

**Central Administrative Tribunal
Principal Bench**

**OA No.1115/2018
MA No.709/2019**

New Delhi, this the 1st day of April, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Janak Raj (Aged about 61 ½ yrs. Group 'A'),
S/o (Late) Sh. Dhannu,
R/o H.No.1174, Village & Post Office:
Dichaon Kalan, Najafgarh,
New Delhi-110043

[Presently retired as EE (Civil)
From Delhi Development Authority]

...Applicant

(By Advocate : Shri R.A. Sharma)

Versus

1. Delhi Development Authority,
Through its Vice-Chairman,
Vikas Sadan (B-Block) 1st Floor,
Near I.N.A., New Delhi-110023.
2. Vice Chairman,
D.D.A.,
Vikas Sadan (B-Block), 1st Floor,
Near I.N.A., New Delhi-110023.

...Respondents

(By Advocate : Shri Shalok Chandra)

ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman :-

The applicant worked as Executive Engineer in the Delhi Development Authority (for short, DDA), the first respondent herein. He retired from service on

31.07.2016, on attaining the age of superannuation. A charge memo was issued to him on 19.01.2018, alleging two acts of misconduct. It was mentioned that the applicant moved a proposal for extra item payment aggregating to Rs.8,55,46,448/-, and on account of the same, the organisation incurred a loss of Rs.2.99 crores. It was also alleged that the applicant submitted a statement of rainy days on 15.10.2013, in relation to certain works entrusted to the contractors and that the same constituted the basis for arbitration, resulting in an award amounting to Rs.1,00,06,354/-.

2. The applicant submitted an explanation denying the charges. He raised objection as to the maintainability and legality of the charges. According to him, the CCS (Pension) Rules, 1972, are applied to the services and Rule 9 thereof permits for initiation of disciplinary proceedings against a retired employee only in respect of events that have taken place not later than four years, prior to the issuance of charge sheet. He denied the charges on merits also. Not satisfied with that, the disciplinary authority appointed the inquiry officer.

3. This OA is filed challenging the charge memo dated 19.01.2018. The principal contention raised in the OA is that the charge memo is barred by the time limit, stipulated under Rule 9 of the Pension Rules. On merits also, the contents of the charges are disputed.

4. The respondents filed counter affidavit opposing the OA. It is stated that the applicant initiated a proposal on 16.01.2014, and such a proposal was approved and cleared by the Chief Engineer on 27.01.2014, and it is thereafter, that the loss that occurred to the department was noticed. It is stated that if the date of the approval submitted by the applicant is taken into account, the event is within four years from the date on which the charge memo was issued.

5. In relation to the second article of charge, it is stated that the impact of the statement issued by the applicant, as regards non rainy days, resulted in loss only when it was accepted in the arbitration proceedings and in that view of the matter, the proceedings were initiated within time.

6. We heard Shri R.A. Sharma, learned counsel for applicant and Shalok Chandra, learned counsel for respondents, at length.

7. It is not in dispute that the applicant worked as Assistant Engineer (AE) with the 1st respondent organisation in the year 2014 and he discharged certain functions attached to that post, at the relevant point of time. He retired on 31.07.2016 and nearly after 1½ years, the charge memo was issued on 19.01.2018. The charges read as under :-

“Article 1:-

That the said Sh. Janak Raj, while working as AE, Dwk/DDA had initiated and forwarded extra item statement no.1 for *“Providing and laying bitumen mastic wearing course (as per specifications) with industrial bitumen of grade 85/25 conforming to IS:702, prepared by using mastic cooker and laid to required level and slope, including providing antiskid surface with bitumen pre coated fine grained hard stone chipping of approved size at the rate of 0.005 cum per 10 sqm and at approximate spacing of 10cm centre to centre in both directions, pressed into surface protruding 1 to 4mm over mastic surface, including cleaning the surface, removal of debris etc. all complete (considering bitumen using 10.2% as per MORTH specifications). (a) 40mm Thick”*, in the existing agreement no. 13/EE/SWD-7/DDA/2013-14, for approval to the Competent Authority. The rate of extra item no.1 was computed by him as

Rs.1581.85 per sqm. on market rate basis and EIS No.1, amounting to Rs.8,55,46,448/- was forwarded for sanction to senior officers, without assessing the prevailing market trend. The EIS was subsequently approved for Rs.8,43,62,096/- at the unit rate of Rs.1559.95 per Sqm. by the CE(Dwk.) the competent authority as per financial powers delegated to him without assessing the prevailing market trend. This has resulted in undue benefit to the agency and DDA had suffered monetary loss of amounting to Rs.2.99 Crore.

