

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 904/2015
MA 836/2015

Reserved on 07.02.2019
Pronounced on 25.02.2019

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

Sh. Chander Dev
Retired School Inspector
S/o Late Sh. Makkhan Singh
R/o H.No. E-6/128, Sangam Vihar,
New Delhi-110080. ... Applicant

(By Advocate: Mr. Rama Shankar with R.S.Kaushik)

VERSUS

1. North Delhi Municipal Corporation
Through its Commissioner,
Dr. S.P.M. Civic Centre, Minto Road,
New Delhi.
2. Smt. Mamta,
Assistant Law Officer,
Vigilance Department,
North Delhi Municipal Corporation
Dr. S.P.M. Civic Centre, Minto Road,
New Delhi. ... Respondents

(By Advocate Mr. R.K.Jain)

O R D E R

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

We have heard Mr. Rama Shankar, counsel for applicant and Mr. R.K.Jain, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In this OA, the applicant has prayed for the following reliefs:
 - “8.1 Quash and set aside the impugned Charge sheet dated 18.12.2014

8.2 Direct the respondents to pay the cost of litigation to the applicant.

8.3. Pass any other order or direction which this Hon'ble Tribunal thinks fit and proper in the facts and circumstances of the case."

3. Though several facts have been stated in the Original Application as well as in the counter affidavit, but however the relevant facts of the case are that the applicant retired as on 31.12.2010. Way back in 1989, an enquiry was held. Subsequently a criminal case was also filed. After the applicant was convicted by the trial Court, he was dismissed from service by the respondents. But, however, after he was acquitted by the appellate Court, he was reinstated in service by the respondents. After his retirement once again on the same set of facts the impugned charge sheet was issued to the applicant, on the allegation that he had secured appointment on the basis of false/forged/fabricated ST certificate and regarding the same, an FIR was also registered against him. The charge is extracted below:-

"Shri Chander Dev, School Inspector (Retd.) while working as School Inspector in Education Department, City Zone, Delhi failed to maintain absolute integrity, devotion to duty and committed gross misconduct which was unbecoming of mpls. employee on the following counts:-

1. He got appointment of School Inspector as ST candidate by way of producing false/forged/fabricated certificate of ST at the time of initial appointment in MCD on 07.1.1983.
2. An FIR No.377/2005, P.S. Hauz Khas registered against him is pending trial in the Saket Court for issuing fake/bogus appointment letters in Edn.Deptt. South Zone without any authority.

He, thereby contravened Rule 3(1)(i)(ii) (iii) of CCS (Conduct) Rules, 1964 as made applicable to the employees of NDMC."

The same was communicated to him vide letter dated 26.12.2014 which he has challenged in this OA.

4. The counsel for the applicant vehemently contended in his written submissions that as the applicant was acquitted in the criminal case, departmental enquiry should not have been initiated. But however the counsel for the applicant, has not supported his contention on the basis of any rule, as such and also as there are catena of cases of the Hon'ble Supreme Court to the effect that the scope and the effect of both departmental enquiry and the criminal cases are different as such this contention cannot be countenanced. The counsel for the applicant further submitted that under the Pension Rules without the approval of the President, the respondents cannot start the departmental enquiry. The respondents in their counter affidavit at para 12 specifically stated that as the applicant was an employee of MCD and as such under the DoP&T OM dated 10.01.2013, the approval of the Commissioner in place of the President is the requirement and the case was placed before the Commissioner, who vide order dated 14.08.2014 gave the required approval for initiating departmental proceedings under CCS (Pension) Rule, 1972. The relevant portion is extracted below:

"... The above facts of the case were placed before the Commissioner, who vide his orders dated 14.8.14 observed that the applicant had got his job in Municipal Corporation on the basis of fake/bogus certificate as such his services are liable to be terminated in light of DoPT OM dated 10.1.2013. Since the applicant has already been retired from Municipal services after attaining the age of superannuation as such, his services cannot be terminated at this stage except initiation of Major Penalty proceedings CCS (Pension) Rule 1972."

5. The counsel for the applicant further vehemently submitted that the UPSC advice is mandatory before initiating the departmental enquiry. In support of this contention, he has relied upon the order of G.I. M.F., U.O. No.58-E, V (A)/59 dated the 7th February, 1959, in File No. 5, (9)-E, V/59.. The relevant portion of the order is extracted below:-

Consultation with U.P.S.C.- A question was raised whether the UPSC has to be consulted under Article 341-A, C.S.R (Rule 9) only in cases which involve Gazetted Officers, it was held in consultation with the Ministry of Home Affairs that the UPSC should be consulted in all the cases before final orders to withhold or withdraw a pension or any part of it in terms of this Article are passed. This is a measure of safeguard for pensioners. Similarly, the provision of departmental proceedings, if not instituted while the officer was on duty should not be instituted save with the sanction of President is also for the pensioner's safeguard."

6. From the perusal of the above said Government of India order, it is crystal clear that DPC advice is required to be taken only before passing the final order after the departmental enquiry. But, however, in the present case, departmental enquiry has not yet been started as such the above order of Govt. of India is not applicable at this stage. The counsel for the applicant in his written statement stated that the applicant has been honourably acquitted by the appellate Court, as such holding of the departmental enquiry is bad in law. In support of his contention, the counsel for the applicant relied upon the law laid down by the Hon'ble Supreme Court in the following judgments:

- (1) **G.M.Tank Vs. State of Gujarat** (2006) 5 SCC 466
- (2) **R.P.Kapur vs. Union of India** (AIR 1964 SC 787)
- (3) **Joginder Singh Vs. UT of Chandigarh and Others**
(2015)(2) SCC 377)

In those cases it was Hon'ble acquittal or there was no evidence at all for conviction in the criminal Court, whereas in the present case, the applicant was convicted by the trial court and from the close reading of the extracted portion of the judgment extracted by the applicant in his written submission, it is clear that the appellate court acquitted the applicant as the prosecution could not establish the guilt beyond reasonable doubt. In these facts and circumstances of the present case, the law laid down in the above said cases is not applicable.

7. The counsel for the applicant has submitted in his written submission to the effect that the impugned charge sheet has been issued after 4 years of his retirement and such issuance of charge sheet is not permissible under Rule 9 (b)(ii) of the CCS (Pension) Rules, 1972. But, the facts do not support this submissions, as the applicant retired on 31.12.2010 and the charge sheet is dated 18.12.2014 and it was served on him on 26.12.2014 as such it is within 4 years. Therefore, the bar of issuing charge sheet under the above said rule referred to by the counsel for the applicant is not applicable in this case. Further, the allegation in the charge sheet is that the applicant secured the job on the basis of a false ST certificate, though the departmental action on that basis was started way back in 1989 yet for some reason or other departmental proceedings were not held for the said alleged misconduct on the applicant until his retirement. In case the said alleged misconduct is established the applicant is only not entitled for appointment but he is also not entitled for pension. As such for these reasons as well, we are of the view that there is no bar in holding the departmental enquiry under Rule 9(b) (ii) of the above said Pension Rules.

8. In view of the above facts and circumstances, the action of the respondents for initiation of the departmental proceeding against the applicant by issuing the impugned charge sheet dated 18.12.2014 cannot be interfered with.

9. Accordingly, OA dismissed. No order as to costs.

(S.N.Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

'sk'

.....