

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

O.A. No. 572/2017

M.A. No. 339/2018

Reserved on : 20.04.2018

Pronounced on : 06.06.2018

Hon'ble Mrs. Jasmine Ahmed, Member (J)

Hon'ble Mr. Uday Kumar Varma, Member (A)

Baban Rao (PIS No. 29680103), Ex-ASI
Age-69 years,
S/o. Sh. Ananda,
R/o. Village – Gauri,
P.O.-P.S. Satara,
Maharashtra.

...Applicant

(By Advocate : Mr. Sachin Chauhan)

Versus

1. Govt. of NCTD through
The Chief Secretary,
Govt. of NCTD,
A-Wing, 5th Floor,
Delhi Secretariat,
New Delhi – 110 113.

2. The Commissioner of Police,
Delhi Police,
M.S.O. Building, I.P. Estate,
New Delhi.

3. The Addl. Dy. Commissioner of Police,
Central District,
Through the Commissioner of Police,
Delhi Police,
M.S.O. Building, I.P. Estate,
New Delhi.

....Respondents

(By Advocate : Mr. Vijay Pandita)

ORDER

Mrs. Jasmine Ahmed, Member (J)

This is second round of litigation before the Tribunal wherein the applicant preferred O.A No. 989/2007 challenging the order

of dismissal under Article 311 (2) (b). An order was passed by this Tribunal in the O.A on 06.09.2007 allowing the O.A and quashing and setting aside the impugned orders of the disciplinary authority dated 20.03.2007 and the appellate authority dated 14.05.2007. The respondents were also directed to reinstate the applicant in service forthwith with all consequential benefits. The directions were to be complied with preferably within a period of three months from the date of receipt of certified copy of that order. However, the respondents were given a liberty to hold an inquiry against the applicant and pass order strictly in accordance with law. The order of this Tribunal dated 06.09.2007 passed in O.A No. 989/2007 was challenged by the respondents before the Hon'ble High Court which was dismissed in limine and thereafter the department issued order dated 18.03.2018 whereby the applicant was reinstated in the service with all consequential benefits. Counsel for applicant states that after the reinstatement a departmental inquiry was initiated against the applicant dated 04.04.2008 basing on the allegation as was alleged in FIR No. 14/2007 dated 19.03.2007 under Section 7/13 POC Act, P.S. A.C. Branch. That DE dated 04.04.2008 which was initiated was kept in abeyance vide its order dated 16.07.2008 till the decision of the criminal case. The order dated 16.07.2008 is as under :-

“The Departmental Enquiry initiated against ASI Baban Rao, No. 5327/C (now 4207/D) (PIS No. 29680103) (Under Suspension) vide this office order No. 2061-78/HAP/AC-II/C dated 04.04.08 is hereby held in abeyance till the

disposal of criminal case FIR No. 14/07 dated 19.03.07 u/s 7/13 POC Act, PS A.C. Branch, New Delhi pending against the ASI. This DE will be re-opened after the finalisation of the above criminal case by the Court of Law.

Let ASI Baban Rao, No. 5327/C (now 4207/D) be informed accordingly.

(Alok Kumar)
Dy. Commissioner of Police
Central Distt. : Delhi”

2. It is contended by the counsel for applicant that in between the applicant retired on 30.11.2008 and retiral benefits of the applicant was withheld as a criminal case was pending against him. The applicant was convicted by the special Judge POC Act finding him guilty of committing the offence. After being convicted in a criminal case a criminal appeal No. 921/2011 was filed before Hon'ble High Court of Delhi. In the meantime, the respondents vide its order dated 28.11.2011 withdrew the order of initiation of departmental inquiry dated 04.04.2008 without prejudice to the disciplinary action to be taken against the applicant. The order dated 28.11.2011 reads as under :-

“The Departmental inquiry order issued against ASI Baban Rao, No. 5327/C (No. 4207/D) (PIS No. 29680103) (now Retired) initiated vide this office order No. 2061-78/HAP/AC-II/C dated 04.04.2008 which was kept in abeyance vide order No. 5397-5412/HAP/AC-II/C dated 16.07.2008 is hereby withdrawn on administrative grounds without prejudice to the disciplinary action to be taken against him.”

