

**Central Administrative Tribunal
Madras Bench**

MA/310/00379/2016 (in)(&)OA/310/01631/2015

Dated the 11th day of November Two Thousand Nineteen

P R E S E N T

**Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)**

A.Vetriselvan,
Deputy CCA (Retired),
G/8, BSNL Staff Quarters,
Type-IV, No.45, VM Street,
Royapettah,
Chennai 600 014. .. Applicant
By Advocate **M/s.P.R.Satyanaryanan**

Vs.

1. The Secretary,
Department of Telecommunication,
M/o Communications & IT,
Sanchar Bhawan,
20, Ashoka Road,
New Delhi 110 001.
2. Member(Finance),
Department of Telecommunication,
Sanchar Bhawan,
20, Ashoka Road,
New Delhi 110 001.
3. Principal Controller of Communication Accounts,
Department of Telecommunication,
Tamilnadu Circle,
Chennai 600 028.
4. The Secretary,
Department of Posts,

M/o Communications & IT,
Dak Bhawan,
New Delhi 110 001.

.. Respondents

By Adovacte **Mr.K.Rajendran**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The above OA is filed seeking the following relief:-

“....to call for the records relating to the impugned charge memo No.8-8/2015-Vig.II dated 06.5.2015 issued by the first respondent and the consequential proceedings No.8-8/2015-Vig.II dated 03.7.2015 issued by the first respondent and quash the same and direct the respondents to settle his pension and pay all his retiral benefits like DCRG, commutation and also leave encashment etc. along with interest @ 18% p.a. from the date it has fallen due and pass such further or other orders as this Tribunal may deem fit and proper in the circumstances of the case and thus render justice .”

2. The admitted facts of this case is as follows:-

The applicant belongs to Accounts and Finance Service of Department of Telecommunications, Ministry of Communications & IT, Government of India. The applicant was working as Senior Accounts Officer (SAO) in the Office of Postmaster General, Madurai Division w.e.f. 02.1.09 and he worked there till 31.5.11. Thereafter, he was promoted as Chief Accounts Officer (CAO), Office of the Postmaster General, Department of Posts, Jharkhand Circle, Ranchi w.e.f. 17.5.12. He continued to work there till 05.11.14. Thereafter, he was transferred and posted as Deputy Controller of Communication Accounts (Dy.CCA), Office of Principal Controller of Communication Accounts, Tamilnadu Circle, Chennai w.e.f. 07.11.14. According to the applicant, he has retired from service on 28.2.15. The applicant submits that his retiral benefits and leave encashment benefits are withheld by the

respondents and on 11.05.15 he was issued with a charge memo under Rule 9(2)(b)(ii) of CCS (Pension) Rules, 1972 dt. 06.5.15. According to him, the charges were related to the year 2009 and he immediately gave a representation to the competent authority stating that as per Rule 9(2)(b)(ii) of CCS (Pension) Rules, there is a clear bar against taking action on an event which took place more than 4 years of the issuance of charge memo. According to him, the charges relating to the tendering of batteries which are made in Madurai Division in the year 2009 and the last act of tender i.e. payment was given on 30.10.09. According to him, there is a clear bar for proceeding against him with an enquiry relating to an incident which took place in the year 2009 which is more than 4 years of his retirement. As per the reply given by the M/o Communication which is produced as Annexure A5 the Article No.3 in charge mentioned in the OA had happened on 31.5.11 and hence the charge memo is not barred by limitation prescribed in the rules and his representation was rejected.

3. The respondents in this case appeared and filed a detailed reply admitting the service rendered by the applicant. According to them, the applicant in this case had earlier filed OA 1660/2015 praying for a direction to dispose off his representation for release of retirement benefits dt. 05.8.15 and this Tribunal has directed the respondents to dispose off the representation within a period of four weeks from the date of receipt of the order. Pursuant to the same, the respondents had disposed off the representation by a speaking order dt. 15.2.16. The respondents dispute the allegation that the disciplinary proceedings initiated as per charge memo dt. 06.5.15 is not barred by limitation. According to them, a major penalty proceeding was

initiated in the year 2014 vide memo No.8-09/2014-Vig II dated 29.9.14 and another major penalty proceeding was initiated against the applicant as per Annexure A2 dt. 06.5.15. It is because of that the retiral benefits were not released. According to the respondents, the applicant who was working as SAO had avoided any reply to the objections raised regarding the irregularities pointed out in the tendering and payment done in the year 2009 and he kept the file without making any observation till 31.5.11 and hence he is liable for misconduct. According to the respondents, the third charge relates to the said misconduct and hence charge memo is not barred by limitation.

