

Central Administrative Tribunal
Patna Bench, Patna.
[Circuit Bench at Ranchi]
O.A./051/00654/2018

Date of CAV : 17.12.2019

Date of Order:- 19.12.2019

C O R A M

Hon'ble Shri Dinesh Sharma, Member [A]
Hon'ble Shri Swarup Kumar Mishra, Member [J]



Paramjeet Kaur, W/o Late Sardar Kamal Singh, R/o D-401, Vikramshila Garden, Cheshire Home Road, Rani Bagan, Bariatu, PO & PS – Bariatu, District – Ranchi.

....Applicant

By Advocate : Mr. R. Pallav

Vs.

1. Union of India, through Ministry of Personnel, PG and Pensions, Lodhi Road, North Block, PO & PS – Lodhi Road, New Delhi-110001.
2. The Secretary, Department of Personnel & Training, Lodhi Road, North Block, PO & PS – Lodhi Road, New Delhi-110001.
3. Union Public Service Commission, Dholpur House, Sahjanan Road, PO – Union Public Service Commission, New Delhi-110069.
4. The State of Jharkhand through Department of Personnel, Administrative Reforms & Raj Bhava, Government of Jharkhand, Project Building, PO –Dhurwa, PS – Jagannathpur, District – Ranchi.
5. The Principal Secretary, Department of Personnel, Administrative Reforms & Raj Bhava, Government of Jharkhand, Project Building, PO –Dhurwa, PS – Jagannathpur, District – Ranchi.
6. The Secretary, Department of Urban Development & Housing Department [Housing], Government of Jharkhand, Project Building, PO –Dhurwa, PS – Jagannathpur, District – Ranchi.
7. The Deputy Secretary, Department of Personnel, Administrative Reforms & Raj Bhava, Government of Jharkhand, Project Building, PO –Dhurwa, PS – Jagannathpur, District – Ranchi.

..... Respondents.

By Advocate : Shri Rajendra Krishna, UOI

Shri F. Rahman for UPSC

Shri R.A. Gupta for State of Jharkhand

O R D E R**Per Swarup Kr. Mishra, M [J] :-**

The applicant has

filed the instant OA for quashing of entire departmental proceeding initiated under resolution as contained in Memo No.1/Aa.-544/2013 Ka. 4846 Anu. Dated 28.06.2018 [Annexure-A/6], whereby the Respondent No.7 has intimated the applicant for initiation of departmental proceedings under Rule 6 of All India Services [Death-cum-Retirement Benefits] Rule 1958.



2. The applicant's case in short, runs as under : -

- [i] The applicant was appointed in State Administrative Service through Bihar Public Service Commission on 29.07.1980 in the erstwhile State of Bihar. After bifurcation of State in the year 2000, the applicant was allocated to Jharkhand State Cadre. The applicant was promoted to All India Administrative Service in the year 2012 and was posted as Managing Director, Jharkhand State Housing Board, vide notification dated 30th October, 2012 [Annexure-A/1]. Thereafter, the applicant retired on 31.10.2015 from the post of Director, G.P.F. Directorate, Ranchi.
- [ii] The applicant while posted as Director, FPF Directorate, Ranchi, was served with a show cause dated 01.09.2015 asking her to file reply within seven days on the charges mentioned in Prapattra Ka, which was enclosed along with the show cause. The applicant, thereafter, vide her application dated 03.09.2015 sought certain documents and C.D. of videography done at the time of auction from the Managing Director, Jharkhand Housing Board, Ranchi. She also prayed

for further 15 days time to file her reply to the show cause, vide her application dated 04.09.2015 [Annexure-A/4]. However, the applicant did not receive any document as sought from the Managing Director, Jharkhand Housing Board, Ranchi. Ultimately the applicant submitted her reply to show cause, vide letter dated 14.09.2015 [Annexure-A/5] on the basis of documents available that time.



[iii] The applicant pleaded that the charges contained in 'prapatra ka' was not signed by the Respondent No.5, who was the authorized person to serve show cause notice, being head of the department. The applicant mainly contended that she retired on 31.10.2015 and after lapse of more than two years nine months, she received a memo dated 29.06.2018 [Annexure-A/6] whereby she was informed about initiation of departmental proceeding by the level of State Government under Rule 6 of All India Service [Death-cum-Retirement Benefits] Rule 1958. The applicant further pleaded that the Respondent No.4 has no jurisdiction to initiate departmental proceeding against a retired I.A.S. officer under Rule 6 of All India Service [Death-cum-Retirement Benefits] Rule 1958. The applicant also contended that the Respondent No.5 has not considered the reply filed by her and issued the impugned resolution. The applicant draws our attention towards Rule 6 of All India Service Rules, which reads as under : -

