

X

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA-3187/2003

New Delhi this the 25th day of September, 2006.

**HON'BLE MR. JUSTICE B.PANIGRAHI, CHAIRMAN
HON'BLE MRS.CHITRA CHOPRA, MEMBER(A)**

Shri D.P. Srivastava,
Area Manager (Retd.),
Indore Telephone Distt. Indore,
at present residing at 153,
Krishna Apartments,
I.P. Extension,
Patpar Ganj,
Delhi-110092

...Applicant

(By Advocate: Shri S.C. Luthra)

VERSUS

Union of India, through

The Secretary,
Ministry of Communication,
Department of Telecommunications,
Sanchar Bhavan,
Ashok Road,
New Delhi-110001

...Respondents.

(By Advocate: Shri R.N.Singh)

ORDER

By Hon'ble Mrs. Chitra Chopra, Member (A)

This OA has been remanded back by the Hon'ble High Court of Delhi vide its order dated 20.2.2006 passed in Writ Petition (C) No.19769/2004 & CM 14598/2004

Union of India Vs. D.P.Srivastava.

2. The applicant Shri D.P.Srivastava had initially filed this OA-3187/2003 in this Tribunal in which he has assailed the penalty of 25% cut in his pension for a period of five years imposed vide impugned order dated 25.2.2002 (Annexure A-1). He also sought for restoration of his pension with consequential benefits.

3. The OA was allowed vide this Tribunal's order dated 21.5.2004 and the impugned order was quashed primarily on the ground that prejudice had been caused to the

cl

applicant in so far as while he had been awarded major penalty of cut in pension, another Area Manager namely one Shri R.K.Mishra was let off with only 'censure' on similar charges. The OA was allowed with the following observations:-

"14. Shri Mishra was awarded only a censure.The fact of the matter is that the alleged dereliction of duty was known to the respondents much before what is being told to this Tribunal in the written reply.Departmental proceedings should be initiated even before the report could be submitted as has been done in the case of Shri R.K.Mishra.

15. Delay by itself cannot be a ground because it must be shown that prejudice has been caused to the concerned person. The applicant has pleaded even in the synopsis, that prejudice is caused when years lapsed. In that event, it must be taken that it caused prejudice unless as referred to above, the case falls in the category where the dereliction of duty is discovered later or there is another fact like that the matter has been under investigation.

16. Keeping in view the ratio deci dendi of the decision of the Supreme Court in the case of N.Radhakishan (supra), it must be, in the facts, concluded that there is prejudice caused to the applicant.

17. For these reasons, the present application is allowed and the impugned orders are quashed."

4. Against the aforesaid order dated 21.5.2004, the UOI filed Writ Petition(C) No.19769/2004 and CM-145988/2004 before the Hon'ble Delhi High Court. Vide order dated 20.2.2006, the Delhi High Court while holding that the Tribunal was not justified in setting aside and quashing the entire proceedings on the ground of delay, set aside the Tribunal's order and remanded the matter back to the Tribunal with the following observations:

"The Tribunal while coming to the conclusion that there was delay relied upon the case of one R.K.Mishra. It is submitted that the case of R.K.Mishra is similar to that of the respondent herein. In our considered opinion the aforesaid finding recorded was on a misreading of the facts. Although there could be similarity between the two charges but the prosecution in relation to the departmental proceedings instituted against R.K.Mishra was distinctly different and separate from that of prosecution in which D.P.Srivastava was involved. It is also to be pointed out that facts of the two cases cannot be equated. It is crystal clear from the impugned judgment and order of Tribunal that so far as Mr.Mishra is concerned departmental

proceedings was initiated in April, 1994. In our considered opinion no case of prejudice is made out and no such case was also pleaded in the departmental proceeding except raising a ground for it in the revision application. The said ground also was taken by way of passing reference. At any rate we on facts are pleased to hold that there are cogent reasons explaining the time taken at various stages of the departmental proceeding.