3. The respondents suddenly reinitiated the departmental inquiry vide its order dated 20.11.2014 which was ordered vide order dated 04.04.2008 and withdrawn vide order dated

28.11.2011. On being initiation of the departmental inquiry, the applicant made a representation dated 22.07.2015 to the Commissioner of Police for quashing of the departmental inquiry initiated vide order dated 20.11.2014 by placing reliance on Rule 9 of CCS (Pension) Rules. The applicant was served with a summary of allegations vide order dated 22.07.2015. On 12.01.2017 the inquiry officer recorded statements of few witnesses in the departmental inquiry. The Counsel for applicant vehemently argued that once the departmental inquiry initiated vide order dated 04.04.2008 is being withdrawn by order dated 28.11.2011 then, any order in respect of the same departmental inquiry cannot be reinitiated vide its order dated 20.11.2014 as the applicant has already retired on 30.11.2008 and any proceedings can be held in respect of a retired person only under Rule 9 of CCS (Pension) Rules. He contended that as the applicant has retired in between after the withdrawal of the initiation of the departmental inquiry, the respondents are estopped from taking any action in respect of departmental inquiry by reinitiating it vide its order dated 20.11.2014 as the applicant has already retired and departmental inquiry can be held only in pursuance of compliance of Rule 9 of CCS (Pension) Rules. Hence, the order dated 20.11.2014 re-initiating the DE, which was withdrawn is bad and in complete violation of Rule 9 of CCS (Pension) Rules. Counsel for applicant also argued that as the applicant had retired in the year 2008 hence, after a period of 6 years the respondents cannot initiate any

departmental inquiry vide its order dated 20.11.2014 and in this regard he placed his reliance on the judgment of Delhi High Court in W.P.C No. 4245/2013 and C.M. No. 9885/2013 **Hari Singh Vs. Union of India** which was decided on 23.09.2013.

Relevant portion of which reads as under :-

“57. In the instant case, so far as delay is concerned, the petitioners do not remotely suggest that the respondent attributed to any delay. It is a hard fact that there is delay which is abnormal and extraordinary. The explanation of the petitioners is completely unacceptable for the reason that it is an after thought. In fact the petitioners had available with them the entire record which they claimed to have acquired belatedly.

58. It would be most inappropriate to accept the only justification tendered by the respondents of merely having written a few communications to the DRI for the documents. In any case, if the petitioner was serious about initiating disciplinary action in the above noted circumstances, it could have done so. We have noted above that the petitioner had available with them the necessary record and there was really no reason or occasion for delaying the proceedings for want of original documents. The final adjudication order as well as all inquiry reports was based on the records of the petitioners. Even after obtaining the inquiry report, the respondents delayed the matter not by one or two years but by several years as set out above.

59. We find that the courts have even held that delay in initiating disciplinary proceedings could tantamount to denial of a reasonable opportunity to the charged official to defend himself and therefore be violative of the principles of natural justice. In this regard, reference may usefully be made to the pronouncement of the Kerala High Court reported at 2001 (1) SLR 518 Meera Rawther Vs. State of Kerala wherein it has been held as follows:-

"3. The court also held that wherever delay is put forward as a ground for quashing the charges, the Court has to weigh all the factors, both for and against the delinquent officer and come to a conclusion which is just and proper in the circumstances. In this connection we also refer to the decision of Gujarat High Court in Mohanbhai Dungarbhay Parmar vs. Y.B. Zala and Others, 1980 (1) SLR 324 wherein the Court held that delay in initiating proceedings must be held to constitute a denial of reasonable opportunity to defend himself for one cannot reasonably expect an employee

to have a computer like memory or to maintain a day-to-day diary in which every small matter is meticulously recorded in anticipation of future eventualities of which he cannot have a pre-vision. Nor can he be expected to adduce evidence to establish his innocence for after inordinate delay he would not recall the identity of the witness who could support him. Delay by itself therefore, will constitute denial of reasonable opportunity to show cause and that would amount to violation of the principles of natural justice."

60. So far as the prejudice is concerned, the long period which has lapsed between the alleged transaction and issuance of charge sheet would by itself have caused memory to have blurred and records to have been lost by the delinquent. Therefore, the respondent would be hard put to trace out his defence. The prejudice to the respondent is writ large on the face of the record. The principles laid down by the Supreme Court as well as by this court in the judgments cited by the respondent and noted above squarely apply to the instant case."

