

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

O.A.No.364/2017 & MA 203/2018

Dated Friday, the 1st day of February, 2019

PRESENT

Hon'ble Mr.R.Ramanujam, Administrative Member

&

Hon'ble Mr.P.Madhavan, Judicial Member

K.L. Thilakchand

Masti, 102, Ankur Grand Apartments

252, Poonamallee High Road

Kilpauk, Chennai – 600 010.

... Applicant

By Advocate M/s Menon, Karthik, Mukundan and Neelakantan

Union of India rep by

Secretary to Government

Ministry of Finance

Department of Revenue

Central Board of Direct Taxes

North Block, New Delhi 110 001.

... Respondent

By Advocate Mr. V. Vijay Shankar

(Order: Pronounced by Hon'ble Mr.R.Ramanujam, Member(A))

Heard. The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

“To set aside the charge memorandum F.No. 14011/13/07-V & L, dated 08.10.2007 issued by the respondent as being void ab initio and pass such further or other orders as may be deemed fit and proper.”

2. The grievance of the applicant is that Annexure A-1 charge memo issued against him dated 08.10.2007 under Rule 14 of the CCS CCA Rules, 1965 was being continued as proceedings under Rule 9 of the CCS Pension Rules, 1972 r/w Rule 14 of the CCS Conduct Rules, 1964. The respondents have passed Annexure A-5 order dated 18.12.2012 in this regard.

3. Learned counsel for the applicant would submit that prior to the issue of charge memo the applicant had sought voluntary retirement from service w.e.f 01.02.2007 through a notice dated 31.10.2006 under FR 56(k)(i). However, on the expiry of the notice period he was not allowed to retire. The respondents rejected the notice by an order dated 01.02.2007 on the ground that the applicant was not clear from vigilance angle. The applicant filed OA 723/2007 which was disposed of by an order of this Tribunal dated 28.04.2009 in which it was held that the applicant was “deemed to have been retired from service w.e.f 01.02.2007 and relieved from the deemed service on the afternoon of 01.06.2007”. The respondents were directed to disburse the retirement

benefits of the applicant with 8% interest and release the balance GPF along with interest as admissible under the PF rules.

4. The respondents challenged the order of the Tribunal in WP No.23472/2009 before the Hon'ble Madras High Court which dismissed the writ petition on 04.02.2010 along with the observation that during the pendency of the WP, the approval of the Hon'ble President had been conveyed to the acceptance of the notice of voluntary retirement of the applicant under FR 56 (k) (1) by an order dated 09.12.2009 and accordingly the applicant stood retired from service w.e.f 01.06.2007.

5. Learned counsel for the applicant would argue that in as much as the charge memo dated 08.10.2007 under Rule 14 had been issued after the deemed date of retirement of the applicant, it was a violation of the relevant rules as the applicant was no longer in service and his status was that of a pensioner as on that date. As such, the order passed subsequently in 2012 stating that the proceedings would continue under Rule 9 of the CCS Pension Rules, 1972 would be equally bad in law as the charge memo itself was non est and is therefore, liable to be quashed and set aside, it is contended.

6. Learned counsel for the respondents would, however, submit that the applicant's notice for voluntary retirement had not been accepted and a reply had been given to him stating that he was not clear from vigilance angle. As such the applicant could not escape disciplinary proceedings without being formally cleared of the charges. When the charge memo

dated 08.10.2007 was issued, the applicant was very much in service as the order of the Tribunal in OA 723/2007 had only been passed on 28.04.2009. Since the applicant was in service as on the date of issue of Annexure A-1 charge memo, the continuation of the proceedings under Rule 9 as per Annexure A-5 dated 18.12.2012 was wholly valid in terms of the relevant rules, it is contended.

7. We have considered the matter. It is not in dispute that this Tribunal allowed the applicant's claim in OA 723/2007 and directed that the applicant shall be deemed to have retired from service w.e.f 01.02.2007 and relieved from the deemed service on the afternoon of 01.06.2007. The respondents had challenged the order in the Hon'ble High Court of Madras in WP No.23472/2009 but without waiting for its disposal, passed an order dated 09.12.2009 accepting the notice of voluntary retirement of the applicant under FR 56 (k) (1) w.e.f 01.06.2007. The Hon'ble High court took cognizance of this development and dismissed the WP. Had the respondents been serious about pursuing the charge memo, they would not have passed a self defeating order when there were no interim directions of the Hon'ble High Court to accept the notice of voluntary retirement in the mean time.

8. Under the above circumstances, we are of the view that the respondents have only themselves to blame for the situation brought about by their order which rendered their WP against the order of this Tribunal infructuous. Their action made untenable Annexure A-1 charge

memo issued on 08.10.2007, even if otherwise justified, and ought to have been pursued as on such date the applicant was no longer in service and, therefore, no proceedings could have been taken under the CCS (CCA) Rules, 1965. The subsequent Annexure A-5 order dated 18.12.2012 does not stand the scrutiny of law either as it seeks to continue the proceedings under Rule 9 of the CCS Pension Rules, 1972 r/w Rule 14 of the CCS Conduct Rules, 1964. As Rule 14 charge memo in the case of the applicant was itself not sustainable in the light of his deemed retirement, the question of its continuation under the Pension rules could not arise. Even after the order of the Hon'ble High Court, the respondents could have dropped the Rule 14 proceedings and initiated Rule 9 proceedings afresh under the CCS Pension Rules, instead of allowing themselves to be under an illusion that the 2007 charge memo continued to be valid and could be converted into Rule 9 proceedings under the CCS Pension Rules three years thereafter.

8. In the light of the above, the applicant gets the benefit of the thoughtless action of omission and commission on the part of the respondents in processing the entire matter. The prayer to set aside the charge memo dated 08.10.2007 as ab initio void is granted. OA is disposed of. MA also stands disposed of.

(P.MADHAVAN)
MEMBERJ)

M.T.

01.02.2019

(R.RAMANUJAM)
MEMBER (A)