

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 27th day of July, 2011

ORIGINAL APPLICATION No.110/2010

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

P.D.Shankhala
S/o Shri Gyarsi Lal,
R/o 13/4, Housing Board,
Malviyanagar,
Jaipur.
Last employed on the post of
Regional Provident Fund Commissioner Gd.I,
Zonal Training Institute,
West Zone, Ujjain (MP).

... Applicant

(By Advocate : Shri C.B.Sharma)

Versus

1. Union of India through
Secretary to Government of India,
Ministry of Labour and Employment,
Shram Shakti Bhawan,
Rafi Marg,
New Delhi.
2. Chairman,
Central Board of Trustees,
Employees Provident Fund Organisation,
Bhavishya Nidhi Bhawan,
14, Bhikaji Cama Place,
New Delhi.

... Respondents

(By Advocate : Shri Amit Mathur, proxy counsel for
Shri R.B.Mathur)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the
following relief :

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"That impugned disciplinary proceedings instituted vide memo dated 18.1.2008 (Annexure A-1) and order sheet dated 5.2.2010 (Annexure A/2), and all subsequent proceedings thereof, may be declared illegal and the same may be quashed. The respondents may be directed to allow all consequential benefits as if no such adverse order were ever in existence."

2. The applicant has stated that during the period from 28.8.2001 to 4.6.2002 he was holding the post of Regional Provident Fund Commissioner [RPFC-I] (officer-in-charge), Regional Office, Raipur. His subordinate, the Assistant PF Commissioner (Adm), reported to him that Shri Vinod Singh Kakodia, UDC, the then Caretaker, never cared to complete the stock registers and hand over the charge of stores to Shri Ramaswamy, Caretaker. The Kakodia also misappropriated and assessed the amount in respect of different articles, whose receipt, supply and balance could not be confirmed from the entries of the stock register. The applicant issued a charge-sheet vide memo dated 24.5.2002 (Ann.A/3) to said Shri Kakodia. The applicant also reported the matter to the Deputy Director, Vigilance, West Zone, Mumbai.

3. That the aforesaid charge-sheet came to be dropped by applicant's predecessor and a fresh charge-sheet under Rule-10 of the EPF Staff (CCA) Rules, 1971, was issued vide memo dated 10.6.2004 (Ann.A/4) to the same Shri Kakodia on the allegation that he deliberately and with an ulterior motive attempted to defraud the office of the EPF, Regional Office, Raipur, to the tune of approximately Rs.four lakh by showing receipt of stationary items without obtaining and ensuring the actual physical possession thereof. It seems that the matter was manipulated and the charges against Shri Kakodia were held as not proved vide inquiry report dated 19.7.2007 (Ann.A/5) on the basis of inadmissible evidence e.g. DD-8 of Shri Rajeev Kumar Pal, relied upon without its proving by the author since Shri Rajeev Kumar Pal was not examined as a witness in the case.

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4. The applicant has further stated that it would be pertinent to mention that the applicant was RPFC-I (officer-in-charge) for Chhattisgarh Region. Purchase of stationary items and other store articles were processed and done by the concerned ACPF (Adm) & (Stores) under the financial power delegated to them. The applicant never gave any instructions to deviate from the established procedure for making purchase e.g. proposal for purchase, approval of APFC, placement of supply order, pre-audit of bills etc.

5. That while the applicant was planning for his settlement after retirement i.e. on 31.1.2008, just a few days before his retirement he was issued a charge-sheet under Rule-10 of the EPF Staff (CCA) Rules, 1971, for imposition of major penalty vide memo dated 18.1.2008 (Ann.A/1) alleging violation of Rule-3, and its sub-rules, of the CCA (Conduct) Rules, 1964. A bare perusal of the imputation of charges would reveal that most of the allegations against the applicant are based on the finding and observations made in the inquiry report, whereby Shri Kakodia was exonerated. Other allegations were not even falling within his duty schedule. If the respondents had any complaint against the applicant in the said matter, they would have resorted to a joint disciplinary proceeding against the said Shri Kakodia and the applicant in the year 2002 itself and they should not have waited for almost six long years.

6. The applicant has denied the charges and submitted a representation in reply to the charge-sheet vide letter dated 28.1.2008 (Ann.A/6). Subsequently, another details were furnished vide letter dated 2/11.9.2009 (Ann.A/7). The inquiry officer was appointed on 24.4.2008 and he fixed the date for preliminary hearing on 7.12.2009. Now the next date in the disciplinary proceedings is fixed as 22.2.2010, as per order-sheet dated 5.2.2010 (Ann.A/2).

7. That the subject matter of the charge-sheet relates to the year 2001-2002. The charge-sheet came to be issued on

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18.1.2008 i.e. after six years of the alleged incident. The inquiry officer was appointed on 24.4.2008 and he fixed the date for preliminary hearing on 7.1.2009. In this way, the disciplinary proceedings have already taken a time of about two years while the alleged incidence is of about 8-9 years back. It has been stated that there has been no delay on the part of the applicant in finalization of the case. There is no explanation of delay in instituting and finalizing the disciplinary case against the applicant. It is difficult to defend the case at a belated stage. There is no justification to continue with the disciplinary proceedings at this belated stage. Therefore, the applicant has prayed that the OA may be allowed and the memo/charge sheet dated 18.1.2008 (Ann.A/1) and the order sheet dated 5.2.2010 (Ann.A/2) may be quashed.

