

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00164/2017

DATED THIS THE 03RD DAY OF AUGUST, 2017

HON'BLE SHRI JUSTICE HARUN-UL-RASHID...MEMBER (J)
HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

Dr.S. Rajendran, IFS (Retd),
#8, IAS Officers' Colony,
5th C Cross, 16th Main, BTM II,
Bangalore 560 076.

... Applicant

(By Party-in-Person)

Vs.

The Government of Karnataka,
Represented by the Chief Secretary,
Vidhana Soudha,
Bangalore-560 001.

...Respondent

(By Smt. Rafee Unnisa, Counsel for the Respondent)

ORDER (ORAL)

HON'BLE PRASANNA KUMAR PRADHAN, MEMBER (A):

The applicant has filed the present OA seeking the following reliefs:

- i. To quash the charge-sheet vide Annexure-A1 dated 30.09.2011 and the order appointing the inquiry officer vide Annexure-A4 dated 23.01.2017.
- ii. To order to release the withheld DCRG amount.

2. The applicant submits that he is a retired Indian Forest Service Officer borne in Karnataka cadre and retired on superannuation on 31.10.2011. In 2002, the State Government established the Karnataka State Medicinal Plants Authority (KAMPA) at Bangalore which was registered as an autonomous society under the Karnataka Registration of Societies Act, 1960. This was set up for conservation and development of medicinal plants in the state and functions under the Additional Chief Secretary, Department of Forest, Government of Karnataka. The applicant was deputed as Chief Conservator of Forests and Chief Executive Officer to KAMPA in April 2002 and worked there till December 2005. The Executive Committee of the KAMPA had authorized the applicant to engage a CA to prepare the accounts and audit the same for the year 2002-2003 and 2003-2004. The said CA had met with an accident after which another Chartered Accountant was engaged and the duly audited accounts was submitted in October, 2009. The incumbent CEO of the KAMPA once again got the accounts of the KAMPA for the period, the applicant was in charge, audited by internal audit of the office of Principal Chief conservator of Forests but no substantial objections on the expenditure side of accounts was found. Thereafter another Chartered Accountant was engaged to audit the accounts of the period of the applicant who also couldn't find any substantial objections on the expenditure side of the accounts of the applicant.

3. According to the applicant, the CEO, KAMPA then requested the Principal Accountant General of Karnataka to audit the accounts of KAMPA for the years 2002 to 2009. In the year 2010, the Principal Accountant General had audited the accounts for the years 2002 to 2009 and raised

some objections and observations on the expenditure side of the accounts. It is not known whether the office produced all the details, cash book and vouchers to the audit party or not. The CEO sent the audit report to the applicant to furnish replies for the audit objections raised by the AG for his period vide letter dated 29.11.2010 to which he submitted para-wise answers to the audit objection on 30.05.2011. However one month before his retirement, a charge memo was issued to the applicant on 30.09.2011 containing 7 charges based on the audit objections for the period during which the applicant was CEO. The applicant immediately thereafter submitted a detailed statement denying all the 7 charges by letter dated 26.10.2011 and requested the respondents to drop the charges for the reason submitted in his defence statement. Following the superannuation of the applicant on 31.10.2011, the State Government withheld the pension, DCRG and leave salary on account of the pending departmental enquiry. After several requests were made by the applicant to the State Government, they released the provisional pension but withheld the DCRG and encashment of leave salary. The applicant continued to request the respondents to drop the charges or continue the enquiry and release the retirement benefits through various representations between 18.06.2013, 21.05.2016. The State Government then agreed to release the leave salary benefits vide order dated 17.06.2016. Again the applicant represented the State Government vide letter dated 23.07.2016 (Annexure-A3) requesting to drop the charges on account of delay and other grounds. However the State Government vide Annexure-A4 order dated 23.01.2017 appointed Inquiry Officer and Presenting Officer to

conduct the enquiry against the applicant. Aggrieved by the said order, the applicant has filed the present application seeking justice and equity.

