

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**



No. O.A. 350/01699/2016

Date of order : 31.07.2018

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Nanturam Majhi,
Son of Late Nidhar Chandra Majhi,
Aged about 69 years,
Retired Junior Accounts Officer,
Office of the General Manager
(Postal Accounts & Finance),
West Bengal Postal Circle,
Kolkata, P-36, C.R. Avenue, Yogayog Bhawan,
Kolkata – 700 012,
Residing at Village No. 1, Beleswar,
P.O. & P.S. – Falta,
Dist. 24 – Parganas (South),
Pin – 743 504.

---Applicant

- Versus**
1. Union of India,
Through the Secretary to the Govt. of India,
Ministry of Communications & IT,
Department of Posts, Dak Bhawan,
New Delhi – 110 001.
 2. The Secretary to the Govt. of India,
Ministry of Communications & IT,
Department of Posts, Dak Bhawan,
New Delhi – 110 001.
 3. The Director General of Posts,
Government of India,
Department of Posts, Dak Bhawan,
New Delhi – 110 001.
 4. The General Manager (Postal Accounts & Finance),
West Bengal Postal Circle,
Kolkata, P-36, C.R. Avenue,
Yogayog Bhawan,
Kolkata – 700 012.

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5. The Director of Accounts (Postal),
Kolkata, Office of the General Manager
(Postal Accounts & Finance),
West Bengal Postal Circle,
Kolkata, P-36, C.R. Avenue,
Yogayog Bhawan,
Kolkata – 700 012.

---Respondents

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

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

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

The instant Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:-

- (a) An order quashing and/or setting aside the impugned Memorandum of Charge Sheet dated 27.9.2007 and the entire proceeding as well as inquiry held thereunder including the report of the I.O.
- (b) An order quashing and/or setting aside the order of deemed suspension dated 27.9.2007.
- (c) An order directing the respondents to grant all consequential monetary benefits including full pay and allowance for the period of deemed suspension and all pensionary and post retirement benefits including leave salary on the basis of pay and allowances as he would have drawn had he not been placed under deemed suspension with interest at the rate as to this Hon'ble Tribunal may seem fit and proper.
- (d) An order directing the respondents to produce/cause production of all relevant records.
- (e) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

2. Heard Ld. both Ld. Counsel, examined pleadings and documents on record.

3. The case of the applicant, as canvassed by his Ld. Counsel, is that the applicant is a retired Junior Accounts Officer of the Postal Department having superannuated on 30.9.2007. The applicant was arrested by the police on 8.8.2007 in connection with a Falta Police Station Case No. 92 dated 7.8.2007

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under Sec. 325/506 (2), 34 of the Indian Penal Code and he was detained in custody from 8.8.2007 to 17.8.2007 and subsequently released on bail.

That, vide a memorandum dated 26.9.2007 (A-1 to the O.A.), the applicant was issued a memo of charges on the ground that the applicant had allegedly suppressed the fact of such detention before the office authorities.

That, thereafter, vide Office Order dated 27.9.2007 (Annexure A-2 to the O.A.), the applicant was placed under suspension until further orders. Subsistence allowance was granted to him till the period 30.9.2007. Further, vide Office Order dated 27.9.2007 (Annexure A-4 to the O.A.), his order of retirement on superannuation was cancelled by the respondent authorities on the ground that a judicial proceeding as well as disciplinary proceedings were pending against the applicant.

That, the applicant was, however, actually allowed to retire on 30.9.2007.

That, thereafter vide an Office Order dated 15.10.2007 (Annexure A-6 to the O.A.), the applicant was provisionally pensioned off on attaining his age of superannuation on 30.9.2007. The departmental proceedings, which had initiated with the issue of memorandum of charges, was followed up with an enquiry report dated 8.4.2009 (Annexure A-7 to the O.A.), which was served upon the applicant and the applicant submitted his defence statement on 17.6.2009 (Annexure A-9 to the O.A.).

That, nine years have passed since the issue of memorandum of charges to the applicant and more than seven years have passed from the date of report of the enquiry officer and the applicant's written statement to the same. The departmental proceedings, however, have been kept pending arbitrarily and illegally and, hence, the applicant has approached the Tribunal, seeking the relief as contained in the pleadings.

4. The grounds advanced by the applicant are as follows:-

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"(a) For that acts or omissions on the part of the respondent authorities in keeping the stale charge pending are totally arbitrary and the same are tainted with malice in law.

