

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA 210 OF 1997

Present : Hon'ble Mr. S. Dasgupta, Member (A)

Hon'ble Mr. D. Purakayastha, Member (J)

PANKAJ KUMAR DAS

VS

1. Union of India through the
General Manager, C.L.W.,
Dist. Burdwan, West Bengal

2. Dy. Controller of Stores (II)
C.L.W., 4, C.R.Avenue,
Calcutta-72

..... Respondents

For the applicant : Mr. C.Samadder, Counsel
Mr. D.P.Bhattacharya, Counsel

For the respondents : Mrs. B. Ray, Counsel

Heard on : 3.8.98 & 4.8.98

Order on : 26.8.98.

ORDER

S.Dasgupta, A.M.

The applicant in this OA filed u/s 19 of the Administrative Tribunals Act, 1985, is seeking a direction to the respondents to withdraw and/or cancel the charge-sheet dated 26.12.95 served on him as per annexure-A1 to the application and also for a direction to the respondents to release all settlement dues including pension, commuted value of pension, DCRG, leave salary etc. together with interest at the rate of 16% per annum.

2. The applicant was promoted to the post of O.S., Gr. I and was posted to B-1 Purchase Section in the year 1990. He has stated that initially he was posted for in-service training under the supervision of one Shri Prasanta Kumar Bose (P.K.Bose) and on the retirement of the latter on 30.4.90, he took charge of the said Section with effect from 2.5.90. He was transferred from B1 Purchase Section to a nonpurchase Section by an order dt. 10.9.90 where he worked till his

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retirement. It is stated that a major penalty charge-sheet dt. 26.12.95 was served upon him alleging that he failed to detect forged technical recommendation certificates purported to have been issued by Dy. CEE, CLW, Chittaranjan while processing ten tender papers during 1989-90 and that he placed the same before Shri B.P.Das, ACOS, Calcutta allowing him thereby to place the purchase orders in favour of M/s Vinod Electric company at a much higher rate causing thereby undue pecuniary loss to the Govt. The other allegation was that the applicant failed to ensure proper despatch and receipt of tender papers from Calcutta to CLW, Chittaranjan and back allowing thereby the impugned recommendation certificate to be placed in the tender papers.

3. The applicant has taken several grounds in challenging the charge-sheet and the disciplinary proceedings. The main ground taken by him is that the charges against him are vague inasmuch as the dates on which the alleged events or incidents had taken place have not been specified in the imputation. The other ground taken is that there has been an inordinate delay in initiating the disciplinary proceedings inasmuch as the alleged misconduct had taken place during 1989-90 whereas the chargesheet was served only on 26.12.95. The third plea taken by him is that the chargesheet is mala fide inasmuch as this was served on the applicant only after Shri P.K.Bose, under whom he was posted in B-1 Purchase Section and also Shri B.P.Das, who had actually placed the purchase orders ~~and the~~ ⁴ ~~two~~ were mainly responsible for the alleged loss to the Govt. had expired. Lastly, he has taken a ~~plea~~ that the alleged pecuniary loss has not been indicated in the chargesheet and therefore, the charges are totally unjustified. indefinite

4. The applicant has also alleged that despite his request for being given copies of the documents relied upon in

the chargesheet, these were not supplied to him and although subsequently he was given inspection of the documents, he was not shown the original technical recommendation certificate which forms the basis of the chargesheet. He has alleged that thereby he was denied reasonable opportunity to defend himself.

5. The respondents have filed a reply in which it has been stated that the major penalty chargesheet was issued only after holding a preliminary departmental enquiry and after ~~that~~ the disciplinary authority was satisfied that a prima facie case against the applicant ^{do} ~~would~~ exist. They have denied that the charges are vague and have stated that the statement of imputation is quite specific. As regards non-furnishing of documents, they have averred that all the documents were shown to the applicant and he was allowed to take notes of the same. However, the original technical recommendation certificate could not be shown to him as the same was not available. They have denied the allegation that the chargesheet was mala fide and that it was deliberately issued only after the demise of Shri P.K.Bose and B.P.Das

6. We have heard the learned counsel for both the parties and carefully perused the pleadings on record. It has to be noted that the applicant had approached this Tribunal challenging the chargesheet itself at the threshold of the disciplinary proceedings. The law is now well settled through a series of decisions rendered by the Hon'ble Supreme Court that at the chargesheet stage, it would not be proper for the courts or tribunals to interfere unless the statement of imputations do not make out any misconduct or the proceedings initiated are wholly mala fide. Reference in this regard may be ^{made} given to the following cases :

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1. UOI -vs- K.K.Dhawan .. 1993 SCC(L&S) 325
2. UOI -vs- A.N.Saxena ...1992 SCC(L&S) 861
3. Transport Commissioner, Madras -vs-
A.Radhakrishna Moorthy ... 1995 SCC(L&S) 313
4. Dy.I.G.Police -vs- K.P.Swaminathan,

1996(11)SCC498

and ~~in~~ a recent case i.e.

