

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 181/00922/2019

Monday, this the 6th day of September, 2021

CORAM:

Hon'ble Mr. P. Madhavan, Judicial Member
Hon'ble Mr. K.V. Eapen, Administrative Member

K.C. Kunhimon, aged 59 years, S/o. Ander Thattana Chetta,
 Revenue Inspector, Collectorate, Kavaratti, Residing at :
 Qtr No. B-III, Near SOB, Kavzaratti – 682 555,
 Mob. No. 9495273885. **Applicant**

(By Advocate : Mr. T.C. Govindaswamy)

V e r s u s

1. The Administrator, Union Territory of Lakshadweep,
 Lakshadweep Administration, Kavaratti – 682 555.
2. The Collector cum Development Commissioner,
 Union Territory of Lakshadweep, Collectorate,
 Kavaratti – 682 555. **Respondents**

(By Advocate : Mr. S. Manu)

This application having been heard on 01.09.2021 through video conferencing, the Tribunal on 06.09.2021 delivered the following:

O R D E R

Hon'ble Mr. P. Madhavan, Judicial Member –

This is an Original Application filed by the applicant seeking the following relief:

“(i) Call for the records leading to the issue of Annexure A1 and quash all further proceedings pursuant to the same;

“(ii) Declare that the applicant is entitled to be considered and granted the third financial up-gradation in level six of the pay matrix with effect from 21.11.2018 and direct the respondents accordingly;

(iii) Direct the respondents to consider and grant the applicant the third financial up-gradation in level six of the pay matrix with effect from 21.11.2018 and direct further to grant all the consequential benefits, including arrears of pay and allowance arising therefrom;

(iv) Award costs of and incidental to this application;

(v) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.”

2. The applicant in this case was working as Revenue Inspector, Kavaratti in the Union Territory of Lakshadweep. While he was working as Revenue Inspector he was issued with a charge memo dated 28.3.2013 under Rule 16(b) of CCS (CCA) Rules, 1965 raising three allegations. The copy of the charge memo is produced as Annexure A1. The main allegation against him was that the applicant has recommended for the issuance of an ownership certificate to one K.R.B. Ismail for getting electricity connection without verifying the documents. On receipt of the memo he immediately gave a representation, Annexure A2 denying the allegations leveled against him. The applicant has issued the certificate as per the practice prevalent and based on the report of the Amin and also stating that the certificate is valid only for electric connection for a particular building. The said act of issuance of certificate was done in good faith and the applicant had no malafide intention. Thereafter he was not informed regarding the proceedings. According to him the inquiring authority had conducted a fact finding inquiry and had submitted a report on 7.4.2016 holding that no action can be taken against the applicant as there are no proper guidelines issued by the Department and the certificate was issued by the Deputy Collector on the basis of the report given by the local inhabitant Amin. So there is no fault on the part of the Revenue Inspector. The report of the

inquiry officer is produced as Annexure A3. According to the applicant he joined service on 21.11.1988 and he was promoted as adhoc Revenue Inspector in the year 1996. Later he was appointed as regular Revenue Inspector. With effect from 1.9.2008 the applicant was granted 2nd financial up-gradation and because of the pendency of the inquiry proceedings the applicant was not considered for 3rd financial up-gradation w.e.f. 21.11.2018. According to him the alleged incident has taken place in the year 2011 and the charge memo was issued in the year 2013. More than 8 years have elapsed since the date of incident and after being exonerated of the charges by the inquiry officer, the disciplinary authority has not passed any order on the report of the inquiry officer. According to the applicant he retired on superannuation on 31.5.2020. Much time has elapsed and it is not possible for the applicant now to collect further evidence and produce it before the Tribunal to defend his case. He is suffering much financial crises due to the pendency of the disciplinary proceedings and therefore, prays for the above reliefs.