4. The applicant further submits that though the applicant had submitted his defence statement on 26.10.2011 within the time limit, the government took its own time and after an inordinate delay of 5 years and 3 months, they appointed the Inquiry Officer. The Government of India vide letter dated 16.08.1978 set the time limit for completing certain stages into charges against the members of All India Services. This was followed by another OM dated 31.05.1997 saying that from the date of issuing charge memo, within two months, reply to the charge memo should be obtained and Inquiring Authority and Presenting Officer should be appointed. However the time schedule was not adhered to and the State Government made an inordinate delay in taking up the enquiry. Therefore it is unfair to permit the departmental proceedings at such a belated stage and which has been detrimental to the interest of the applicant as his DCRG benefits have also been withheld.

5. The respondents have filed a reply statement in which they have agreed to the fact that applicant was holding the charge of Chief Executive Officer in Karnataka Medicinal Plants Authority from April, 2002 to December, 2005. On the draft objections received by the Accountant General, Karnataka in audit paras and on recommendation of Principal Chief Conservator of Forests and after approval of the competent authority a show cause notice under Rule 8 of All India Services (Discipline & Appeal) Rules, 1969 was issued to the applicant on 30.09.2011 so as to initiate departmental proceedings in respect of 7 charges. The charges were framed in pursuance of the audit report submitted by AG. In response to the show cause notice, the

applicant submitted his defence statement on 26.10.2011 requesting to drop the charges stating that the charges were framed due to personal enmity to fix him at the time of retirement due on 31.10.2011. Thereafter the CEO, KAMPA was requested vide letter dated 19.02.2013 to furnish the report as to whether the replies furnished by the applicant have been sent to AG and whether AG has accepted the replies. Several reminders dated 07.05.2013, 30.07.2013, 25.10.2013, 29.03.2014 were issued to the CEO, KAMPA for furnishing the report. Finally the CEO, KAMPA vide letter 09.04.2014 informed that based on the reply furnished by the applicant to AG's audit report, a note was prepared and placed in the executive committee meeting held on 22.03.2014 and 05.04.2014. The CEO, KAMPA further informed that after discussion in the Executive Committee Meeting, the Committee suggested some changes to the note and after incorporating the changes it was decided to send the revised note to all the members for their opinion before sending it to AG. The CEO, KAMPA further informed that after obtaining the opinion of the members of the Executive Committee on the revised note, the same will be sent to AG and the Government. In a further communication dated 04.07.2014, the CEO, KAMPA informed that they have furnished their opinion to the AG on 04.07.2014 on the reply statement of the applicant. Thereafter vide a communication dated 05.09.2014, the AG, Karnataka was requested to send a report to CEO, KAMPA. The CEO, KAMPA vide communication dated 16.11.2015 while forwarding the report of AG sought for clarification as to which of the charges have to be dropped and which of the charges are to be continued. The State Government, was not aware of office objection raised by AG. Vide letter 19.01.2016 they asked KAMPA to furnish audit objections

raised by the AG and opinion on the clarification made but no reply was forthcoming from CEO, KAMPA. In the meanwhile, the applicant requested vide letter dated 23.07.2016 for taking early decision in this regard and settle his DCRG amount. Thereafter decision was taken to continue with the departmental enquiry against the applicant. After taking approval from the competent authority, order dated 23.01.2017 was passed appointing Inquiry Officer to conduct the departmental enquiry.

6. The respondents submit that the delay in the process of departmental enquiry is mainly due to administrative reasons and as such no malafides can be attributed. The delay was primarily caused due to correspondence of the CEO, KAMPA and the AG office for taking a decision for appointment of Inquiry Officer. They also submit that it is only a show cause notice and in number of cases the Hon'ble Apex Court had declined to interfere with the issue of show cause notice. He also referred to Hon'ble Apex Court order in Union of India and another Vs. P. Sathyanarayana saying that ordinarily a Writ Petition should not be entertained against a mere show cause notice as it may be held to be premature. Therefore they contended that no harm is caused to the applicant for initiating the departmental enquiry and since the departmental enquiry is still pending, the question of releasing his retirement benefits does not arise.

7. Heard the petitioner in person and also the learned counsel for the respondents. The petitioner in person submitted that the entire proceedings had been initiated based on the audit report on some procedural lapses which could be due to non-furnishing of details by the office to the Accountant General. This was done with jealousy and with intention to harass the

applicant when he was on the verge of retirement. Even though he submitted the replies immediately, no decision was taken and no action was also taken promptly for providing reply to the AG. Such an inordinate long delay not only resulted in not only withholding his DCRG and regular pension but also caused mental agony and harassment to the applicant. In spite of the clear stipulation to hold the departmental enquiry in time bound manner, this was not done so. Therefore he may be granted the reliefs which has been sought by him in the present OA.

