

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIAL BENCH**

OA 3338/2017

Reserved on 15.01.2019
Pronounced on 23.01.2019

**Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr.S.N.Terdal, Member (J)**

R.S. Sehrawat, Aged 66 Years,
S/o Late Shri Pyre Lal,
Retired Grade-1 (DASS) from
GNCT of Delhi.
R/o A-41, Nangal Dewat,
Vasant Kunj, New Delhi.

... Applicant

(By Advocate Mr. Yogesh Sharma)

VERSUS

Govt. of NCT of Delhi through
The Chief Secretary, Delhi Secretariat,
I.P.Estate, New Delhi. .. Respondent

(By Advocate: Mr. Kapil Agnihotri)

ORDER

(Hon'ble Mr. S.N.Terdal, Member (J):

We have heard Mr. Yogesh Sharma, counsel for applicant and Mr. Kapil Agnihotri, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In OA, the applicant has prayed for the following reliefs:

- "(i) That the Hon'ble Tribunal may graciously be pleased to pass an order quashing the impugned charge sheet dated 18.5.2017 (Ann.A/1), declaring to the effect that the same is illegal, unjust, arbitrary and against the rules and law of the land and consequently, the applicant is entitled for all the consequential benefits.
- (ii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant along with the costs of litigation."

3. This is a second round of litigation. The relevant facts of the case are that contemplating disciplinary proceedings against the applicant, an order keeping him under suspension was passed by the respondents on 28.02.2011. That was the last date of his service and he retired with effect from 28.02.2011. The applicant challenged the said suspension order by filing OA No. 1322/2012. This Tribunal vide its order dated 24.05.2013 held that the suspension order against the applicant had become ineffective as it was the date of his retirement. However, this Tribunal gave liberty to the respondents to proceed ahead departmentally under the provisions of relevant rules. Subsequently, the respondents issued charge sheet on 18.05.2017 for some alleged action on the part of the applicant taken during the year 2009 with ulterior motive and malafide intention in passing mutation with respect to land in Chhattarpur village. The article of charge is extracted below:-

"Article-1

That the said Sh. R.S.Sehrawat, Gr.1 (DASS) (now retired), while functioning as Naib-Tehsildar in Sub-Division Hauz Khas, during the year 2009, committed gross misconduct in as much as, with ulterior motive and malafide intention, he passed an order dated 22/06/2009 for mutation of land bearing Khasra No.307(0-10) in village Chhattarpur, New Delhi, in violation of the provisions of Delhi Land Revenue Act, 1954, the Delhi Land (Restriction on Transfer) Act, 1972 and administrative instructions thereon, extending undue favour to the private parties.

By the above acts of omission & commission, the aforesaid Sh.R.S.Sehrawat, Gr.1 (DASS) (now retired), exhibited lack of integrity and devotion to duty, which is unbecoming of a Govt. servant, thereby violating the provisions of Rule 3 of CCS (Conduct) Rules, 1964."

4. Along with the article of charge, statement of imputation of misconduct, list of witnesses and list of documents were served on the applicant. In this OA the applicant has challenged the charge sheet dated 18.05.2017 mainly contending that the charge sheet having been issued after his retirement but not in the name of the President of India as required under Rule 9 of the CCS (Pension) Rules. It is contended that it is only the President of India who can initiate departmental proceedings with respect to the retired employees. Counsel for the applicant also vehemently and strenuously contended that, as the incident is alleged to have happened in the year 2009, therefore, for the incident that has happened about four years back, charge sheet shall not be issued with respect to the retired employees under Rule 9(2)(b)(ii) of the CCS (Pension) Rules . The said rule is extracted below:

"9. Right of President to withhold or withdraw pension

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

2(b)(ii) shall not be in respect of any event which took place more than four years before such institution.."

In support of his contention, the counsel for the applicant referred to the judgment of Hon'ble High Court in the case of **UOI & Anr. Vs. S.K.Mathur & Anr.** (WP (C) 17221-22/2004 and others)

5. Counsel for the respondent equally vehemently and strenuously contended that as the applicant was suspended on 28.02.2011 when the applicant was still in service and the said order is not specifically set aside by this Tribunal vide its order dated 24.05.2013 and that

they have been given liberty to proceed with the departmental enquiry as per Rule, as such under rule 9(2)(a) read with rule 9(6)(a) of the above said pension rules the charge sheet is legally sustainable. The said Rule 9(2)(a) and 9(6)(a) are extracted below:

9(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.

9(6)(a). departmental proceedings shall be deemed to be instituted if the Government servant has been placed under suspension from an earlier date, on such date...."

We have perused the orders passed by this Tribunal. No specific order was passed setting aside the suspension order, though it is recorded that the suspension order is of no effect because as on that date the applicant retired. This Tribunal by the said order gave liberty to the respondents to proceed departmentally. The relevant portion of the said order is extracted below:-

“8. In the present case, it is very clear that the suspension order against the applicant became ineffective after his retirement. No chargesheet has been served on him till date and, therefore, there is no justification in withholding the benefit of MACP already granted to him as well as his retiral dues. We, therefore, allow this OA with direction to the respondents to grant him his retiral dues as well as benefits under the MACP Scheme which have already been sanctioned much earlier, within a period of two months from the date of receipt of a copy of this order. They are, however, free to proceed against him

departmentally treating him as a retired employee, under the provisions of the relevant rules."

This order has attained finality. In cases where the departmental proceedings are deemed to have been initiated before retirement by virtue of issuing suspension order under rule 9(6)(a) read with 9(2)(a), the only requirement is that after holding the departmental enquiry the findings of the departmental enquiry is required to be submitted to the President under the proviso to the said Rule 9(2)(a).

The said proviso is extracted below once again.

"9(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.

6. In view of the facts of the case and the provisions of the rules extracted and analysed above, we are of the opinion that the charge sheet dated 18.05.2017 which has been impugned in this OA does not call for any interference.

7. Accordingly, OA is dismissed. No order as to costs.

(S.N.Terdal)
Member (J)

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(Nita Chowdhury)
Member (A)