3. The respondents appeared and admitted almost all the facts leading to the filing of the OA. They admitted that the applicant has a claim for 3rd financial up-gradation under MACP with effect from 21.11.2018 and it could not be considered because of the pendency of the Rule 16 inquiry proceedings initiated against him. The inquiry report absolved the applicant of all the charges in the year 2016 but due to administrative constraints the disciplinary authority could not take a final decision on the same. Any how they have initiated steps to conclude the proceedings at the earliest after the OA is disposed of. They are also ready to take a decision on the entitlement

of the applicant for the 3rd financial up-gradation under MACP without delay. As on date the applicant has retired from service and he is given provisional pension. It is only because of the non-completion of the inquiry proceedings the delay has occurred. So they pray for disposal of the OA with necessary directions.

4. We have heard both sides and perused the pleadings made in this case. On going through the submissions, we find that the alleged incident of issuance of ownership certificate has taken place in the year 2011 and the charge memo was issued to the applicant as per Annexure A1 in the year 2013. The fact finding inquiry was also conducted and the inquiry officer has filed a detailed report absolving the applicant from any liabilities as per Annexure A3 on 7.4.2016.

5. The counsel for the applicant would submit that the applicant has retired from service on 30.5.2020 and now the disciplinary authority cannot pass any order as the proceedings is only under Rule 16 of the CCS (CCA) Rules, 1965. There has taken place undue delay in completing the disciplinary proceedings and this has seriously prejudiced the applicant as he could not get the full pensionary benefits and the 3rd financial up-gradation under MACP for which he is entitled to get. Much financial difficulties are caused due to the pendency of the disciplinary proceedings.

6. The respondents on the other hand admitted the pendency of the disciplinary proceedings and they also admitted the fact that even though the inquiry officer's report was filed in the year 2016, the disciplinary authority has not passed any order on the basis of the above report.

7. We have carefully considered the matter in the light of the various provisions relevant in such cases. As per the Government of India's decision No. (9) below Rule 15 of CCS (CCA) Rules, 1965, the Government has fixed a time limit of three months for passing final orders on the inquiry report. The Government of India's decision No. (9) reads thus:

"(9) Time-limit for passing final orders on the inquiry report – The feasibility of prescribing a time-limit within which the Disciplinary Authority should pass the orders on the report of the Inquiry Officer, and requiring that authority submit a report to the next higher authority in cases where the time-limit cannot be adhered to, explaining the reasons therefor, was examined. It is felt that, while both in the public interest as well as in the interest of employees avoidable delay should occur in the disposal of disciplinary cases, it is necessary that sufficient time is available to the disciplinary authority to apply its mind to all relevant facts which are brought out in the inquiry before forming an opinion about the imposition of a penalty, if any, on the Government servant. While therefore it has to be ensured that fixing of any time-limit on the disposal of the inquiry report by the disciplinary authority by making a provision in this regard in the C.C.S. (C.C.A.) Rules, should not lead to any perfunctory disposal of such cases, taking all relevant factors into consideration it is felt that in cases which do not require consultation with the Central Vigilance Commission or the Union Public Service Commission, it should normally be possible for the disciplinary authority to take a final decision on the inquiry report within a period of three months at the most. In cases where the disciplinary authority feels that it is not possible to adhere to this time-limit, a report may be submitted by him to the next higher authority indicating the additional period within which the case is likely to be disposed of and the reasons for the same. In cases requiring consultation with the Central Vigilance Commission and the Union Public Service Commission also, every effort should be made to ensure that such cases are disposed of as quickly as possible."

This clearly shows that the disciplinary authority is expected to take a decision on the inquiry report within a period of three months and this has not been taken place in the present case. More than 5 years have elapsed and no decision is yet taken by the disciplinary authority. The inquiring authority has conducted the inquiry and found the applicant not guilty as alleged in the charge memo. No dissenting note or order has been passed by the disciplinary authority and the only inference that can be drawn in this case is that the disciplinary authority has no adverse opinion in this matter. As per

the Government of India's decision reproduced above, the disciplinary authority has to take a decision on the inquiry report within 3 months but the disciplinary authority has arbitrarily kept the report without taking any action and the employee/applicant retired on 30.5.2020 without ordering any punishment. We have to presume that disciplinary authority has no adverse opinion against the report of the inquiry officer.

