

Reserved
(On 05.03.2019)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 14th day of March 2019

Original Application No. 330/01214 of 2017

Hon'ble Ms. Ajanta Dayalan, Member – A
Hon'ble Mr. Rakesh Sagar Jain, Member – J

Chandrama Ram, S/o Late Ram Narain Ram, R/o 2/4 MIG Awas Vikas Colony Yojna No. 3, Jhunsi, Allahabad.

By Adv: Shri Swayambar Lal . . . Applicant

V E R S U S

1. Union of India through Secretary Finance, Govt. of India, Ministry of Finance, Department of Revenue, New Delhi – 110011.
2. The Chairman Central Board of Excise and Customs, North Block, New Delhi – 110011.
3. Commissioner, Central Excise and Service Tax (CGST) 38, M.G. Marg, Civil Lines, Allahabad.
4. Assistant Commissioner Central Excise and Service Tax (CGST), Division I, 38, M.G. Marg, Civil Lines, Allahabad.
5. Pay and Account Officer, Central Excise, 38, M.G. Marg, Civil Lines, Allahabad.

By Adv: Shri L.P. Tiwari . . . Respondents

O R D E R

By Hon'ble Ms. Ajanta Dayalan, Member – A

The present OA has been filed by the applicant Chandrama Ram seeking quashing of orders dated 14.12.2016 (Annexure A-1) and 22.09.2016 (Annexure A-2) passed by respondents department regarding payment of his retiral dues. The applicant has also prayed for all retiral benefits including final pension, gratuity and commutation of pension alongwith 18% from 01.08.2016.

2. The applicant was initially appointed on 07.03.1980 as Inspector in Central Excise and Service Tax department and was promoted as Superintendent in December 1995. He was again promoted as Assistant Commissioner on 24.10.2014 and superannuated on 31.07.2016. After retirement, the applicant was issued order dated 22.09.2016 granting him provisional pension of Rs. 45,550/- (last pay drawn being Rs. 91,100/-) w.e.f. 01.08.2016. The applicant made a representation on 01.08.2016 and issued reminders requesting for payment of retiral dues. He also moved Writ – A No. 45858 of 2016 before jurisdictional High Court, which directed the respondents to decide his application dated 01.08.2016 within 6 weeks. Thereafter, the respondents department passed impugned order dated 14.12.2016 stating that a charge sheet for major penalty was issued to the applicant on 24/25.10.2016 and he was not cleared from vigilance angle; and accordingly, as per Rule 69 (c) of CCS (Pension) Rules, 1972, gratuity and commutation cannot be paid to him until departmental proceedings are concluded.

3. The case of the applicant is that no disciplinary or judicial proceedings were pending against the applicant on the date of his retirement i.e. 31.07.2016; and as such Rule 69 does not apply to him and hence order dated 14.12.2016 is arbitrary and illegal.

4. The applicant also stated that charge sheet dated 24.10.2016 has been issued to him without complying the provision of Rule 9 of CCS (Pension) Rules, 1972. He has also stated that Presidential sanction has been accorded under this Rule and an inquiry has been proposed under

Rule 14 and 15 of CCS (CCA) Rules, 1965. However, charge sheet has not been issued under prescribed proforma as provided below Rule 9 and hence the same is illegal. The applicant has also stated that in his reply dated 18.02.2017 to Memo of Charges, he has pointed out the illegalities in leveling of charges No. 1 and 2 against him. Specifically, the applicant has been considered liable for penal action under provision of Rule 14 and 15 of CCS (CCA) Rules 1965 whereas action should have been initiated against Rule 9 of CCS (Pension) Rules 1972.

5. He has also stated that another officer Shri Rajendra Kumar has already received all the retiral dues in similar circumstances, whereas the applicant has been discriminated against, thus violating the provisions of Articles 14 and 16 of the Constitution of India. Hence, the OA.

6. The applicant has also cited the cases of ***N.K. Gupta vs North Delhi Municipal Corporation and other – OA No. 2240 of 2013*** decided by the Principal Bench of this Tribunal; ***Union of India and others vs. Paul George – (2014) 1 SCC (L&S) 162*** and ***Vijay L. Mehrotra vs. State of U.P. and others – 2002 SCC (L&S) 278*** in his support.

