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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.2971/2003

This the 10th day of March, 2004

BENCH :

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

HON'BLE SHRI S.A. SINGH, MEMBER (A)

Sh. S.K. Mathur

Sh. N. Safaya

vs.

Union of India & Ors.

Ms. Harvinder Oberoi

- 1) Whether to be referred to Reporter? YES ✓
- 2) Whether to be circulated to other Benches? YES ✓
- 3) Whether to be released to Press? NO

S. Raju
(SHANKER RAJU)
Member(J)

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-2971/2003

New Delhi this the 10th day of *March*, 2004.

Hon'ble Sh. Shanker Raju, Member(J)
Hon'ble Sh. S.A. Singh, Member(A)

Shri S.K. Mathur,
Ex-Chief Producer,
Under Directorate General,
Doordarshan,
Presently resident of
211, Mavilla Apartments,
Mayur Vihar, Phase-I,
Delhi-91.

.... Applicant

(through Sh. N. Safaya, Advocate)

Versus

1. Union of India through
its Secretary,
Information & Broadcasting,
Shastri Bhawan,
New Delhi-1.

2. Under Secretary,
to the Government of India,
Ministry of Information &
Broadcasting, 'A' Wing,
Shastri Bhawan,
New Delhi-1.

3. Sh. S.M. Lal,
Commissioner of Departmental
Inquiries, Central Vigilance
Commission, GPO Complex,
I.N.A., New Delhi-23.

.... Respondents

(through Mrs. Harvinder Oberoi, Advocate)

ORDER (Oral)

Hon'ble Sh. Shanker Raju, Member(J)

The applicant impugns respondents' order dated 21.10.2002 as well as disciplinary proceedings initiated vide Memorandum of even date. He has sought quashing of the above with all benefits. By an order dated 9.12.2003 further disciplinary proceedings are stayed. Applicant while working as Chief Producer was to

superannuate on 31.8.2000. He was placed under suspension by an order dated 28.8.2000 issued in the name of the President and was served upon him on 30.8.2000.

2. By a letter dated 21.10.2002 post retirement sanction has been accorded by the President to initiate the disciplinary proceedings which culminated into a Memorandum dated 21.10.2002 wherein the applicant has been alleged to have misconducted pertaining to the period 1977-98 admittedly, an event more than 4 years old from the date of sanction accorded by the President. The aforesaid memorandum is assailed by the applicant.

3. Learned counsel of the applicant referring to Rule 9(2)(b) of the CCS(Pension) Rules, 1972 contends that the disciplinary proceedings are without jurisdiction as the sanction of the President has been accorded on 21.10.2002 whereas the event had taken place 4 years earlier which bars institution of proceedings.

4. According to learned counsel sub-rule 6 of Rule 9 ibid where the departmental proceedings are deemed to be instituted in respect of a government servant from the date when the suspension does not apply to a case of pensioner. According to him by giving an interpretation in case of pensioner as to deemed institution from the date of suspension of the disciplinary proceedings would render the other

provisions i.e. Rule 9(2)(b) as redundant and in the light of the contextual and harmonious construction such an interpretation is misconceived.

5. Sh. Safaya, learned counsel further states that under CCS(Pension) Rules a government servant is not defined. However, this definition is forthcoming in CCS (CCA) Rules which does not include a pensioner. However, under Rule 22 of CCS(CCA) Rules, 1965, a government servant only for the limited purpose can prefer an appeal against the penalty of removal, dismissal or compulsory retirement having ceased to be in government service.

6. Learned counsel further states that the Division Bench of Karnataka High Court in the case of State of Karnataka Vs. R.S. Nail (1983(3)SLR 285 as well as Madras Bench of the Tribunal in S. Ramanujam Vs. Commissioner for Departmental Inquiries & Ors. (1986(4)SLR 530) clearly held that once a government servant is permitted to retire, the order of suspension lapses and the entire period is to be treated for full pay and allowances. It is stated under Rule 9 that sanction of the President is sine qua non and chargesheet follows the sanction. It is the sanction which is the initiation of disciplinary proceedings and as such the sanction is to be accorded within 4 years. Accordingly, in the instant case the deemed suspension would be from the date of issue of the chargesheet i.e.

21.10.2002 and as it is not disputed by the respondents that the event on which the misconduct is alleged is beyond 4 years from the institution of the proceedings memorandum is liable to be quashed.