5. Govt.of Tamil Nadu -vs- K.N. Rammurthy,
..... 1997(7) SCC 101.

7. We have carefully perused the articles of charges and the statement of imputations. There is no doubt that the dates on which the various incidents relating to the placement of purchase orders ^{l. took place} have not been indicated nor the actual quantum of loss which has occurred to the Govt. due to placement of the purchase orders as alleged has been specified. However, this does not make the charges so vague as to cause any prejudice to the applicant in defending himself against the said charges. The statement of imputations does give details of the various purchase orders in connection with which the applicant was charge-sheeted. Therefore, even if the various dates of incidents have not been mentioned or the quantum of the loss has ^{l. not} been specified, the applicant can very well submit his defence against the charges.

8. So far as the second ground of mala fide is concerned, we find that the applicant has not attributed mala fide to any specific authority nor any such authority has been impleaded by name as respondent. Although even in such circumstances, it is possible to infer malice in law from the facts of the case, we do not find any basis or foundation for presuming that the chargesheet was mala fide. The only ground stated by the applicant in this regard is that the chargesheet was served on him after the demise of two persons who were mainly

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responsible for the placement of the purchase orders. It appears from the reply furnished by the respondents that these purchase orders were investigated by the CBI/Vigilance and only thereafter the chargesheet was filed. It is well known that the CBI does take a long time in completing enquiries. Therefore, the demise of two persons stated to be mainly responsible for the loss, before the chargesheet was served on the applicant, could be purely coincidental. We need not necessarily see any deliberate ~~attempt~~ ^{design} on the part of the respondents in serving the chargesheet on the applicant only after the demise of these persons.

9. As regards other ground of delay in serving the chargesheet ~~is concerned~~, there is no doubt that the apex court deprecated such delays in several decision and had interfered where there has been unconscionable and unexplained delay in initiating the disciplinary proceedings. In the case before us, the delay to serve the chargesheet is for ^{more than} ~~more than~~ ^{5 years} _{5 years}. In view of the fact that there was an CBI enquiry, we cannot hold that the delay was totally unconscionable.

10. The plea taken by the applicant regarding non-supply of the documents etc cannot be called into question at the chargesheet stage. This could be a valid ground in challenging any action taken against him on the basis of the disciplinary proceedings in pursuance of the impugned chargesheet. This could not be taken as a ground for challenging the chargesheet. We have noticed that the disciplinary action could not proceed beyond the stage of chargesheet as an interim order was passed by this Tribunal on 25.2.97 staying any further action on the chargesheet.

11. At the time of hearing, the learned counsel for the applicant raised the pleas relating to vagueness of the charges, inordinate delay in serving the charge-memo and the mala fide manner in which the chargesheet was served. All

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these points we have already dealt with and as we have already stated, we do not find these pleas to have sufficient force in order to interfere at the chargesheet stage. He, however, took another plea that since the proceedings are to be conducted under rule 9 of the Railway Services (Pension) Rules, the applicant having already retired from service, no action can be taken against him unless it is shown that the loss was caused to the Govt. and the loss quantified. The relevant portion of the rule reads as follows :

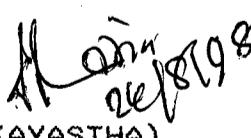
"9(1) The President reserves to himself the right of withholding or withdrawing a pension or gratuity, or both, either in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Railway, 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 after retirement....."

12. It would, therefore, be clear from the above that the question of quantifying the loss to the Govt. would arise only ~~after~~ an order is passed for recovery from the pension or gratuity of whole or part of any pecuniary loss caused to the Govt. The President has, however, the option to withhold a pension or gratuity or both, either in full or in part, or withdraw pension in full or in part, if in the departmental proceedings the pensioner is found guilty of grave misconduct or negligence during the period of his service. In the case before us the charge is of grave misconduct and if the said charge is proved, the President can exercise power under rule 9 of Railway Services Pension Rules to withhold or withdraw pension or gratuity in full or in part either permanently or for a specified period. Therefore, the plea that failure to

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specify the loss caused will debar any proceedings under Rule 9 is wholly misconceived.

13. In view of the foregoing, we see no reason to interfere at the stage of the charge-sheet. The application is accordingly dismissed. We are, however, conscious of the fact that as a result of an interim order passed by this Tribunal which is continuing till now, the disciplinary proceedings could not proceed against the applicant. The alleged misconduct took place in the year 1989-90. Already nearly 8 years have elapsed since then and the applicant has also retired from service in the meanwhile. While we are not making any observation with regard to the culpability of the applicant regarding placement of the purchase orders, we have noted the fact that the applicant was undisputedly in the Purchase Section for a very short period and that the purchase orders were actually placed by ~~Shri P.K.Bose~~ and Shri B.P.Das. These facts as well as the fact that considerable time has elapsed since the incident took place, will no doubt be taken into consideration by the respondents before taking a decision as to whether they should continue the proceedings on the basis of the charge-memo in terms of the provisions contained in rule 9 of the Railway Services (Pension) Rules. However, it is ^{for a matter} for the respondents to decide. We only provide that in case they do proceed, such proceedings must be brought to a conclusion by passing a final order within a period of six months from the date of communication of this order. The parties are left to bear their own costs.


(D. PURAKAYASTHA)

MEMBER (J)


(S. DASGUPTA)

MEMBER (A)