

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

O.A. No.021/00872/2017

Date of Order :20.08.2018.

Between :

Madan Lal, IPS (Retd.), s/o Sri ParsaRam,
Aged 64 yrs, r/o 107, Prashasan Nagar,
Road No.72, Jubilee Hills, Hyderabad.Applicant

And

1. The Government of Andhra Pradesh,
Rep., by its Chief Secretary, Secretariat,
Amaravathi, AP.
2. The Union of India, rep., by its Secretary,
Dept. Of Personnel & Training, North M Block,
New Delhi-110 001.
3. The Accountant General (A&E) Andhra Pradesh,
Hyderabad.
4. The Pay & Accounts Officer, Tilak Road,
Hyderabad. Respondents

Counsel for the Applicant Mr.K.Sudhaker Reddy
Counsel for the Respondents Mrs.K.Rajitha, Sr.CGSC
.... Mr.E.Peddanna, SC for State of AP

CORAM:

**THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)
THE HON'BLE MRS.NAINI JAYASEELAN, MEMBER (ADMN.)**

ORAL ORDER

{ As per Hon'ble Mr.Justice R.Kantha Rao, Member (Judl.) }

Heard Mr.K.Sudhaker Reddy, learned counsel appearing for the Applicant and Mr.E.Peddanna, learned standing counsel appearing for the State of Andhra Pradesh.

2. The applicant, who is an IPS Officer, retired from service on attaining the age of superannuation on 30.4.2013, while working as Managing Director, AP Police Housing Corporation in the rank of Additional DGP, Andhra Pradesh. After his retirement, a notice dated 21.07.2013 was issued by the ACB making certain allegations against him. The allegations are to the effect that he resorted to certain malpractices in the matter of giving promotions by collecting certain amounts from certain Engineers. The applicant submitted an explanation dated 31.07.2013 to the said notice. Thereafter, the Government sanctioned and paid him 90% of the service pension and withheld 10% of the service pension. He submitted a representation to the respondents to sanction full pension since there were no charges pending against him prior to his retirement. As the same was not acceded to, he filed OA.No.160/2016 before this Tribunal and this Tribunal by order dated 05.02.2016 directed the respondents to dispose of the representation and pass appropriate orders. The respondents rejected the said representation by order dated 11.09.2017, on the ground that the Government of India, Ministry of Home Affairs by orders dated 17.11.2014 has already conveyed sanction for the departmental inquiry against him.

3. The version of the respondents seems to be that since the sanction was accorded in the year 2014 i.e., within four years from the date of his post retirement, provisions of Rule 6 (1) (b) (ii) of All India Services (DCRB) Rules, 1958, shall not be applicable. Being aggrieved by the said rejection order, the applicant filed the present OA.

4. The first respondent filed a reply statement. The principal contentions urged by the respondent are that –

(i) Due to the pending disciplinary case, Government have sanctioned 90% of the Service Pension as Provisional Pension to the retired officer vide G.O.Rt.Nof.1037, GA (SC.C) Department, dated 14.03.2014, Government have sanctioned encashment of Earned Leave to the applicant and the remaining pensionary benefits were not released to the applicant.

(ii) After examination on the report of the DG, ACB, AP, the Govt. Of India has been requested to issue necessary sanction under the provisions (b) (i) of Sub-Rule (1) Rule 6 of the All India Services (DCRB) Rules, 1958, to initiate the disciplinary proceedings against the applicant. Accordingly, the MHA, GOI, vide its order No.26011/68/2014-IPS.II, dated 17.11.2014, have conveyed the sanction for departmental enquiry against the applicant. After examination of the matter, orders were obtained to initiate the disciplinary action against Sri Madan Lal, IPS (RR :80) (Retd.) under Rule 8 of AIS (D & A) Rules, 1969, for the (4) partly proved

allegations, so as to place the applicant on his defense before the Commissioner of Inquiries (COI). As recommended by the DG, ACB and under the provisions (b) (i) of sub-rule (1) Rule 6 of the All India Services (DCRB) Rules, 1958, to institute the disciplinary proceedings against the applicant. Government vide its Memo dt. 25.4.2015 have requested the DG, ACB, to furnish the Draft Article of Charges. In the meanwhile, the applicant, in his representation dated 25.11.2015, has requested the Government to transfer the files relating to disciplinary action to the Telangana Government as the applicant is drawing his pension at Hyderabad. Accordingly, the connected files have been transferred to the Government of Telangana on 14.12.2015, for taking necessary action, as the retired MoS is drawing his pension at Hyderabad.