4. Counsel for applicant vehemently argued that the incident which occurred in the year 2007 for which a charge sheet cannot be issued in the year 2015 as the delay will mar the outcome of the departmental inquiry as held by the Hon'ble High Court in the case of Hari Singh (Supra). He also argued that only on this count of unexplained delay of 8 years it is sufficient to quash the charge sheet issued in the year 2015. He also stated that an inordinate delay in initiation of the proceedings will seriously prejudice the defence of the applicant and will deprive him from any efficacious defence as by allowing the passage of time it is not humanly possible to recollect and connect the vital issues in regard to the incident/allegations. Counsel for applicant argued that once an order has been passed by the respondents dated 16.07.2008 for keeping in abeyance the DE against the applicant and vide its order dated

28.11.2011 the initiation of D.E. was withdrawn, it is not understandable how by an order dated 20.11.2014 that can be reinitiated after 6 years of retirement of the applicant. After retirement the entire character of employer and employee relation has been changed and the applicant is no more guided by CCS (CCA) Rules instead will be guided by Pension Rules.

5. The respondents have filed their counter contesting the case. He stated that as per order of O.A No. 989/2007 the applicant was reinstated in the services forthwith. He also stated that while allowing the O.A the Tribunal gave a liberty to the respondents to hold an inquiry against the applicant. Accordingly, a regular parallel departmental inquiry was initiated against the applicant vide its office order dated 04.04.2008. He also stated that the same was kept in abeyance till verdict of Trial Court. After the judgment in the Criminal Court dated 31.05.2011 when the applicant was found guilty of committed offence and was convicted accordingly, the DE which was re-initiated against the applicant vide its order dated 20.11.2014 which was withdrawn vide its order dated 28.11.2011 without prejudice to the disciplinary action to be taken against him. Hence, DE has been re opened vide its office order dated 20.11.2014. Counsel for respondents also stated that the applicant has given a representation dated 27.01.2017 for setting aside the order dated 20.11.2014 and the DE with all consequential benefits in response to that, the

applicant has been informed vide letter dated 15.03.2017 by the respondents that the matter is under consideration. Hence, he should have waited for the outcome of his representation. The main arguments of counsel for respondents is that no fresh DE is ordered or initiated against the applicant. The DE which was initiated vide order dated 04.04.2008 has been reopened or re-initiated. Hence, no violation of CCS (Pension) Rules, 1972 has been done by the respondents. He also stated that on finalisation of the departmental inquiry initiated against the applicant the finding of the EO has to be forwarded to the competent disciplinary authority i.e., President of India in the case of retiree for taking a decision as envisaged under Rule 9 of CCS (Pension) Rules, 1972. Hence, nothing arbitrary or illegal can be made out on the part of the respondents.

6. The applicant has filed the rejoinder and reiterated the same as in the O.A.

7. The instant case in hand hinges on two legal points :-

(1) When the criminal matter on the self same subject has resulted in a conviction and the appeal is pending whether the departmental proceedings should take place.

(2) When the applicant is retired from service as early as in 2008 and when the earlier orders of penalty have all been quashed and set aside by this Tribunal, albeit with liberty to issue a fresh charge sheet strictly in accordance with law, whether the department is justified in initiation of

proceedings in 2017 on a subject matter occurred some times in 2007 whereas the applicant has superannuated in 2008.

8. Heard the learned counsel for the parties and the documents perused.

9. Admittedly, the applicant has been convicted by the Trial Court and his appeal is pending. He is released on bail. On the date of his retirement in 2008 the criminal trial was not completed. Law is very specific that departmental proceedings after retirement cannot commence on a matter which was more than four years anterior to the date of the initiation of charge. Thus, if a proceeding be initiated in the year 2017, the same must be on an act of misconduct committed not earlier than 2013. The liberty granted by this Tribunal to initiate proceedings was subject to the rider "in accordance with law". Thus, the four years restriction to commence the proceedings cannot be escaped. Thus, the respondents are legally prevented from initiating any proceedings. The impugned order thus is liable to be quashed and set aside. Accordingly, order dated 28.11.2014 and summary of allegation dated 22.11.2015 is quashed and set aside. However, should the appeal result in dismissal, action to withhold pension in accordance with law could be taken by the respondents and instead, if the appeal stands allowed, the provisional pension crystallizes into regular

pension, with provision for commutation being allowed and the terminal benefits shall also have to be released.

The O.A is disposed of accordingly. No costs.

(Uday Kumar Varma)
Member (A)

(Jasmine Ahmed)
Member (J)

/Mbt/