7. The respondents in their counter affidavit have stated that disciplinary proceedings for major penalty were instituted against the applicant vide charge memorandum dated 24.10.2016 under provisions of Rule 9 of CCS (Pension) Rules, 1972. The Presidential sanction was accorded vide sanction order dated 24.10.2018. They have further stated that on the date of date of retirement of the applicant, the vigilance inquiry was pending against him and hence, vide order dated 29.07.2016 – i.e.

prior to his date of retirement – Central Board of Excise and Customs informed that the applicant is not clear from vigilance angle and hence, his pension was fixed provisionally. They have also stated that the memorandum dated 24.10.2016 has been issued after complying the provisions of Rule 9 of CCS (Pension) Rules, 1972 and after Presidential sanction was accorded under this Rule. It is further stated that inquiry against the applicant was proposed under Rules 14 and 15 of CCS (CCA) Rules, 1965. As the vigilance status of the applicant was not clear on the date of his retirement, gratuity was not paid to him as per provisions of Rule 69 (c) of CCS (Pension) Rules, 1972 and his pension was fixed provisionally. Further, It is stated that commutation of pension was also not allowed due to non finalization of pension. It is also informed that CVC vide OM dated 26.07.2016 had advised for institution of major penalty proceedings against him.

8. The respondents have also stated that as per provisions of Rule 69 of CCS (Pension) Rules, 1972, '*No gratuity shall be paid to the government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon*'. As the vigilance case was initiated against the applicant and charge sheet was issued, gratuity and commutation of pension could not be paid till final decision. The respondents have stated that vigilance inquiry was already pending against him before the date of his retirement.

9. The respondents have further stated that there is no violation of provisions of Article 14 and 16 of Constitution of India. The charge memo has been issued as per prescribed procedure after due application of mind

by the disciplinary authority. In their support the respondents have cited following case laws:-

- i. Secretary to Government, Prohibition and Excise Department vs. L. Srinivasan – (1996) 3 SCC 157*
- ii. The Secretary, Ministry of Defence and Others vs. Prabhash Chandra Mirdha – (2012) 11 SCC 565*
- iii. LIC of India and Ors. vs. A. Masilamani – (2013) 6 SCC 530*
- iv. J.K. Goyal vs. Union of India and Ors. – (MANU/CA/0395/2008) Coordinate Bench of this Tribunal*

10. The respondents have concluded that the action taken by the department is as per rules and due sanction of the competent authority has been obtained prior to issue of charge sheet and hence, no case is made out for intervention by this Tribunal.

11. We have heard learned counsels for both the parties and have gone through the pleadings of the case. We have also given thoughtful consideration to the matter.

12. The facts of the case are not in dispute. That the applicant retired on 31.07.2016 and no charge sheet was pending on that date is not disputed. However, it is clear from the averments made by the respondents in their counter affidavit quoting letter dated 29.07.2016 of Central Board of Excise and Customs that the applicant was not clear from vigilance angle even on this date. Sanction of The President for institution of departmental proceedings against the applicant has also been accorded vide order dated 24.10.2016 (Annexure A-3 to the OA). This sanction clearly provides as follows:-

“.....The President further directs that the said departmental proceedings shall be conducted in accordance with the procedure laid down in Rules 14 and 15 of the CCA (CCA) Rules, 1965.”

This sanction is by order and in the name of The President. Further, Memorandum No. 33/2016 of the same date and annexure states that in pursuance of this sanction, The President proposes to hold an enquiry against the applicant under Rule 14 and 15 of CCS (CCA) Rules, 1965. This order goes to state as under:-

“Substance of imputation of misconduct in respect of which inquiry is proposed to be held is set out in enclosed statement of Article of Charges (Annexure – I). A statement of the imputation of misconduct in support of each Charge of Article is enclosed (Annexure –II). A list of documents by which and a list of witnesses by whom, the Articles of Charge are proposed to be sustained are also enclosed (Annexure-III & IV)”.

This order dated 24.10.2016 is also by order and in the name of The President.

