

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. No. 599 of 1997.

Present : HON'BLE DR. B.C. SARMA, ADMINISTRATIVE MEMBER.

HON'BLE MR. D. PURKAYASTHA, JUDICIAL MEMBER.

Sri Sushanta Kumar Nandy,
S/o- Late, Mahadev Nandy,
working as - Assistant Garrison Engineer
(Technical) in the office of
Garrison Engineer (Central), Calcutta, 21,
T/37 Nappier Road, Hastings.

... Applicant.

Vrs.

1. Union of India,
Service through Ministry of
Defence, South Block, New Delhi.

2. Chief Engineer,
HQ Eastern Command,
Engineers Br, Fort Williams,
Calcutta- 21.

... Respondents.

For applicant : Mr. R.K. Das, Counsel.

For respondents : Mrs. K. Banerjee, Counsel.

Heard on : 16.1.1998.

Ordered on : 16.1.1998.

O R D E R

B.C.Sarma, AM.

1. The applicant is an Assistant Engineer in the Military Engineering Service under the respondents. By a Charge Memo dated 21.5.1997 a departmental proceeding has been instituted against him on the charges that he had failed to perform his duties as Asstt. Engineer for supervising and ensuring security and maintenance of installations like water supply and Air Conditioning which were stolen/damaged by some civilians which resulted in loss to the state to the tune of Rs. 4,00,030/- (Book Value). The said charge is for the period from 22nd April '92 to 6th Feb '93. The applicant has

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assailed the charge memo on the ground that he did not join the post during the relevant period and all the charges are vague and there is no basis.

2. Mrs. Banerjee, 1d. Counsel appearing for the respondents strongly opposes the application and submits that this is a premature application and it deserves to be dismissed. Mrs. Banerjee also cited the decision of the Calcutta High Court in the case of - Ram Pada Nath Vs. Union of India & Ors., reported in 1981(2) SCSLJ page 187, in support of her contention.

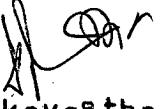
3. We have carefully considered the submission of the 1d. Counsel for both the parties and perused records. We have also perused the reply filed by the respondents. ^{and} ~~and~~ Days for Interim Order also for the release of gratuity amount as well as other retirement dues. The law regarding judicial review in respect of charge memo is very well settled. The Hon'ble Apex Court in the case of - Transport Commissioner, Madras-5 Vs. A. Radha Krishna Moorthy, reported in SC (L & S) 1995, page 313 had observed that correctness of charges is not subject to judicial review prior to conclusion of the departmental enquiry and even after the conclusion of the departmental enquiry, the scope of judicial review is restricted to charges based on no evidence. This was also the view of the same Hon'ble Court in the case of - Union of India & Ors. Vs. Upendra Singh, reported in JT 1994(1) SC 658. The applicant has assailed in this petition the Charge Memo on the ground that the respondent authority had given him only 10 days time to file reply, if any, to the charge memo. The applicant, if he so likes, could have prayed for extension of time to file reply. However, the applicant submits that the charges levelled against him are incorrect. As has been laid down by the Hon'ble Apex Court, correctness of the charges cannot be decided by us because the Tribunal does not sit as super-appellate authority over the disciplinary authority and the appellate authority; we are of the view that the disciplinary proceeding, which has been



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instituted by the impugned charge memo has to be brought to a logical conclusion. No interference is called for from our side at this stage. Since the departmental proceeding is pending, the interim order prayed for by Mr. De for releasing gratuity amount etc. also cannot be allowed. However, we note that the Court had already granted the prayer of the 1d. Counsel for the applicant for giving provisional pension to the applicant.

4. In view of the above, we do not find any merit in the application. Accordingly, it is dismissed. We, however, direct the respondents to complete the disciplinary proceedings instituted against the applicant as early as possible keeping in view the fact that he has already retired from service on 31st May, 1997. No order is passed as regards costs.


(D. Purkayastha)
Member (J)


(B.C. Sarma)
Member (A)

P/K/C.