"Rule 6 Recovery from Pension –

6[1] The Central Government reserves to itself the right of withholding a pension or gratuity, or both, either in full or in part, whether permanently or for a specified

period, and of ordering recovery from pension or gratuity of the whole or part of any pecuniary loss caused to the Central or a State Government, if the pensioner is found in a departmental or judicial proceedings to have been guilty of grave misconduct or to have caused pecuniary loss to the Central or a State Government by misconduct or negligence, during his service, including service rendered on re-employment after retirement:

Provided that - no such order shall be passed without consulting the Union Public Service Commission:

Provided further that-

(a) such departmental proceeding, if instituted while the pensioner was in service, whether before his retirement or during his re-employment, shall, after the final retirement of the pensioner, be deemed to be a proceeding under this sub-rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the pensioner had continued in service.

(b) such departmental proceeding, if not instituted while the pensioner was in service, whether before his retirement or during his re-employment;

(i) shall not be instituted save with the sanction of the Central Government ;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

(iii) shall be conducted by such authority and in such place or places as the Central Government may direct and in accordance with the procedure applicable to proceeding on which an order of dismissal from service may be made;

(c) such judicial proceeding, if not instituted while the pensioner was in service whether before his retirement or during his re-employment, shall not be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution.

Explanation:- For the purpose of this rule

(a) a departmental proceeding shall be deemed to be instituted when the charges framed against the



pensioner are issued to him or, if he has been placed under suspension from an earlier date, on such date and

(b) a judicial proceeding shall be deemed to be instituted-

(i) In the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to the criminal court; and

(ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made to a civil court. 27Note-1- Where a part of the pension is withheld or withdrawn the amount of such pension shall not be reduced below the amount of rupees three thousand five hundred per mensem or at the rates provided under the corresponding rules of the Central Civil Service (Pension) Rules, 1972".

Note-2- Where Central Government decides not to withhold or withdraw pension but orders recovery of any 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 the member of the service.

6(2) Where any departmental or judicial proceeding is instituted under sub-rule (1), or where a departmental proceeding is continued under clause, (a) of the proviso thereto against an officer who has retired on attaining the age of compulsory retirement or otherwise, 28he shall be sanctioned by the Government which instituted such proceeding, during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceeding final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service upto the date of retirement, or if he was under suspension on the date of retirement, upto the date immediately preceding the date on which he was placed under suspension; but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceedings and the issue of final orders thereon.

Provided that where disciplinary proceeding has been instituted against a member of the Service before his retirement from service under rule 10 of the All India Service (Discipline and Appeal) Rules, 1969, for imposing any of the penalties specified in clause (i), (ii)



and (iv) of sub-rule 1 of rule 6 of the said rules and continuing such proceeding under sub-rule (1) of this rule after his retirement from service, the payment of gratuity or death-cum-retirement gratuity shall not be withheld.

6(3) Payment of provisional pension made under sub-rule (2) shall be adjusted against the final retirement benefits sanctioned to the pensioner upon conclusion of the aforesaid proceeding, but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period."



[iv] The applicant pleaded that on bare perusal of Rule 6 of All India Service [Death-cum-Retirement Benefits] Rules, 1958, it is evidently clear that it is the Central Govt. only through Respondent No.2, the controlling authority of IAS Officers, reserves the right to initiate departmental proceeding under this Rule for withholding of pension or gratuity on the whole or part thereof. In the present case, on perusal of Annexure-A/6, the impugned resolution dated 28.06.2018, the departmental proceeding has been initiated from the level of State Government, who is in fact not the competent authority to initiate departmental proceedings. The applicant further submitted that the delinquent must be found guilty in a departmental or judicial proceeding, which is also lacking in the present case. It is further submitted that requirement of consultation of the UPSC is also lacking in the present case, hence the instant case.

3. Per contra, the respondents representing Jharkhand State contested the case by way of filing their written statement. The respondents, State of Jharkhand also draws our attention Rule 6[1] of All India Service [Death-cum-Retirement Benefits] Rules, 1958.



