

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.3824/2013
With
OA No.3825/2013

Order Reserved on:26.02.2016

Pronounced on:25.04.2016

**Hon'ble Mr. Justice M.S. Sullar, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)**

OA No.3824/2013

T. Vijay Kumar Nair,
S/o late Shri P. Thanuvan Thamosi,
Retd. Administrative Officer,
National Zoological Park,
Mathura Road,
New Delhi-110003.

Residential Address:-

122, Maitri Apartment,
Mayur Vihar, Phase-I,
New Delhi-110091.

-Applicant

(By Advocate Shri G.D. Bhandari)

-Versus-

Union of India through:

1. The Secretary,
Ministry of Environment, Forest & Wild Life,
Pariyavaran Bhawan,
C.G.O. Complex,
Lodhi Road,
New Delhi-110023.

2. The Secretary,
Department of Pension & Pensioners' Welfare,
Lok Nayak Bhawan,
New Delhi.

3. The Director,
National Zoological Park,
Mathura Road,
New Delhi-110003.
4. The Pay & Accounts Officer,
Central Pension Accounting Office,
Government of India, Trikoot-II,
Bhikaji Cama Place,
New Dehi-110066.

-Respondents

(By Advocate Shri Gyanendra Singh)

OA No.3825/2013

T. Vijay Kumar Nair,
S/o late Shri P. Thanuvan Thamosi,
Retd. Administrative Officer,
National Zoological Park,
Mathura Road,
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(By Advocate Shri Gyanendra Singh)

O R D E R

Mr. K.N. Shrivastava, Member (A):

The applicant has filed two OAs under Section 19 of the Administrative Tribunals Act, 1985, viz. OA No.3824/2013 and OA No.3825/2013.

2. In OA No.3824/2013 the reliefs prayed for read as under:

“(i) set-aside and quash the Respondents' orders dated 11.07.2011, Annexure-A-1; 23/25.08.2011, Annexure-A-1a; and 09/10.05.2013, Annexure-A-1b, which are badly vitiated in view of the statutory provisions of Rule 9(2)(b)(ii) of the CCS (Pension) Rules;

(ii) any other relief deemed fit and proper in the facts and circumstances of the case, may also be granted in favour of the applicant alongwith heavy costs against the Respondents, in the interest of justice.”

3. In OA-3825/2013 the reliefs prayed for read as under:

“(i) set-aside and quash the Memorandum of Charges dated 04.07.2013, Annexure-A-1, which is badly vitiated in view of the statutory provisions of Rule 9(2)(b)(ii) of the CCS (Pension) Rules, amongst other grounds so taken;

(ii) any other relief deemed fit and proper in the facts and circumstances of the case, may also be granted in favour of the applicant alongwith heavy costs against the Respondents, in the interest of justice.”

4. As the respondents were common in both the OAs, it was decided to hear the OAs together and pass a common order.

5. The brief facts are as under:

5.1 The applicant was initially appointed as a Stenographer in Central Government on 06.10.1969. He joined the National Zoological Park (NZP) Mathura Road, New Delhi as Office Superintendent on deputation basis on 08.07.1992 and was later absorbed in NZP w.e.f. 08.07.1995. In the year 1987, the respondent No.3, i.e., Director, NZP vide his order dated 1.7.1987 (Annexure A-2 in OA-3824/2013) merged the posts of Accountant and Office Superintendent and created a new post of Accountant-cum-Superintendent in a higher pay scale of Rs.1640-2900 and the applicant was appointed to that post w.e.f. 08.07.1987. The respondents advertised the post

of Administrative Officer (AO) in NZP to be filled up through UPSC. The applicant was selected to the post of AO by the UPSC in the pay scale of Rs.2000-3500 (gazetted – Ministerial Group ‘B’) w.e.f. 08.03.1991. He was declared as Head of the Office for the purpose of delegation of Financial Power Rules, 1978 vide respondent no.3’s order dated 05.10.1993 (Annexure A-3 in OA-3824/2013). He has been making necessary entries in the service records of all the employees, including himself which were duly being signed by respondent no.3. The applicant superannuated on 31.07.2009 from the post of AO. The respondent no.3 vide his order dated 11.07.2011 (Annexure A-1 in OA-3824/2013) has held that the appointment of the applicant to the post of Accountant-cum-Office Superintendent vide order dated 01.07.1987 stands cancelled as the said post was never in existence. The said order also alludes to the audit report of a Special Audit Team appointed by the Principal Director of Audit, which stated that no prior approval of the Ministry of Environment and Forests (MOEF) was taken for creation of the post of Accountant-cum-Office Superintendent. Annexure A-1 order directed reversion