7. *Accordingly, the Tribunal was not justified in setting aside and quashing the entire proceedings on the ground of delay. We, therefore, set aside the impugned order passed by the learned Tribunal and remit the matter back to the Tribunal to deal with the other pleas which were raised before it by the respondent and to pass an appropriate order in accordance with law."*

5. Briefly, to recapitulate the factual background of the case is as under:

- (i) Applicant Shri D.P.Srivastava retired as Area Manager, Indore Telephone Distt. Indore on 31.7.97. He was placed under suspension on 28.7.1997 vide order dated 28.7.1997 (Annexure A-2) i.e. three days prior to his superannuation in contemplation of the disciplinary proceedings. As contended by the applicant, this order was served on him at 11.40 hrs. on 31.7.1997. The applicant demitted the charge of his office in the afternoon of the same day.
- (ii) Vide order dated 2.12.1998 (Annexure A-4) he was served Memo containing Article of charges against him i.e. after over one year and four months of his superannuation and after more than 11 years of the alleged misconduct. The order dated 2.12.1998 (Annexure A-3) is the Presidential sanction issued under Rule 9(2) (b) (i) of the CCS (Pension) Rules, 1972 in terms of which the departmental proceedings were initiated against the applicant, now a retired Government servant.

6. The disciplinary proceedings culminated into issue of impugned order dated 25.2.2002 (Annexure A-1) under which he was imposed the penalty of 25% cut in his pension.

Cl

7. Briefly, the statement of Articles of Charges contained two Articles of charges; one that he incurred expenditure beyond his delegated powers and secondly he failed to ensure that PVC Coating was according to specifications.

8. Learned counsel for the applicant Shri S.C.Luthra has assailed the impugned order on the following grounds:-

(i) The applicant was suspended on 28.7.1997 but the order of suspension was served on 31.7.1997 at 11.40 hrs and on the same day in the afternoon he was allowed to retire. As soon as a person retires from Government service, he ceases to be a Govt. servant. As he no longer remains a Govt. servant and as such proviso (ii) to sub-rule 2(b) of Rule 9 of CCS (Pension) Rules,1972 is applicable which prohibits the enquiry in respect of any event which took place more than four years before such issuance of charge-sheet. The alleged mis-conduct is admittedly of the year 1986-87. Sanction of the President under Rule 9 of CCS (Pension) Rules,1972 was issued vide Order No.8/88/97-Vig.II, Department of Telecommunications dated 2.12.1998 (Annexure A-4) and the charge-sheet was also issued simultaneously. The alleged mis-conduct was 11-12 years old when the charge sheet was issued on 2.12.1998 and thus the same is not sustainable. Learned counsel placed reliance on the case of **S.K.Mathur Vs. UOI and others SLJ 2005(2) CAT 286**, wherein a correct interpretation of Rule 9 of CCS (Pension) Rules, 1972 has been given. He has further submitted that the applicant was severely prejudiced as he was not supplied advice of CVC or the UPSC while relying on the decision of the Hon'ble Apex Court in the case of **UOI Vs. D.C.Agarwal & another (1993 (1) SCC 13)**, wherein it has been held that

“Non-supply of CVC’s advice which was prepared at the back of the Respondent and in which he had not participated, vitiated the inquiry.”

CL

- (ii) The applicant has also been hit adversely by inordinate delay in serving the charge sheet upon him even though the investigation by CVC and other agencies invariably took long time.
- (iii) In regard to the charges, learned counsel has averred that it was normal practice to get ex post facto approval in Form Engineering 27 and this position was envisaged in the very nature of work. It was a normal practice and it is not understood why the applicant had been singled out for seeking ex post facto approval of the higher authority when this practice was being observed in general in the department.

