

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAI PUR BENCH, JAI PUR

O.A. No. 282/2001
T.A. No.

188

DATE OF DECISION 20.11.02

Mahesh Chandra Petitioner

P. V. Calla Advocate for the Petitioner(s)

Versus

Union of India & Others Respondent

T. P. Sharma Advocate for the Respondent(s)


CORAM :

The Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.

The Hon'ble Mr. Gopal Singh, Administrative Member.

- ✓ 1. Whether Reporters of local papers may be allowed to see the Judgement ?
- ✓ 2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
- ✓ 4. Whether it needs to be circulated to other Benches of the Tribunal ?

(GOPAL SINGH)
Administrative Member


(G. L. GUPTA)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

* * *

Date of Decision: 20.11.02

OA 282/2001

Mahesh Chandra, Retired Executive Engineer, CPWD, r/o 533, Mahavir Nagar, Near Ayappa Temple, Tonk Road, Jaipur.

... Applicant

Versus

1. Union of India through Secretary, Ministry of Urban Development & Poverty Alleviation, Nirman Bhawan, New Delhi.
2. Director General (Works), CPWD, Nirman Bhawan, New Delhi.
3. Commissioner for Departmental Inquiries, Central Vigilance Commission, Block No.10, Jamnagar House, Akbar Road, New Delhi.
4. UPSC through its Chairman, Dholpur House, Shahjahan Road, New Delhi.

... Respondents

CORAM:

HON'BLE MR.JUSTICE G.L.GUPTA, VICE CHAIRMAN

HON'BLE MR.GOPAL SINGH, ADM.MEMBER

For the Applicant

... Mr.P.V.Calla

For the Respondents

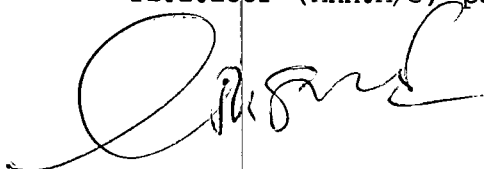
... Mr.T.P.Sharma

O R D E R

PER MR.JUSTICE G.L.GUPTA

The applicant was Executive Engineer during the period 5.9.92 to 22.1.94 at PWD Division No.VI of Delhi Administration. At that time, construction work of Master Plan Road No.43 was in progress. The work was completed sometimes in the month of November, 1993. The Final Bill of the work was prepared during the tenure of the applicant. The applicant, on attaining superannuation age, retired from government service on 31.7.95.

2. After his retirement a charge-sheet was served upon the applicant vide memorandum dated 1.7.97, wherein it was alleged that the applicant as Executive Engineer did not test check the levels recorded for payment of earth work against item No.1 (of SH:1) in 7th Running Account Bill and failed to take note of sudden & substantial increase in the quantity of earth work for payment against the said item No.1, with the result that the fictitious levels recorded by Shri O.P.Beri, Jr.Engineer, remained undetected, thereby leading to an over payment of Rs.8,56,272/- and consequent loss to the Government. The applicant filed reply to the charge-sheet. Inquiry was held and ultimately vide order dated 12.2.2001 (Ann.A/3) penalty of 25% cut of the admissible pension for



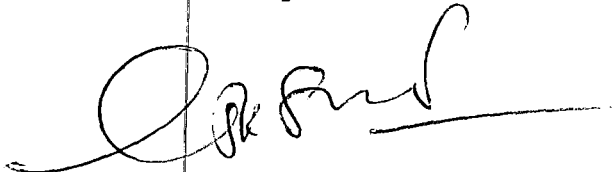
five years was imposed on the applicant. This order is under challenge in the instant OA. The memorandum dated 1.7.97 and the memorandum dated 16.1.98 have also been challenged.

3. The applicant's case is that the memorandum dated 16.1.98 was not issued in the name of his Excellency the President of India and the same was issued under the signatures of the Deputy Chief Vigilance Officer, who was not competent. The main grievance of the applicant is that the event for which the payment was made related to 6th RA Bill, and the charge is in respect of 7th RA Bill and as by the 7th RA Bill no pecuniary loss was caused, the charge-sheet could not be served upon the applicant. It is also the case for the applicant that the 6th RA Bill was passed on 24.4.93 and four year period had ended in April, 1997, whereas the charge-sheet was served upon him in July, 1997, which was barred under Rule-9 of the CCS Pension Rules, 1972. It is stated that after the earth work is executed, the initial levels cannot be verified at a later date and, therefore, if any attempt has been made to show the incorrectness in the measurement of the earth work, it was futile and it is the case of no evidence.

