

CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH, R A N C H IREGN. NO.: OA/051/00867/2018Date of Order:- 09.05.2019C O R A M

HON'BLE MR. JAYESH V.BHAIRAVIA, MEMBER (JUDL.)
HON'BLE MR. DINESH SHARMA, MEMBER (ADMN.).

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Arun Kumar Gupta, retired General Manager (Finance), Regional office, Ranchi. Housing and Urban Development Corporation Ltd., New Delhi. Resident of Plot No.72, New AG Co-operative Colony, Kadru, PO-Doranda, PS-Argora, District-Ranchi, Jharkhand-834 002.

.....Applicant.By Advocate:- Shri M.N.Thakur.

Vs.

1. Chairman and Managing Director, Housing and Urban Development Corporation Ltd., Core 7A, HUDCO Bhawan, India Habitat Centre, Lodhi Road, New Delhi-110 003.
2. Chief Vigilance Officer, Housing and Urban Development Corporating Ltd., Core 7A, HUDCO Bhawan, India Habitat Centre, Lodhi Road, New Delhi-110 003.
3. J.Prem Nawaj, Executive Director (Human Resource Development), Housing and Urban Development Corporation Ltd., Core 7A, HUDCO Bhawan, India Habitat Centre, Lodhi Road, New Delhi-110 003.
4. H.T.Suresh, Executive Director (Retail Finance)/Inquiry Officer, Housing and Urban Development Corporation Ltd., Core 7A, HUDCO Bhawan, India Habitat Centre, Lodhi Road, New Delhi-110 003.

.....RespondentsBy Advocate:- Shri Prabhat Kumar, Standing Counsel.O R D E R (ORAL)

Dinesh Sharma, Member (Admn.) :- The case of the applicant is that disciplinary proceeding has started against him just before his retirement in the year 2018 for alleged lapses which occurred in the years 2007/2008. Such delayed disciplinary action is against the decisions of the Hon'ble Supreme Court of India where the Apex

Court has held that initiating action for matters which are more than ten years old without any justifiable reason is not correct. The applicant has also challenged withholding of his leave encashment and gratuity amount as being against the decision of the Hon'ble Apex Court in the **State of Jharkhand vs. Jitendra Kr. Srivastava [(2013) 12 SCC 210]**. The applicant has also questioned initiation of action against him while sparing the other members of the Appraisal Committee who were also parties to the decision for which a punitive action is taken against the applicant. The applicant has also alleged that the matters for which action is being taken now were already enquired into earlier and the new action amounts to double jeopardy.

2. The respondents have filed their written statement in which they have denied the claims made by the applicant. They have alleged that the respondents are well within their rights to initiate action against the applicant under the Conduct, Discipline & Appeal Rules of HUDCO, 1976. They have alleged that the OA is premature since the respondents have only initiated a disciplinary action and no final orders have been passed. The respondents have also denied having taken earlier action for the same wrong doing as the earlier action related to different set of lapses by the applicant. The respondents also quoted the decision of the Apex Court in **Executive Engineer, Bihar State Housing Board vs. Ramesh Kumar Singh** to support their argument about the applicant's case being premature.

3. We have perused the pleadings and heard the learned counsel of both the parties. During the course of the argument the learned counsel for the applicant cited the decision of the Apex Court in **State of Madhya Pradesh vs. Bani Singh & Anr., P.V.Mahadevan vs. M.D.Tamil Nadu Housing Board, and State of Andhra Pradesh vs. N.Radhakrishna.** All these cases support the argument of the applicant about unexplained delay in initiating disciplinary action being a valid ground for quashing such proceedings. The counsel for the applicant also argued that not allowing payment of the amount of leave encashment was not permissible according to the decision of the Supreme Court in **State of Jharkhand vs. Jitendra Kr. Srivastava.**

4. After going through the pleadings and hearing the arguments, it is clear that though the charges framed against the applicant relate to his alleged failing in his duties in the years 2007/2008, the full implications of these failures were felt later and the respondents had to suffer huge losses because of not being able to recover the loans granted in those years. The respondents have initiated the disciplinary action before the applicant retired and their rules permit retention of retiral benefits, excluding what is applicant's own money (GPF). The applicant did participate in the enquiry at the beginning of the enquiry but has stopped cooperating with it as the detailed time lines given in the written statement clearly shows. At this stage, when the disciplinary proceedings are half way through, stopping it on account of alleged delay in initiating these proceedings will amount to aborting a process of disciplinary action without taking it to its

logical conclusion. It is clear that all the charges relate to sanctioning of loans without following proper procedure. The charges also show the amount of loss which the respondents might suffer because of huge defaults discovered under these loans upto the year 2017. Thus, the decisions of the Hon'ble Apex Court do not directly apply to the facts of this case where the gravity of the charges against the applicant was fully realised only after large scale defaults occurring against those loans. The argument of the applicant about not taking action against other persons responsible is also illogical and cannot come to the defence of any wrongful action on the part of the applicant if it is proved to be so after the conduct of the enquiry.

5. Hence, taking into account all these factors, we are not inclined to grant the prayer of the applicant for quashing the enquiries initiated against the applicant at this stage. Since the applicant has already retired it would, however, be appropriate to direct the respondents to finish the inquiry as expeditiously as possible and not later than 90 days from the date of receipt of this order. In case, the enquiries are not concluded by that time, the respondents would release all his retiral benefits without any delay.

Regarding the request of the applicant for release of amount of leave encashment, we feel that this is an entitlement which he has earned and as directed by the Hon'ble Apex Court in the Jitendra Kumar Srivastava case cited above, this should not be retained on ground of the pending disciplinary action. We, therefore, direct

immediate payment of leave encashment amount without waiting for the completion of the above enquiry.

The OA is disposed of accordingly.

(Dinesh Sharma)
Member (Admn.)

(Jayesh V.Bhairavia)
Member (Judl.)