According to them, the applicant is a retired IAS and during her posting as Managing Director, Jharkhand State Housing Board, the answering respondents have received representations mentioning irregularities being practiced by the applicant. The representations were sent to the Department of Urban Development and Housing. The Housing Board issued Papatra-K against the applicant and sent the same to Department of Personnel, administrative Reforms and Rajbhasha through the Urban Development and Housing Department. The said Parpatra-K along with a show cause was served upon the applicant, vide letter dated 01.09.2015. The applicant vide her letter dated 04.09.2015 prayed for 15 days further time to file reply to the show cause dated 01.09.2015, which she replied vide letter dated 14.09.2015. The reply was thoroughly considered by the respondents and on finding the same unsatisfactory, on approval of the State of Jharkhand, a decision with regard to initiation of Departmental proceeding against the applicant was taken, vide memo date 29.06.2018, which is under challenge. No separate written statement was filed by the Union of India.

4. The applicant filed a rejoinder to the written statement and contended that mere naming of a document as Prapatra 'K' [Article of Charges] does not give it the characteristics of Prapatra 'K'. On 01.09.2015, vide letter no.7954, only the show cause notice was issued. In fact the letter was termed as Prapatra-'K' but the same was not actually a charge memo. The applicant contended that the charge memo under prapatra-'k' can only be issued on commencement of departmental proceeding by the appropriate

authority. The applicant mainly submitted that the show cause notice was neither served as departmental proceeding nor in contemplation of departmental proceeding. It was only a show cause notice and that too not duly signed by the controlling authority.

5. The applicant relied upon the decisions rendered by Hon'ble Supreme Court in the case of **Union of India & Ors. vs. B.V.**

Gopinath [Civil Appeal No. 7761/2013] along with five other Civil Appeals, reported in [2014] Supreme Court Cases 351,

wherein the respondent, while working on the post of Additional Commissioner of Income Tax in Indian Revenue Service, was served with a charge-sheet contemplating major punishment under Rule 14[3] of the Central Civil Services [Classification, Central and Appeal] Rules, 1965. During pendency of the inquiry proceedings the respondent approached the Central Administrative Tribunal [CAT] claiming that the charge-sheet served on him was without jurisdiction and therefore, liable to be quashed, as the charge memo had not been approved by the disciplinary authority, i.e. the Finance Minister. CAT accepted the submission of the respondent and quashed the charge-sheet. The order of CAT was challenged by the appellant by filing a writ petition before the High Court, but the same was dismissed. Further, dismissing the appeal, the Hon'ble Supreme Court held that the charge-sheet/charge memo having not been approved by the disciplinary authority is non est in the eye of law.

The applicant also relied upon the decision rendered by Central Administrative Tribunal, Principal Bench, New Delhi in the case of **Yateendra Singh Jafa vs. Union of India & Ors,**



reported in 2007 SCC Online CAT 2343 wherein following the law laid down in Mohd. Idris Ansari & V.K.Gupta wherein the case held that we have no hesitation to conclude that framing of charges, relating to events more than four years old at the time of initiation of proceedings, was illegal, impermissible, unjustified & beyond the time-limit prescribed in proviso [b] to Rule 6[1] of 1958 Rules.

6. Heard the learned counsel for the parties and gone through the materials on record.

7. With regard to issue of charge memo and initiation of departmental proceeding, the relevant portion of the counter affidavit has to be carefully considered. It is averred that the said Prapatra-K alongwith a show cause was served upon the applicant, vide letter no.7945[Anu] dated 01.09.2015 issued by the Department of Personnel, Administrative Reforms and Rajbhasha, Govt. of Jharkhand asking her to reply the charges mentioned in Prapatra-K. Unfortunately, on approval of the State Govt., a decision with regard to initiation of Departmental Proceeding against the applicant has been taken vide memo dated 29.06.2018. The respondents further submitted that the Prapatra-'K' was constituted by the Department of Urban Development and Housing which found irregularities committed by the applicant. The Department of Personnel issued the Prapatra-'K' to the applicant with the consent of the then Secretary. The applicant replied to the show cause notice dated 01.09.2015, vide letter dated 14.09.2015.

8. The learned Counsel for the respondents relied upon the decision rendered by Hon'ble Supreme Court of India in the case of U.P.State Sugar Corporation Ltd. Vs. Kamal Swaroop Tondon [Case



No. Appeal (Civil) 513 of 2009], wherein the Hon'ble Supreme Court held –



"10. The learned counsel for the appellant is right when he submitted that show cause notice was issued to the respondent-employee on January 13, 2000 when he was very much in service. The respondent submitted his explanation on January 15, 2000 which was not found to be satisfactory. A regular show cause notice was, therefore, issued by the Corporation on January 31, 2000 and was served upon the respondent-employee on the same day. The notice was also sent by registered post which was received by the employee on February 11, 2000. But it is clear from the documents that show cause notice was issued and replied. A regular show cause notice as to departmental inquiry was also served upon the respondent-employee on the last day of his service which was January 31, 2000. In our opinion, therefore, it could not be said that the proceedings had been initiated against the respondent-employee after he retired from service.