4. We have heard both sides and perused the pleadings and documents produced by both sides. Now the main point to be considered in this case is whether the charge memo dt. 06.5.15 is hit by Rule 9(2)(b)(ii) of CCS (Pension) Rules. According to the counsel for the applicant, Rule 9(2)(b)(ii) of CCS (Pension) Rules states as follows:-

“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.

(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.”

On going through the Sub-Section (2)(b) clause (ii), it can be seen that no proceeding shall be instituted against a person for an event which took place more than 4 years before such institution. In this particular case, it can be seen that the purchase of

battery and other connected facts took place in the year 2009 while the applicant was working as SAO, Office of the Postmaster General, Madurai. There is no dispute regarding this aspect before this Tribunal. If we go through the Articles of Charges produced and marked as Annexure A2, this can be seen. The main contention of the respondents in this case is that the Internal Check Audit Party during inspection from 14.11.09 to 27.11.09 has pointed out the irregularities in the tender and purchase process and the file was routed through Circle IFA and the Circle IFA has observed certain irregularities namely, not referring CIFA for vetting of draft NIT, not prescribing mandatory documents in Annexure III of NIT, recommending L3 tenderer by TEC in its minutes dt. 25.8.09 etc. The file was marked to RIFA on 13.9.2010 for furnishing reply to the points raised by CIFA. Eventhough the irregularities have been pointed out by CIFA in September 2010, no action was taken by Shri A.Vetriselvan for furnishing reply to the points raised by CIFA till his transfer from RO, Madurai on 31.5.2011. So, according to the respondents, if we calculate the period from 31.5.11 the charge memo is not barred by limitation as provided under Rule 9(2)(b)(ii) of CCS (Pension) Rules. No other arguments were raised by the counsel for the respondents in this case. It is also admitted that the disciplinary proceedings initiated in the year 2014 was dropped subsequently as per Annexure A10 dt. 10.4.15. So, admittedly no other proceedings is pending against the applicant at present. On an anxious consideration of the facts and circumstances of this case, we find that Annexure A2 charge memo was issued on the basis of irregularities detected in the year 2009. Articles 1 to 3 relates to the same subject. According to

the applicant, the payment was effected on 30.10.09 itself and even according to the respondents, the objection were detected in the year 2009 itself. After the above incident the applicant was promoted and posted to Jharkhand Circle as CAO and he worked there till 2014. Thereafter, he was transferred to the Office of the Dy.CCA w.e.f. 07.11.14 and he superannuated from the said place on 28.2.15. The charge memo relating to the incident of the year 2009 was given to the applicant only on 11.5.2015 i.e. after more than 4 years after the alleged incident for which the disciplinary action is taken. Here a contention was put forward by the respondents that the applicant has kept the file without giving any explanation till he was promoted and transferred to Jharkhand Circle i.e. 30.5.2011. If we calculate the period of 4 years from 30.5.11, the charge memo is not barred by limitation. On a perusal of the charge memo and Articles 1 to 3 issued by the respondents, it can be seen that it relates to the same subject matter i.e. purchase of batteries that has taken place in the Madurai Division in the year 2009. As per Section 9(2)(b) Sub-Section (ii) of CCS (Pension) Rules, a disciplinary proceeding cannot be instituted against a retired person for an incident that took place more than 4 years before such institution. The Hon'ble Supreme Court in ***Brajendra Singh Yambem v. Union of India reported in I(2016) 9 SCC 20*** has held that -

“Rule 9(2) of the CCS (Pension) Rules, 1972 makes it clear that if the disciplinary proceedings are not instituted against the government servant by the disciplinary authority while he was in service, then the prior sanction of the President of India is required to institute such proceedings against such a person which shall not be in respect of an event which took place more than four years before the institution of such disciplinary proceedings. It is an undisputed fact that the appellant retired

from service on 31.8.2006. Hence, fresh memorandum of charges dated 22.8.2008 issued to the appellant for the act allegedly committed in the year 1995 was clearly beyond the period of limitation of four years as provided for under the CCS (Pension) Rules, 1972.”

