

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-2530/2015

Reserved on : 10.04.208.

Pronounced on : 27.04.2018.

Hon'ble Ms. Praveen Mahajan, Member (A)

Sh. Bir Singh, 60 years
S/o Late Sh. Ram Charan,
R/o C-121, New Seema Puri,
Delhi-95. Applicant

(through Sh. U. Srivastava, Advocate)

Versus

1. Union of India through
The Secretary,
Ministry of petroleum and Natural Gas,
Shastri Bhawan, New Delhi.
2. The Under Secretary,
Ministry of Petroleum and Natural Gas,
GOI, Shastri Bhawan, New Delhi. Respondents

(through Sh. Vijendra Singh, Advocate)

O R D E R

The applicant, who belongs to SC category, on 09.08.1979 was appointed as Safai Karamchari with the respondents. He was promoted as Peon in the year 1984. While working as MTS, vide order dated 20.02.2015, the applicant was suspended. Vide order dated 09.04.2015, the applicant was granted subsistence allowance of Rs. 6705/- plus dearness allowances as applicable w.e.f. 20.02.2015 i.e. the date of suspension, until further orders. The applicant retired

from service on attaining the age of superannuation w.e.f. 31.05.2015. Vide order dated 10.06.2015, the respondents granted provisional pension @Rs.6705/- plus dearness relief on provisional pension w.e.f. 01.06.2015 pending departmental or judicial proceedings under Rule 69 of CCS (Pension) Rules, 1972 against the applicant.

2. The applicant submits that after attaining the age of superannuation on 31.05.2005, neither any criminal proceedings have been initiated against him nor has any charge sheet been served to him. He has, however, been granted provisional pension. He avers that this action of the respondents is violative of Articles 14, 16 and 21 of the Constitution of India, besides being against the principles of natural justice.

3. Aggrieved, the applicant has filed the current O.A. seeking the following relief:-

"(a) Directing the respondents to place the relevant records pertaining to the present O.A. before their Lordships for the proper adjudication in the matter in the interest of justice.

(b) Directing the respondents to release the entire retirement benefits including the original pension for which the applicant is entitled in accordance with the relevant rules and instructions on the subject.

(c) Allowing the O.A. of the applicant with all other consequential benefits and cost.

(d) Any other fit and proper relief may also be granted."

4. The applicant has placed reliance on the decision of Hon'ble Supreme Court in the case of **Union of India Vs. K.V. Janki Raman**, 1991(4) SCC 109.

5. Rebutting these contentions, the respondents in their reply state that a raid was conducted by the Crime Branch Delhi Police at Shastri Bhawan on 17.02.2015. This was followed by FIR registered against the applicant under Section 368/471/380/11/418/474420/34 read with 120B IPC. A charge sheet was also filed in the Hon'ble Court of Chief Metropolitan Magistrate, Patiala House, Delhi on 17.04.2015. While making a seizure report, Delhi Police revealed the involvement of the applicant along with two other officials, namely, Sh. Asha Ram, MTS and Sh. Ishwar Singh, MTS. Accordingly, he was suspended on 20.02.2015. In the charge sheet, it was mentioned that:-

"It was also disclosed that about few days back CCTV cameras were installed in the Ministry which curtailed the free movement of the accused persons in the Ministry and to overcome this hindrance. Asharam along with his son had meeting with Vir Singh (actual name-Bir Singh) and they had lured him for switching off the CCTV Camera as and when required during the night time. Vir Singh agreed to their lucrative demands and on the intervening night of 17/18-02-2015, as per their place, Vir Singh switched off the CCTV cameras to facilitate their movement in the offices during night. On surfacing sufficient evidence against Asha Ram and Ishwar Singh, they were arrested on 18.02.2015. The outcome of investigation with regard to Vir Singh will be filed through supplementary chargesheet."

6. The respondents admit that Crime Branch, Delhi Police has not yet filed a supplementary charge sheet with regard to the applicant.