4. In the counter, it is stated that the applicant had previously filed an Original Application challenging the memorandum dated 1.7.97 and the memorandum dated 16.1.98 and, therefore, this OA is not maintainable. It is denied that the charge levelled against the applicant is not established by the evidence produced during inquiry. It is stated that payment of the running account bills is made subject to the adjustment in the final bill and that the payment made on 6th RA Bill was not final and the payment of the Final Bill was made to the Contractor on 30.8.93 and, therefore, the order of the President was within four years of the event of misconduct. It is further stated that the report of the Enquiry Officer is based on assessment of the material on record and the Disciplinary Authority, in consultation with the UPSC, has considered all the relevant facts and circumstances of the case before deciding the matter. It is prayed that the OA be dismissed.

5. In the rejoinder, the applicant has reiterated the facts stated in the OA. It is stated that the alleged over payment was made at the time of payment of the 6th RA Bill on 24.4.93 and the applicant could not be charge-sheeted under Rule-9 of the Pension Rules after the expiry of four years.

6. We have heard the learned counsel for the parties and perused the documents placed on record.

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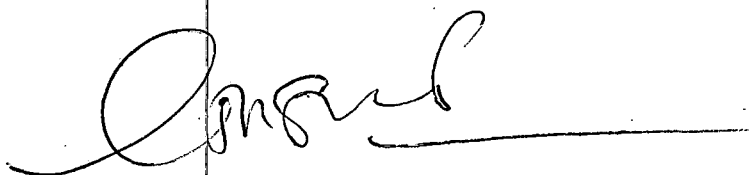
7. The main contention of the learned counsel for the applicant was that no payment was made under the 7th RA Bill and the payment under the 6th RA Bill was made on 24.4.93 and as the disciplinary proceedings were not instituted within four years, the order passed on such disciplinary proceedings is not sustainable in law. He cited the case of S.Ramanujam v. Commissioner for Departmental Inquiries & Ors., 1986 (4) SLR 530 in support of his contention. His further contention was that the representation of the applicant against the charge-sheet was not decided by the competent authority as the memorandum (Ann.A/1) was signed by the Deputy Chief Vigilance Officer and hence the inquiry stands vitiated. He canvassed that there is no evidence worth the name of record to hold the charge established and this being a case of no evidence, this court should interfere.

8. On the other hand, the learned counsel for the respondents contended that the scope of judicial review in such matters is very limited and when the Disciplinary Authority has passed the order on the basis of the documentary and oral evidence, this court cannot be justified in reapprising the evidence. His further contention was that the contract given to the Contractor for the construction of Master Plan Road No.43 from Chainage 4000 feet to 16050 feet was one contract and must be treated as one event for all purposes and period of limitation of four years should be calculated from the date the payment of Final Bill was made to the Contractor. He canvassed that the applicant having already filed an Original Application challenging the charge-sheet dated 1.7.97 and the memorandum dated 16.1.98 cannot reagitate the points in the instant OA.

9. We have given the matter our thoughtful consideration.

10. Before we consider the contentions raised by the learned counsel for the parties, it is considered necessary to state the facts on which there is no dispute between the parties. It is admitted position of the parties that the charge-sheet has been served upon the applicant after he had retired from service and no steps to initiate disciplinary proceedings had been taken when the applicant was in service. It is also admitted fact that the applicant had filed OA 142/98 challenging the two memorandums dated 1.7.97 and 16.1.98 and the same was dismissed by this Tribunal vide order dated 14.2.2001.

11. We may now read Rule-9 of the CCS Pension Rules, 1972. Relevant portion of the same is reproduced hereunder:

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"9. Right of President to withhold or withdraw pension

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement:

Provided that the Union Public Service Commission shall be consulted before any final orders are passed :

Provided further that where a part of pension is withheld or withdrawn, the amount of such pensions shall not be reduced before the amount of rupees three hundred and seventy-five (Rupees One thousand two hundred and seventy-five from 1-1-1996-see G1D below Rule 49) per mensem.]