7. Respondents counsel Mrs. Harvinder Oberoi vehemently opposed the contentions and stated that as per sub-rule (6) of Rule 9, as the applicant was placed under suspension on 28.8.2000, the same would be deemed institution of proceedings as it falls within 4 years of the event the disciplinary proceedings are valid as per the rules *ibid*.

8. Mrs. Oberoi further states that the applicant superannuated on 31.8.2000 while under suspension and it is only for the purposes of provisional pension under sub-rule (6) f Rule 9 he has been paid the same under the pension rules *ibid*. The applicant retired on 31.8.2000 while under suspension.

9. In the rejoinder the applicant has reiterated his pleas.

10. The issue relevant for our consideration in the present case is whether sub-rule 6(a) of Rule 9 of CCS (Pension) Rules, 1972 in so far as deemed institution of disciplinary proceedings from the date of suspension would apply in the case of pensioners also?

11. It is also to be ascertained whether the prior sanction of the President when the proceedings could not be instituted against a government servant while in service after his retirement can be accorded in respect of an event which took place more than 4 years before such an institution?

12. For the clarity of things it is relevant to quote the concerned rule:-

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 pension shall not be reduced below the amount of rupees three hundred and seventy-five (Rupees one thousand two hundred and seventy-five from 1-1-1996 - See GID below Rule 49) 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.

(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.

(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 92), 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,-

(a) 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

(b) judicial proceedings shall be deemed to be instituted-

(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

(ii) in the case of civil proceedings, on the date the plaint is presented in the Court.

13. We have carefully considered the rival contentions of the parties and perused the material on record. Basic rule of interpretation has been crystallised by the Apex Court in several pronouncements. Among the various modes to interpret the provisions and construction are contextual construction, harmonious construction, literal construction and purposive construction. However, one thing is to be kept in mind while interpreting a provision, the object sought to be achieved is to be kept in mind and also that the provision should not be rendered redundant or negatory by such interpretation.

14. The admitted facts are that the applicant was placed under suspension while in service on 28.8.2000 but was allowed to retire and was accorded provisional pension. The order of suspension was passed on President's approval and the sanction of the President to institute disciplinary proceedings was accorded on 21.10.2002 and a memorandum under Rule 9 of the pension rules was issued to the applicant on 21.10.2002.

15. Under the pension rules neither the government servant nor pensioner has been defined but it is stated that the government servant is a person who is in service of the government whereas a pensioner is a retired government servant or a person who is no more in

service. CCS(CCA) Rules, 1965 which deals with inquiries and punishment defines government servant as a member of service holding a civil post under Rule 3(h) of the rules ibid and also a member holding a civil post under the State Government, however, at the disposal of the Central Government as well as in service of State and other authority/charge, having services temporarily placed at the disposal of the Central Government.

16. Rule 22 of the CCS(CCA) Rules, 1965 defines government servant including a person who is ceased to be in government service. This definition is only for the limited purpose of preferring an appeal against the order of dismissal, removal or compulsory retirement and has an object to be achieved. The aforesaid definition cannot be read into the provisions of CCS(Pension) Rules which has a separate object i.e. regulation of benefits and other procedure to be carried out in case of retired government servant. Rule 9 of the Pension Rules as apparent from its reading provides that a government servant who retires if misconduct relates to grave mistake or negligence which has caused pensionary loss by virtue of his ceasing to be government servant should not go scot free. It deals with the procedure to be adopted in dealing such an eventuality.

17. In so far as government servant in service is concerned, he is to be proceeded under Rule 14 of the CCS(CCA) Rules for his misconduct but in case

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of a government servant against whom the disciplinary proceeding had been instituted while he was in service and also the case where pensioner is to be proceeded against the detailed procedure is set out under Rule 9.

18. In so far as first category is concerned if one is served with the chargesheet and retires, the only requirement is to resume the proceeding and in that even the President would pass an order in consultation with the UPSC. However, the departmental proceedings if instituted while the government servant was in service before his retirement it would be deemed to be pending and be resumed in the same manner as if the government servant had continued in service. This is no more res integra and is also not relevant to the present case.

19. However, in second category where the disciplinary proceedings had not been instituted while the government servant was in service before his retirement the sine qua non for initiating the proceedings is the sanction of the President. This is also further subjected to the condition that the enquiry cannot be instituted on an event which had taken place 4 years before such institution.

20. From the perusal of the above, we are clear in mind that if the government servant while in service has not been proceeded in a departmental proceeding the same has to be instituted with the sanction of the President and would not be valid if the

event is 4 years old. The only issue which is to be ascertained is what would be the date of such institution?