7. During the course of hearing, learned counsel for the applicant Sh. U. Srivastava strongly argued that Sh. Bir Singh (applicant), who retired on 31.05.2015, has been wrongly implicated in the current case. He averred that this is evident from the fact that even after a lapse of three years, the Crime Branch, Delhi Police has not been able to file a supplementary charge sheet against him. He drew my attention to O.M. No. 11012/04/2016-Estt.(A) dated 23.08.2016 wherein instructions regarding timely issue of charge sheets have been laid down by the Government. He prayed that in view of this, the respondents be directed to release all retiral benefits including the original pension etc. in accordance with relevant Rules and law on the subject, to the applicant.

8. Learned counsel for the respondents Sh. Vijendra Singh reiterated the averments made in the counter filed by them. He submitted that Sh. Bir Singh (applicant) has been granted provisional pension (equivalent to the maximum permissible pension) in terms of Rule 69 of CCS (Pension) Rules, 1972. Since the respondents have followed the law on the subject strictly, they should be allowed to complete their investigation.

9. I have gone through the facts of the case carefully and considered the rival submissions.

10. The facts of the case are not in dispute. The applicant's plea is that till date no criminal proceedings have been initiated against him nor has any charge sheet been issued to him by the respondents. The veracity of this plea is borne out from the facts available on record. A perusal of the FIR (Annexure R-1) shows that the name of the applicant does not figure in it. The summary of the investigation enclosed speaks of the other accused involved in the matter. Despite a lapse of 03 years, supplementary charge sheet has not been filed against the applicant to substantiate the allegations of complicity of the applicant with the main accused. Hence, as of now, the only alleged misdemeanors, on the part of the applicant is that he was lured into switching off the CCTV Camera on the night of 17/18.02.2015, by the two other accused (Asharam and his son). The defense of the applicant in this regard is not on record since unless the accused (applicant) is informed in specific terms about the charges against him and confronted with the evidence relied upon, it will be impossible for him to put up an effective defense.

11. The O.M. No. 11012/04/2016-Estt.(A) dated 23.08.2016 enunciates that:-

"Subject: Central Civil Services (Classification, Control and Appeal) Rules, 1965 – instructions regarding timely issue of Charge-sheet – regarding.

The undersigned is directed to refer to DoP&T's O.M. No.11012/17/2013-Estt.A-III dated 3rd July, 2015 on the above mentioned

subject and to say that in a recent case, Ajay Kumar Choudhary vs Union of India Civil Appeal No. 1912 of 2015 dated 16/02/2015, the Apex Court has directed as follows:

“14 We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Charge sheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Charge sheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.”

2. In compliance of the above judgement, it has been decided that where a Government servant: is placed under suspension, the order of suspension should not extend beyond three months, if within this period the charge-sheet is not served to the charged officer. As such, it should be ensured that the charge sheet is issued before expiry of 90 days from the date of suspension. As the suspension will lapse in case this time line is not adhered to, a close watch needs to be kept at all levels to ensure that charge sheets are issued in time.

3. It should also be ensured that disciplinary proceedings are initiated as far as practicable in cases where an investigating agency is seized of the matter or criminal proceedings have been launched. Clarifications in this regard have already been issued vide O.M. No. 11012/6/2007-Estt.A-III dated 21.07.2016.”

Despite stating that a supplementary charge sheet will be filed against the applicant, the same has not been filed/served on him by the respondents for the past three years for no plausible reason except an inference that the hasty action against the applicant is not supported by sufficient evidence.

12. The case at hand is a sad reflection on how the rights of an individual are messed around by a casual and arbitrary approach of the agencies who are supposed to get them enforced/implemented.

13. In view of the foregoing, respondents are directed to release all the retiral benefits, which the applicant has prayed for and is entitled to as per law. The same may be done within a period of three months from the date of receipt of a copy of this order. The O.A. is accordingly allowed. No costs.

**(Praveen Mahajan)
Member (A)**

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