8. The learned counsel for the respondents reiterated the submissions made in the reply statement and submitted that the delay was mainly due to administrative grounds as outlined in the reply statement and was not deliberately done. Just because of this delay the initiation of departmental enquiry cannot be vitiated and the respondents should be allowed to continue with the enquiry. The learned counsel further mentioned that it is only a show cause notice and hence it should not be interfered with.

9. We have carefully considered the facts of the case and submissions made by either side. As would be evident from the facts submitted in the OA and the reply statement, the present charge memo was issued to the applicant based on the observation made by audit in 2010. Though the applicant had formulated the reply to the AG and submitted the same to the KAMPA in May, 2011, just one month prior to retirement, a charge sheet was issued to him. It appears from the reply statement that after the applicant submitted his reply to the charge memo when the State Government repeatedly asked the KAMPA to indicate whether the reply has been sent to AG and whether the same has been accepted, there was no response. After

several correspondence, the KAMPA indicated that in 22.03.2014 i.e. after 3½ years, a note was prepared and placed in the executive committee meeting and based on their views some changes were made and a revised note will be prepared. It only indicates that after the reply to AG's comment were provided by the applicant, the KAMPA took their own time to send the reply along with their observation to AG on 04.07.2014. It clearly shows the casual approach in the matter. The KAMPA also informed Government that in November, 2015 they sought clarification from AG as to which charge has to be dropped and which are the charges to be continued. It is difficult to comprehend as to whether Accountant General's advice is required on continuation of charges in a departmental proceeding initiated by the Government. The reply of respondents says that they were not aware of office objection raised by AG. It is surprising, since the charge memo was based on AG's report only. Surprisingly, even after the State Government asked KAMPA in January, 2016 to furnish audit objections raised by AG and the clarification of CEO, KAMPA, no reply was said to be forthcoming. When the applicant insisted for dropping the charges and settle his DCRG amount in July, 2016, the State Government decided to continue with the enquiry and appointed the Inquiry Officer.

10. It is quite clear from the available facts that the present charges were framed on the basis of AG's report only and no independent enquiry was ever conducted by the State Government to find out whether there was any procedural irregularity or infraction were committed by the applicant. It is also not clear whether all the facts were placed by the subsequent CEO, KAMPA before the AG in respect of their observations. Even when the applicant is

said to have formulated. Detailed replies to the AG's observation, it was sent after 4 years with their own comments. The subsequent events as highlighted in the reply statement clearly indicate that no effective measures were taken by respondents to take any final decision on the AG's observations more so when they formed the basis of the present charge memo. Therefore it is quite clear that the respondent had a very casual approach in the matter resulting in the inordinate delay of more than 5 ½ years in initiating the proceedings against the applicant after the issue of charge memo and the reply received from the applicant. This is inspite of the fact that the applicant is a retired person and will be adversely affected if the retirement benefits are not provided.

11. The Hon'ble Apex Court in Anant R Kulkarni Vs Y.P.Education Society & Others in Civil Appeal No. 3935/2013 213 SCC 515 had clearly observed that it is a settled legal proposition that a departmental enquiry can be quashed on the ground of delay provided the charges are not very grave. In this case, the charges are based purely on observation of audit without any proper examination of the State Government and we do not consider the same as grave. Moreover there is an inordinate delay on the part of State Government and the KAMPA to decide the matter more so when the applicant had retired nearly 6 years back and his DCRG amount had been withheld. Therefore we hold that in view of such an inordinate delay, continuation of the departmental proceeding cannot be sustained.

12. On detailed consideration of facts and circumstances of the case, we allow the present OA and quash the charge memo dated 30.09.2011 and subsequent order dated 23.01.2017 for continuation of departmental

proceedings specifically in view of the inordinate delay in taking up the departmental proceedings. The respondents are also directed to release the withheld DCRG to the applicant within the period of 3 months from the date of receipt of a copy of the order. The OA is accordingly allowed. No order as to costs.

(PRASANNA KUMAR PRADHAN)
MEMBER (A)

(JUSTICE HARUN-UL-RASHID)
MEMBER (J)

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