8. The counsel for the applicant had drawn our attention to Government of India's decision brought out at serial No. 6 of Rule 9 of CCS (Pension) Rules, 1972 which is as under:

*“(6) Minor penalty proceedings have no effect on pension. – Sub-rule (1) of Rule 9 of the CCS (Pension) rules, 1972 confers on the President the right to withhold or withdraw the pension or a part thereof, either permanently or for specified period, and to order recover from the pension, of the whole or a 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 on retirement. Sub-rule (2) of this Rule provides that the departmental proceedings, referred to in sub-rule (1), if instituted before the retirement of a Government servant or during his re-employment shall after his final retirement, be deemed to be proceedings under this Rule and shall be continued and concluded. Accordingly, the minor penalty proceedings and the major penalty proceedings, which are instituted against a Government servant while in service and which do not get concluded before the date of retirement, automatically become proceedings under Rule 9 *ibid*. However, since grave misconduct or negligence cannot be established as a result of minor penalty proceedings, action under Rule 9 *ibid* for withholding or withdrawing pension etc., cannot be taken against a pensioner in respect of whom minor penalty proceedings had been instituted and have been continued after retirement. Such minor penalty proceedings continued after retirement, therefore, do not literally have any effect on the pension in the matter of reducing or withholding of his pension. The disciplinary authorities are requested to take note of this position and take steps to see that minor penalty proceedings instituted against Government servants, who are due to retire, are finalized quickly and in time before the date of retirement, so that the need for continuing such minor penalty proceedings beyond the date of retirement does not arise.”*

On reading of the above decision of the Government of India, it can be seen that pensionary benefits can be curtailed only when a person is found guilty of grave misconduct or negligence during the period of service including

service upon re-employment on retirement. Since the proceedings drawn against the applicant were minor penalty proceedings under Rule 16(1)(b) and he had since retired w.e.f. 31.5.2020, none of the minor penalties can now be imposed against him. Further, as per the above Government instructions since grave misconduct or negligence cannot be established, action under Rule 9 ibid for withholding or withdrawal of pension cannot be taken against a pensioner in respect of whom minor penalty proceedings are initiated and continued after retirement. So no further action appears to be possible and continuance of proceedings literally has no effect on pension etc. or on the pensioner.

9. In these circumstances we find that there is no purpose in keeping open the Rule 16 inquiry after the retirement of the applicant. The alleged incident took place in the year 2011 and the charge memo was issued in the year 2013. The inquiry report was given in the year 2016. There is no satisfactory explanation offered by the respondents for the undue delay occurred in either closing the proceedings or continuing with it in this case. Hence, we find that there is no merit in the time sought by the respondents in the reply. The respondents ought to have taken a decision within a period of three months as ordered by the Government of India's decision quoted above in this type of matters. Further the decision as per serial No. (6) under Rule 9 of CCS (Pension) Rules, 1972 as brought out above makes it clear that any further action against the pensioner is not possible. The respondents have failed to take any decision and we find that there is merit in the contention put forward by the applicant in this OA. The arbitrary action has seriously prejudiced the applicant and we hereby order that the disciplinary

proceedings initiated against the applicant under Rule 16 of the CCS (CCA) Rules, 1965 shall stand closed from the date of this order. The applicant is entitled to get all consequential benefits including pensionary benefits and financial up-gradation, if he is otherwise eligible. The above exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

10. The Original Application is disposed of as above. No order as to costs.

(K.V. EAPEN)
ADMINISTRATIVE MEMBER

(P. MADHAVAN)
JUDICIAL MEMBER

“SA”

Original Application No. 181/00922/2019**APPLICANT'S ANNEXURES**

Annexure A1 – True copy of the charge memo bearing NO. 1/22/2012-LR/Estt dated 28.3.2013 issued by the Collector cum Development Commissioner, Union Territory of Lakshadweep.

Annexure A2 – True copy of the reply to the charge memo on 6.4.2013 addressed to the 2nd respondent.

Annexure A3 – True copy of the report dated 7.4.2016 submitted by the Inquiry officer, Kavaratti.

RESPONDENTS' ANNEXURES

Nil

-X-X-X-X-X-X-X-