(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service :

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment,-

(i) Shall not be instituted save with the sanction of the President,

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

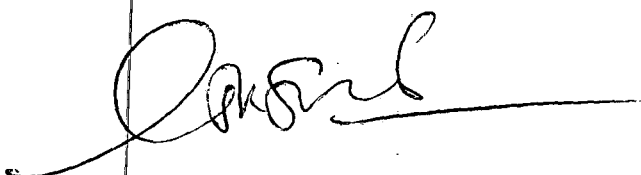
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(4) x x x x x

(5) x x x x x

(6) x x x x x x"

The aforesaid rule envisages that the President is empowered to withhold pension either in full or in part permanently or for a



specified period, if the pensioner is found guilty of grave misconduct or negligence during the period of service. The rule further envisages that UPSC is necessarily to be consulted before final orders are passed by the President. Sub-rule (2), which is relevant to decide the controversy, envisages that departmental proceedings cannot be instituted against a retired government servant without the sanction of the President, and such disciplinary proceedings cannot be initiated in respect of any event which took place more than four years before such institution.

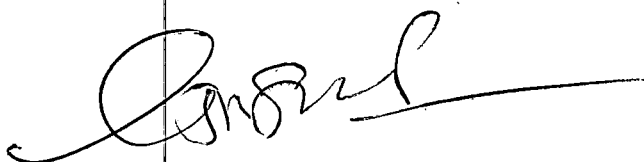
12. In the instant case, it is admitted position that the departmental proceedings were instituted against the applicant with the prior sanction of the President. It is also evident from the record that before the President passed the order of penalty, the UPSC was consulted. Now the serious question for consideration is whether the departmental proceedings were not instituted against the applicant within the period of four years from the 'event' of alleged misconduct.

13. The word 'event' has not defined in the rules. However, it is commonly understood as 'occurrence' or 'happening'. It is also understood as the outcome or result of anything. In the Webster's Encyclopedic Unabridged Dictionary 'event' has been defined as; (1) anything that happens or is regarded as happening; an occurrence, esp. one of some importance; (2) the outcome, issue, or result of anything; (3) Philos. something that occurs in a certain place during a particular interval of time; (4) Sports. any of the contests in a program made up of one sport or of a number of sports.

In the Concise Oxford Dictionary, Ninth Edition, also 'event' has been defined in the same manner. So also, in the Reader's Digest Universal Dictionary, 'event' has been defined in the same terms.

14. When we talk of 'event' in relation to a contract, it certainly includes the agreement from beginning to the end. It cannot be accepted that there are different 'events' during the course of execution of one contract. The argument that the various running account bills constitute separate events, is not tenable. In our opinion, the entire work constitute one 'event' and, therefore, the period of limitation provided in sub-rule (2)(b)(ii) of Rule-9 should be reckoned from the date of the Final Bill.

15. It is not material that some payment was released under the Final Bill or not. When payment is made to a Contractor by way of running

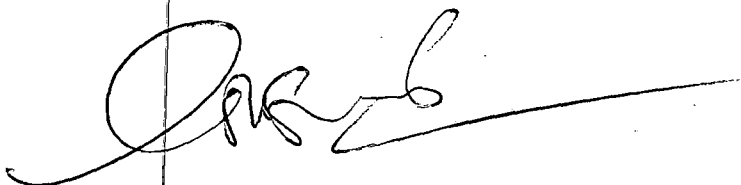
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account bills, it does not mean that the work done under the 1st, 2nd or 3rd RA Bills is not subject to scrutiny while preparing the Final Bill. It is not that when the payment of the first running account bill is made, it means that the entire payment has been made for the construction done upto the first running account bill or when the payment of the second running account bill is made, the entire payment has been made for the work done upto that stage and so on. As a matter of fact, the payments made under the various running account bills are on provisional basis which are subject to the verification till the payment of the last bill. If over payment has been made through the previous bills, it will be adjusted in the last bill and if recovery is to be made from the Contractor, the same shall be made at the time of preparing the Final Bill. Similarly, if any outstanding amount is due to the Contractor towards the Running Account Bills, the same shall be paid to him under the Final Bill.

16. In the instant case, it is stated that no payment towards earth work was made under the 7th RA Bill and whatever payment was made, it was made upto the 6th RA Bill, which was paid on 24.4.93. On this basis, it was contended that there was no misconduct ^{of} preceding four years from the date of institution of the departmental proceedings, and hence charge-sheet could not be served to the applicant.

The argument is not tenable in view of what we have stated above. Whatever payment was made upto the 6th RA Bill, was on provisional basis. The final payment was to be made by way of the 7th and final RA Bill. It may be that over payment had been made to the Contractor upto the 6th RA Bill, then it is possible that no payment was made under the 7th RA bill. But the agreement to execute the entire work one 'event' and it started from the date, the tender of the Contractor was accepted, till the date, the final bill was prepared and, therefore, the period of four years shall necessarily have to be reckoned from the date of the Final Bill, which was passed by the applicant.