(iii) It is necessary to submit that the applicant suppressed the following factual aspects which were mentioned in the impugned orders dt. 17.11.2014. Basing up on the report of the ACB vide order dt. 17.11.2014, the Govt., have taken decision to initiate the disciplinary action against the applicant, directed the DGP, AP to call for the Draft Article of charges vide Memo dt. 25.4.2015. In the meanwhile, at this point of time the applicant made representation dt. 25.11.2015 requesting the Govt. Of AP to transfer his entire file to Govt. Of Telangana. At his request, his entire file was transferred to the Govt. Of Telangana on 14.12.2015. But the Govt. Of Telangana in their letter dt. 3.12.2016 received on 27.7.2017 has returned the file to the State of AP stating that they are no way concerned with this

case. Suppressing these facts, the applicant is filing OAs after OAs before this Tribunal. It is necessary to submit that because of the applicant only the delay has occurred in conducting enquiry but not by the Govt. Of Andhra Pradesh.

5. Thus, the contention of the first respondent seems to be that they received information about malpractices committed by the applicant even before his retirement. The respondents consulted the ACB and there was lot of correspondence and ultimately the sanction was obtained on 17.11.2014. As lot of time was spent to ascertain the correct facts before obtaining the sanction, the charge sheet could not be issued before the retirement of the applicant. Thus, according to the respondents, as the sanction was obtained even before the retirement of the applicant, Rule 6 (1) (b) (ii) of the AIS (DCRB) Rules, are not applicable in the present case.

6. It is contended by the learned counsel appearing for the Applicant that since no charge sheet was issued to the applicant before his retirement, it cannot be stated that any disciplinary proceedings are initiated prior to his retirement and no portion of his service pension can be withheld.

7. On the other hand, it is contended by the learned standing counsel appearing on behalf of the Govt. Of Andhra Pradesh that as the sanction had been obtained prior to the retirement of the applicant, it is deemed that the disciplinary proceedings have been initiated against the applicant and

therefore the department is justified in withholding of 10% of the pensionary benefits of the applicant.

8. Before proceeding to decide the issue, it is necessary to look into Rule 6 of All India Services (Death-cum-Retirement Benefit) Rules, 1958. Rule 6 (1) (b) lays down that the departmental proceeding, if not instituted while the pensioner was in service, whether before his retirement or during his re-employment, shall not be instituted save with the sanction of the Central Government.

Clause (ii) lays down that such departmental proceeding shall be in respect of any event which took place not more than four years before the institution of such proceeding.

Clause (c) says that such judicial proceeding, if not instituted while the pensioner was in service, whether before his retirement or during his re-employment, shall not be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution.

9. It is now well settled that a disciplinary proceeding is said to be instituted only when a charge sheet is served on the employee. In the instant case, so far no charge sheet has been served on the applicant. The applicant retired on 30.04.2013. Mere obtaining sanction just before the retirement of the applicant does not save the limitation of serving the charge sheet because Rule 6 specifically stipulates that a charge sheet

shall be issued to the applicant and it shall be in respect of a cause or event which took place within four years of issuing the charge sheet. As already said, in fact, in the instant case, even as on date, no charge sheet has been issued to the applicant. The respondents, however, put in their efforts to obtain sanction and they also tried to explain the reasons for the delay in issuing the charge sheet. We wish to point out that the respondents though obtained sanction on 17.11.2014, could not issue the charge sheet before the date of retirement of the applicant. Even, as on date, no charge sheet has been issued to the applicant. Therefore, mere obtaining sanction does not save the limitation, which is prescribed under Rule 6 (1) of AIS (DCRB) Rules, 1958.

10. In view of what all stated hereinbefore, the respondents are not justified in withholding 10% of the pensionary benefits of the applicant. The OA, therefore, deserves to be allowed.

11. Accordingly, the OA is allowed. The memo dated 11.09.2017, whereunder 10% of service pension of the applicant was withheld is declared illegal and is set aside. The respondents are directed to release the remaining 10% of pensionary benefits, which were withheld within a period of (8) weeks. No order as to costs.

**(NAINI JAYASEELAN)
MEMBER (ADMN.)**

**(JUSTICE R.KANTHA RAO)
MEMBER (JUDL.)**

Dated: this the 20th day of August, 2018
Dictated in the Open Court

Dsn.