

Central Administrative Tribunal
Principal Bench

OA No.1476/2015

New Delhi this the 26th day of July, 2016

Hon'ble Mr. Justice M.S. Sullar, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)

Haridev Prasad aged 61 years,
Son of Late Shri. Roop Chand Prasad,
Retd. Senior Technician,
Group 'C'
Resident of Flat No.304, B-105,
Bindapur,
Matiala Road, Nanhe Park,
Uttam Nagar, New Delhi 110 059.Applicant

(Argued by: Shri H.P. Chakravorty with
Shri P.S. Khare, Advocates)

Versus

Indian Council of Agricultural Research,
Through its Secretary,
Krishi Bhawan, Dr. Rajendra Prasad Road,
New Delhi, 110 001.Respondent

(By Advocate :Shri S. Lingwal)

ORDER (ORAL)

Mr. Justice M.S. Sullar, Member (J):-

Tersely, the facts and material, which needs a necessary mention, for the limited purpose of deciding the core controversy involved the instant Original Application (OA), and emanating from the record, as claimed by the applicant, Haridev Prasad, S/o Late Shri Roop Chand Prasad, is that, he was initially appointed as Beldar in Group 'D' post in Respondent-Organisation, i.e., Indian Council of Agricultural Research (ICAR), New Delhi. During the course of

his tenure of more than 32 years, he was ultimately promoted to the rank of Senior Technician in Group 'C' post. Having served the department for 32 years, he retired from service on superannuation on 28.02.2014 with clean record of service. All the dues of retiral benefits were released in his favour, vide order dated 28.03.2014 by the Respondent.

2. According to the applicant, that after about 3 (three) months from his retirement, he received the impugned Memorandum of charge dated 24.11.2014 (Annexure A-1 Colly.), wherein it was mentioned that the applicant has submitted the fake matriculation certificate/mark sheet in the year 1993-94 issued by High School, Bakhri Doa, District Mujaffarpur, Bihar, for the purpose of promotion to the post of T-1.

3. In response thereto, he submitted the detailed/comprehensive representation/reply dated 26.12.2014 (Annexure A-2), requesting the respondent to withdraw the charge sheet, being barred by Rule 9 of CCS (Pension) Rules, 1972 [hereinafter to be referred as "CCS(Pension) Rules"] (Annexure A-3), but in vain.

4. Aggrieved thereby, the applicant has preferred the instant OA challenging the impugned charge sheet dated 24.11.2014 (Annexure A-1 Colly.) on the following grounds:-

"5.1 BECAUSE the petitioner got no excess payment in any account nor has he been in govt. accommodation nor is there any dues against him, on

the date of retirement or prior thereto and he has been retired from service on normal superannuation on 28.02.2014.

5.2 BECAUSE after retirement for initiation of any judicial or disciplinary proceedings purpose of withholding or withdrawing of pension, the powers are vested with Hon. President of India only and other authority is empowered under CCS (Pension) Rules, 1965.

5.3 BECAUSE the Charge-Memorandum above has not been issued under sanction of President of India, at all, therefore, it is totally without jurisdiction.

5.4 BECAUSE while issuing the charge-memorandum above, the provisions of Rule 9 (2) (b) (ii) of CCS (Pension) Rules, 1972, extracted below have not at all been taken into (sic) consideration –

“ (b) The departmental proceedings, if not instituted while the Government servant was in service, whether before the 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) x x x x x x.“

5.5 BECAUSE the Charge-memorandum speaks of committing grave misconduct during 1993-94 and no departmental/disciplinary proceedings was instituted during his service period.

5.6 BECAUSE it is more than 10 years from such event said to have been occurred, therefore in view of above provision of Rule 9 (b) (ii) CCS (Pension) Rules, 1972, no departmental proceedings can be and could be instituted against the petitioner.

5.7 BECAUSE since there is statutory bar in instituting for the event took place four years ago from initiating such proceeding, the Memorandum of Charge above is not sustainable in law and liable to (sic) be quashed and set-aside and the same deserves to be injuncted forthwith by this Hon. Tribunal.

5.8 BECAUSE the charges are based on false, fabricated facts and concocted documents, the charge are emphatically denied. Infact, the petitioner did not act at all as alleged in the Memorandum of Charge and the charges, which have been framed with malicious intention and to (sic) harass the petitioner, deserves to be withdrawn forthwith.

5.9 BECAUSE no proceedings, (sic) judicial and/or departmental disciplinary proceedings can be instituted at the behest of high-ups for settling the score and statement of imputations in Charge Memorandum are nothing but (sic) bundle of facts for settling scores and personal vendetta and it liable to be cancelled forthwith.

5.10 BECAUSE no order of withholding or withdrawing the pension has been ordered by the Hon. President of India, at all and stopping of the pension of applicant (sic), is against the provisions of CCS (Pension) Rule, 1972 read with Article 21 of Constitution of India.

5.11 BECAUSE besides refund of the sum of Rs.50,000/- withheld so far, the applicant is entitled for interest @ 18% compounded yearly thereon w.e.f. 01.09.2014 till the date of actual payment.