13. During arguments, learned counsel for the applicant stated that as per Ministry of Finance Office Order dated 19.07.2005, approval for issuing charge memo and sanction of prosecution was to be with the approval of Finance Ministry (reference Sl. No. 8 of Annexure RA-1). Learned counsel for the applicant pleaded that though sanction of prosecution was taken but no approval for issue of charge sheet was taken from the competent authority i.e. Finance Minister. On this point, the learned counsel for the respondents was asked to make his submission vide order of this Tribunal dated 09.01.2019. Learned counsel for the respondents has now brought to our attention memorandum No. 33/2016 dated 24.10.2016 (supra) which clearly approves (a) holding of inquiry as well as (b) substance of imputations, (c) statement of imputation of misconduct in support of each articles of charge, list of documents and list of witnesses by whom the article of

charges are proposed to be sustained. Learned counsel for the respondents also stated that Government order below Rule 9 of CCS (Pension) Rules, 1972 also gives standard form of sanction and for charge sheet for proceedings under Rule 9 of CCS (Pension) Rules, 1972. He stated that the sanction issued is in this standard form.

14. With reference to above, learned counsel for the applicant pointed to para 5 of Memorandum No. 33/12016 in the present case, which is an insertion and deviation from in the standard form. We do find that this paragraph does not exist in the standard form. Otherwise, the sanction of The President regarding substance of imputation of misconduct in support of each article of charge etc. are in conformity with the standard form prescribed. We also note that the standard form is only an executive instruction and that too primarily to ease the task of the department in issuing these orders. The only difference by way of insertion of an paragraph which relates to banning Government servant from bringing or attempting to bring any political or outside influence to bear upon any superior authority to further his interest. This provision is as per Rule 20 of CCS (Conduct) Rules. We do not feel that insertion of this para in the standard form compromises the basic contention or intent to the competent authority regarding approval of charge sheet. It only bring attention of Rule 20 of CCS (CCA) Rules which already exists and for violation of which Government servant is in any case liable for action as per Conduct Rules.

15. We, therefore, find that both sanction for initiation of departmental proceedings as well as contents of charge sheet have been issued by

the competent authority. We find no justification for any inference on this ground.

16. We note that Rule 9 of Pension reads as follows:-

“9. Right of President to withhold or withdraw pension

¹[(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement :

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn the amount of such pensions shall not be reduced below the amount of (Rupees three thousand five hundred) per mensem.]

(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule 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:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment, -

(i) shall not be instituted save with the sanction of the President,

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) ¹Deleted.

(4) 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."

We thus note that the only bar for institution of disciplinary proceedings not instituted while the Government servant was in service, is that these shall not be instituted save with sanction of The President, and shall not be in respect of any event that took place more than 4 years before such institution. In the present case, the Presidential sanction and approval of the President of charge sheet already exists. Also the periods to which the charges relate are of 2016 and hence, the conditions given in Rule 9 are satisfied.

17. We further observe that as per Rule 9, provisional pension has also been allowed to the applicant. We also observe that it is not justified for provisional pension to be commuted. Rule 9 gives right to The President to withhold or withdraw pension. Portion of pension withheld or not finally granted cannot be commuted because commutation is against payment of pension in future years. Similarly, as per this Rule, gratuity cannot be paid to the applicant unless pending disciplinary proceedings is decided.

18. We are also of the view that disciplinary cases are all individual cases based on detailed facts and evidence in each case. These are, therefore, to be decided on their individual merits. Accordingly, allegation of discrimination or violation of principle of equality and Articles 14 and 16 of Constitution of India and the argument that another officer has been granted the benefits being claim by the applicant does not hold good.

Each case is to be judged on its own merit. Parity in such cases cannot easily be drawn as facts and circumstances of each case, the role of the employees in misconduct as well evidence against them may vary from case to case. Hence, this ground put forth by the applicant is not found justified. As regards the case laws, the respondents' side has already quoted pronouncements by the Apex Court as well coordinate Bench of this Tribunal supporting the respondents' contention that there is no ground for interference by this Tribunal in the instant disciplinary case.

19. We also note that scope of judicial review in disciplinary proceedings is rather limited and in view of discussions in preceding paragraphs, we find that no ground for the same is made out by the applicant side.

20. We, therefore, find no justification for interference by this Tribunal in the matter. Accordingly, the OA is dismissed. No costs.

(Rakesh Sagar Jain)
Member – J

(Ajanta Dayalan)
Member – A

/pc/