(b) For that there was no justification and/or bonafide reason in proceeding as well as continuing the departmental proceeding for such a long time after retirement.

(c) For that the acts or omissions on the part of the respondents in continuing the proceeding against the applicant even after a long lapse of time are totally arbitrary and unjustified.

(d) For that the applicant has been badly suffering due to unnecessary pendency of the departmental proceeding against him."

6. The respondents have filed their counter affidavit in which they have argued as follows:-

That, the applicant, Ex. Junior Accounts Officer, Office of the GM (PA & F), Kolkata was arrested on 08.08.2007 by the police authority in connection with Falta Police Station Case No. 92 dated 07.08.2007 under Section 325/506 (2), 34 of Indian Penal Code and was produced before the Ld. ACJM Court, Diamond Harbour in G.R. No. 909/2007 on 08.08.2007. He was detained in Jail custody for the period from 08.08.2007 to 17.08.2007 and subsequently released on bail on 17.8.2007 by an order issued by Ld. A.C. J.M., Diamond Harbour Court.

That, the applicant reported for duty on 20.8.2007 and applied for commuted leave for the period w.e.f. 7.8.2007 to 17.8.2007 with medical certificates in two spells from 7.8.2007 to 9.8.2007 and from 10.8.2007 to 17.8.2007, suppressing the fact of his detention by the police authority.

That, the applicant was directed to explain under what circumstances he had not intimated the fact of his detention in jail custody for the period from

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8.8.2007 to 17.8.2007, to the office authority. The applicant was also deemed to have been suspended w.e.f. the date of detention i.e. 08.08.2007 in terms of sub rule (2) of Rule 10 of CCS (CCA) Rules, 1965 vide Office Order No. Admn.I-154 dated 27.9.2007 and was granted subsistence allowance from the date of his suspension i.e. 8.8.2007 to the extent of amount equal to the salary he would have drawn if he had been on leave, on half pay i.e. 50% of his last pay drawn as per FR 53. The order of retirement in respect of the applicant was cancelled as judicial as well as department disciplinary proceedings had been initiated against him under Office Memo No. Admn.I-156 dated 17.9.2007.

That, the applicant, who was placed under suspension w.e.f. 8.8.2007 on attaining the age of superannuation on 30.9.2007 (A/N), was provisionally pensioned off as the departmental or court proceedings did not terminate at the material point of time. An enquiry was initiated against him under Rule 14 of CCS (CCA) Rules, 1965. The applicant vide Office Memorandum No. Disc./NM/Admn.I-3448 dated 27.9.2007 was intimated the substance of the imputations of misconduct in respect of which the enquiry was proposed to be held. The enquiry was held as per the provisions of Rule 14 of CCS (CCA) Rules, 1965 and subsequently converted to Rule 9 of CCS (Pension) Rules, 1972.

That, the inquiry report submitted by Shri A.K. Biswas, Inquiry Officer was communicated to the applicant vide Office letter No. Disc./N.Majhi/Admn.I-1370 dated 26.5.2009 wherein violation of Rule 3(i), 3(ii) and Rule 3(1)(iii) of CCS (Conduct) Rules, 1964 was established. Thereafter disciplinary proceedings under Rule 14 of CCS (CCA) Rules, 1965 against the applicant was converted to Rule 9 of CCS (Pension) Rules, 1972 as he retired on attaining the age of superannuation on 30.9.2007 (A/N).

The Respondents have averred further that a proposal seeking permission to drop the disciplinary proceedings has already been forwarded to the appropriate authority through proper channel, which is pending consideration.

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ISSUES

7.(a). To adjudicate upon the relief claimed by the applicant, two issues are to be resolved:

- (a) What is the legal position in the context of suspension of an employee, who retires while on suspension.
- (b) Whether the disciplinary proceedings as initiated against the applicant stand vitiated on account of delay.

FINDINGS

8.(a) The purpose of placing an employee under suspension, as held by the Hon'ble Apex Court in **U.P. Rajya Krishi Utpadan Mandi Parishad v. Sanjiv Rajan, 1993 Supp (3) 483** is as under:

"Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to penetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or enquiry etc."

The Hon'ble Apex Court has also considered the general principle of suspension vide its judgment in the case of **R.P. Kapur v. Union of India (1964) 5 SCR 431** while laying down the law that:

"..... On general principle therefore the authority entitled to appoint a Public servant would be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him."