9. In the counter affidavit, learned counsel for the respondents Shri R.N.Singh has submitted that the sanction dated 2.12.98 of the President relates to continuation of the disciplinary proceedings after retirement of the officer on 31.7.1997 and as such the orders were passed by the Competent Authority in accordance with the statutory rules. He has further submitted that the last sub-para of the corresponding para of Rule 9 of the CCS (Pension) Rules, 1972 viz. that the proceedings shall not be in respect of an event which took place more than four years on the date of suspension, does not form part of sub-rule 6 of Rule 9 of the said Rules. It is further submitted that the disciplinary action against a serving Govt. servant is not barred on account of delay in initiating action. He has also submitted that there is no provision of supply of advice of UPSC and advice of UPSC is supplied to the applicant with the order of penalty. There is no basis to indicate that non supply of the UPSC's advice has caused any prejudice to the applicant. It has also been submitted that there has been no discrimination against the applicant as the disciplinary proceeding against him was taken on account of irregularities committed by the applicant.

10. Before discussion on merits of the case, it would be relevant to quote Rule 9 of the CCS (Pension) Rules, 1972 under which the applicant was proceeded against:-

"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

cl

✓

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:

(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:*

(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,"*

It is also necessary to see the provisions of Rule 9(6) of the CCS(Pension) Rules, 1972 which is reproduced below:

(6) (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*

11. We may now see the facts, in relation to the ambit of the provisions of Rule 9 of the CCS(Pension) Rules, 1972. The applicant was placed under suspension on 28.7.1997 and retired on 31.7.1997. He would thus cease to be a Government servant after 31.7.1997 and would acquire the status of a pensioner w.e.f. 1.8.1997. Since he ceases to remain a Government servant, his suspension would automatically stand ceased as there is no rule under which a pensioner can be placed under suspension. It is precisely for this

CL

reason that Sanction of the President under Rule 9 of the said Rules would be required for instituting disciplinary proceeding against a pensioner.

12. The main issue that would arise for our consideration is in respect of date of institution of proceedings, particularly in the light of the fact that they relate to an incident pertaining to years 1986-87. Although the applicant Shri Srivastava was placed under suspension vide order dated 28.7.1997, the charge-sheet and Memo was issued vide order dated 2.12.1998. It is important to note that the charge sheet was issued almost one and four months after superannuation of the applicant namely in December, 1998. We feel constrained to observe that no cogent reasons have been given by the respondents for such delay. As the applicant ceased to be a Government servant after 31.7.1997, the date of institution will logically and legally have to be the date of issue of charge sheet i.e. 2.12.1998.

13. The next main point for consideration is whether in the light of the fact that the applicant became pensioner w.e.f. 1.8.1997, he could be charged for incident/act of ~~or~~ omission and commission pertaining to the year 1986-87. The rule position in this regard quoted in para 10 above is very clear that in case of a pensioner such proceedings shall not be in respect of any incident which took place more than four years before such institution. In view of the clear position of the rules, the charge sheet which is in respect of incident of 1986-87 i.e. 11 years before his retirement would not be sustainable. This position has been upheld by this Tribunal in **S.K.Mathur's case (Supra)** which reads as under:-

"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

ce

11

rule pensioner would have to 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 or 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 charge sheet 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.

xxxxxxxxxx

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 of charges cannot be the subject matter of proceeding under Rule 2(b) and the President is without jurisdiction to proceed under Rule 9."

14. It was clearly held that the later part of Rule 6(a) would not apply in case of a pensioner and that institution of proceedings would be the date of issue of charge sheet. This issue has earlier been deliberated in length in the case of **V.C Pande, IAS and others Versus Union of India and others** reported in (1996)34 **Administrative Tribunals cases 214**. In this case, the applicants were Government servants and it has been clearly held by the Tribunal that the institution of departmental proceedings commenced only from the date on which the Memoranda of Charges was served on each of the applicants as the act of omission attributed to the applicants related to more than four years prior to their retirement. The proceedings were held to be unsustainable in law being barred by limitation. The findings and conclusion are given below:-