of the applicant to the post of Office Superintendent from the pay scale of Rs.1640-2900 to Rs.1600-2600 w.e.f. 08.07.1987 as well as for recovery of any excess payment made to the applicant. The respondent No.3 vide his Annexure A-1a order dated 23.08.2011 has revised the pay of the applicant between the years 1987-2009 consequent to the cancellation of the alleged irregular appointment of the applicant to the non-existent post of Accountant-cum-Office Superintendent. Vide Annexure A-1b order dated 09.05.2013 the respondent no.3 has directed a recovery of Rs.2,55,088/- in 51 instalments from the applicant.

5.2 Aggrieved by the impugned Annexures A-1, A-1a and A-1b orders passed by respondent No.3, the applicant has filed OA-3824/2013. The applicant has filed OA-3825/2015 against the issuance of Annexure A-1 memorandum of charges to him by respondent No.3 in which as many as seven articles of charges have been levied. The gist of these charges is that the applicant was keeping his service book under his personal custody, there are overwriting of entries in the service book without proper authentication, entries

relating to his leave account have been forged by him, entries relating to increments have been made without approval of the competent authority, pay fixation done was not checked by audit, instalments were not paid regularly for various kinds of loans taken by the applicant, increments for the years 1991-1993 were released by the applicant to himself under his own signature without approval of the competent authority, order for incharge arrangement during his leave period in the year 2009 was made by the applicant without the approval of the competent authority etc.

6. Pursuant to the notices issued, the respondents entered appearance and filed their reply in both the OAs. The applicant also filed his rejoinders to the replies filed by the respondents. With the completion of the pleadings, the case was taken up for hearing of arguments on 26.02.2016. Shri G.D. Bhandari, learned counsel for the applicant and Shri Gyanendra Singh, learned counsel for the respondents argued the case.

7. The learned counsel for the applicant submitted that the applicant was allowed to retire on 31.07.2009 from the post of AO and no disciplinary proceedings

were pending against him nor were contemplated at that time. However, on 08.07.2009, just three weeks before the retirement of the applicant the Joint Director, NZP wrote to MOEF that NZP was not able to process the pension papers of the applicant, as several discrepancies have been found in his service book. The said letter also stated that the service book of the applicant has been got audited through Principal Director of Audit who had constituted a Special Audit Team for the purpose. The Team submitted its report on 15.09.2009. It was also submitted by the learned counsel that instead of sanctioning to the applicant his regular pension, he was only granted provisional pension vide Pay and Accounts Office, MOEF order No.P/TVN/354/09-10/2595 dated 31.12.2009 (Annexure A-4 in OA-3824/2013). The learned counsel vehemently argued that despite MOEF's Annexure A-5 letter dated 15.10.2009 and Annexure A-6 letter dated 18.12.2009 (in OA-3824/2013) stating therein that the special audit report submitted by the Principal Director of Audit has been examined and found that no serious misdemeanour has come to light, which may warrant action under the relevant rules and hence the NZP may

settle the dues of the applicant immediately, no action has been taken by respondent no.3 in the matter. The learned counsel further submitted that the cancellation of the post of Accountant-cum-Office Superintendent, which was created way back on 01.07.1987, after 34 years vide impugned Annexure A-1 order dated 11.07.2011 (in OA-3824/2013) is absolutely unjust and so also the resultant reductions in his pay scale between the years 1987-2009 vide impugned Annexure A-1a order dated 23.11.2011 as also the impugned Annexure A-1b order dated 09.05.2013 through which a recovery of Rs.2,55,088/- has been ordered from the applicant. The learned counsel further submitted that the impugned memorandum of charges dated 04.07.2013 in OA-3825/2013 is also bad in the eyes of law as the same has been issued after four years of the applicant retiring from service. It was also submitted that the main charge against the applicant is that he had kept his service book in his personal custody and that he has been making entries in the service book pertaining to leave at his credit, grant of increments, sanctioning of advances etc.; but the respondent no.3

has failed to notice that all these entries have been duly signed by his predecessor, the then Director, NZP.