It was also held that -

“.....the action of the disciplinary authority is untenable in law for the reason that the interpretation of the CCS (Pension) Rules, 1972 which is sought to be made on behalf of the respondents amounts to deprivation of the fundamental rights guaranteed to the appellant under Part III of the Constitution of India. Hence the disciplinary proceedings initiated by the disciplinary authority after obtaining sanction from the President of India under Rule 9(2)(b)(i) of the 1972 Rules are liable to be quashed.”

On going through the said decision, it can be seen that when there is a clear bar in the rules which prohibits the institution of disciplinary proceeding after a period of 4 years, the authority cannot circumvent it and proceed with the enquiry after retirement.

5. In this case also the respondents had initiated the disciplinary proceedings only on 06.5.15 as per Annexure A2 and it is clearly beyond 4 years after the event and at any stretch of imagination the said event cannot be considered as within 4 years of the limitation period fixed under Rule 9(2)(b)(ii) of CCS (Pension) Rules. The argument that the applicant had kept the file with him and committed misconduct is not sufficient to extend the period of limitation. The event alleged have been taken place and the cause for institution of disciplinary action has taken place in 2009 and hence the argument of the respondents that the period has to be counted from 30.5.11 cannot be sustained in this particular case. It is the date on which the applicant was promoted and transferred to Jharkhand. The original cause of action for the

disciplinary action had actually taken place in 2009. So, there is no merit in the argument of the counsel for respondents in this case.

6. In view of the above circumstances, we are of the view that the disciplinary proceeding initiated against the applicant as per Annexure A2 charge memo cannot be sustained in the eye of law. The said proceeding is clearly barred under Rule 9(2)(b) (ii) of CCS (Pension) Rules. Hence, we hereby quash the impugned charge memo No.8-8/2015-Vig.II dated 06.5.2015 issued by the first respondent and the consequential proceedings No.8-8/2015-Vig.II dated 03.7.2015 issued by the first respondent. Accordingly, OA is disposed off. Consequently MA 379/16 also stands disposed off. No costs.

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

11.11.2019

/G/

Annexures referred to by the applicants in OA No.1449/2016:

Annexure A1: Copy of Rule 9 of CCS (Pension) Rules, 1972.

Annexure A2: Copy of charge memo No.8-8/2015-Vig.II dated 06.5.15 issued to the applicant by the 1st respondent dt. 06.5.15.

Annexure A3: Copy of reply to the charge memo submitted by the applicant to the 1st respondent dt. 18.5.15.

Annexure A4: Copy of the representation submitted by the applicant to the CVO, DOT, New Delhi dt. 25.6.15.

Annexure A5: Copy of the proceedings No.8-8/2015-Vig.II dt. 03.7.15 issued by the 1st respondent dt. 03.7.15.

Annexure A6: Copy of representation submitted by the applicant to the 2nd respondent dt. 03.8.15.

Annexure A7: Copy of reminder submitted by the applicant to the 2dn respondent dt. 12.11.15.

Annexure A8: Copy of notification issued by the Inquiry Officer dt. 18.11.15.

Copy of representation of the applicant to the IO dt. 21.11.15.

Annexures with Reply Statement:

Annexure R1: Order appointing an inquiring authority dt. 29.9.14.

Annexure R2: Charge Memo issued by the 1st respondent dt. 06.5.15.

Annexure R3: Order dt. 03.7.15 on the representation of the applicant dt. 25.6.15.

Annexure R4: Order passed by the CAT, Madras Bench in OA 1660/15 dt. 08.12.15.

Annexure R5: Order dt. 15.2.16 on the representation of the applicant dt. 05.8.15.