



In The Central Administrative Tribunal,

Calcutta Bench Kolkata

O.A No. 350/883/2017

Nagesh Rai, ex permanent Mazdoor Ex No. 6402655, residing at RR Trevedi's Building, Near Victoria Biscuit Factory, Ward No. - 24, Malancha Road, Kharagpur, Dist. - West Medinipur, PIN-721301, West Bengal.

Applicant

-VERSUS-

M *the Secretary*

1. Union of India through Ministry of Defence, South-Block, New Delhi. -1
2. The commandant, 413 Petroleum Platoon, ASC, Guwahati, PIN-905413.
3. The Lieutenant Colonel Officer Commanding 413 Petroleum Platoon, ASC, Guwahati PIN-905413.
4. The commanding officer, 413 Petroleum Platoon, Salimpur, ASC, Guwahati, PIN-905413.
5. The Controller Defence Account Fund Merath Cant, Merath, PIN-250001.

Respondents

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

OA/350/883/2017

Date of Order: 29.08.2019

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Nagesh Rai

.....Applicant

Vrs.

Union of India & Ors.Respondents

For the Applicant(s): Mr. M.S.S.Rao, Counsel

For the Respondent(s): Mr. P. Mukherjee, Counsel

ORDER(ORAL)

Bidisha Banerjee, Member (J):

The applicant, in this O.A., has assailed initiation of proceedings vide charge memo dated 09.09.2016. In this O.A. he has sought for the following reliefs:

- i) To quash the letter dt. 13/04/16 of Major, Preliminary Investing Officer & ASC, Guwahati;
- ii) To quash the letter No.209/NR/ST-12(iv) dt. 29/09/16 issued by Officer commanding 413 Petroleum Platoon, ASC;
- iii) To quash any letters issued in respect of departmental proceedings;
- iv) To quash the memorandum of charge memo under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules 1965 issued by officer commanding 413 Petroleum Platoon ASC and Appointing Officer;
- v) To direct the Respondent authorities to pay the settlement dues/retiral benefits to the applicant from the date of retirement alongwith interest;
- vi) To direct the Respondent authorities to fix the superannuation pension and to pay the same with arrears alongwith interest accrued from the date of superannuation till finalization of the case;

vii) Any other relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case may be given in favour of the applicant."

2. The grievance of the applicant, in a nutshell, is that he retired from service on superannuation on 31.07.2013 and, almost three years thereafter, a charge sheet dated 29.09.2016 was served with a clear indication that the Disciplinary Authority being an Officer Commanding initiated proceedings under Rule 14 of the CCS(CCA) Rules, 1965 against the retired employee; to whom Rule 9 of Pension Rules applies for the purpose of initiation of disciplinary proceedings. An extract of Rule 9 of the CCS (Pension) Rules, 1972 would be relevant for bringing clarity to the claim of the applicant, which is as under:

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

[(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement :

Provided that the Union Public Service Commission shall be consulted before any final orders are passed :

Provided further that where a part of pension is withheld or withdrawn the amount of such pensions shall not be reduced below the amount of (Rupees three thousand five hundred) per mensem.]

(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.

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| | | (b) <i>The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment, -</i> |
| | | (i) <i>shall not be instituted save with the sanction of the President,</i> |
| | | (ii) <i>shall not be in respect of any event which took place more than four years before such institution, and</i> |
| | | (iii) <i>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.</i> |

(3) deleted.

(4) *In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 69 shall be sanctioned.*

(5) *Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.*

(6) *For the purpose of this rule,*

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| | | (d) <i>departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and</i> |
| | | (b) <i>judicial proceedings shall be deemed to be instituted -</i> |
| | | (i) <i>in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made, and</i> |
| | | (ii) <i>in the case of civil proceedings, on the date the plaint is presented in the court.</i> |

Ld. Counsel for the applicant would contend that in terms of Rule 9 Sub Rule 2(b) proceedings against a pensioner cannot be instituted;

(i) *save with the sanction of the President.*

and

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

Whereas in the present case, giving a complete go by to Rule 9 of CCS (Pension) Rules, the Disciplinary Authority has initiated proceedings under Rule 14 of the CCS(CCA) Rules, which applied to the applicant while he was in service. Therefore, Ld. Counsel would seek quashment of the chargesheet.

3. Ld. Counsel for the respondents, in their reply, strongly refuted the claim having said as under:

"As per Rule 9(b)(i) of CCS(Pension) Rules, 1972 sanction of the President was required in order to proceed against the applicant and hence the matter was taken up with the Directorate General of Supply & Transport, Integrated Head Quarters of Ministry of Defence (Army) and a direction to institute disciplinary action against the applicant has been received from Disciplinary Authority vide letter No. 78603/2/Q/ST-12(Civ) dated 10 July 2018 under rule 9(b) of CCS(Pension) Rules, 1972, which is under process."

