

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

TA 64/2013

New Delhi, this the 30th day of August, 2016

Hon'ble Mr. Justice M.S. Sullar, Member (J)
Hon'ble Mr. P.K. Basu, Member (A)

Hira Lal Duggal S/o Late Shri M.R. Duggal
(Supdt. (Retd) Grade-I Dass)
Government of NCT of Delhi
R/o House No.5, Sector-7, Gurgaon
Haryana

... Applicant

(Through Shri H.M. Singh, Advocate)

Versus

1. State NCT of Delhi
Through Deputy Director of Education
(Vigilance Branch) South (B)
Najafgarh, Delhi
2. State of NCT (Delhi)
Through Assistant Commissioner of Police
DIU – North District Delhi
Lucknow Road near CGHS Dispensary
Timarpur, Delhi
3. State Election Commission
State NCT of Delhi
Through Commissioner, Nigam Bhawan
Kashmiri Gate, Delhi

... Respondents

(Through Ms. P.K. Gupta, Advocate)

ORDER (Oral)

Mr. P.K. Basu, Member (A)

The applicant, while working as Superintendent Grade-I (DASS), was deputed on election duty in 2007 as Assistant Returning Officer for the election of Councilors of Municipal

Corporation of Delhi (MCD). After the elections were over, it was challenged in a Court of Law through petition No.47/2007 and vide order dated 4.06.2008, the Additional District Judge Delhi disposed of the matter. In the order, apart from deciding the main issue, the learned Judge also passed severe strictures against the applicant and the Returning Officer, concluding finally that the allegations against them are serious and entail both departmental and penal consequences. The learned Judge also directed as follows:

"It is desirable and also expected that the State Election Commission shall take a serious note of their conduct and take appropriate action in accordance with law under intimation to this court so as to send a clear message that such persons have no place in the system."

2. The respondents initiated departmental proceedings against the applicant and issued charge memorandum dated 25.02.2011 (actually issued on 3.03.2011). Vide memo dated 11.03.2011, the Article of Charge etc. were sent to the applicant. However, vide letter dated 22.03.2011, Office of Deputy Director of Education informed the HOS, RTRG Co. Ed. Sar. Vidyalaya, Surhera, New Delhi to serve the original charge sheet on the applicant, enclosing copy of letter dated 11.03.2011. The applicant states that he actually received the charge sheet only on 29.03.2011.

3. This matter has been transferred to the Tribunal vide order dated 6.08.2013 by the Hon'ble High Court of Delhi for decision.

4. This Application has been filed seeking the following reliefs:

- a) Issue appropriate writ order or direction in the nature of certiorari, expunging the remarks made by Ld. ADJ, Delhi in C.S. No.47 of 2007 dated 4.06.2008 and consequent initiation of criminal and departmental proceedings vide FIR No.64 of 2009 dated 4.03.2009 P.S. Kashmiri Gate, Delhi No. De 54/6/DDE/SWB/VIG/2011/459 dated 22.03.2011 against petitioner on the basis of said remarks.
- b) Issue appropriate writ order or direction in the nature of certiorari, quashing departmental proceedings No. De 54/6/DDE/SWB/VIG/2011/459 dated 22.03.2011 by respondent No.1 in violation of rule 9 (2) (b) of the Central Civil Services (Pension) Rules 1972 and FIR No.64 of 2009 dated 4.03.2009 P.S. Kashmiri Gate, Delhi.

5. The learned counsel states that adverse orders had been passed by the learned ADJ, Delhi without giving an opportunity to the applicant to be heard in the matter and, therefore, the remarks made by the learned ADJ should be expunged and order dated 22.03.2011 communicating the charge memo be also quashed as it is in violation of Rule 9 (2) (b) of CCS (Pension)

Rules. He has also prayed for quashing of FIR 64/2009 dated 4.03.2009, P.S. Kashmiri Gate, Delhi.

6. Prayers of expunging the remarks by learned ADJ and of quashing of FIR No.64/2009 clearly do not fall within the jurisdiction of this Tribunal and no order can be passed thereon. The applicant may approach the appropriate forum to seek such relief.

7. As regards charge memo dated 22.03.2011, it is seen from the charge memo itself that the incident happened on 17.03.2007. Rule 9 (2) (b) of the CCS (Pension) Rules provides as follows:

“9. (2) (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.”

8. The applicant also relied on **State of U.P. and another Vs. Shri Krishna Pandey**, (1996) 9 SCC 395 and **Punjab State Power Corporation Ltd. Patiala and others Vs. Atma Singh Grewal**, 2014 (1) SCALE 626 to claim that no

departmental proceeding can be initiated in respect of an event which took place more than four years before the serving of charge sheet and after his retirement.

9. Since the original date of incident is 17.03.2007, the period of four years expired on 16.03.2011 and the charge memorandum of disciplinary proceeding was admittedly sent on 22.03.2011 to be served on the applicant. The applicant states that he actually received the same on 29.03.2011. Even if we ignore the actual date of receipt of 29.03.2011, the actual date when the charge memo was issued i.e. 22.03.2011 is clearly beyond the period of four years stipulated in Rule 9 (2) (b) of the CCS (Pension) Rules. Therefore, this charge memo cannot sustain. Accordingly, letter dated 22.03.2011 and the original charge sheet attached thereto are quashed and set aside. No costs.

(P.K. Basu)
Member (A)

(Justice M.S. Sullar)
Member (J)

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