27. In our opinion, Mahadevan does not help the respondent. No rigid, inflexible or invariable test can be applied as to when the proceedings should be allowed to be continued and when they should be ordered to be dropped. In such cases there is neither lower limit nor upper limit. If on the facts and in the circumstances of the case, the Court is satisfied that there was gross, inordinate and unexplained delay in initiating departmental proceedings and continuation of such proceedings would seriously prejudice the employee and would result in miscarriage of justice, it may quash them. We may, however, hasten to add that it is an exception to the general rule that once the proceedings are initiated, they must be taken to the logical end. It, therefore, cannot be laid down as a proposition of law or a rule of universal application that if there is delay in initiation of proceedings for a particular period, they must necessarily be quashed.

28. In the present case, the High Court has not quashed the proceedings on the ground that there was inordinate and unexplained delay on the part of the Corporation in initiating such proceedings against the respondent. According to the High Court, since the respondent retired on January 31, 2000, the proceedings could not have been continued against him. From the case law referred to by us hereinabove, it is clear that such proceedings could have been continued since they were initiated for the recovery of losses sustained by the Corporation due to negligence on the part of the respondent-employee. Such loss caused to the Corporation could be

recovered from the respondent from the retiral benefits of the respondent.

35. Recently, in Secretary, ONGC Ltd. & Anr. v. V.U. Warrier, (2005) 5 SCC 245 : JT 2005 (4) SC 489, an employee of Oil and Natural Gas Commission (ONGC) unauthorisedly retained an official accommodation after his retirement. When penal rent was charged and sought to be recovered from retiral benefits of the employee, he filed a petition invoking Article 226 of the Constitution. The High Court allowed the petition and directed the Corporation to release all the benefits to which the employee was entitled. The High Court observed that it was open to the Corporation to take appropriate proceedings for recovery of the dues claimed by the Corporation. Aggrieved ONGC approached this Court.

36. Allowing the appeal, setting aside the order passed by the High Court and considering the relevant decisions on the point, one of us (C.K. Thakker, J.) observed;

As already adverted to by us hereinabove, the facts of the present case did not deserve interference by the High Court in exercise of equitable jurisdiction under Article 226 of the Constitution. The respondent-petitioner before the High Court, was a responsible officer holding the post of Additional Director (Finance & Accounts). He was, thus, gold collaremployee of the Commission. In the capacity of employee of the Commission, he was allotted a residential quarter. He reached the age of superannuation and retired after office hours of February 28, 1990. He was, therefore, required to vacate the quarter allotted to him by the Commission. The Commission, as per its policy, granted four months time to vacate. He, however, failed to do so. His prayer for continuing to occupy the quarter was duly considered and rejected on relevant and germane grounds. The residential accommodation constructed by him by taking loan at the concessional rate from the Commission was leased to Commission, but the possession of that quarter was restored to him taking into account the fact that he had retired and now he will have to vacate the quarter allotted to him by the Commission. In spite of that, he continued to occupy the quarter ignoring the warning by the Commission that if he would not vacate latest by June 30, 1990, penal rent would be charged from him. In our judgment, considering all these facts, the High Court was wholly unjustified in exercising extraordinary and equitable jurisdiction in favour of the petitioner respondent herein and on that ground also, the order passed by the High Court deserves to be set aside. (emphasis supplied)"



The facts and circumstances of the said case is completely different from the facts and circumstances of the present case. In the said case, the proceeding was initiated for recovery of losses sustained by the U.P. State Sugar Corporation Ltd. due to negligence on the part of the respondent and it was held by the Hon'ble Apex Court that such losses caused to the Corporation could be recovered from the retiral benefits of the employee. But in the present case, the points to be determined as to whether the correspondence dated 28.06.2018 which also enclosed the charge memo, can be considered to be the date of initiation of the departmental proceeding in view of Rule 6 of All India Services [Death-cum-Retirement Benefits] Rule, 1958. The Hon'ble Supreme Court, in the decision reported in [2007] 6 Supreme Court Cases 694, UCO Bank And Anr. Vs. Rajinder Lal Kapoor and [2014] 1 Supreme Court Cases 351, Union of India & Ors. vs. B.V. Gopinath [supra] had the occasion to consider the relevant portion of Rule 20[3][iii] of the UCO Bank Officer Employees Service Regulation (which is analogous to proviso (a) to Rule 6[1] of the All India Service Rules] in order to come to the conclusion as to whether the departmental proceeding can be deemed to have been initiated on the date of issue of show cause notice to the employee as per relevant regulation of the Bank. It was further urged by the learned counsel for the respondents that the communication, vide Annexure-A/2 was not a mere letter as it was accompanied by the enclosures i.e. charge memo dated 25.05.2015 duly signed by the concerned persons, and therefore, the departmental proceeding against the applicant has to be considered as departmental proceeding



initiated from the date of issue of the said letter dated 01.09.2015, vide Annexure-A/2.

