

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIAL BENCH**

OA 3597/2016

Reserved on 17.01.2019  
Pronounced on 23.01.2019

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

Surinderpal Tanwar,  
Assistant Engineer (Retd.),  
S/o Late Shri Chhote Lal, Age 62 years,  
R/o WZ-80, Naraina,  
New Delhi-110028. ... Applicant

(By Advocate Mr. M.K.Bhardwaj )

**VERSUS**

1. South Delhi Municipal Corporation  
Through its Commissioner,  
Shiv Mandir Marg, Block G,  
Lajpat Nagar II, New Delhi-110024
  
2. Assistant Law Officer (ALO)  
South Delhi Municipal Corporation  
Vigilance Department, 26<sup>th</sup> Floor,  
Civic Centre, New Delhi. ... Respondents

(By Advocate: Mrs. Anupama Bansal )

**O R D E R**

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

We have heard Mr. M.K.Bhardwaj, counsel for applicant and Mrs. Anupama Bansal, 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:
  - "a) quash and set aside the impugned order dated 13.4.2016 passed by the Respondents against the Applicant:
  - b) any other or further order(s) as this Hon'ble Tribunal may deem fit and proper in the interest of justice.

3. This is a second round of litigation. The relevant facts of the case are that a memorandum was issued proposing to hold a departmental enquiry for not taking timely action during the period from 01.06.2011 to 16.04.2012 during his tenure against the unauthorized construction carried out in a property in Bhagirath Palace, Chandni Chowk by an order dated 13.04.2016. The statement of charge is extracted below:-

"Sh.S.P.Tanwar while working as AE (B) in City Zone in unified Corporation was also looking after the work of EE(B) during the period 3.e.f. 01.06.2011 to 28.07.2011, 29.09.2011 to 09.10.2011 and again from 08.02.2012 to 16.04.2012. He failed to maintain absolute, integrity devotion to duty and committed gross misconduct on the following counts:-

1. He failed to get stopped/demolished the unauthorized construction of 29 shops at SF carried out in property no. 1526, Bhagirath Palace, Chandini Chowk at its initial/ongoing stage.
2. He also failed to get booked the said unauthorized construction for taking action u/s 343/344 of DMC Act.
3. He also failed to get initiated action for sealing the unauthorized construction u/s 345-A of DMC Act.
4. He also failed to get initiated action for prosecution of the owner/builder u/s 332/461 or 466-A of DMC Act.
5. He also failed to exercise proper supervision and control over the functioning of Sh. Vikas Meena, JE who did not take proper and timely action against the unauthorized construction.

He thereby, contravened Rule 3(1) (i) (ii) & (iii) and 3(2) (i) of CCS (Conduct) Rule, 1964, as made applicable to the employees of SDMC."

As the applicant retired on 31.03.2013, he had earlier filed OA No.1423/2015 seeking retiral dues. However, at the time of hearing the charge sheet, which is subject matter of this OA was also referred to and ultimately this Tribunal vide its order dated 05.08.2016 directed the respondents to complete the pending disciplinary proceedings

against the applicant within four months from the date of receipt of the order. The relevant portion of the order is extracted below:

“9. In the circumstances, the OA is disposed of with a direction to the respondents to complete the pending RDA against the applicant and to pass final orders thereon, within four months from the date of receipt of a copy of this order, failing which they shall release all the retiral benefits of the applicant.”

4. The applicant filed the present OA on 7.10.2016 without waiting for the four months time granted by this Tribunal, by the above said order dated 5.08.2016 to the respondents to complete the departmental enquiry. In the present OA the contention of the applicant is that the above stated charge sheet is hit by the provisions of Rule 9(2)(b)(ii) of the CCS (Pension) Rules, 1972. The said Rule is extracted below:-

**“Rule 9. Right of President to withhold or withdraw pension**

9(2)(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment.

xxx                   xxx                   xxx

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

But, however, from the close perusal of the records, it is clear from the charge sheet issued that the misconduct was alleged to have been committed during his tenure between 01.06.2011 to 16.04.2012, whereas the charge sheet was issued on 13.04.2016, as such the alleged conduct is not older than 4 years.

5. The counsel for the applicant vehemently and strenuously contended referring to the statement of misconduct that the alleged misconduct was alleged to have been committed on various dates

earlier than 16.04.2012 and also as it was served on him in the month of May, 2016, as such, on that basis he submitted that it should be treated as more than four years before the date on which the charge sheet was issued. He has further submitted that this Tribunal in the said OA referred to above vide order dated 05.08.2016 directed the respondents that departmental enquiry should be completed within four months, but however, the respondents have taken two years to complete the departmental enquiry and passed the final order on 09.03.2018, as such, the impugned charge sheet issued on 13.04.2016 requires to be set aside. From the perusal of the records, we are of the opinion that the charge sheet was not issued after 4 years of the alleged misconduct. As such the charge sheet is not hit by the provisions of above referred Rule 9(2)(b)(ii) of the CCS (Pension) Rules.

6. The counsel for the respondents has produced an order dated 09.03.2018, from the perusal of which it is clear that the departmental proceedings initiated against the applicant pursuant to the charge sheet issued vide order dated 13.04.2016 has attained finality in imposing the penalty on the applicant. In view of the order dated 09.03.2018, the present OA has also become infructuous.

7. In view of the facts and circumstances narrated above, the charge sheet is not hit by Rule 9(2)(b)(ii) of the Pension Rules.

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

**(S.N.Terdal)**  
**Member (J)**

'sk' ...

**(Nita Chowdhury)**  
**Member (A)**