

Central Administrative Tribunal Jammu Bench, Jammu

T.A. No. 95/2021
(S.W.P. No.1673/2013)

Thursday, this the 29th day of April, 2021

(Through Video Conferencing)

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)

Farooq Ahmad Renzu (aged 58 years)
S/o. Gh. Mohammad Renzu
R/o. IshbarNishat, Srinagar.

..Applicant

(Mr. Altaf Haqani, Senior Advocate and Mr. Shakir Haqani, Advocate)

VERSUS

1. State of Jammu and Kashmir through
Commissioner/Secretary to Government
General Administration Department,
Civil Secretariat, Srinagar.
2. Shri Atul Duloo, IAS
Commissioner/Secretary to Government,
Tourism and Culture Department (Inquiry Officer),
Civil Secretariat, Srinagar.
3. Mr. Sheikh Mushtaq, IAS
Commissioner/Secretary to Government
Sheep and Animal Husbandry Department
(Ex. Secretary to Government,
General Administration Department)
Civil Secretariat, Srinagar.

..Respondents

(Mr. Amit Gupta, Additional Advocate General and Mr. Rajesh Thappa, Deputy Advocate General)



ORDER (ORAL)**Mr. Justice L. Narasimha Reddy:**

The applicant belongs to Kashmir Administrative Service (KAS) and was working as Vice Chairman, Srinagar Development Authority. On 18.03.2013, the Government, in the General Administration issued a memo of charge to the applicant with certain allegations. He attained the age of superannuation on 31.03.2013. He filed SWP No.1673/2013 before the Hon'ble High Court of Jammu & Kashmir with a prayer to quash the charge sheet dated 18.03.2013 and to prohibit the respondents from proceeding with the inquiry.

2. The plea of the applicant is that whatever may have been the justification in issuing the charge sheet, it was not competent for the Government to continue the proceedings once he retired from service. It was also his contention that unless there exists specific provision, enabling the Government to continue disciplinary proceedings even after the retirement, no further steps can be taken. Reliance was placed upon the judgment of Hon'ble High Court of Jammu & Kashmir, Srinagar in **Dr. Ghulam Mohammad Dhar v. State of Jammu & Kashmir** (L.P.A. No.70/1999) decided on 31.12.1999 as well as the judgment of Hon'ble Supreme Court in **Bhagirathi Jena v. Board of Directors, O.S.F.C.**, AIR 1999 SC 1841.

3. The respondents filed a detailed reply, stating that the disciplinary proceedings were initiated against the applicant having regard to serious violations on his part. Reference is made to the various proceedings in relation to that. They contend that it is competent for them to continue the disciplinary proceedings even after retirement.



4. The SWP has since been transferred to the Tribunal in view of reorganization of the State of Jammu & Kashmir and renumbered as T.A. No.95/2021.

5. Today, we heard Mr. Altaf Haqani, Senior Advocate assisted by Mr. Shakir Haqani, learned counsel for applicant and Mr. Amit Gupta, learned Additional Advocate General & Mr. Rajesh Thappa, learned Deputy Advocate General, at length.

6. The charge memo was issued to the applicant two weeks before his retirement. To be precise, he retired from service on 31.03.2013 and the charge memo was issued on 18.03.2013. It is fairly well settled that unless there exists any provision of law, enabling the Government or the concerned authority to continue the disciplinary proceedings after retirement, they come to an end with the retirement of the employee. The reason is that the relationship of the employee and employer ceases on retirement. However, there are instances where the Government reserves to



itself, the right to continue the proceedings, which were initiated while the employee was in service. In this context, reference can be made to Rule 9 of CCS (Pension) Rules, 1972, which provides for withdrawal of the pension in full or part on the basis of pecuniary loss as a result of the departmental or the criminal proceedings. The Rule further stipulates that the departmental proceedings cannot be initiated against an employee once he retires from service, except in few circumstances, mentioned in Rule 9 (2). It is brought to our notice that a similar provision is contained in Regulation 168-A of Jammu & Kashmir Civil Service Regulations, 1956. It reads:-

“168-A. The Government reserves to itself the right to order the recovery from the pension of an officer of any amount on account of losses found in Judicial or Departmental proceedings to have been caused to Government by the negligence or fraud of such officer during his service provided that-

(a) such Departmental proceedings if not instituted while the officer was on duty--

(i) shall not be instituted save with the sanction of Government;

(ii) shall be instituted before the officer's retirement from service or within a year from the date on which he was last on duty, whichever is later;

(iii) shall be in respect of an event which took place not more than one year before the date on which the officer was last on duty; and

(iv) shall be conducted by such authority and in such places as the Government may direct;

(b) all such departmental proceedings shall be conducted if the officer concerned so requests in accordance with the

procedure applicable to departmental proceedings on which an order of dismissal from service may be made; and

(c) such judicial proceedings if not instituted while the officer was on duty, shall have been instituted in accordance with sub-clauses (ii) and (iii) of clause (a) above.”



From this, it is evident that in case the departmental proceedings are initiated against the employee while in service, it is competent for the Government to continue the same.

7. It is true that the Hon'ble High Court in **Dr. Ghulam Mohammad Dhar's** case (supra) held that the departmental proceedings cannot be continued against an employee once he retires from service. Reference is also made to the judgment of Hon'ble Supreme Court in **Bhagirathi Jena's** case (supra), wherein it has been held:-

“In view of the absence of such provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.6.95. there was no authority vested in the Corporation or continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement.”



8. There is absolutely no quarrel for proposition. However, it appears that the attention of the Hon'ble High Court was not drawn to Regulation 168-A of Jammu & Kashmir Civil Service Regulations, 1956. The Hon'ble Supreme Court held that in case there exists any provision that enables the Government to continue the proceedings even after retirement of an employee, there cannot be any illegality as such. In other words, much would depend upon the existence of the relevant provisions. Once we find that Regulation 168-A enables the Government to continue the proceedings, we cannot find fault with the action of the Government in continuing, even after retirement the disciplinary proceedings that were initiated while the employee was in service.

9. We do not find any merit in this T.A. It is accordingly dismissed. There shall be no order as to costs.

(AradhanaJohri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

April 29, 2021
/sunil/mbt/sd/