

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 77/98

Date of Decision: 18.3.1998

Captain G.R.Pathrabe

Applicant.

Shri M.S.Ramamurthy

Advocate for  
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri R.G.Agarwal

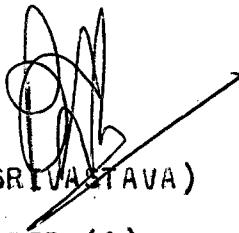
Advocate for  
Respondent(s)

CORAM:

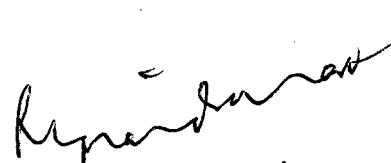
Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri. P.P.Srivastava, Member (A)

- (1) To be referred to the Reporter or not? *no*
- (2) Whether it needs to be circulated to *no* other Benches of the Tribunal?

  
(P.P.SRIVASTAVA)

MEMBER (A)

  
(R.G.VAIDYANATHA)

VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

OA NO. 77/98

Wednesday this the 18th day of March, 1998

CORAM : Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman  
Hon'ble Shri P.P.Srivastava, Member (A)

Captain Ganpati Rambhau Pathrabe  
R/o 23, Ambazari Layout,  
Behind Dharampeth Science College,  
Nagpur - 440 010.

By Advocate Shri M.S.Ramamurthy

... Applicant

V/S.

1. Union of India,  
through its Secretary,  
Ministry of Urban Affairs  
& Employment, Nirman Bhavan,  
New Delhi.
2. Shri R.D.Agrawal,  
Superintending Engineer (INQ),  
Inquiry Officer, C.P.W.D.Room No.3,  
First Floor, "E" Wing, Nirman  
Bhawan, New Delhi.
3. Shri G.S.Mittal,  
Superintending Engineer (Civil),  
C.P.W.D. 6/1, Seminary Hills,  
Nagpur.

By Advocate Shri R.G.Agarwal

... Respondents

O R D E R

(Per: Shri Justice R.G.Vaidyanatha, VC)

This is an application filed by the  
applicant for quashing the charge-sheet dated  
27.8.1997 and for other consequential reliefs.  
The respondents have filed reply opposing the  
application. We have heard Shri M.S.Ramamurthy,  
learned senior advocate for the applicant and  
Shri R.G.Agarwal, learned counsel for the respondents.

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2. The applicant has been issued a charge-sheet dated 27.8.1997 alleging misconduct during his term of office as Executive Engineer. He is now challenging the legality and validity of the said charge-sheet.

At the time of argument, the learned counsel for the applicant pressed three points before us which we are discussing below one by one. The first point before us is that though the charge-sheet is dated 27.8.1997, it was actually served on the applicant on 4.9.1997 through post but he had already attained superannuation on 31.8.1997 and therefore issuance of charge-sheet after the retirement of the applicant is illegal and liable to be quashed. The learned counsel for the respondents contended that the charge-sheet has been issued on 27.8.1997 before the retirement of the applicant and the date of actual service of the charge-sheet on the applicant is not relevant. We have been invited to the relevant rules, in particular, reliance on Rule 9 of the Pension Rules. Rule 9 (2) (a) clearly states that departmental proceedings which are initiated and or pending can be continued even after the date of retirement.

Then sub-clause (6) provides that departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant.

3. The learned counsel for the applicant wants us to hold that though the words used are issuing the charge-sheet, it should be read as serving the charge-sheet on the applicant.

But according to the respondents, the issuance of the charge-sheet before the date of retirement is relevant and the date of actual service is not relevant.

4. As already stated the charge-sheet is dated 27.8.1997. According to the respondents, it was posted at Delhi, addressed to the applicant on 28.8.1997. Therefore, the charge-sheet has been prepared and posted at Delhi before the retirement of the applicant. Then respondents have pointed out that on 30.8.1997 an officer went to the house of the applicant to serve the charge-sheet but since the door was closed, he prepared a panchnama and inserted the charge-sheet through the door of the house and therefore they say that delivery of the charge-sheet is also done before 31.8.1997. Since we are at the stage of admission, we are not expected to go into this question in detail and give our views. Prima facie we see that the charge-sheet is issued before attaining the date of retirement and prima facie it is done within the meaning of sub-clause (6) of Rule 9 of Pension Rules. It is also brought to our notice that the charge-sheet has been put in a cover and posted at Delhi, addressed to the applicant on 28.8.1997. It is prima facie at this stage to hold that there is no illegality in issuing the charge-sheet before the retirement of the applicant. But we hasten to add that we do not want to express our views finally and leave that question open. It is open to the applicant to take this defence before the disciplinary authority or enquiring authority. It is open to disciplinary authority or appellate authority to consider and decide the same. But however, this is not a ground on which we can interfere at this interlocutory stage.

5. The next question <sup>urged</sup> on behalf of the applicant is that the applicant be permitted to engage Legal Practitioner to defend himself in the enquiry. According to Rule 14 (8) of CCS(CCA) Rules, a delinquent officer has no legal right to engage Legal Practitioner as of right. In fact, there is a prohibition to engage Legal Practitioner. However, discretion is given to disciplinary authority to grant permission in a particular case by relying on the circumstances of the case.

The applicant has made a request to the disciplinary authority to engage a legal practitioner to defend himself. The disciplinary authority has rejected the request by order dated 26.2.1998. As things stand today, we do not find that the case involves any complicated questions of facts or law. Normally in interlocutory proceedings this Tribunal cannot substitute its discretion in the place of discretion to be exercised by the competent authority under the rules. The learned counsel for the respondents pointed out that the applicant was an Executive Engineer at the time of retirement and the only point of misconduct alleged against him is giving excess rate for transporting cement and it does not involve any complicated questions of law. However, we do not want to give any <sup>final view</sup> on this question. During the course of <sup>inquiry</sup>, the ~~represent~~ applicant can make a <sup>fresh</sup> ~~represent~~ explaining in detail the circumstances which requires him to engage a legal practitioner to defend him. The disciplinary authority may consider and then decide whether it is a fit case for permitting the applicant to engage a legal practitioner or not.

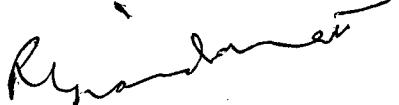
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6. The next and last question is that the enquiry should be held at Nagpur as the applicant is residing at Nagpur. It is also submitted that the applicant is a cardiac patient and it will be difficult for him to attend the enquiry if it is held at Delhi. When we questioned the learned counsel for the respondents, he submitted that there is no formal application on behalf of the applicant. We, therefore, observe that it is open to the applicant to make a formal application by giving all the facts and urge that the enquiry should be held at Nagpur and when such a request is made, the disciplinary authority or enquiry authority may consider and take an appropriate decision according to rules.

In our view, no case is made out for interference at this interlocutory stage and the application is liable to be rejected.

7. In the result, the application is rejected at the admission stage subject to the observations made above during the course of judgement. No costs.

  
(P.P. SRIVASTAVA)  
MEMBER (A)

  
(R.G. VAIDYANATHA)  
VICE CHAIRMAN

mrj.