Copy of the letter issued from the office of the Director General of Supplies & Transport, Quarter Master General's Branch, Integrated HQ of MoD (Army), Sena Bhawan, New Delhi dated 10.07.2018, which is self explanatory, has been annexed as Annexure-R/2.

However, the fact remains that the proposal for initiating departmental action against the applicant, Mazdoor of 413 Pet Pl ASC, who retired on 31.07.2013, was submitted to MoD/D (QS), to obtain sanction of the Hon'ble President under sub-clause (i) of clause (b) of sub rule (2) of Rule 9 of the CCS(Pension) Rules, 1972 and to authenticate the orders on behalf of the

President, by signing the sanction letter as per the standard form prescribed under Rule 9, by an officer in the Ministry of Defence authorized under Article 77(2) of the Constitution.

Ministry of Defence observed that as per Scheduled-V of the CCS(CCA) Rules, 1965, QMG has the power of Disciplinary Authority for Group-C Civilian Post. Hence, it has been directed on approval of JS(Army), that the appointing authority should take action against the applicant, being the Disciplinary Authority.

Since the power of Disciplinary Authority has been delegated to Commandant in respect of officers of Army Services Corps vide Presidential Order No. 5(10)/79/D(Lab) dated 10.08.1979, OC 413 Pet PlASC is directed to take departmental action against Shri Nagesh Rai, Mazdoor, under clause (i) of clause (b) of sub Rule (2) of Rule 9 of the CCS(Pension) Rules, 1972, being the disciplinary authority for Group-C Civilian Post."

A bare perusal of the aforesaid would demonstrate that the departmental proceeding vide charge memo was initiated against a pensioner by the regular Disciplinary Authority under CCS(CCA) Rules and not under the Pension Rules by the President or with the Presidential sanction or even in the name of the President, as nothing has been placed on record.

Admittedly and irrefutably, the proceedings were initiated by an authority empowered to act as Disciplinary Authority under CCS(CCA) Rules that applies to one in service and not by the authority empowered to initiate proceedings against a pensioner, under Pension Rules, which constituted a glaring defect in the institution of the proceedings. The proceedings were thus *ab initio* void. The

statutory safeguards provided to pensioners could not have been overlooked in the manner it has been done in the present case.

4. We have heard Ld. Counsel for both parties and perused the materials on record.

5. We note that on retirement from service a public servant does no longer remain a public servant. He does not perform any duty nor is he amenable to any disciplinary authority. There is cessation of master and servant relationship between the State and the retired employee. He cannot be imposed any of the scheduled penalties enumerated in the service rules. On retirement of a public servant, the State at once becomes liable to pay all the retiral dues to the retired employee. His right to receive pension cannot be interfered with, unless the pensioner is found guilty of a serious crime in a criminal case or found to have committed grave misconduct in a departmental proceedings. However, there are statutory provisions which make the payment of pension subject to good conduct. It is also possible to continue with a departmental proceedings against an employee after his retirement during such proceedings, or to initiate such proceedings against a retired employee who, during the period of his service, committed acts of grave misconduct or negligence. To facilitate continuation or initiation of the departmental proceedings after retirement, deeming provisions have been incorporated in the CCS(Pension) Rules, 1972 or its equivalent rules.

Although, a pensioner is no longer a government servant, by drawing his monthly pension, which is provided by the exchequer, a pensioner still keeps a relation with the Government. For this purpose he remains under the control of the appointing authority or President, who has power under the Rules to deny

him either in full or in part his pension or contingencies specified in the relevant Pension Rules.

To safeguard the interest of a pensioner to lead a peaceful and hassle free life, a charge sheet after retirement requires Presidential sanction before its issue. This requirement is statutorily provided in Rule 9(2)(b) of the CCS (Pension) Rules 1972 and other corresponding statutes. Such charge sheet can be made only in respect of grave misconduct or negligence alleged to have been committed within a period of 4 years before its institution.

6. Inasmuch as a regular Disciplinary Authority has been divested with the power to initiate proceedings against a retired government employee by virtue of Sub Rule (2)(b) of Rule (9) of CCS(Pension) Rules and in view of the fact that the charge sheet has been evidently and irrefutably issued in terms of Rule 14 of the CCS(CCA) Rules by a regular Disciplinary Authority and not in terms of Rule 9 Sub Rule(2(b) clause (i) of CCS(Pension) Rules, as also in view of the clear admission on the part of the respondents that the delegation of power, if any, was received on 10.07.2018, i.e. long after initiation of the proceedings vide charge memo dated 29.09.2016, the charge sheet impugned in the present O.A. is quashed with liberty to the respondents to act in accordance with law.

7. With the aforesaid observation and direction, the O.A. stands disposed of.

No costs.

(Dr. Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member(J)

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