administrative reason, the respondents were forced to change the inquiry officer and the presenting officer appointed initially because of the difficulties as the applicant was a senior CHS officer as also the other charged officers. Proceeding against Dr. Sushil Kumar was dropped as he had made a representation that the requirement of Sponge Stone in so far as his operation theatre is concerned was correctly indicated by him and the quantity was changed subsequently by some subordinate staff member for which he was not responsible. The relief sought by the applicant may not be granted as the disciplinary proceedings have been started by issuing a notice for preliminary enquiry and any stay in the matter will only further delay the proceeding not only against the applicant but also other charged officers in this case.

8. We have heard the learned counsel for both the parties and have gone through the records as also the file made available to us concerning placement of the order of Sponge Stone to DGS&D. The Memo. Of charge was issued on 16.6.1999 and the applicant has come to the Tribunal on 24.6.2004 and that after lapse of five years. As per rule 21 of the Administrative Tribunals Act, 1985, the application would be under limitation. However, the applicant has argued that he could not file the application earlier as he was not supplied the documents to

enable him to make a reply to the notice. In the case of Dr.Sushil Kumar co-delinquent, the proceedings have been dropped after his representation. In the absence of the documents, the applicant was unable to make a representation and instead of supplying of these documents, notice for starting the preliminary enquiry was issued on 21.5.2004 hence the cause of action arose on that date. Accordingly, he filed the application within the period of limitation. Respondents have not given any reasons for not supplying of documents and inordinate delay in starting the departmental proceeding except that they had administrative difficulties in appointing the Enquiry Officer and Presenting Officer because of the seniority of the persons that were involved. We, therefore, agree with the applicant that this application is not barred by limitation.

9. Without going into the merit of the case, we take up the question of limitation in starting the proceeding. According to Rule 9 (2) (b) (ii) of the CSS (Pension) Rules, 1972 which reads as under :

Provided that where the departmental proceedings are instituted by an authority Subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) The departmental proceedings, if not instituted, while the Government servant was in service, whether before his retirement, or during his re-employment,-

(i) xxxx xxxx xxx

(ii) shall not be in respect of any event which took place more than four years before such institution”

10. According to this Rule no disciplinary proceeding can be initiated in respect of the event which took place more than four years before such institution. In the present case, the short question is whether the event was within four years as claimed by the respondents or after four years as contented by the applicant? The proceedings were instituted vide charge Memo. dated 16.6.1999. Therefore, any event earlier than 16.6.1995 would come within the ambit of limitation in terms of Rule 9 (2)(b)(ii).

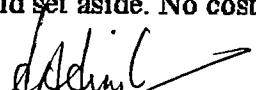
11. The respondents have urged that the relevant date for determining the period of limitation is the date of placement of order by DGS&D and not the date of placement of indent. The order was placed by the DGS&D on 22.6.1995 after they have received the technical suitability report from the Hospital. This report had been approved by the applicant on 20.5.1995 therefore, the disciplinary proceedings had been instituted ^{within} ~~even~~ four years of the placement of the order.

12. The statement of articles of charge reads:

“ That Dr. Mohd. Khaliuah while functioning as director , GB Pant Hospital while placing consolidated indent for the purchase of Sponge Stone on the DGS&D Madras did not check the level of Consumption reason/justification for a sudden 10 fold increase in the demand thus failing in his duty of maintaining adequate check thereby violating Rule 3 (1) (ii) & (iii) of the CCS (Conduct) Rules, 1964”.

13. From the plain reading of the article of charges, it is clear that the applicant had failed to check the level of consumption/justification for placement of the indent for purchase of Sponge Stone on DGS&D and not relating to the placement of purchase order. The date of placement of indent is 8.2.1995 and is not in dispute. Thus, this event of placement of indent clearly took place before four years of the institution of the disciplinary proceeding.

14. Without going into any other matter, the OA is allowed on the ground that the event (placement of indent) took place four years before the institution of the disciplinary proceeding, hence the proceedings are barred by limitation in terms of Rule 9 (2)(b)(ii) of the CCS (Pension Rules).. Accordingly, departmental proceeding initiated against the applicant pursuant to the charges contained in the memo. dated 16.6.99 of respondent No.1 and also the departmental proceeding being held against him by the letter dated 20.5.2004 of respondent No.2 are quashed and set aside. No costs.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman