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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO. 417-O.F-1996

DATE OF ORDER: - 13/6/1997

BETWEEN:

G. VENKATAPATHI RAJU

.. APPLICANT

AND

Union of India represented by:

1. The Secretary, Govt. of India,
Ministry of Finance (Customs & Central Excise),
Central Secretariat, North Block,
New Delhi,
2. The Commissioner I,
Central Excise & Customs, Basheerbagh,
Hyderabad,
3. The Assistant Commissioner of Central Excise,
Hyderabad VIth Division,
CLS Building, Nampalli Station Road,
Hyderabad 500001.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr. KSR ANJANEYULU

COUNSEL FOR THE RESPONDENTS: Mr. NV RAGHAVA REDDY, Adl. CGSC

CORAM:

HON'BLE SHRI R. RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

ORDER

ORDER (PER HON'BLE SHRI R. RANGARAJAN, MEMBER (ADMN.))

Heard Shri KSR Anjaneyulu, learned counsel for the applicant and Shri N.V. Raghava Reddy, learned standing counsel for the respondents.

2. The applicant herein joined the Central Excise Department as Clerk on 9.3.56. He was promoted as

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[Signature]

Inspector of Central Excise in 1976. Thereafter he was further promoted as Superintendent of Central Excise on 2.7.92. In that capacity he worked in the Headquarters' office, Hyderabad and was later posted as Superintendent, Range-II, Bolaram on 27.5.93.

3. While working as Superintendent Range II Bolarum, he was placed under suspension as per the Commissioner-I, Central Excise Memo No.II/39/38/95/CIV dated 21.7.95 (Annexure 2 to the OA) in exercise of the powers conferred by Sub-rule I of rule 10 of CCS (CCA) Rules, 1965. Further instructions while under suspension were also informed to the applicant as per that letter. A corrigendum C.No.II/39/42/95-CIU dated 13.9.95 was issued correcting the file ^{No. as} C.No.II/39/42/95-CIU dated 21.7.96 (Annexure 3 to the OA). The applicant was relieved of the duties as per the handing over charge dated 21.7.95 (Annexure 4 to the OA).

4. The applicant retired on superannuation on 31.8.95 after serving 39 years in the Department. The deemed relieving order on superannuation was issued by Memo No.D.No.II/25/1/95-Estt. dated 31.8.95 (Annexure I to the OA). The provisional pension was ordered and the applicant was also paid the amount equivalent to encashment of leave, CGEIS. But his final pension is yet to be ordered. Because his pension is not finalised he is not paid ^{value} commutation/of pension and gratuity.

5. The applicant submitted representations to R-2 for payment of gratuity and commutation of pension amount by

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his representation dated 11.7.96 (Annexure 7 to the OA). It is stated that no action has been initiated on that representation.

6. This OA is filed praying for a direction to the respondents to treat the period of suspension from 21.7.95 to 31.8.95 as ^{on} duty and to fix his final pension and order payment of DCRG and commuted value of pension on the basis of his retirement with 18% interest for the belated payment from 1.9.95.

7. The main contention of the applicant in this OA is that the departmental proceeding is deemed to have been initiated only by issue of the charge sheet. As he has been deemed to be relieved on the afternoon of 31.8.95 as per the relief report of R-3 dated 31.8.95 it is illegal in not making his pension final. As the final pension is not fixed, he is deprived of getting his commutation value of pension and gratuity. The denial of payment of commutation/pension and payment of gratuity on that score is illegal and arbitrary. He relies on the judgment reported in 1995(30) ATC 330 (Ram Shiromani v. Union of India and others) and the judgment reported in 1993(23) ATC 552 (Dinesh Ranjan Datta v. Union of India) to state that the disciplinary action is deemed to have been initiated only after a formal charge sheet has been issued. The date of suspension is not the date of initiation of the departmental proceedings. As no formal charge sheet has been issued to him even today, he is entitled for fixation of final pension and payment of gratuity and commutation even though he has been placed under suspension before his date of retirement. He also submits that an ~~employee was suspended with the charge~~

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employee can be issued with the charge sheet only by the President of India after his retirement and not by any other departmental authorities subordinate to the President of India.

8. A reply has been filed in this OA. The respondents submit that the disciplinary proceedings are deemed to have been started once the suspension is ordered as per Rule 9(6)(a) of the CCS (Pension) Rules. They further submit that in terms of Rule 9(2)(a) of the said rules, the departmental proceedings instituted while the Government servant was in service before his retirement or during his reemployment shall after final retirement of the Government servant be deemed to be proceeded under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the servant Government /had continued in service. It is incumbent on that disciplinary authority to place the report regarding his finding to the President of India for ~~xxxxxx~~ imposition of the penalty.

8. As the disciplinary proceedings having been initiated against the applicant by the competent authority by suspending him by the memo dated 21.7.95, the applicant cannot demand for fixation of final pension. As the final pension is not fixed, the question of payment of value of commutation/does not arise. In terms of rule 69(c) of the CCS (Pension) Rules, no gratuity shall be paid to the Govt. servant until conclusion of the departmental and judicial proceedings and issue of final orders thereon.

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10. The respondents have also indicated the gravity of the charges levelled against him which is under investigation. They submit that the goods allowed for export were not properly examined and the officers which included the applicant showed gross negligence in discharging their duties properly. The export documents were signed on 31.3.95 as if the container crossed the ~~check~~ post at Thondapalli on that date thereby forging ^{the} documents. A check of the container at Madras Port revealed that the items under export did not stand to the description as indicated in the invoice/shipping bill. The estimated value of the consignment was Rs.5 lacs only. Thus the exporters benefitted by earning the duty draw back of more than 22 lacs for exporting the materials. Thus the applicant showed undue consideration to the exporter thereby depriving the Govt. of its revenue.

11. The respondents further submit that a detailed scrutiny and examination of the evidence is being done at present by the Director of Vigilance, Madras, and it will take some time to complete the scrutiny and examination before issue of the charge sheet. But it cannot be said that the applicant is not aware of the charges as he was asked to give explanation to the queries that were raised in the letter dated 13.6.95 and those queries will definitely give him the necessary feed back that the irregularities committed by him are being scrutinised. There were press reports in this connection which would ^{fully} have made the applicant aware of the irregularities committed by him in this connection.

12. A reply to the counter has been filed in this connection. The sum and substance of the reply affidavit is

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more or less on the same lines as the OA. The only point made in this reply rejoinder is that the letter dated 13.6.95 is only in the nature of asking the clarifications and it would not mean that the applicant was aware of the charges.

13. The applicant submits that the charge sheet has to be issued by the President of India as he is a retired Government servant. The respondents submit that the proceedings have been initiated by issue of the suspension order and charge sheet may be issued by the competent departmental authority but only the punishment has to be inflicted by the President. Who should issue the charge sheet is not ^{the} point for consideration in this OA. If in the opinion of the applicant any incompetent authority issues the charge sheet then he is at liberty to initiate proceedings challenging the issue of the charge sheet as and when it arises. At present, there is no need to consider who should issue the charge sheet and what is the exact rule that is to be followed for issue of charge sheet. Hence the above point is not to be considered at this juncture.

14. Then what is the crucial point to be decided in this OA is the next question that is to be answered. In this OA, the applicant was placed under suspension by the order dated 21.7.95. Whether issue of the suspension order is initiation of the disciplinary proceedings or not is the question to be decided. In the opinion of the applicant, initiation of the disciplinary proceedings starts only when a charge sheet is issued as per CCS (CCA) Rules. But till now no disciplinary proceedings have been initiated even if he had been placed under suspension. For this ~~REMARKS~~

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he relies on the reported judgment of the other Benches of the Tribunal referred to above. As the disciplinary proceedings have not been initiated by issue of the charge sheet, the applicant submits that the denial of fixation of his final pension and non payment of gratuity and ^{value of pension} commutation is illegal.

15. On the other hand, the respondents submit that the disciplinary proceedings have been initiated by issue of the suspension order. As the applicant was placed under suspension on 21.7.95 earlier to his date of superannuation i.e., 31.8.95, he is not entitled for fixation of his final pension and payment of gratuity and commutation. For this they rely on the Rule 9(6)(a) of CCS (Pension) Rules. The respondents further emphasise the gravity of the charges levelled against him as brought out above and submit that a ~~prima facie~~ case existed for initiation of disciplinary proceedings against the applicant.

16. From the above, the crucial point to be decided in this OA is the date of initiation of the disciplinary proceedings. Whether the date of initiation of the disciplinary proceedings starts from the date of issue of the suspension order or from the date of issue of the charge sheet. If it is concluded that the initiation of the disciplinary proceedings starts from the date of issue of the suspension order i.e., 21.7.95 in the present case, then the applicant is not entitled for fixation of his final pension and payment of ~~commutation and gratuity~~ in terms of Rule 69(c) of CCS (Pension) Rules. If it is decided that the initiation of the disciplinary proceedings

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starts only from the date of issue of the charge sheet, then the final pension of the applicant has to be fixed and gratuity and commutation has to be ordered as no charge sheet has been issued to the applicant till today after his retirement on 31.8.95.

17. The respondents submit that rule 9(6)(a) of ^{the} CCS (Pension) Rules clearly states that the initiation of the disciplinary proceedings starts from the date of issue of the suspension order. This relevant para viz 9(6)(a) reads as below:-

"departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date;...."

As per this para, the departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner or if the Govt. servant has been placed under suspension from an earlier date, on such date. This would mean that for the purpose of withholding of final pension, suspension is the date of start of the initial disciplinary proceedings.

18. But the Pension rules cannot be relied upon for the above unless such a rule existed in the CCS (CCA) Rules, as CCS (Pension) Rules in regard to initiation of disciplinary proceedings is dependent on the Rules in CCS (CCA) Rules. CCS (CCA) Rules are primary documents to be relied upon in

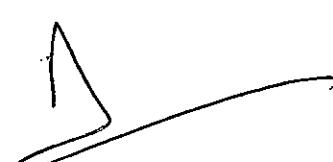
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the case of disciplinary proceedings. Hence we examined the various provisions under the rules relating to suspension. It has been indicated in Chapter II of the Swamy's compilation of CCS (CCA) Rules under, Suspension - A Digest, "that disciplinary proceedings must have been considered to have been started against an employee and pending such an inquiry, the officer concerned can be suspended as a first step even before any charges are framed against him. The exact verbatim of that para is reproduced below:-

"Suspension is an executive action whereby a Government servant is kept out of duty temporarily pending final action being taken against him for acts of indiscipline, delinquency, misdemeanour, etc. When allegations of serious nature are received against a Government servant and it is decided to initiate enquiries into such allegations, disciplinary proceedings must be considered to have been started against him and pending such an enquiry the officer concerned can be suspended as a first step even before any charges are framed against him."

From the above clarification it is evident that the disciplinary proceedings start when ~~the~~ suspension order is issued. On the basis of this only, Rule 9(6)(a) of the CCS (Pension) Rules recites that the date of suspension is the initiation of the departmental proceedings. Hence there can be no doubt in the mind of anybody that initiation of the disciplinary proceedings starts ~~with~~ with the issue of the suspension order.



19. The learned counsel for the applicant relying on the judgment of the Patna Bench of the Tribunal in Ram Shiromani's case cited supra, submits that "DCRG/Commutation of pension, gratuity should not be withheld unless a formal charge sheet was issued in a departmental proceedings or filed in a court or in a criminal trial." In Dinesh Ranjan Datta's case of Calcutta Bench of the Tribunal cited supra, it was held that "Once an employee has been allowed to retire without initiation of the disciplinary proceedings, neither his DCRG can be withheld nor payment of pension be kept provisional. The final pension has to be sanctioned to him and commutation of pension is also to be allowed according to normal operation of rules".

20. We have read the facts of these two cases. In Ram Shiromani's case, Shri Ram Shiromani, the applicant in Patna Bench of the Tribunal, was superannuated on 30.6.93 and till that date the applicant therein was not issued with the charge sheet nor was he placed under suspension on or before that date. Similarly, in the case of Dinesh Ranjan Datta, the applicant in Calcutta Bench of the Tribunal was not issued with the charge sheet nor was he placed under suspension on or before the date of his retirement. It is ~~ever~~ stated in that judgment that even on the date of pronouncement of the judgement, no disciplinary proceeding was started.

21. In view of the position that no charge sheet was issued or the applicants in those OAs were not suspended on or even earlier to a date of their superannuation, the learned Members of the Bench of Calcutta and Patna Tribunal

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had held that the applicants in those OAs were eligible to get their final pension fixed and were also eligible for payment of gratuity and commutation. Nowhere in those two OAs, the question whether disciplinary proceedings were deemed to have been initiated when the suspension order was issued, was considered. As there was no necessity to consider whether the suspension is \neq initiation of disciplinary proceedings, there was no need in those two OAs to consider the CCS (CCA) Rules as extracted above and also Rule 9(6)(a) of CCS (Pension) Rules. Hence it cannot be stated that the cited judgements by the applicant can reflect the answer to the question posed in this OA. In those two judgements, the question of date of initiation of the disciplinary proceedings whether it started from the time of issue of suspension order or issue of charge sheet was not considered on the basis of the rules and hence relying on those two judgements to state that the disciplinary proceedings are deemed to have been initiated only after the charge sheet is issued, cannot be held as correct appreciation of the rules. In that view, we hold that those two citations do not come to the rescue of the applicant in this case.

22. The suspension pending departmental inquiry is a safeguard against the Government servant interfering with and hampering the preliminary investigation and tampering with the material evidence - oral and documentary. In case of involvement in a criminal proceedings, such charges, therefore, involve moral turpitude. It would not be proper to allow the person concerned to work as \neq public servant unless there are exceptional reasons for not resorting to suspension. Suspension is also ordered to exhibit firm determination of the Government to root out the corruption

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or other grave misconduct. Incidentally the suspension provides the Govt. servant with enough time to prepare of himself adequately for the inquiry and to clear himself/all the charges levelled against him.

23. From the facts of this case it is evident that the applicant had been placed under suspension on a prima facie case having been established. The applicant cannot plead that he is not aware of any charges pending against him. The very fact that certain details have been asked by the letter dated 13.6.85 and they directly relate to the discharge of his duties as Superintendent, Range II, he should have got the smell that his conduct is being inquired into. Even if the exact nature of charges to be framed against him cannot be ascertained from this letter dated 13.6.95, it cannot be said that he is blissfully ignorant of the fact that he has not committed any irregularity. Further, having come to certain conclusion in regard to the prima facie case against the applicant, the respondents have placed him under suspension validly. The suspension order is not questioned in this OA. In the reply to the counter, the applicant submits that the respondents cannot rely on the Rule 9(6)(a) of the CCS (Pension) Rules, 1972 to come to the conclusion that the departmental proceeding is said to have been initiated from the date of suspension. But the applicant did not elaborate on this point/how he had come to that conclusion. Though he cited two judgments of this Tribunal referred to above, we have already observed that those two citations do not come to the rescue of the applicant.

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24. The provisions as quoted above both in CCS (CCA) Rules and CCS (Pension) Rules are very specific in that the departmental proceeding is said to have been initiated from the date of issue of the suspension order. These rules are not challenged. Hence it has to be held that the departmental proceedings have been initiated against the applicant by issue of the suspension order dated 21.7.95 earlier to his retirement. The date of superannuation fell on 31.8.95. In that view it cannot be said to be irregular if his final pension is not fixed and he is not paid the gratuity and commutation as per ^{the} CCS (Pension) Rules.

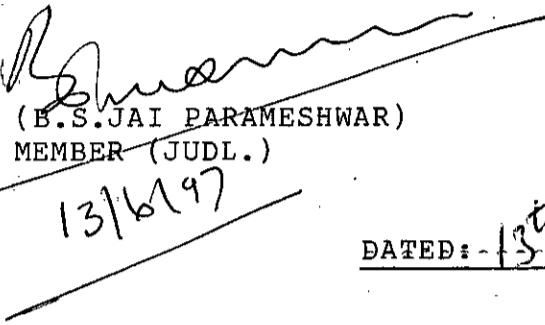
25. The next question that arises is whether the applicant can be allowed to continue under suspension indefinitely after he had retired. It is very unfortunate that a retired Govt. servant is languishing probably due to financial difficulties and hence it has to be presumed that he has approached this Tribunal by filing this OA. The applicant retired on 31.8.95. Even till today no charge sheet has been issued to him. Even presuming that if the charge sheet is issued in the very near future, proceedings will take ^a long time to complete. As the applicant is a retired Government servant, his case has to be considered sympathetically by the respondent-authorities to issue the charge sheet quickly and to complete the proceedings very early. That will give some relief to the applicant. In view of that, we urge the respondents to complete the scrutiny of the case and examination of evidence very quickly and issue charge sheet in the very near future. Even after issue of the charge sheet, the respondents should take quick action to complete the proceedings so

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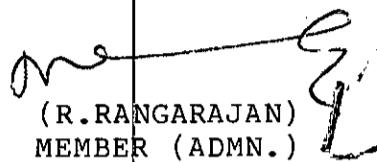


that the applicant will not be put to serious difficulties.

26. In the result, we find that there is no merit in this OA and hence the OA is dismissed subject to the observation made in para 25 above. No order as to costs.

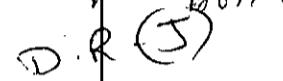

(B.S.JAI PARAMESHWAR)
MEMBER (JUDL.)

13/6/97


(R.RANGARAJAN)
MEMBER (ADMN.)

DATED: - 13th June, - 1997

vsn


D.R. (J)

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Copy to:

1. The Secretary, Govt. of India, Min. of Finance, (Customs and Central Excise), Central Secretariat, North Block, New Delhi.
2. The Commissioner I, Central Excise & Customs, Basheerbagh, Hyderabad.
3. The Asst. Commissioner of Central Excise, Hyderabad VI Division, CLS Building, Nampalli Station Road, Hyderabad.
4. One copy to Mr.K.S.R.Anjaneyulu, Advocate, CAT, Hyderabad.
5. One copy to Mr.N.V.Raghava Reddy, Addl.CGSC, CAT, Hyderabad.
6. One copy to D.R(A), CAT, Hyderabad.
7. Copy to All the Reporters as per list of CAT, Hyderabad.
8. One duplicate copy.

YLKR

SECRET
S.R.
16/7/97

TYPED BY
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDRAVAD

THE HON'BLE SHRI R. RANGARAJAN: M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR: M
(J)

DATED 13/6/97

ORDER/JUDGEMENT

M.A./R.A/C.A. NO.

in
O.A. NO. 417/96

Admitted and Interim directions
Issued.

Allowed

Disposed of with directions,

Dismissed

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected.

No order as to costs.

YLR

II Court.

