

**Central Administrative Tribunal
Principal Bench**

OA No. 3574/2015

This the 14th day of August, 2018

***Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Pradeep Kumar, Member (A)***

Sh. Ved Prakash,
Aged about 69 years,
S/o Late Sh. R.S.Verma,
Executive Engineer (E) (Retired), CPWD,
R/o House No. F-195B, Shastri Gali,
Mangal Bazar, Laxmi Nagar,
Delhi-110092.

... Applicant

(By Advocate: Sh. S.K.Das)

Versus

1. Union of India
Through Secretary,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi-11.
2. Director General of Works,
Central Public Works Department,
Nirman Bhawan,
New Delhi-11.

... Respondents

(By Advocate: Ms. Anupama Bansal)

ORDER (ORAL)

By Justice L.Narasimha Reddy, Chairman

The applicant joined the service of CPWD, Ministry of Urban Development. He retired as Executive Engineer on 30.09.2005. A

charge sheet was issued to him on 17.02.2009 with seven articles of charge, pointing out that alleged irregularities in the context of evaluation of tenders were committed. Applicant submitted an explanation raising several grounds. Not satisfied with the explanation, the disciplinary authority ordered enquiry. After conducting the enquiry, the disciplinary authority submitted a report on 31.01.2013 holding that charges 3, 6 & 7 are not proved, charge no.1 is partly proved and charges 2, 4 & 5 are proved. The disciplinary authority proposed to differ with the findings of the enquiry officer on charges 3, 6 & 7 and issued notice. On consideration of the explanation submitted by the applicant, disciplinary authority passed an order dated 04.09.2014 imposing the punishment of withholding of 20% of monthly pension otherwise admissible to him, for a period of five years. The said order is challenged in this OA.

2. Applicant contends that the very initiation of disciplinary proceedings is untenable in view of the restriction contained in Rule 9 of CCS (Pension) Rules, 1972, which prohibits the initiation of proceedings against a retired employee in respect of matters which are older than four years. He further contends that the allegations are general in nature and though there are several superior officers in the hierarchy, it was proceed as though the Executive Engineer is the ultimate authority in the department. It is also pleaded that

punishment imposed is disproportionate to the findings of the charges.

3. Respondents filed the counter affidavit opposing the OA. It is stated that punishment imposed on the applicant is strictly in accordance with law and since the charges, which were proved, were serious in nature, and inasmuch as the disciplinary authority differ with the findings recorded of the enquiry officer on some Articles of Charge, the punishment cannot be said to be disproportionate.

4. We heard Sh. S.K.Das, learned counsel for applicant and Mrs. Anupama Bansal, learned counsel for the respondents in detail.

5. It is not in dispute that the applicant retired from service on 30.09.2005 and the disciplinary proceedings were initiated on 17.02.2009. Rule 9 of the CCS (Pension) Rules mandates that no proceedings shall be initiated against a retired employee in respect of an issue which is more than four years old. It is contented by the respondents that the disciplinary proceedings have been initiated within four years of retirement of the applicant. This may be technically correct. However, the lapses on the part of the applicant are prima facie, older than four years, if reckoned from the date of initiation of proceedings. This is only one aspect.

6. The enquiry officer held that three out of the seven charges are proved, three are not proved and one is partly proved. The disciplinary authority is no doubt conferred with the power to differ with the findings of enquiry officer. However, having proposed to differ with the findings, the disciplinary authority did not elaborate as to how he can hold charges no.3, 6 & 7 as proved. There is no discussion on this aspect in the impugned order. That means, half of the charges levelled against the applicant remain unproved. We have also gone through the charges in detail and nowhere it is pointed out that applicant has displayed to any dishonesty. At the most, it was a case of miscalculation or mis-judgment. Even there, the department has several superior officers above the applicant, and nothing can assume finality without their approval.

7. In the totality of circumstances, we are of the view that the punishment imposed against the applicant is disproportionate. Pension is almost the property of an employee which he acquires through dint of hardwork for the entire length of service. Strong reasons are needed for withholding 20% thereof. We are, therefore, of the view that ends of justice would be met, if punishment imposed on the applicant is reduced to the one of withholding of pension of 10%, for a period of two years.

8. We, therefore, allow the OA in part, by reducing the punishment imposed against the applicant to the one of

withholding of pension to the extent of 10% for a period of two years. Since the pension has been withheld for five years and the order has been passed, respondents shall work out the difference and pass on the resultant amount to the applicant within a period of three months. If the amount so calculated is not paid within three months period from the date of receipt of this order, it will carry interest at 6% per annum. There shall be no order as to costs.

(Pradeep Kumar)
Member (A)

(Justice L.Narasimha Reddy)
Chairman

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