21. Sub-Rule (6)(a) of Rule 9 ibid in so far as government servant and pensioner is concerned deems institution on the date when statement of charges is issued. But as an alternate it is also provided which refers to only government servants where the institution would be deemed from an earlier date when the government servant has been placed under suspension. The aforesaid provision has been construed by the respondents to the effect that the applicant who was placed under suspension on 28.8.2000 the said date would be the date of institution irrespective of issue of chargesheet on 21.10.2002. It is in this conspectus argued that the President has passed an order of suspension as such on subsequent sanction relates back to the date of suspension as if ipso-facto sanction, would not invalidate the proceedings.

22. The Apex Court in Five Judges Bench in the case of Dadi Jagannadham Vs. Jammulu Ramulu 2001_Vol.7 SCC 71 held that while applying the principle of interpretation the court should presume that the legislature did not make a mistake and the interpretation shall be in a manner to carry out the obvious intention of legislature. Nothing can be added to the provision when literal reading leads to an unintelligible conclusion.

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23. In so far as the contextual interpretation is concerned the following observation has been made by the Apex Court in Union of India Vs. Elphinstone Spg. and Wvg. Co. Ltd. (2001(4) SCC 139:-

"When the question arises as to the meaning of a certain provision in a statute it is not only legitimate but proper to read that provision in its context. The context means the statute as a whole, the provision state of law, other statutes in paari materia, the general scope of the statute and the mischief that it was intended to remedy.

Although the court would be justified to ~~some~~ extent in examining the materials for finding out the true legislative intent engrafted in a statute, but the same would be done only when the statute itself is ambiguous or a particular meaning given to a particular provision of the statute would make the statute unworkable or the very purpose of enacting the statute wuld get frstated. But it is not open for a court to expand even the language used in the Preamble to extract the meaning of the statute or to find out the latent intention of the legislature in enacting the statute."

24. In so far as principle of harmonius construction is concerned the Apex Court in Anwar Hasan Khan Vs. Mohd. Shafi 2001(8) SCC 540 held that when the interpretation which reduces a particular provision to a dead letter shall not be harmonious construction. The provisions should be construed with reference to each other to ensure their consistency with the object sought to be achieved.

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25. The Apex Court in Balbir Vs. State of Haryana & Anr. 2000(1)SCC 284 held that the act has to be read as a whole and provisions in harmony to give effect to all of them.

26. Three Judges Bench of Apex Court in Gurudevdatla VKSSS Maryadit Vs. State of Maharashtra (2001(4) SCC 534 held as follows:-

It is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver. The courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute."

27. In Kandaswamy Vs. Board of Management, Haji Sri Ismail Said Mosque (2001)3 SCC 614 the Apex Court held that while interpreting a provision for construction which is couched in clear and unambiguous

language, the court should give meaning to the plain words of statute and no external aid is to be desired for that purpose.

28. The Apex Court in Balram Kumawat Vs. U.O.I. (2003) 7 SCC 628 while recording a finding on rules of interpretation held that "the construction which would defeat the plain intent the legislature and renders it futile should be awarded" bolder construction for the purposes of bringing about an effective resolution i.e. purposive construction should be adopted.

29. If one has regard to the above and settled position of law, an interpretation should be done in a manner which is purposive carries out the aim and object to the act and does not render the provision or any its part redundant or negatory when the meaning is clear and explicit, no words can be interpolated or added to it.

30. In the conspectus of the above, we advert to interpretation of Rule 9(6)(a) for the purpose of initiation of the proceedings. The purpose and object of Rule 9 is that in case a government servant retires and is guilty of grave misconduct or negligence and in case where the pensioner cause pecuniary loss is caused to the government he should be appropriately dealt with and punished. As ceasing to be in service the

enumerated punishment under CCS(CCA) Rules cannot be imposed upon a pensioner. However, the penalty of withholding of pension or gratuity and ordering recovery from the retiral benefits can be imposed on a proven mistake. The safeguard in such case is that the order should be passed by the President in consultation with UPSC.