5.12 BECAUSE the petitioner is also entitled for exemplary cost to the tune of Rs.50,000/- from the respondents for harassment.”

5. The applicant termed the impugned charge sheet and action of respondent as being, illegal, arbitrary and without jurisdiction. On the strength of aforesaid grounds, the applicant sought to quash the charge sheet (Annexure A-1) in the manner indicated hereinabove.

6. The respondent refuted the claim of the applicant and filed reply, wherein it was admitted that applicant was appointed as SSG-I in the NBPGR, New Delhi on 01.10.1982. He was stated to have shown that he has passed the 10th class examination from the High School, Bakhir Doa, Bihar. Later on, he vide letter dated 10.08.1993, submitted a certificate dated 07.01.1993 issued by the High School, Bakhir Doa, Bihar, containing marks obtained by him in the said examination.

7. Subsequently, he was promoted to the post of SS Grade-II vide order dated 05.02.1994 and further promoted to the post of T-1 (Fieldsman), vide order dated 08.10.1999. Thereafter, on the recommendations of the Assessment Committee, the applicant was further promoted to the post of T-2 (Fieldsman) vide order dated 08.04.2005 by the Institute.

8. According to the respondent, that in the wake of complaint, the matter was enquired into and it revealed that the applicant had submitted a fake mark sheet/certificate of

10th Class. In this view of the matter, the applicant was rightly charge sheeted for the indicated misconduct.

9. Virtually acknowledging the factual matrix and reiterating the validity of the impugned charge sheet (Annexure A-1 Colly), respondent has stoutly denied all other allegations and grounds contained in the main OA and prayed for its dismissal.

10. Having heard the learned counsel for the parties, having gone through the record with their valuable help and after considering the entire matter, we are of the firm view that the present OA deserves to be accepted, for the reasons mentioned hereinbelow.

11. As is evident from the record that the incident of submitting a false educational certificate is stated to be during the period of year 1993-94 and applicant superannuated on 28.02.2014, whereas the impugned charge sheet was served on him on 24.11.2014 (Annexure A-1).

12. Ex-facie, the argument of learned counsel for applicant, that the Department is legally debarred from initiating the enquiry against the applicant, after his retirement, as contemplated under Rule 9 (2)(b) of CCS (Pension) Rules, has considerable force.

13. Rule 9(2)(b) postulates that the departmental proceedings, if not instituted while the Government servant

was in service, whether before his retirement, or during his re-employment, shall not be instituted save with the sanction of the President, **shall not be in respect of any event which took place more than 4 (four) years before such institution**, and 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.

14. A plain and meaningful reading of the above provisions would reveal that the Department has no power to institute a Departmental Enquiry (DE), after the retirement of the Government servant in respect of any event which took place more than 4 (four) years before such institution. As depicted hereinabove, the event was stated to have taken place during the period of year 1993-94 and the impugned charge sheet was served on the applicant on 24.11.2014 (Annexure A-1).

15. On the contrary, the learned counsel for respondent has urged that the bar contained under Rule 9(2)(b) is not applicable to the case of the applicant, as he was charge sheeted for submitting a false matriculation certificate for the purpose of promotion and was not for any misconduct during the course of his employment. In this regard, he has placed reliance on the observation of this Tribunal in case **Shri Rajinder Singh Vs. DTC & Others** decided on 09.03.2011 in

OA No.1339/2010, wherein it was observed that the DE for trying to secure promotion by submitting forged certificate, is not a misconduct in performance of duty, so bar under Rule 9(2)(b) is not applicable.

16. At the first instance, the argument based on the indicated observation of this Tribunal, appeared to be somewhat attractive, but at the same time when the matter was deeply examined in view of law laid down by the Hon'ble High Court of Delhi in the same very case of **Rajinder Singh Vs. DTC and Others** decided on 03.01.2012 in **W.P. (C) No.2744/2011**, then we cannot, help observing that, the argument of learned counsel for respondent is not only devoid of merit, but misplaced as well.

17. The Hon'ble High Court, while interpreting Rule 9(2)(b) of the CCS (Pension) Rules, ruled that submitting of fake certificate for the purpose of promotion is a misconduct in the performance of his duty and the bar envisaged under Rule 9(2)(b) will be fully applicable and the Department is debarred from instituting DE in respect of an **event**, which took place more than 4 (four) years before such institution.

18. Therefore, the ratio of law laid down by Hon'ble High Court *mutatis mutandis* is applicable to the present case and is a complete answer to the problem in hand. Hence, it is held that the initiation of DE, by virtue of impugned charge sheet

dated 24.11.2014 (Annexure A-1) against the applicant by the respondent, is legally barred by limitation and is illegal.

19. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

20. In the light of the aforesaid reasons, the instant OA is accepted. The impugned charge sheet dated 24.11.2014 (Annexure A-1) and all departmental proceedings in pursuance thereof, are hereby set aside. However, the parties are left to bear their own costs.

(V.N. GAUR)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)
26.07.2016

Rakesh