"It is a public policy that officials who are found to be guilty of misconduct during their service should be proceeded against even if the misconduct came to light after their retirement. It is for this reason, the provision has been made for taking action against them, but it is again a public policy that after retirement of a government servant, he should not be haunted indefinitely by the ghosts of his actions and inactions during the

CQ

service, thereby disturbing his peace and tranquility in the evening of his life. It is for this reason, a period of limitation of four years has been prescribed in the respective rules for initiating departmental proceedings in regard to misconduct committed by him, reckoning from the date on which the event constituting the misconduct occurred. If interpretation sought to be given by the respondents to the word 'event' is accepted, then the period of four years would be rendered nugatory and Damocle's sword would be hanging over every pensioner indefinitely. This could not have been the intention of the rule-makers when they prescribed time limit of four years from the date of event constituting the misconduct to the initiation of departmental proceedings against a retired civil servant. It is not an event but a misconduct for which a government servant or a pensioner can be found guilty of. The event must be one constituting the misconduct. The word 'event' used in the rules means the act or omission constituting the misconduct. Institution of departmental proceedings commenced only from the date on which the memorandum of charges were served on each of the applicants. In all the four cases under consideration, the acts or omissions attributed to each of the applicants related to the dates more than four years prior to the dates on which the departmental proceedings were initiated against each of them. The proceedings cannot, therefore, be sustained because they are barred by limitation."

15. On the point of delay, the Hon'ble Supreme Court (Hon'ble Justice Ruma Pal and Justice Dr. A.R. Lakshmanan) while quashing the charge memo on the ground of delay has clearly held in the case of **P.V. Mahadevan V. M.D., Tamil Nadu Housing Board (JT 2005 (7) SC 417** as under:

"Allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher Government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a Government employee should, therefore, be avoided not only in the interests of the Government employee but in public interest and also in the interests of inspiring confidence in the minds of the Government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry."

16. Although in the instant case, the applicant did not remain a Govt. servant but a pensioner, It is a fact that even after his suspension order on 28.7.1997, the charge sheet was issued only on 2.12.1998. No reasonable explanation has been forthcoming for delay

on this count. While it is understandable that the administrative authorities take time to prepare charge sheet and complete the procedure for issue of charge sheet, it is equally incumbent upon them that this should be done within a reasonable time, particularly in the case of a retired employee. Even this delay of almost one year and four months is enough to cause mental agony and distress to a retired Government servant.

17. A careful reading of Sub- para (a) to Sub-Rule (6) to Rule 9 of the CCS(Pension) Rules,1972 would indicate that the departmental proceedings shall be deemed to have been 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. In the present case, the applicant being a pensioner, the departmental proceedings in respect of him would be deemed to have been instituted only on 2.12.1998 on which date the charge sheet had been issued to him. The last part of sub-rule 6(a) would apply only to Government servant because only he could be placed under suspension while still in service and consequently only then in his respect departmental proceedings shall be deemed to be instituted from the date of suspension. Thus, in view of rule position as well as the settled law, we are of the view that the charge sheet dated 2.12.1998 issued to the applicant cannot be sustained as it was in respect of an incident/act of omission and commission which is more than four years before such institution and was, therefore, clearly not in accordance with Rule 9 (2)(b) of the CCS (Pension) Rules,1972.

18. In the above conspectus, we are of the view that the proceedings/and charge sheet, being not sustainable in law, deserve to be quashed. Accordingly, the OA is allowed and the impugned orders dated 25.2.2002 (Annexure A-1) and charge sheet dated 2.12.1998 (Annexure-A4) are quashed. The applicant would be entitled to get all the consequential benefits. No costs.

Chitra Chopra
 (CHITRA CHOPRA)
 MEMBER(A)

B. Panigrahi
 (B.PANIGRAHI)
 CHAIRMAN

/usha/