

**Central Administrative Tribunal
Principal Bench: New Delhi**

OA No.2916/2015

Reserved on :10.08.2015
Pronounced on:03.11.2015

Hon'ble Shri Sudhir Kumar, Member (A)
Hon'ble Shri Raj Vir Sharma, Member (J)

Sh. Purshottam Lal Chawla, Age -62 years,
Retired Head Clerk
S/o Late Sh. Bansi Lal Chawla
R/o B-810, Park View Apartment
Sector-5, Vasundhara, Ghaziabad-201012.Applicant

(Advocate : Shri Dinesh S. Badiar)

Versus

1. The Commissioner
North Delhi Municipal Corporation
Civic Centre, New Delhi.
2. The Director (Vigilance)
North Delhi Municipal Corporation
Civic Centre, New Delhi.
3. The Deputy Assessor & Collector
North Delhi Municipal Corporation
Sadar Paharganj Zone
Idgah Road, Delhi-110006.Respondents.

ORDER

Per Sudhir Kumar, Member (A):

The applicant filed this OA on 02.07.2015, and after rectification of defects it was listed for admission on 10.08.2015.

2. Learned counsel for the applicant pointed out that the applicant had retired as Head Clerk from the Property Tax Department of the Respondent-North Delhi Municipal Corporation (NDMC in short) on 28.02.2014. He was released his General Provident Fund, and Group Insurance Scheme dues, but his other terminal benefits, like Leave Encashment, Gratuity and Pension

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Commutation were not released. Therefore, the applicant preferred a representation on 06.03.2014 to the Respondent No.3, followed by another representation on 13.03.2014 for releasing of such retiral benefits. Since the applicant was aware about a regular departmental enquiry case having been initiated against him, he also sought for supply of complete Paper Book pertaining to the RDA No.1/67/2013/NDMC registered against him through Annexure A-5 dated 24.03.2014. However, a charge-sheet dated 27.04.2015 (Annexure A-2), impugned in this OA, was issued to him, more than 14 months after his retirement on 28.02.2014, with the noting that it has been issued vide Corporation Resolution No.413 dated 02.03.2015. A copy of the said Resolution of the Respondent-Corporation has also been enclosed by the applicant (Pages 22 of the Paper Book) which states as follows:

“Resolution No.213 – Resolved that as recommended by the Appointments, Promotions, Disciplinary & Allied Matters Committee vide its Resolution No.78 dated 2.3.2015, the proposal of the Commissioner as contained in his letter No.F.33/Vig/NDMC/748/C&C dated 22.12.2014, approval for initiation of major penalty proceedings and charge-sheet against Shri Purshotam Lal Chawla S/o Shri Bansi Lal Chawla, Head Clerk (Retd), House Tax Deptt., S.P.Zone in RDA No.1/67/2013, be accorded.

The motion was carried.”

3. The aforesaid charge-sheet was accompanied with the statement of charges, and the statement of allegations on the basis of which charges framed against the applicant were sought to be proved, in respect of the incidents relating to the years 2011-2012. The applicant has alleged that, in the meanwhile, after receiving a response to the RTI query dated 06.02.2015, a legal notice dated 29.03.2015 was got served by him upon

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the respondents. Since no reply was still received by him regarding the RDA enquiry, and since he had not committed any misconduct, and no charge-sheet had been issued to him till the date of his retirement, he is entitled to all the retiral benefit, as per rules and the judicial pronouncements on the subject. In this context, the applicant relied upon the following judgments:-

1. G Subramaniam Vs. Govt. Of Tamil Nadu, (1988) 2 MLJ 418, decided on 29.08.1988 by Hon'ble Court of Madras;
2. P. Pandaram Pillai Vs. State of Tamil Nadu, dated 27.6.2011 in W.P. (MD No. 10032 of 2008 of High Court of Madras;
3. P.V. Mahadevan Vs. M.D. Tamil Nadu Housing Board in Appeal (Civil) No. 4901/2005 dated 8.8.2005 of Supreme Court of India
4. M.Elangovan Vs. The Trichi District Central Co-op. Bank Ltd.
& Another, in W.P No. 10694/2005 & W.P. No.10695/2005 dated 10.03.2006 of Madras High Court.

