

Central Administrative Tribunal Lucknow Bench Lucknow

Original Application No; 373/2003.

this, the 21st day of April, 2004.

Hon'ble Shri S.P. Arya Member(A)

Hon'ble Shri M.L. Sahni Member(J)

Surendra Prakash, aged about 61 years, son of Shri Puttu Lal, resident of C-1520, Indira Nagar, Lucknow (lastly working as Senior Accounts Officer, in the Office of Principal Controller of Defence Accounts (Central Command), Lucknow Cantonment-226002.

...Applicant.

BY Advocate Shri R.C. Singh.

Versus

1. Union of India, through the Secretary, Ministry of Defence (Finance), New Delhi-110001.
2. Controller General of Defence Accounts, Ministry of Defence, Government of India, West Block V, R.K. Puram, New Delhi-110066.
3. Principal Controller of Defence Accounts (Central Command), Lucknow-226002.
4. Shri A.K. Garde, Secretary (Retired), Inquiring Authority, 103, Godavari Apartments, Alakhnanda, New Delhi-110019.

....Respondents.

BY Advocate Shri S. Lavania.

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ORDER

BY SHRI S.P. ARYA MEMBER(A)

The applicant was issued a charged sheet by the Controller General of Defence Accounts (CGDA) with regards to passing for payment of 47 bills amounting to Rs. 8,26,559.00, while working as Senior Accounts Officer in the office of Principal Controller of Defence Accounts (PCDA) Central Command. The applicant submitted his written statement of defence against the charge sheet dated 29.5.2002. He retired from service on attaining the age of superannuation on 31.12.2002. A request was made for dropping the charges which was not <sup>acceded ✓</sup> ~~exceeded~~ to. The charge sheet was amended by the Disciplinary authority on 23.4.2003. A representation was further moved by the applicant that the matter may be reviewed in the light of provisions of Rule-9 of the CCS (Pension) Rules as the charges are not grave. The request was rejected. A request for changing of inquiry officer was also rejected. By this Original Application, the applicant prays for issuing of directions for setting aside the departmental proceedings initiated against the applicant on the basis of impugned Memorandum of 29.5.2002, alongwith amended Corrigendum of 23.4.2003 and order dated 24.3.2003 rejecting the request of the applicant to change the inquiry authority and for dropping the charges and also the order dated 22.5.2003 and also to direct the respondents to release the post-retiral benefits which have been with-held on the ground of pendency of the impugned departmental proceedings within a period of two months with interest at the rate of 18% per annum.

2. We have heard the learned counsel for both the parties and perused the pleadings.

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3. Learned counsel for the applicant has argued that Paragraph 367 of the office Manual Part I, provides that in the matter of verification of specimen signature of the officers preferring the claims in respect of local purchase bills, only 1% check has to be carried-out by the Senior Accounts Officer in respect of claims below Rs. 1 lakh. The contingent bills alleged to have been passed are below one lakh, therefore, no check was expected to be made by the charged officer (C.O.) No misconduct has been committed by the applicant, but the charges can be only said to <sup>be</sup> irregularities or audit failure. A retired government officer has been appointed as Inquiry Authority which is against the Full Bench Judgement in the case of Y. Baby Versus Sub-Divisional Engineer and others reported in (1998) 37, Administrative Tribunals Cases 293. The common proceedings under Rule 18 of the CCS (CCA) Rules 1965 were not taken-up. He has argued that substantial and proximate nexus between misconduct and employment is essential for constituting the misconduct as ruled by Hon'ble supreme Court in the case of M/s Glaxo Laboratories (I) Ltd.Vs. Presiding Officer, Labour Court, Meerut and others reported in (1984) 1 Supreme court Cases 1. Charge sheet was issued with delay. The charge sheet is baseless and erroneous and at the most it may constitute an inefficiency but not a misconduct warranting proceedings under rule 14.

4. Counsel for the respondents on the other hand, has argued that the reliefs claimed in para 8 of the Original Application are not based on single cause of action and therefore, is barred by Rule 10 of the CAT (Procedure) Rules, 1987. The charge sheet can be assailed and subjected to judicial review only in cases where (1) if it is not in conformity with

law (ii) if it discloses bias or pre-judgement of the guilt of the charged employee, (iii) there is non-application of mind in issuing the charge sheet (iv) if it does not disclose any misconduct (v) if it is vague (vi) if it is based on stale allegation, and (vii) if it is issued malafide. The present case is not covered by any of such infirmities. This Tribunal has no jurisdiction to entertain the application. It is also contended that the charge sheet has <sup>been</sup> issued with delay because it has been issued after CBI investigation report of the case was received. Further, even delay, if any, in such type of financial irregularity, it does not vitiate the inquiry. The applicant has not stated in the Original application that what prejudice and injustice would be caused to the applicant on account of appointment of respondent No. 4 as inquiry authority. A retired government officer can be appointed as inquiry authority as per instructions of the Central Vigilance Commission and the DOP&T.

5. On going through the charge sheet, it is found that the Charged Officer is alleged to have passed 47 contingent bills amounting to Rs. 8,26,559.00/- for payment which had not been preferred by these units. If the units have not preferred, the bill and same has been passed by the Charged Officer, this cannot be treated as audit failure or irregularity. Whether the Charged officer was required to pass a bill with or without verification is a matter of fact to be enquired into. At this stage no finding can be given by this Tribunal in this regard. This Tribunal cannot go into the correctness of the charges levelled against the Charged officer. It was held in District Forest officer Vs. R. Rajamankam and another by the Apex Court on 3.5.2000 reported in 2003 AIR SCW 2919 that the Tribunal or Court can interfere only if

on the charges (read with imputation or particulars of charges , if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. In this case, we find that charges framed cannot be said <sup>as</sup> ~~to~~ contrary to law or no misconduct has been made out at this stage.