8. The learned counsel stated that the impugned orders and the impugned memorandum of charges are *void ab initio* as the same have been issued by the respondent no.3, who is neither the competent authority nor vested with such powers by the Controlling Ministry, MOEF. The learned counsel also placed reliance on some judgments of Hon'ble Supreme Court and some High Courts, gist of which are mentioned below:

- a) In the case of **S.H. Shirekar v. Union of India**, [1985 (1) SLR 144], the Hon'ble Gujarat High Court has held that when service is taken from an employee on a higher post, though the appointment may not be strictly regular, he cannot be deprived of the salary of such promotional post.
- b) In the case of **Shyam Babu Verma v. Union of India**, [(1994) 2 SCC 521], the Hon'ble Supreme Court has held that recovery of excess amount paid in case of the petitioner therein is impermissible because the initial pay fixation was done by the respondents

without any fault, wrong representation etc. by the petitioner.

c) In the case of **Sahib Ram v. State of Haryana**, [1995 Supp. (1) SCC 18], the Hon'ble Supreme Court reiterated that recovery of any excess amount without any misrepresentation by the employee cannot be done.

d) In the case of **Union of India v. Azadi**, [(2004) 10 SCC 1], the Hon'ble Supreme Court has held that a decision followed by an authority for a long time cannot be unsettled.

e) In the case of **Govt. of A.P. v. Md. Ghouse and Ors.**, [(2001) 8 SCC 425], the Hon'ble Supreme Court has held that procedure adopted for a long time need not be interfered with unless the same is repugnant to a constitutional provision/rule.

9. The learned counsel has also placed reliance on the judgments of the Hon'ble Supreme Court in the following cases:

- i) **Chairman & MD, Bharat Petroleum v. T.K. Raju**, [2006 (1) SC SLJ 431],
- ii) **State of Madhya Pradesh v. Bani Singh**, [1991 SCC (L&S) 638].

- iii) **Air India Ltd. V. M. Yogeshwar Raj**, [2000 SCC (L&S) 710.
- iv) **Central Bank of India v. Prakash Chand Jain**, [AIR 1969 SC 983].
- v) **Bharat Iron Works v. Bhagu Bhai Balu Bhai Patel**, [AIR 1976 SC 1998].
- vi) **Chandi Prasad Uniyal & Ors. V. State of Uttarakhand & Orss**, [SLP (C) No.30858/2011].
- vii) **Union of India v. Kunisetti Satyanarayana**, [(2006) 12 SCC 28].

10. Concluding his arguments, the learned counsel submitted that the applicant has never indulged into any kind of irregularity or misconduct and that the impugned orders and the impugned memorandum of charges have been issued by respondent no.3 with an ulterior motive of harassing the applicant and as such they are liable to be set aside and hence the prayers made in both the OAs may be granted and the OAs may be allowed.

11. Per contra, the learned counsel for the respondents submitted that the applicant has indulged into manipulation of his service records for obtaining unmerited gains. He kept his service book with him

and has made all kinds of entries pertaining to grant of increments, sanctioning of loans, sanctioning of leave etc. It was also submitted that despite an order passed by respondent no.3 that applicant should handover his service book to the Office Superintendent, he failed to do so. After his service book was subjected to a special audit, various irregularities came to light based on which the impugned orders and memorandum of charges have been issued. The learned counsel denied that any action has been taken by respondent no.3 with any ulterior motive. He submitted that the action has been initiated against the applicant in accordance with law and proper notice has been issued to him under Rule 70 (2) of CCS (Pension) Rules, 1972. Concluding his argument, the learned counsel submitted that the applicant has prematurely approached this Hon'ble Tribunal even before the disciplinary enquiry could be started against him vis-a-vis the impugned memorandum of charges and as such both the OAs deserve to be dismissed being devoid of merit.

12. We have considered the arguments put-forth by the learned counsel for the parties and have also

perused the pleadings and documents annexed thereto.