4. The applicant has, therefore, taken the ground that the impugned charge-sheet dated 27.04.2015 as now issued to him is bad in law, as it is contrary to the rules and regulations, and Rule 9 of the CCS (Pension) Rules, 1972, as well as the judicial pronouncements on the subject, because the respondents had slept over the matter approximately for four years, and belated issuance of a charge-sheet is hit by the judgments in the cases of **P.V. Mahadevan Vs. M.D. Tamil Nadu Housing Board**, JT 1998 (3) SCC 123 and **M.V.Bijlani vs. Union of India & Others**, AIR 2006 SC 3475.

5. The applicant has submitted that since there were no proceedings pending against him as on the date of his retirement, and issuance of a charge-sheet after retirement is an exception, and is violative of Rule 9 of the CCS Pension Rules, 1972, therefore, the remaining retirement dues have to be settled by the Respondents. He has further submitted that the

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issuance of charge-sheet after retirement is not permissible, as has been held in the cases of **S.S. Arya Vs. Uttar Haryana Bijli Vitran Nigam** in C.W.P. No.14775 of 2008 decided on 15.05.2009, **Mr. H.S. Sidhu Vs. State of Rajasthan & Ors.** in CWP No.7439/2014 decided on 29.10.2014 and **Dev Prakash Tiwari vs. U.P. Cooperative Industrial Services** in Civil Appeal Nos. 5848-49 of 2014 decided on 30.06.2014. He has, therefore, prayed for quashing and setting aside the charge-sheet dated 27.04.2015, and sought for direction upon the Respondents to release all his retiral benefits, along with 18% interest for the delayed payments.

6. The applicant also relied upon the Coordinate Bench judgment dated 02.07.2014 in OA No.2240/2013, in which case no charge-sheet had been issued against the applicant of that case as on the date of his superannuation, and even on the date the OA was decided. Therefore, the Bench could, in Para-7 of its order, hold that on the strength of Supreme Court judgment in **Union of India vs. K.V.Jankiraman** (1991) 4 SCC 109, unless a charge-sheet is issued, it cannot be said that the disciplinary proceedings are initiated against a public servant. Since the RDA case against the applicant of that case before the Coordinate Bench had not crystallized into issuance of even a charge-sheet, it could be held that the proceedings till that date cannot be equated with initiation of disciplinary proceedings.

7. However, that is not the case in the instant case before us. As is apparent from the charges framed against the applicant, and the statement of allegations on the basis of which charges as have been framed against him are sought to be proved, the respondents had taken cognizance of the

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delinquency on the part of the applicant in the year 2011 itself, and they had issued Memoranda dated 29.11.2012, 11.12.2012, 21.12.2012 and 21.03.2013 to the applicant for producing the said assessment file immediately, but he neither produced the file, nor did he submit any reply to any of the said Memoranda.

8. However, later on, during the investigation by the Vigilance Department of the Corporation, the applicant submitted photocopies of some documents relating to the said file, which proved that he was having in his custody the original assessment file, and the same was not produced by him before the Respondents in reply to the Memoranda issued to him, or before the Vigilance Department, with ulterior motives. Because of this, the Disciplinary Authority had come to the conclusion that the applicant had failed to maintain absolute integrity, and devotion to duty, and had committed gross misconduct, which is unbecoming of a municipal employee. However, since he retired in the meanwhile, after his retirement, the matter was placed before the Appointments, Promotions, Disciplinary & Allied Matters Committee of the Corporation, and after that Committee's recommendation, the matter had to be placed before the Municipal Council vide Resolution No.213/2015. In the case of a Municipal Employee like the present applicant, the position of the Municipal Council is equal to and comparable with that of the President of India under the CCS (Pension) Rules, 1972, in the case of a Government Servant.

9. It is settled law that nobody can be allowed to take advantage of his own mischief, and, in the instant case, it appears that the applicant could delay the finalization of RDA case against him by himself keeping the illegal

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custody of the concerned file, because of which an enquiry could not be instituted earlier, and the charges could not be framed and proved.

10. It is trite law that a person, who approaches any Court/Tribunal with soiled and unclean hands cannot seek mercy of that Court/Tribunal, without establishing his innocence. We are not convinced of the applicant's innocence at this stage. Therefore, we decline to issue notice in the instant case, more so in view of the law as laid down by the Supreme Court in **Union of India vs. Ashok Kacker**, 1995 Supp (1) SCC 180. The disciplinary enquiry shall be proceeded ahead against the applicant, and when once the disciplinary enquiry has been fully completed, the applicant would be at liberty to take recourse to appropriate proceedings, as per law, before the appropriate forum. Therefore, the OA is dismissed *in limine*. No costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

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