17. Even in the case of S.Ramanujam (supra), relied on by the learned counsel for the applicant, it was observed that the term 'event' in the rule relates to the occurrence of any fact which becomes the subject matter of an enquiry or charge. In that case, the matter did not relate to the contract. What was alleged in that case, was that the pensioner therein had purchased a plot of land in the year 1971 and constructed house thereon in the year 1974-75. The disciplinary proceedings were instituted in 1981. In these circumstances, it was held that the charge related to the period beyond four years.



18. In the representation filed by the applicant (Ann.A/6) it was stated that the quantity of the earth work item as indicated in 7th RA bill was a mere repetition of those already measured and paid upto 6th RA bill dated 24.4.93. It was further stated that events of payments relating to the said earth work item were only upto 24.4.93. As already stated, it is not that the date of payment is relevant, it is the completion of the entire work under the agreement and, therefore, the representation was rightly not accepted by the competent authority vide Ann.A/1.


19. For the foregoing reasons, it has to be held that the departmental proceedings had been instituted against the applicant before the expiry of four years from the event i.e. the alleged misconduct.

20. The applicant having already challenged the memorandums (Anns.A/1 & A/4) and having failed cannot be permitted to reagitate the points in this OA. The instant OA is barred by the principle of res-judicata so far as the memorandums Anns.A/1 & A/4.

21. That apart, it is not required that the representation ought to have been decided by the President himself. What is required under Rule-9 of the CCS Pension Rules is that it is only the President who can pass an order of withholding of pension. If the communication of rejection of representation was made by any other authority, it cannot be said to have vitiated the inquiry.

So also, there is no merit in this contention that on the basis of the material on record, memorandum dated 1.7.97 (Ann.A/4) could not be issued. The applicant was the Executive Engineer at the relevant time and it was his duty to do test check the levels recorded for payment of earth work against item No.1. It was his duty to take note of sudden and substantial increase in the quantity of earth work for payment against item No.1. The applicant was dealing with the 7th RA bill, which was the Final Bill, and therefore the applicant cannot escape his liability by saying that no payment was made against item No.1 by way of 7th RA bill.

22. There is also no merit in the contention that there is no evidence worth the name on record on which the charges could have been established against the applicant. It was stated by Shri R.K.Sharda, Executive Engineer, before the Enquiry Officer that excess payment was



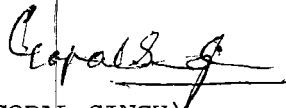
made to the Contractor due to the recording of higher formation levels then executed by the Contractor. It was further stated by him that the 7th RA bill included payment of the work done upto the stage the 7th RA bill became due for payment. The other witnesses who were asked to check the levels/quantities have also stated that the earth work done was 26750 cu.m. but the payment has been made for the quantity of 33320.17 cu.m.


The disciplinary authority has passed the order on the basis of the evidence produced in the inquiry. It is settled legal position that the Court/Tribunal cannot act as an appellate authority over the findings recorded by the disciplinary authority. The scope of the judicial review in such matters is very limited. Unless it is shown that there was no evidence worth the name to hold the delinquent guilty, the Court cannot be justified in interfering with the findings arrived at by the disciplinary authority. For this preposition of law, reliance is placed on the cases of R.S.Saini v. State of Punjab & Ors. - 1999 SCC (L&S) 1424, State of Tamil Nadu & Anr. v. S.Subramaniam - AIR 1996 SC 1232, B.C.Chaturvedi v. Union of India & Ors. - JT 1995 (8) SC 65, Secretary to Govt. of Tamil Nadu v. Thiru M.Sannasi - 2002 SCC (L&S) 902, State Bank of Patiala v. S.K.Sharma - JT 1996 (3) SC 722, & Bank of India v. D.Suryanarayan - JT 1999 (4) SC 489.

Having gone through the entire material on record, it cannot be said that the disciplinary authority has passed the order without any evidence whatsoever. The order is, therefore, not assailable on merits.

23. For the reasons stated above, there is no merit in the contentions raised on behalf of the applicant.

24. Consequently, the instant OA is liable to be dismissed, and it is hereby dismissed. No order as to costs.


(GOPAL SINGH)
MEMBER (A)


(G.L.GUPTA)
VICE CHAIRMAN