

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 940/97

Date of Decision: 19/6/98

Shri Z.J. Aga Applicant.

Shri D.V. Gangal alongwith Shri Marne Advocate for
Applicant.

Versus

The Union of India & Ots. Respondent(s)

Shri V.S. Masurkar Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G. Vaidyanatha, Vice Chairman.

Hon'ble Shri. D.S. Baweja, Member(A).

(1) To be referred to the Reporter or not? Yes

(2) Whether it needs to be circulated to other Benches of the Tribunal? w

abp.


(R.G. VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GULESTAN BLDG.NO.6, 4TH FLR, PRESCOT RD, BORT.
MUMBAI-400 001.

ORIGINAL APPLICATION NO:940/97.

DATED THE 19TH DAY OF JUNE, 1998.

CORAM : Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman.
Hon'ble Shri D.S.Baweja, Member (A).

Shri Z.J.Aga,
Then DAN II MTNL,
Pinky Talkies, Andheri(East),
Bombay - 400 009.
R/o.N.11, MNO Apartments, Yari Road,
Versova, Mumbai-400 061.

... Applicant.

By Advocate Shri D.V.Gangal, alongwith
Shri D.V.Gangal.

V/s.

1. The Union of India,
through the Secretary,
Ministry of Communication,
New Delhi.
2. The Chairman and Managing Director,
Mahanagar Telephone Nigam Ltd.,
New Delhi.
3. The Chief General Manager,
Mahanagar Telephone Nigam Ltd,
Telephone House, Dadar,
Mumbai - 400 028.
4. Shri S.K.Roy,
The Then Zonal General Manager,
Mahanagar Telephone, West-I,
MTNL, Santacruz(West),
Mumbai - 400 054. Now working as
Principal General Manager,
MTNL, Telephone House,
Dadar, Mumbai - 400 028.

... Respondents.

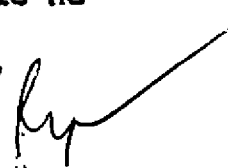
By Advocate Shri V.S.Masurkar

I O R D E R I

[Per Shri R.G.Vaidyanatha,V.C.]

This is an application filed by the applicant
challenging the charge sheet dated 17/2/97. The respondents
have filed reply. We have heard at length both the parties.
Few facts which are necessary for the present
case are as follows:-

The applicant was working as Divisional Engineer
in the MTNL at Bombay. He has retired on 30/4/98 but while he
was still in service respondents have issued charge sheet,



and disciplinary enquiry ^{has} continued even after retirement. The applicant's grievance is that after retirement, the disciplinary enquiry should not be continued unless there is a grave misconduct within the purview of Rule 9(1) of the Pension Rules. Therefore the applicant has filed this OA for quashing the charge sheet and disciplinary enquiry.

Respondents have filed reply mentioning all the facts of the case and the charge sheet ^{and pleading} that no ground is made out for quashing the chargesheet.

2. The Learned Counsel for Applicant has cited some authorities on this point that continuing of disciplinary enquiry after retirement cannot be as a matter of course, but the enquiry can be continued ^{only if} after the allegation of misconduct is gross misconduct or grave misconduct. After retirement, the Pension or Gratuity can be withheld under Rule 9(1) if any disciplinary enquiry is pending and the pensioner is found guilty of gross misconduct and negligence during the period of his service under Rule 9(1) of CCS Pension Rules 1972.

3. Supreme Court had occasion to consider this question in the case of D.V. Kapoor v/s. Union of India and Others reported at 1990(14)ATC-906, wherein it ^{is stated} states that ^{can be} action was taken of withholding pension in case of grave misconduct, which is not the case of the applicant - for not obeying the order of transfer. The Supreme Court on facts found it is not a grave misconduct so as to withhold the Gratuity and pension. The Learned Counsel for applicant cited some other decisions on this point.

In 1994(27)ATC-460 in H.R. Kamath v/s. Railway Board and Another decided by the Bangalore Bench of this Tribunal also took a view that Disciplinary Enquiry cannot be continued after retirement of an officer unless the charges are for grave misconduct or negligence. Similar view has been taken by a Bench of this Tribunal at Calcutta in Narendra Kishore Roy v/s. Union of India and Others reported

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at 1994(28)ATC-219. Identical view has also been taken in 1998(1)ATJ-24 in Tara Singh V/s. Union of India by the Chandigarh Bench of this Tribunal.

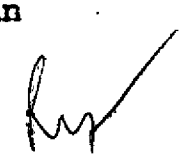
In all these cases, it has been held that disciplinary enquiry cannot be continued against an officer after retirement, ^{unless} ~~if~~ the alleged misconduct is a grave misconduct or negligence.

4. According to the Learned Counsel for Applicant, it is a simple case of allegation of not taking charge of a particular office. It is therefore a minor irregularity and not a grave misconduct within the meaning of Rule 9(1) of the Pension Rules.

5. The Learned Counsel for respondents states that ~~it is~~ the facts and circumstances of a particular incident depends upon number of factors whether the misconduct is grave or minor.

6. Heard both the counsel for some time. The contention of the learned counsel for respondents is, it is purely a question of facts which is to be decided by the disciplinary authority, whether inspite of retirement, the disciplinary enquiry should be continued or not with regard to rule 9(1) of Pension Rules. In this case, admittedly, the charge sheet was issued one year prior to the retirement of the applicant, the applicant retired on 30/4/98. Now therefore disciplinary authority will have to decide ^{that in} ~~as to~~ how the facts and circumstances of this case ~~is~~, whether it is a fit case to continue disciplinary enquiry inspite of retirement or not.

7. We do not want to substitute our view in the place of the view which the Competent Authority has to take. Keeping ^{in mind the} view taken by Chandigarh Bench of this Tribunal in Tara Singh v/s. Union of India, we leave the matter to be considered by the Competent Authority to take a decision as to whether the enquiry should be continued in respect of an officer after retirement or not.



8. The allegation against the applicant is within Rule 9(1) of Pension Rules. Therefore, we do not find it a fit case to quash the chargesheet at this stage. In the circumstances, we feel that the matter should be referred to Competent Authority to take a decision.

9. In the result, the OA is disposed off at admission stage with following direction:

We give liberty to applicant to make a detailed representation to the Competent Authority in detail within 30-days from today. The Disciplinary Authority shall take into account the circumstances of the case including the explanation given by the applicant and then decide whether the allegation against the applicant is a grave misconduct and disciplinary enquiry deserves to be continued even after retirement.

In the circumstances of the case, we direct the disciplinary authority to take a decision in the matter within 4 months from the date of receipt of detailed representation from the applicant. If the allegation is found as not grave misconduct, then the disciplinary enquiry proceedings should be dropped.

However, if the misconduct is grave, the disciplinary enquiry shall be continued even though the applicant has retired, but the enquiry to be completed expeditiously. In the facts and circumstances of the case, all the contentions raised by both parties on merits, are left open. In the circumstances, there will be no orders as to costs.


(D.S. BAWEJA)
MEMBER (A)

abp.


(R. G. VAIDYANATHA)
VICE CHAIRMAN