Article-2

That the said Sh. Janak Raj EE(C) (Retd.) while he was working as AE(C)/SWD-7, DDA and posted on the cited work had verified the hinderance in Hinderance Register with regard to rainy days for the period from 9.7.2013 to 15.10.13 (99 days) in one go as recorded by the then JE/SWD-7. Sh. Janak Raj the then AE did not persue/verify regarding non-rainy day falling in between the above period which would not have made part of hinderance. He had also initiated and forwarded the case for extension of time with the recommendation, "*without levy of compensation*" to the next higher authority and the same was subsequently granted extension of time to the agency without levy of compensation by the Competent Authority. This has led to the award by Arbitrator for the extended period to the agency on account of clause 10C & 10CA and on a/c of compensation for under utilization of infrastructure, establishment and machinery etc. of the contract for an amount of Rs.1,00,06,354/- (Rs. One crore Six thousand three hundred fifty four only) which caused financial loss to DDA."

8. In the first charge, it was mentioned that on account of submission of proposals by the applicant for a sum of Rs.8,55,46,448/-, the DDA suffered, loss to the extent of Rs.2.99 crores. In the second charge, it is stated that the statement of non-rainy days submitted on 15.10.2013, covering 99 days, constituted basis for an award wherein a sum of Rs.1,00,00,000/- was awarded.

9. Here, we are not concerned with the contents or merits of the charges. In fact, the truth or otherwise of the charges, needs to be decided in the departmental inquiry. The principal ground raised by the applicant is that the charge memo is barred by time, stipulated under Rule 9 of Pension Rules.

10. The Pension Rules are made applicable to the services in the DDA. Rule 9 thereof, permits the President, and in the instant case, the appointing authority, to withhold or withdraw the pension of the retired employees. The Rule 9 2(b) becomes relevant in this regard. It reads as under:-

“(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.”

11. The whole controversy is about reckoning of the period of four years. If the date, on which the applicant submitted the proposal, namely, 16.01.2014 is taken as the point of time from which the period of four years is to be reckoned, the charge sheet is outside the limit by three days. If on the other hand, the date on which, the proposal submitted by the applicant was approved by the Chief Engineer, namely, 27.01.2014 is taken into account, the charge sheet is within the time limit, stipulated under Rule 9. The same situation arises in respect of the charge in Article 2 also.

12. The word 'event' occurring in Rule 9(2) is not defined anywhere in the Rules. Though the learned counsel for applicant places reliance upon the judgement of this Tribunal in **V.C. Pande, IAS and Others Vs. Union of India & Ors.** (1996) 34 Administrative Tribunals Cases 214, we do not get any support from it. The judgment in **State of UP and Another Vs. Shri Krishna Pandey** (1996) 9 SCC 395, is also not of immediate relevance, in this behalf.

13. The word 'event' occurring in Rule 9 is almost akin to the expression 'cause of action', which is relevant in the civil cases. It is in the form of a bundle of facts, which give rise to a particular consequence or situation. It would be difficult to restrict the meaning of 'event' to a particular date, in universal manner. In certain cases, the event can be said to have taken place on a particular date. However, instances are not lacking, where the entire episode is covered on a series of developments and in such cases, it would be difficult to identify the event, with reference to any specific date.

14. Another way of looking at it is whether the applicant can be said to have resorted to acts of misconduct by

mere fact of submission of proposal on 16.01.2014. The proposal does not, by itself, lead to any obligation on the part of the DDA, to part with amounts. It is only when the approval is accorded by the higher authority, that the event becomes complete, in the form of the payment of amount to the concerned person. Viewed from that angle, the event, which resulted in loss of about Rs.3,00,00,000/- to the DDA comprises are; (a) act of initiation of proposal by the applicant; (b) the one of forwarding of the same by the Executive Engineer; and (c) the approval of the same by the Chief Engineer. None of these acts can be viewed in isolation from the other.

15. The record discloses that all the Engineers, at various levels, who were responsible for sanctioning of such a huge amount, namely, the Chief Engineer, Executive Engineer and Assistant Engineer, were issued charge memos on the same date.

16. There is yet another way of looking at the issue. Whatever may have been the date on which an act of misconduct has been resorted to, the impact thereto can be noticed only when it is felt. Take for instance, an employee had accepted illegal gratification in the course

of discharge of his duties and it was not noticed for about five years, and in the meanwhile, he retired from service. In such a case, the period of four years referable to Rule 9, needs to be reckoned from the date on which such act came to be known, and not the one on which it occurred.

17. As regards second article also, the impact of the statement submitted by the applicant came to be felt only when the award was passed. Though the act of submission of such a statement could have constituted the basis for initiation of proceedings subject to further verification, there is nothing in law, which prevents initiation of the proceedings.

18. The objective of the prescription of four years limit is to ensure that the stale issues are not dug up to harass retired employees. However, the provision cannot be pressed into service, to scuttle the proceedings, which are otherwise within time, legal and where serious public interest is involved .

19. We do not find any merit in the OA. It is, accordingly, dismissed.

Pending MAs, if any, also stand disposed of.

There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

‘rk’