31. The disciplinary proceedings initiated against the government servant while in service before retirement would be deemed to be proceedings under Rule 9 ibid and would be continued in the same manner if the government service had continued in service. In this conspectus Rule 6 provides both in case of government servant and pensioner that such a disciplinary proceeding would be deemed instituted when statement of charges is issued to the government servant or pensioner. However, further provision that if the government servant has been placed under suspension from an earlier date then from such a date, cannot be applied in case of a pensioner. If the intention of the legislature was to bring a pensioner within the ambit of this later provision then unlike first part of the rule pensioner would have find place. Accordingly, this has to be interpreted that in the case of government servant before retirement the deemed institution would either be from the date of suspension on issue of charge. The aforesaid cannot be applied to a pensioner against whom no proceedings had been initiated while he was in

service. The sine qua non for such initiation is the sanction of the President. At the time of suspension of a pensioner earlier as a government servant while in service, the President could not have foreseen the allegations constituting misconduct. A Disciplinary proceeding is instituted either with an order ordering the proceedings or institution by issue of the chargesheet under Rule 2(b) ibid. If the proceedings are not instituted during service, after retirement with the status of pensioner the same has to be instituted with the sanction of the President. A suspension order cannot be a sanction to institute the proceedings.

32. Admittedly in the present case the sanction has been accorded on 21.10.2002 whereas the applicant retired on 31.8.2000.

33. Moreover, not only sanction but the sine qua non for institution of a proceeding against a pensioner is that the allegation should not relate in respect of any event which is more than 4 years old before such an institution. If such an institution is made from the date of issue statement of charge against the pensioner then if the event is more than 4 years from the date of such sanction, such issue of charges cannot be the subject matter of proceeding under Rule 2(b) and the President is without jurisdiction to proceed under Rule 9.

34. In first part of Rule 6(a) *ibid* grammatically the tense used is present perfect continuous which is reflected by the words "has been placed under suspension". This is used for an action which had taken in the past but is still continuing. Admittedly, if as the applicant during suspension was allowed to retire on 31.8.2000 suspension ceased to exist. State of Karnataka Vs. R.S. Naik (*supra*) referred by the applicant clearly deals with the issue wherein it is held that if the government servant is permitted to retire during suspension necessarily to be treated as having lapsed and is no longer available. This also shows non-applicability of the second part of the provision to a pensioner who was allowed to retire even after placed under suspension. A Division Bench of the Tribunal at Hyderabad in K.P. Rao Vs. A.G.A.P.I (1987(4) ATC 756) held that when the suspended employee has been allowed to retire instead continuing suspension beyond retirement suspension lapses and is to be treated as period spent on duty. The same proposition has been laid down in S. Ramanujam Vs. Commissioner for Departmental Inquiries & Ors. (1986(4) SLR 530).

35. In our considered view if an interpretation is to be given to the later part of Rule 9(6)(a) to the effect that deemed institution would be in case of a pensioner from the date he was placed under suspension while in service would render provisions of


Rule 2(b) as redundant. In that event sanction or no sanction of the President or whether it is earlier or post facto would validate the disciplinary proceedings after retirement. Applying the basic rules of interpretations, the object sought to be achieved by this enactment is that the government servant who was in service, if not proceeded against and if no disciplinary proceeding is instituted sanction is a condition precedent for such an institution and enquiry cannot be gone into on an event which is 4 years old. If the institution is to be taken as from the date of suspension then rule 9(b)(ii) is rendered negatory and ineffective which cannot be the intention of the legislature.

36. Moreover, there cannot be a conflict between Rule 2(b) and Rule 6. On harmonious construction in reference to a disciplinary proceeding deemed institution in respect of a pensioner is the date of the issue of the charge. Reference to a pensioner the date of suspension cannot be deemed institution of disciplinary proceedings. In that event even if there is no sanction the proceedings would be validated. If the intention was that the suspension is the date of institution against a government servant is in the reference of government servant who has been proceeded against with issue of chargesheet while in service then the initiation would relate back to the date of suspension but no stretch of imagination this could be valid for a pensioner. The later part of Rule 6(a) would not apply in case of a pensioner.

37. In the above conspectus, we do not advert to the interpretation offered by the respondents and hold that institution in case of pensioner would be the date of issue of charges which is 21.10.2002 in case of the applicant.

38. As it is not disputed by the respondents that the event in respect of which misconduct has been alleged is more than 4 years old from institution of disciplinary proceedings, the proceedings are nullity. Rule 9 of CCS(Pension) Rules, 1972 cannot be invoked.

39. In the result, the OA is allowed. Impugned order dated 21.10.2002 as well as Memorandum dated 21.10.2002 are set aside. Respondents are directed to accord to the applicant all his retiral benefits within a period of 3 months from the date of receipt of a copy of this order. No costs.


(S.A. Singh)
Member(A)


(Shanker Raju)
Member(J)