The Hon'ble Apex Court reiterated the above view in **Balvantray Ratilal Patel v. State of Maharashtra (1968) 2 SCR 577**.

As held in **R.S. Naik v. State of Karnataka & ors. 1983 (3) SLR 49 (Kant - DB)** and **S.P. Jain v. Punjab National Bank & anr. 1993 (1) SLR 517 (Del)** it is the settled principle of law that, if during suspension, an employee is permitted

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to retire without any objection, the order of suspension must be treated as lapsed since the relationship of master and servant ceases to exist and consequently the period of suspension is to be counted towards duty and the employee would be entitled to all consequential benefits of pay and allowances for that period. The reason for the period to be counted towards duty is that after cessation to relationship, the question of conclusion of departmental proceedings does not arise.

The said ratio was applied by the Principal Bench, Delhi in O.A. No. 3726 of 2013.

Under FR 56, every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years. Under the said rule, there are no distinctions between the employees who are in active service and those who remained under suspension or under deemed suspension. However, when the Government servant under suspension attains the age of superannuation before the termination of departmental or Court proceedings, he is provisionally pensioned off in terms of Rule 9(4) of the CCS (Pension) Rules, 1972, which reads as under:-

"In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 69 shall be sanctioned."

In that event, he will cease to draw subsistence allowance, but will be paid only provisional pension under Rule 69 of the said rules which reads as under:-

"69. Provisional pension where departmental or judicial proceedings may be pending:

(1)(a) In respect of Government servant referred to in sub-rule (4) of Rule 9, the Accounts Officer shall authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant, or if he was under

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suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorized by the Accounts Officer during the period commencing from the date of retirement up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon."

From the said rule position as well as the law laid down by the Hon'ble Apex Court, it is established that an order of suspension made under Sub rule 10(2) of the CCS (CCA) Rules, 1965 continues until further orders till the authorities decide to modify or review the same. When an employee is under suspension/deemed suspension, when he attains the age of superannuation, he has to retire from service and his suspension order get automatically revoked. In that event, instead of subsistence allowance drawn during the period of suspension, the employee gets provisional pension until departmental/criminal case pending against him is concluded. If he is fully exonerated or his suspension held to be wholly unjustified, the period of suspension will count as qualifying service and his provisional pension gets revised and he gets full pension.

In **R.S. Naik's case (supra)**, the Hon'ble Karnataka High Court had held that, the Government, by permitting the petitioner to retire from service, the earlier order of suspension has necessarily to be treated as having lapsed and that, in these circumstances, the period of suspension has to be treated only as on duty.

In the instant case, the respondents, had, after placing the applicant on suspension w.e.f. 8.8.2007, provisionally pensioned off the applicant on attaining the age of superannuation on 30.9.2007 and converted the enquiry held as per provisions of Rule 14 of CCS (CCA) Rules, 1965 to Rule 9 of CCS (Pension)

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Rules, 1972. The fact remains, however, that while the respondents had cancelled his order of retirement on suspension vide their Office Order No. Admn.I-156 dated 27.9.2007, the applicant was nevertheless actually permitted to retire on superannuation on 30.9.2007 without objecting to the actual superannuation. The respondents did not retain the applicant in service till the inquiry was concluded in May, 2009 and till the passing of final orders thereon. In page 4 of their pleadings, the respondents have further admitted as follows:-

"as Shri Majhi retired on superannuation on 30.9.2007 (A/N)."

Hence, as held by the Hon'ble Apex Court in **R.S. Naik (supra)** and **S.P. Jain (supra)** the suspension of the applicant has automatically ceased on his actually superannuating on 30.9.2007 and the said period has to be treated as on duty.

(b) According to CCS (Pension) Rules, 1972, departmental proceedings, if instituted when the government servant was in service, shall, after his final retirement, be deemed to be proceedings under Rule 9 of the CCS (Pension) Rules, 1972 and shall be continued and concluded by the authority by which they were commenced in the same manner as if the government servant had continued in service.

The government servant is also entitled for provisional pension under Rule 69 of the CCS (Pension) Rules, 1972 equal to the maximum pension which would have been admissible on the basis of qualifying service upto the date of retirement of the government servant or if he was under suspension on the date of retirement upto the date immediately preceding the date on which he was placed under suspension.