8. The respondents have filed their reply stating therein that the charge-sheet was served upon Shri Vinod Singh Kakodia, the then Caretaker, and the inquiry was conducted into the charges levelled. The Inquiry officer in his report dated 19.7.2007 (Ann.A/5) after considering the evidence reached on the following conclusion:-

"While bringing the case to nutshell it is stated that it was not happened by chance that Shri Rajeev Kumar Pal the then APFC confirmed his oral directives (DD/8) to the then caretaker to place the order for supply of stationary nor it was by chance the M/s NCCF-Raipur supplied the same to RO, Raipur or nor it was also by chance the then caretaker acknowledged its receipt by follow up action to put the orders for approval of authority which were subsequently utilized by his successor as admitted by him. The coherence of the incidents stated above proves beyond all questions that the material was supplied by M/s NCCF to RO Raipur as per the delivery challan exhibited as P/2. Further, the same was received by the delinquent in regular course of manner with no ulterior motive as the oral orders for the same were placed by the charged official at the behest of his superior as confirmed by Shri Rajeev Kumar Pal for which the delinquent took follow up action by submitting the suitable requisition for approval of the competent authority. Under the circumstances, the sole charge attributed against the said Shri V.S. Kakodia, the charged official, therefore, not proved.

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The relevant documents as detailed in folders I to IV are, therefore, forwarded herewith for further necessary action as deemed fit in the matter."

9. It is incorrect on the part of the applicant to say that the matter was manipulated and charges against him were wrongly framed. The applicant has no authority, at this stage, to raise question-mark over the departmental inquiry conducted against Shri Kakodia. The respondents have carefully examined the report submitted by the inquiry officer and thereafter inquired into the matter and issued memorandum to the applicant.

10. The respondents have further stated that during the tenure of the applicant as RPFC-I, gross financial irregularities were made in his office and the applicant while holding the supervisory post cannot escape from his liability. It is also relevant to point out that prior to issuing the charge-sheet, the entire matter was duly inquired into and only thereafter the charge-sheet was served upon the applicant. A bare perusal of the memorandum (Ann.A/1) itself reveals gross financial irregularities in the office of the applicant. A perusal of the statement of imputation of misconduct or misbehavior in support of article of charges framed against the applicant do reveals that while functioning as RPFC-I the applicant had committed gross misconduct. A perusal of the same also reveals that the applicant himself was involved in giving unreasonable benefits to one of the NCCF suppliers and harassing another. A perusal of the same also reveals that without the consent of the applicant, the aforesaid financial irregularities could not have been committed. As far as the submission of the applicant that he was not involved in the financial irregularities can only be decided in the departmental inquiry which has been initiated against him as per rules. A perusal of the order sheet itself reveals that the applicant is avoiding the inquiry as, on 7.12.2009, he did not appear in the preliminary inquiry and on 5.2.2010 a fax-message was sent by him showing his inability to appear in the inquiry proceedings on the ground of cold and cough. As the applicant himself is avoiding inquiry,

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he is not entitled to any relief. There is no delay in conducting the inquiry. Therefore, according to the respondents, the OA has no merit and the same deserves dismissal.

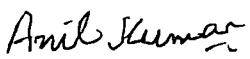
11. Heard learned counsel for the parties and perused the documents on record. Learned counsel for the applicant reiterated the averments made in the OA. He vehemently argued that the charge-sheet has been given to the applicant after a lapse of six years, therefore, on the ground of delay the charge-sheet and further disciplinary proceedings are liable to be quashed. He stated that the incident relates to the period 2001-2002, whereas the applicant has been issued the charge sheet on 18.1.2008. The respondents have not been able to explain the delay. The charge-sheet has been issued to the applicant just before his retirement to harass him. On the contrary, learned counsel for the respondents argued that initially a charge-sheet was given to Shri Vinod Singh Kakodia on 24.5.2002. The inquiry was completed on 19.7.2007 and on the basis of finding of the inquiry officer made in the inquiry report, the applicant was served with a charge-sheet on 18.1.2008. Thus, there is no delay in issuing the charge-sheet to the applicant. If the applicant is innocent and he has no liability then he can raise all admissible objections during the inquiry. However, he himself is avoiding the inquiry and taking adjournments on one pretext or the other. Therefore, this OA has no merit and the same deserves to be dismissed.


12. Having heard the rival submissions of the parties and going through the documents on record, we are of the opinion that the applicant has failed to make out a case for interference by this Tribunal. It is not disputed that the inquiry report against Shri Kakodia was submitted on 19.7.2007 and thereafter on the basis of that report and after further inquiry by the respondents, the applicant was served with a charge sheet on 18.1.2008. Therefore, there is no delay in issuing the charge-sheet to the applicant. The inquiry officer has already been appointed in this case. We do not find any reason to interfere with the departmental proceedings at this stage.

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The applicant has full opportunity to put-up his case before the inquiry officer.

13. In view of the above discussion, we find no merit in this OA and the same stands dismissed accordingly with no order as to costs.


(Anil Kumar)
Member (A)


(Justice K.S. Rathore)
Member (J)

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