

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION: 11-12-1989

PRESENT

HON'BLE SHRI S.P.MUKERJI, VICE CHAIRMAN
&
HON'BLE SHRI A.V.HARIDASAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO.433/89

N.Sankaran Nair - Applicant
v.

1. Collector of Customs and Central Excise, Cochin-18.
2. R.Venkata Raman, Commissioner for Departmental Enquiries, Central Vigilance Commission, New Delhi-1.
3. Union of India, represented by the Secretary, Ministry of Finance, Govt. of India, New Delhi. - Respondents

M/s GP Mohanachandran,
SK Vijayasankar,
Lal C Aruvikkal &
KR Haridas - Counsel of the applicant

Mr PV Madhavan Nambiar, SCGSC - Counsel of the respondents

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(SHRI A.V.HARIDASAN, JUDICIAL MEMBER)

The prayer of the applicant in this application is to quash the disciplinary proceedings pending against him and to allow him the consequential reliefs.

2. The brief facts of the case can be stated as follows. The applicant was working as a Superintendent of Central Excise, Mananthody range, Cannanore. While so, he was suspended by the first respondent, the

Collector of Customs & Central Excise as a criminal investigation by the C.B.I. in RC 29 of 1986 was pending against him. A charge sheet dated 2.5.1989 was thereafter served on the applicant. There are two heads of charges. The charges were: i) that he entered into transaction in immovable and movable properties without obtaining previous sanction from the prescribed authority and failed to report the transaction to his department and thereby violated Rule 18(2) and (3) of the CCS(Conduct) Rules 1964 and ii) that the applicant acquired disproportionate assets by questionable means and thereby failed to maintain absolute integrity and thereby violated Rule 3(1)(i) of the CCS(Conduct) Rules, 1964.

The applicant filed a written statement of defence denying the charges and requesting that he may be reinstated in service before his retirement on 30.6.1989, but the first respondent appointed the second respondent as inquiry authority to hold an enquiry. The applicant retired from service on superannuation on the afternoon of 30.6.1989, but the second respondent has issued notice to the applicant directing him to appear before him for the enquiry. Finding that there is no response and seeing that the second respondent has decided to proceed with the enquiry, the applicant has filed this

application praying that the disciplinary proceedings against him may be quashed and that the respondents may be directed to disburse his pension and other retirement benefits. In the application, it has been contended that the action of the respondents in proceeding with the disciplinary proceedings after the retirement of the applicant on superannuation is illegal and unsustainable in law, since no pecuniary loss is caused to the Government on account of the alleged misconduct and since Rule 9 of the CCS (Pension), Rules 1972 permit proceeding with disciplinary proceedings against a retired Government servant only for the limited purpose of recovery of any pecuniary loss caused to the Government by the retired Government servant, while he was in service.

3. The application has been opposed by the respondents. They have filed a reply statement.

4. We have heard the arguments of the learned counsel appearing on either side and have carefully gone through the records.

5. The learned counsel for the applicant referred us to the decision of the Madras Bench of the Central Administrative Tribunal in K.V.Subramanian -Vs- Assistant Director(Estt), Post Master General's Office, Madras and 2 others reported in 1987 SLJ Vol.3, 125. Relying on

Narayana Swamy -Vs- Government of India (1984 WLR 469)

wherein it was held that a reading of Rule 9(2)(b) along with Rule 9(1) of the CCS (Pension) Rules would make out that disciplinary proceedings could only be held for the limited purpose of ordering recovery from the pension of the whole or part of any pecuniary loss caused to the Government on account of gross misconduct or negligence on the part of the Government servant during the period of his service accepting for a limited purpose of recovery of loss caused to the Government by his misconduct while in service from the pension is without jurisdiction. Since in the instant case there is nothing in the charges against the applicant to show that his misconduct has resulted in any loss to the State, the learned counsel submitted that the continuance of disciplinary proceedings against him after his retirement is without jurisdiction. But in Amarjit Singh V. Union of India and others, ATR 1988(2) CAT-637 a Full Bench of Central Administrative Tribunal, Principal Bench, Delhi held as follows:

"We are unable to agree that the power to continue the disciplinary proceedings under proviso to Rule 9 can only be for the purpose of recovering the pecuniary loss, if any, occasioned to the Government. That provision gives power to the competent authority to find if any of the charges are proved and if any of them are proved, the competent authority is vested with the further power not only

to order withholding of whole or part of the pension but also to order recovery of whole or part of the pecuniary loss occasioned to the Government as a result of grave misconduct or negligence of the officer concerned. The Rule does not anywhere lay down that only if pecuniary loss is occasioned by the grave misconduct or negligence of the officer, pension may be withheld. If grave misconduct or negligence is established but not pecuniary loss is occasioned thereby, the competent authority can only direct withholding of whole or part of the pension. But if in addition, pecuniary loss is occasioned, the disciplinary authority can also direct the recovery of the pecuniary loss. But the continuance of the disciplinary proceedings already initiated is not dependent upon any pecuniary loss being occasioned to the Government. Even if there is none, enquiry into grave misconduct/negligence may be continued after retirement and if proved, pension may be withheld or withdrawn in whole or in part, permanently or for a specified period."

6. In view of the above pronouncement by a Full Bench of the Tribunal, there is no merit in the argument of the learned counsel for the applicant that since the misconduct of the applicant has not resulted in any loss to the State, the continuance of disciplinary proceedings is without jurisdiction. Hence the above argument only to be rejected. However, the learned counsel for the applicant submitted that since a criminal case on the same set of allegations as in the charge sheet is

pending, if he has to file a written statement of defence in the departmental proceedings while the criminal case is pending, it would be prejudicial for him for making his proper defence of the criminal case and that therefore, in the interest of justice demands keeping of the disciplinary proceedings in abeyance till the disposal of the criminal case against the applicant. We are of the view that this submission of the learned counsel deserves consideration. It has been held in a number of decisions that it would be advisable to postpone the disciplinary proceedings till the culmination of the criminal prosecution. In this case it is a common case that a criminal case as CC 2/89 is pending trial before the CBI Court, Ernakulam. For the ~~same~~ ^{that} allegations as for which the disciplinary proceedings have been initiated against the applicant. So we are of the view that the interest of justice demands the disciplinary proceedings are ordered to be kept in abeyance till the disposal of CC 2/89 on the file of the CBI Court, Ernakulam.

7. In the conspectus of facts and circumstances of the case finding that the applicant is not entitled

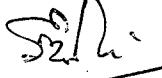
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to the relief claimed in the application, we dismiss the application, but we direct the respondents to keep the disciplinary proceedings pending till the disposal of CC 2/89 against the applicant pending trial before the CBI Court, Ernakulam.

8. We make no order as to costs.


(A.V.HARIDASAN)
JUDICIAL MEMBER


(S.P.MUKERJI)
VICE CHAIRMAN

11-12-1989