In this case, admittedly, the enquiry officer submitted his report and the same was conveyed to the applicant by the respondents' letter dated 26.5.2009. The enquiry report held that the charges against the applicant had been established. The respondents, however, neither in their pleadings nor in their oral arguments have been able to clarify or explain as to what steps were taken by

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the respondent authorities after the applicant had submitted his defence against the enquiry report on 17.6.2009. The respondents, on the other hand, have admitted in their pleadings that a proposal for dropping the disciplinary case has since been forwarded to the appropriate authority through proper channel which is pending consideration. During the oral arguments, the respondents further clarified that as the sanction for dropping the proceedings under Rule 9 of CCS (Pension) Rules against the applicant had not been issued by the President, the respondents are not in a position to drop such proceedings against the applicant.

The Hon'ble Apex Court in ***Bharat Cooking Coal Limited v. Bibhuti Kumar Singh & ors.*** 1994 Supp. 3 SCC 628 has held that although protracted delay has sometimes resulted in not permitting continuance of disciplinary proceedings, if the delay is explained satisfactorily then the proceedings should be permitted to continue. As further, as held in ***Deputy Registrar Cooperative Societies, Faizabad v. Sachindra Nath Pandey*** 1995 (3) SCC 134, when the complaint is of delay the Court is also required to consider if the charges are of a serious nature or not.

Ld. Counsel for the applicant has, in his support, cited the matter of ***State of Andhra Pradesh v. N. Radhakisan*** 1998(4) SCC 154 wherein it was held that in fact when there was hardly any explanation worth consideration as to why delay occurred, the Tribunal was justified in quashing the charge memo.

In the instant matter, no explanations have been offered by the respondent authorities as to why the disciplinary proceedings could not be concluded within the previous seven years. The charges also were not of misappropriation or of serious financial consequences leading to loss to the public exchequer. The respondents have admitted that they have recommended that the disciplinary proceedings be dropped. If in reality the respondents had decided to drop the disciplinary proceedings, the said action for obtaining sanction of the competent authority could have been initiated much earlier and the matter was not required to pend indefinitely.

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We next deliberate in the context of disciplinary proceedings after retirement. As the CCS (CCA) rules, 1965 read with CCS (Pension) Rules, 1972, provides for continuance of disciplinary proceedings post retirement, such continuation proceedings of the respondents was, prima facie, not illegal. In this we are guided by **V. Padvanabhan v. Govt. of Andhra Pradesh (2009) 15 SCC 537** where the Hon'ble Apex Court had held that where a statute raises a legal fiction for which departmental proceedings would be deemed to have been continued even after retirement, such continuation of proceedings are not illegal.

The Kerala Full Bench, however, while relying on **State of Punjab v. Khemi Ram AIR 1970 SC 214**, observed:

"continuance of disciplinary proceedings, if instituted during the service of the employee is to be deemed to be a proceeding under the Rule and may be continued and completed even after his retirement. To this limited extent alone is provision made under the rule for continuance of a disciplinary enquiry beyond retirement. That too is by transmuting it by fiction to be an enquiry under the Rule. Beyond this, we cannot understand the rule as in any way permitting the authorities either to launch or to continue disciplinary proceedings after the retirement of the employee. That would be destructive of the concept of relationship of employer and employee which has come to an end by reason of the retirement of the employee, beyond which, disciplinary control cannot extend."

In light of the ratio enunciated by the Hon'ble Apex Court in **State of Punjab (supra)** and in the absence of any satisfactory explanation of delay by the respondent authorities, the proceedings cannot be allowed to continue any further. The respondent authorities too have admitted that they have recommended that the disciplinary proceedings be dropped and are awaiting the sanction of the competent authority in this regard.

9. Accordingly, we deem it fit and proper to quash the memorandum of charges dated 26.9.2007 and direct the respondents to release the retiral benefits as due to the applicant within a period of four months from the date of receipt of a copy of this order. The suspension order dated 27.9.2007 having ceased on his retirement upon superannuation on 30.9.2007, the intervening period during which the applicant was placed on suspension will also have to be regularized as on duty and dues on account of such suspension during the

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incumbent period be released within a period of four months from the date of this order.

10. The O.A. , accordingly, succeeds. There shall be no order as to costs.

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(Nandita Chatterjee)
Administrative Member

Banerjee
(Bidisha Banerjee)
Judicial Member

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