Admittedly, the applicant came initially on deputation to the post of Office Superintendent in the NZP and was later absorbed in the said organization. He was elevated to the post of Accountant-cum-Office Superintendent on 08.07.1987 by virtue of order dated 01.07.1987 (Annexure A-2 in OA-3824/2013) passed by respondent no.3. Applicant's subsequent selection to the post of AO through UPSC w.e.f. 08.03.1991 is also not in dispute. It is worthwhile to note that the applicant, being the head of the administrative wing, was necessarily the custodian of service books of the employees of NZP, including that of himself. All entries made in his service book, albeit some of them by himself, have been duly countersigned by the then Director, NZP regularly. The applicant has served the NZP for over three decades. All these years never any objection was raised with regard to the applicant keeping his service book under his custody and making various kinds of entries, although all of them have been signed by the then Director, NZP.

13. Although the special audit team has brought out certain discrepancies in the service book of the

applicant but the same have been looked into by the controlling Ministry, i.e., MOEF, who vide their Annexure A-5 communication dated 15.10.2009 and Annexure A-6 communication dated 18.12.2009 to the Director, NZP have clearly stated that the audit team report has been gone into by the Ministry and has been found that no serious misdemeanour has come to light. It would be useful to reproduce the two communications from MOEF and the same is done below:

“Sub:-Finalization of pension case of Shri T.V. Nair, Ex.-Administrative Officer, NZP, New Delhi.

Sir,

I am directed to refer to the letter F.No.2-31/82-NZP/916 dated 17th September, 2009 on the subject mentioned above and to say that the matter has been examined in the light of the Special Audit Report submitted by the Principal Director of Audit, Scientific Department, New Delhi, and a representation of 18.09.2009 submitted by Shri T.V. Nair, former Administrative Officer, NZP, and it has been found that since no serious misdemeanour has come to light, which may warrant action under the relevant Rule, the NZP may settle the dues of Shri T.V. Nair immediately, after recovering the less recovery pointed out by the Audit Team, as per the extant rules.

2. The observations made by the team of Principal Director of Audit are procedural lapses for which other officers in the hierarchy are also responsible, hence, it may be unfair to put the blame and penalize Shri Nair alone.

3. NZP is also advised to take pro-active action to review cases of retiring employees and scrutinize their papers well on time and to put in place a mechanism, to ensure this, as also that the procedural lapses pointed out by Audit do not occur in future.

4. This issues with the approval of DGF&SS.”

“Sub:-Finalization of pension case of Shri T.V. Nair, Ex.-Administrative Officer, NZP, New Delhi-reg.”

Sir,

I am directed to forward herewith a copy of a representation dated 14.12.2009 of Shri T.V. Nair, Ex-Administrative Officer, NZP who was superannuated on 31.07.2009, and to say that the matter has been examined, and it is found that despite clear directions vide this Ministry's letter of even no. Dated 17.10.2009, the pension and gratuity of the retired Officer has not been paid to him.

2. The NZP is, therefore, advised again to do the needful immediately, failing which may lead to fixation of responsibility and attract Action under the relevant provisions of Rule 68 of CCS (Pension) Rules.

3. This issues with the approval of DGF&SS.”

14. From the communications (supra) from MOEF to Director, NZP, it is abundantly clear that the Ministry has not found any fault on the part of the applicant for which his pensionary benefits should be denied. On the contrary, MOEF has directed the Director, NZP

(respondent No.3) to release the pensionary benefits of the applicant forthwith.

15. We have also gone through all the judgments of the Hon'ble Supreme Court and High Court cited by the learned counsel for the applicant. We have also considered the fact that the applicant retired on 31.07.20098 and that the impugned memorandum of charges was issued to him after about four years of his retirement. Taking all these factors into consideration and more particularly the clear-cut direction of the controlling Ministry vis-a-vis the audit report of the special audit team, we find that the action of respondent no.3 in passing the impugned orders and in issuing the memorandum of charges to the applicant smacks of personal vendetta and prejudice against the applicant. The impugned orders and the memorandum of charges are thus found to be bad in the eyes of law and deserve to be set aside.

16. In view of the foregoing discussion, we quash and set aside the impugned Annexure A-1 order dated 11.07.2011, Annexure A-1a order dated 23.08.2011 and Annexure A-1b order dated 09.05.2013, all passed by respondent no.3 in OA-3824/2013. We also quash

and set aside the impugned Annexure A-1 memorandum of charges dated 04.07.2013 (in OA-3825/2013). Both the OA nos.3824/2013 and 3825/2013 are allowed.

17. No order as to costs.

(K.N. Shrivastava)
Member (A)

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

‘San.’