

Central Administrative Tribunal Lucknow Bench Lucknow

Original Application No. 47/2008.

This the 7/10 day of October, 2009

Hon'ble Dr. A. K. Mishra, Member (A)

Patan Deen Shukla aged about 62 years S/o Late Sri Surji Shukla, Retired SPM Hyderabad Post Office Lucknow R/o Village Shukulpurva, P.O., Jarauli Paraspur District Gonda.

Applicant

By Advocate Sri R.S. Gupta.

Versus

1. Union of India through the Secretary Department of Post Dak Bhawan, New Delhi-110001.
2. Chief Postmaster General U.P. Lucknow-226001.
3. Senior Superintendent of Post Offices Lucknow Postal Division, Lucknow.
4. Director of Accounts Postal U.P. Circle Aliganj Lucknow.

Respondents

By Advocate Sri S. P. Singh.

Order

By Hon'ble Dr.A. K. Mishra, Member (A)

The respective submissions in this case have been recorded in my order dated 28.8.2008. The short point for determination, which has arisen out of the submissions made by the learned counsel for both the parties, is whether a disciplinary proceeding is deemed to have commenced from the date of issue of charge sheet or from the date of its service on the charged officer (C.O.)

2. The applicant was appointed as E.D. Packer and subsequently promoted to a regular Group D post on

h/n

8.4.1967. Thereafter, he received several promotions and retired from the postal service on 31.5.2006 on an HSG-I post. But his retiral dues were withheld on the ground that departmental proceedings initiated against him were pending. A charge sheet under Rule 14 of CCS(CCA) Rules 1965 was issued on 30.5.2006, a copy of which was affixed on the premises of his local residence at Lucknow on 31.5.2006 in the presence of witnesses. It is alleged by the respondents that the applicant was involved in the racket of recycling used postage stamps at New Hyderabad Post Office causing losses to the Department. Hence, disciplinary proceedings were initiated against him. Allegedly, the applicant apprehending disciplinary action submitted a medical certificate and went on leave from 1.4.2005.

3. The respondents have taken the plea that the applicant is being paid provisional pension; only the payment of gratuity has been withheld. Other retiral benefits such as GPF, GIS and leave encashment have been paid to him as per rules. Payment of regular pension and DCRG to him can be considered only after finalization of the pending disciplinary proceeding.

4. It is the contention of respondents that the applicant had himself furnished his local address as 512/431, IIIrd Lane Nishatgang, Lucknow in his pension papers and therefore, there was no illegality in serving the charge sheet at the address given by the applicant himself.

6/2

5. Since the charge sheet has not been impugned in this application, I have not gone into the debate whether it was properly served on the applicant, nor about the merits of the disciplinary proceedings against the applicant. The learned counsel for the applicant has cited the case of Union of India and Others Vs. Dinanath Shantaram Karekar and Others reported at 1998 SCC (L&S) 1837 in support of his contention that the charge sheet was not legally served on him and has claimed that the disciplinary proceedings against the applicant had not been legally initiated. Since he has already retired, any disciplinary proceeding against him should require prior approval of the President as provided under Rule 9 of CCS Pension Rules. The judgment cited above deals with the subject of mode of service of a charge sheet. It does not throw any light on the issue before me about the date of commencement of a proceeding: whether from the date of issue of charge sheet, or from the date of service of the charge sheet. Therefore, this judgment is not of any help to the applicant. The applicant has also relied on the judgment of this Bench in O.A. No 5/1996 pronounced on 2nd September 2003 in which, following the ratio of the judgment of the Supreme Court in Dinanath Shantaram Karekar case (Supra), a view was taken that the disciplinary proceedings initiated after superannuation of an employee without the sanction of the President under Rule 9(2) (b) of CCS (Pension) Rules, 1972 was vitiated. In that case, a corrigendum modifying the charge sheet was issued four years after superannuation of the employee. Therefore, the facts

[Signature]

were different from those under consideration in the present case.

6. In ***Union of India Vs. K.V. Jankiramn-AIR 1991 SCC-2010***,

the Supreme Court while dealing with the subject of opening of sealed envelope observed that a disciplinary proceeding was deemed to have been initiated from the date a charge sheet was issued against the employee, not otherwise. While dealing with the question of limitation, the Supreme Court held in

State of M.P. Vs. Onkar Chand Sharma reported at (2001) 9 SCC-171 that disciplinary proceedings would be treated to have been initiated on the date, the charge sheet was prepared and signed by the competent authority and the date of service of such charge sheet on the charged official was not significant to determine the date of initiation of the proceedings. In the case of

State of Madhya Pradesh And Another Vs. Syed Naseem Zahir And Others reported at 1993 SCC (L&S) 429,

the Supreme Court dealing with the matter relating to applicability of sealed cover procedure decided that the decision taken by the competent authority to initiate disciplinary proceeding against the charged official should be taken as the appropriate date and sealed cover procedure should be adopted in DPC meeting even though the charge sheet was issued on a later date. Similar view was also taken by the

Supreme Court in ***Union of India Vs. Kewal Kumar reported at 1993 SCC (L&S) -744*** that the date of decision to initiate disciplinary proceedings by the competent authority should be taken as the material

h

date to adopt sealed cover procedure. In the case of ***Delhi Development Authority Vs. H.C. Khurana reported at (1993) 3 SCC 196***, the Supreme Court held that dispatch of the charge sheet to the government servant, irrespective of its actual service on him, was sufficient to attract the Government of India's office memorandum regarding adoption of sealed cover procedure. In ***U.P. State Sugar Corporation Ltd and others versus Kamal Swaroop Tondon, (2008) 2 SCC 41***, the Supreme court held that disciplinary action could be taken against an employee even on the day of his superannuation. From the above rulings of the Supreme Court, it appears that the sine qua non of pendency of a disciplinary proceeding is from the date of issue of a charge sheet. The settled law is that the disciplinary proceedings are deemed to have been initiated from the date of issue of charge sheet.

7. Admittedly, the charge sheet against the applicant was issued on 30.5.2006 when he was in service; the disciplinary proceeding so initiated can not be said to be vitiated on the ground that the charge sheet was served after his superannuation. The applicant has been paid provisional pension and other retiral dues except gratuity. It is admitted that regular pension and the DCRG becomes payable only after disciplinary proceedings against an employee are finalized. Now that a copy of the charge sheet annexed to the Counter Affidavit has been supplied to the applicant, he should file his reply before disciplinary



authority and cooperate in the matter for finalization of the proceedings drawn up against him.

8. In the result, I do not find any merit in this application, which is accordingly dismissed. No costs.

A. K. Mishra 7/10/09
(Dr. A. K. Mishra)
Member (A)