9. The learned counsel for the applicant, on the other hand, submits that the said communication is not a show cause notice and the enclosures attached therewith, was also not approved by the competent authority. For the sake of arguments, the Id. Counsel for the applicant submits that the charge memorandum was required to be approved by the competent authority. In this regard, the Id. counsel for the applicant has drawn attention of this Tribunal that the said charge memorandum dated 25.05.2015 has not been signed by the Chief Secretary of the Govt. of Jharkhand. Therefore, it is evidently clear that there was no approval or application of mind by the said authority. The another plank of argument of the Id. Counsel for the applicant is to the effect that if such communication of Annexure-A/2 dated 01.09.2015 was to be considered as service of charge memorandum, then there was no necessity of sending the letter dated 28.06.2018 [Annexure-A/6] along with the charge memorandum. It is seen that no subsequent charge memorandum has been signed but the charge memorandum which was originally sent along with the show cause [Annexure-A/2] has been again re-sent to the applicant along with show cause notice vide Annexure-A/6 dated 28.06.2018. The show cause notice also mentions that the charge memorandum is re-sent to the applicant.

10. The averments made by the respondents and the materials produced by them before the Tribunal in this case shows that the charge memorandum in question was sent to the applicant along with Annexure-A/2, and that is the reason for which no subsequent



charge memo was prepared. The stand taken by the respondents in this regard is also revealed from the materials available on record and correspondences made by them and unerringly points to the fact that the charge memo has in fact been sent to the applicant along with the letter dated 01.09.2015 [Annexure-A/2]. The said letter might not have been properly worded to show that by the said show cause notice the applicant was asked to present her stand with regard to the charges framed against her for the purpose of departmental enquiry. There is also no mention in Annexure-A/2 that any departmental proceeding has been initiated against her.



11. After examining all these averments, it is clear that in order to resolve the issues raised in this OA, we have to decide whether the action initiated by the respondent, State Govt. by way of issue of communication dated 01.09.2015 (Annexure-2) constitutes an "institution" of "disciplinary proceedings" as provided in the proviso (a) to Rule 6(1) of All India Service Rules. Going by the judgment of the Apex Court in UCO Bank's case (cited supra by the applicant), the initiation of disciplinary proceedings cannot be by way of issuance of a show cause notice. Though this judgment was in the context of UCO Bank Officers Employees Regulations, we are reproducing the relevant portion of these regulations here to show that the rule is not materially different from the proviso(a) of Rule 6(1) of All India Service Rules:-

"20. (3) (iii) The officer against whom disciplinary proceedings have been initiated will cease to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service until the

proceedings are concluded and final order is passed in respect thereof."

12. In the present case, though there is a proforma chargesheet enclosed with the letters issued on 01.09.2015, in which the Special Secy. to the Government seeks reaction of the applicant within seven days on the proforma chargesheet framed by the Housing Department, Jharkhand, the chargesheet in proforma has been signed by 3 officers of the Housing Board and the Secretary, Housing Department but not by the Principal Secretary, Department of Personnel/Administrative Reforms and Official Languages. Thus, the letter is clearly not a chargesheet issued by the competent authority of the State Government and hence, even if this letter was to be considered as a chargesheet, it cannot be considered to be a chargesheet issued by a competent authority, which must be an officer authorized to issue such chargesheet against an All India Service Officer. For the aforesaid reasons, since the letter issued on 01.09.2015 cannot be considered as an institution of disciplinary proceedings against the applicant, the respondent cannot take benefit of the proviso(a) to Rule 6(1) and continue the action without getting sanction of the Central Government as required under proviso b(i) of the said Rule 6[1]. Action of the Respondent No. 7 in Memo No. 1/Aa.-544/2013 Ka. 4846 Anu. dated 28/29.06.2018, being violative of proviso b(i) of the said Rule 6[1] is, therefore, quashed and the stay issued by this Tribunal through order dated 09.08.2018 is hereby made absolute. The OA is disposed of accordingly. No order as to costs.

[Swarup Kr. Mishra]M[J]

[Dinesh Sharma]M[A]

Mps.

