

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 875/93
T.A. No.

199

DATE OF DECISION

5.8.93

<u>Shri J.D.Gupta</u>	Petitioner
<u>Shri S.C.Jain</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India</u>	Respondent
<u>Shri M.L.Verma</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. J.P.Sharma, Member (J)

The Hon'ble Mr. N.K.Verma, Member (A)

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 it needs to be circulated to other Benches of the Tribunal ?

JUDGEMENT

(Hon'ble Shri N.K.Verma, Member (A)).

In the two O.As No.875 and 876 of 1993 the applicant Shri JD Gupta, a retired Assistant Engineer in the CPWD has assailed the impugned order dated 22-3-93 under which he was informed of a proposed action against him under rule 16 of the CCS (CA) Rules 1965 on the basis of statement of imputation of mis-conduct. The applicant has been charged with failure to maintain absolute integrity and lack of devotion to duty thereby contravening rule 3110 and 3127 of CCS Conduct Rules, 1964. The applicant has prayed quashing of the impugned order and an interim relief of staying the operation of the impugned order. While admitting the O.A. on 3-4-93 notice was issued to the respondents to file reply before this Bench and an interim stay for 14 days was also granted till 5-5-93. The interim order has been continued thereafter and the case

came for final hearing on 19-7-1993.

2. The short facts of the case are that the applicant was an Assistant Engineer, CPWD w.e.f. 13-3-1973 and was posted in the Directorate of CPWD in New Delhi during June, 1979. He was served with the impugned orders on the ground that he, while working as A.En. during 1980-83, committed irregularities in the work of construction of Byepass to NH-1 which resulted in a loss to the government of Rs.1,28,722/- . The applicant has assailed this initiation of proceedings of minor penalty at a time when he was about to retire within a weeks' time on superannuation. He has quoted the Ministry of Home Affairs instructions vide O.M. No.134/10/80-AVD-I dated 28-2-81 under which it has been said that minor penalty proceedings continued after retirement do not have any effect on the pension in the matter of reducing or withholding the pension of a retired government servant and as such disciplinary authorities are required to take steps to see that the minor penalty proceedings instituted against a government servant who is due to retire are quickly finalised before the date of retirement. The ^{applicant also} alleges malafides on the part of Respondent No.2 who was made to ^{pay} pay a penalty of Rs.500/- under this Tribunal's orders dated 28-8-92 in another OA No.211/92 filed by this applicant.

3. The respondents have stoutly denied the allegations as of malafides and they also came up with a subsequent office Memorandum issued by the Ministry of Personnel, P.G. & Pensions dated 31-7-87 which stipulates that the Central Government has the powers to withhold or withdraw pension even as a result of minor penalty proceedings instituted while the charged officer was in service and which was continued after his retirement provided grave misconduct or negligence is established. Besides it has been submitted that no cause of action has arisen in favour of the applicant against the respondent yet as the charge sheet was served on him before retirement and he also replied to it on 24-4-93 and orders on this charge sheet are yet to be issued and he has not

exhausted the remedies available to him in the departmental proceedings before coming to the Tribunal. The application is, therefore, premature and the ex parte stay has been obtained after concealing the material facts.

4. We have ~~had~~ learned counsels for both the sides. Admittedly the disciplinary authority has the powers to initiate proceedings under rule 16 of the CCS(CCA) Rules, 1965 while the applicant was in service for grave mis-conduct or negligence established by him. However, the same order dated 31-7-87 also reiterates that it should be the endeavour of the disciplinary authority to see that the minor penalty proceedings instituted against the government servant who is due to retire are finalised quickly and normally before his retirement so that a need for continuing such proceedings beyond the date of retirement do not arise. In the instant case the applicant has been charged with failure to maintain absolute integrity and he had showed lack of devotion to duty thereby contravening rule 3.1(1) & 3.1(2) of the CCS Conduct Rules, 1964. The charges nowhere indicate that the over-payment made by the applicant by tape measurement of the work done instead of by levels constituted such a grave mis-conduct which warrants continuation of a proceedings in terms of rule 9(2)A of the CCS Pension Rules, 1972. If the mis-conduct or negligence was so grave, nothing prevented the disciplinary authority to initiate charge sheet against the applicant as and when the same was detected. The dated of alleged over-payments are May 1981. The respondents have taken more than 12 years to initiate charge sheet against the official at the time when he was about to retire within a week. The reason why there was no promptness shown for initiation of charge sheet against the official has not been explained satisfactorily. Viewed in this context, one cannot also overlook the fact that there was some kind of malafides on the part of Respondent No.2 in having the charge sheet initiated against the applicant at the time of his retirement because of the penalty of Rs.500/-

awarded to him under this Tribunal's orders. We are therefore persuaded that the proceedings under the impugned orders are initiated by the malafides and also the delays involved are unexplained. The application therefore succeeds and we order accordingly. The impugned order is quashed.

This also disposes of D.A.No.876/93 filed subsequently on similar grounds and seeking similar reliefs.

N.K.Verma
(N.K.VERMA)
Member (A)

J.P.Sharma
(J.P.SHARMA) 5/9/93
Member (J)

Pronounced by me.

J.P.Sharma
(J.P. Sharma)
Member (J).