



CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH  
KOLKATA

OA 350/01053/2015

Date 02-08-2016

Present : Hon'ble Mr Justice Vishnu Chandra Gupta, Judicial Member  
Hon'ble Ms Jaya Das Gupta, Administrative Member

Madhumoy Chakraborty

.....Applicant

-Vs-

Union of India (Posts)

.....Respondents

For the petitioner : Mr S.K.Dutta, Counsel

For the respondents : Mr B.P. Manna, Counsel

ORDER

JUSTICE V. C. GUPTA, JM:

Heard counsel for both sides.

2. The applicant prays for the following reliefs which is extracted herein below :

- a) An order holding that any proceeding pursuant to the charge sheet dated 25.3.2015 as served upon the applicant on 16.4.2015 is not sustainable in law and the said charge sheet is liable to be set aside.
- b) An order quashing and/or setting aside the proceeding pursuant to the charge sheet dated 25.3.2015 including the said charge sheet.
- c) An order directing the respondents to release and pay all withheld post retirement benefits to the applicant with interest and further directing the respondents to pay month pension to the applicant with effect from April, 2015.
- d) An order holding that the communication in respect of refund of commutation value of pension are bad in law and cannot be sustained and accordingly those communications may kindly be quashed and set aside.
- e) An order quashing and/or setting aside the Memo dated 22.5.2015 whereby the Disciplinary Authority has nominated

a Presenting Officer as communicated to the applicant and the communication dated 23.4.2015.

f) An order directing the respondents to produce/cause production of all relevant records.

3. Challenge in this case is to the memo of charges dated 25.03.2015 on the ground that the same has been served upon the applicant after retirement as the applicant retired on superannuation on 31.03.2015. Hence the memo of charge is violative of Rule 9 of CCS (Pension) Rules i.e. without approval of the President of India.

4. Learned counsel for the respondents on this score demonstrated that memo of charge was sent by speed post on 27.3.2015 and the envelop containing the memo of charges was tendered on 28.3.2015, 30.3.2015 and 31.3.2015 and also thereafter and ultimately it was returned unserved on 10.4.2015. Again the same was despatched under the registered cover but by this time the same has been received by applicant on 16.04.2015.

5. The counsel for the applicant submits that the allegation to the effect that memo of charge was ever tendered on 28<sup>th</sup>, 30<sup>th</sup> and 31<sup>st</sup> March 2015 is incorrect. The counsel for the respondents relied upon the endorsement of the Postal authorities on the registered envelop on different dates which has been annexed as Annexure R-11 to the reply. It has not been stated by the applicant that letter despatched on the address mentioned on the envelop is incorrect. Hence in view of the provisions contained in Section 27 of the General Clauses Act the memo of charge shall deemed to have been served on the applicant before retirement. Hence we are of the view that charge sheet is not in violation of the CCS (CCA) Rules as the same has been tendered before retirement of the applicant.

(H) b/

6. Learned counsel for the applicant further pointed out that in this case the commutation amount of pension has already been released on 07.04.2015.

7. It has been submitted by the learned counsel for the respondents that process for grant of pension was earlier done and if amount of commutation has been paid in this process it will not be a ground to set aside the departmental proceeding for the alleged misconduct.

8. Learned counsel for the applicant further pointed out that he has not yet been paid any amount of pension. Even during pendency of departmental proceeding the applicant cannot be deprived of the benefit of granting provisional pension. Learned counsel for the respondents is not aware whether provisional pension has been paid or not ?

9. Hence we are of the view that this application may be finally disposed with a direction to the respondents that if enquiry has not yet been concluded or the applicant has not been exonerated the provisional pension may be paid adjusting the amount of commutation. No other relief could be granted to the applicant in the aforesaid circumstances.

O.A is accordingly disposed of. No order as to costs.

(Jaya Das Gupta )  
Administrative Member

(Justice V.C.Gupta)  
Judicial Member

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