6. It has also been argued that the confidential letter of 6.11.79 gives the guidelines for proceedings to be adopted for imposition of major penalties and imposition of minor penalties. The counsel for the applicant argues that the various categories of audit failure can be covered under ~~minor~~ <sup>minor</sup> penalty proceedings. However, whether it was an audit failure or gross irregularities or the negligence in the discharge of official duties or allowing reimbursement of false claims, nothing can be said at this stage. Moreover, these are mere guidelines and have no statutory force. What would be result of the inquiry cannot be inferred at this stage.

7. The learned counsel for the applicant has relied on Union of India and others Vs. J. Ahmed reported in (1979) 2 Supreme Court Cases 286 that negligence in performance of duty or inefficiency in discharge of duty are not acts of "Commission or Omission" under Rule 4 of the Discipline and Appeal Rules nor a failure to maintain "devotion ~~to~~ duty" under rule 3 of the conduct Rules. We find that this matter decided on March 7, 1979 and thereafter, a notification by department of DOP&AR, GOI, issued on 21st February, 1986 adding explanation to Rule 3 of Central Civil Services (Conduct) Rules, 1964 which is reproduced below:-

"Explanation I A Government servant who habitually fails to perform the task assigned to him within the time set for the

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purpose and with the quality of performance expected of him shall be deemed to be lacking in devotion to duty within the meaning of Clause (ii) sub Rule (1).

Explanation II- Nothing in clause (ii) of sub rule (2) shall be construed as empowering a Government servant to evade his responsibilities by seeking instructions from, or approval of a superior officer or authority when such instructions are not necessary under the scheme of distribution of powers and responsibilities."

8. In view of the explanation given above, negligence in <sup>performance</sup>~~purpose~~ of duty would amount to misconduct therefore, the benefit of the judgement <sup>in</sup> J. Ahmed's case cannot be availed by the applicant.

9. With regards to appointment of inquiry authority under rule 14 (2) of CCS (CCA) Rules 1965, it has been argued that the Disciplinary Authority can appoint an authority to enquire into the truth of any imputation of misconduct or behaviour against a Govt. servant. Relying on M/s Glaxo Laboratories (I) Ltd. Case, it has been argued that the words of limitation must receive due attention at the hands of the interpreter. It was argued that the <sup>Enquiry &</sup> authority can be only a serving officer and he cannot be retired officer. However, we find that any person who has been appointed under the provisions of CCS (CCA) Rules 1965 or under the provisions of Public Servants (Inquire) Act, 1950 becomes an authority to enquire into the truth thereof. Therefore, appointment of a retired government servant/officer, as inquiry authority/officer, in view of the O.M. of DOP&T dated 12th May, 1987, 29th June, 2001 and the CVC instructions of 18th November, 1998 and 16th December, 1998 is perfectly in order. The appointment of retired Govt. servant of proven integrity as Enquiry Authority cannot be said to be bad in the eye of law. The case of the Central Bank of India Vs. C. Bernard (1991) 1 Supreme Court Cases 319 is a different case. The Bank Officer

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appointed as Inquiry officer and Disciplinary authority continuing the enquiry even after his superannuation during the pendency of the enquiry and passing the order of punishment against the delinquent employee of the bank. So the facts of the case are different and therefore, it does not apply to the present case. In Y. Baby's case, the Government of India instruction as available in Swamy's compilation, 1986 Edition, were relied upon. These instructions have changed now. Therefore, the full Bench ruling in Y. Babi would not be applicable to the present Original Application. It may be seen that no bias or prejudice has been alleged against the Inquiry Authority who is a retired Govt. Officer. We do not find any force in the arguments that the appointment of retired government officer would vitiate the inquiry.

10. Rule 18 of CCS (CCA) reads as under:-

"Where two or more government servants are concerned in any case, the president or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceedings."

11. To use the word 'may' does not make common proceedings mandatory. Therefore, even if more than two government servants were involved in the case, it was not necessary to hold a common proceedings. Authority competent could decide whether common proceedings should be held or not. We do not find any illegality on this count.

12. It was contended by the respondents that under Rule 9 of Central Civil Services (Pension) Rules, 1972 in the case of Govt. Servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub

rule (2) , a provisional pension as provided in rule 69 shall be sanctioned. Rule 69 of these rules provides for provisional pension to be sanctioned by the Accounts Officer on retirement till final order passed by the competent authority in the department proceedings. It also provides for non-payment of gratuity till the conclusion of the departmental or judicial proceedings. The applicant would be given the retiral benefits which he is entitled to under these rules. However, this is a separate cause of action. The applicant can approach in this regard to the appropriate authority/forum.

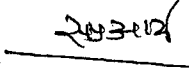
13. In view of the above discussion, we find no legal infirmity in issue of the charge sheet or the order passed on the representation. Applicant can approach for his post retiral benefit he is entitled to during pendency of the proceedings in appropriate authorities or forum.

14. In view of the above discussion, the O.A. is dismissed without any order as to costs.

  
(M.L. Sahni)

Member (J)

HLS/-

  
(S.P. Arya)

Member (A)