

(2019) 01 CAT CK 0051

In the Central Administrative Tribunal

Case No : Original Application No. 1729 Of 2018

Ashok Kumar Garg

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 25-01-2019

Acts Referred:

Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 14, 14(4)
Central Civil Service (Pension) Rules, 1972 — Rule 9, 9(2), 9(2)(b), 9(2)(b)(i), 9(2)(b)(iii), 9(6), 9(6)(a)

Citation : (2019) 01 CAT CK 0051

Hon'ble Judges : L. Narasimha Reddy, J;Aradhana Johri, Member (A)

Bench : Division Bench

Advocate : Ajesh Luthra, Manish Kumar

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J

1. The applicant joined the Indian Revenue Service in the year 1979, on being selected by the UPSC. He has been promoted to the post of Commissioner of Income Tax (for short, CIT), and while working as CIT-VII, he took voluntary retirement w.e.f. 19.11.2007. It is stated that he is now practicing as an Advocate.

2. An inquiry was conducted against an ITO, by name, Shri Kailash Verma, as regards the assessments in respect of M/s Green World Corporation, for the Assessment years 1998-1999 to 2003-2004. It is stated that during the inquiry on 03.07.2008, the said ITO confessed that she did not draft the assessment orders in question, but signed the ones supplied to her on behalf of the assessee, at the behest of the applicant herein. In view of this, a memo was issued to the applicant on 04.11.2009 requiring him to put forward his version. The applicant submitted his reply on 06.05.2010.

3. An order dated 03.11.2010 according Presidential sanction under sub-clause

(i) of clause (b) of sub-rule (2) of Rule 9 of the Central Civil Service (Pension) Rule, 1972 (for short, Pension Rules) was issued. It was followed by a charge memo, together with statement of imputation of misconduct. On receipt of the same, the applicant submitted a reply on 03.12.2010 denying the allegations made against him, and raised certain objections for the very initiation of proceedings, including the one, as to limitation. According to him, the disciplinary proceedings were instituted against him beyond four years from the date on which the disputed order of assessment was passed. Thereafter, the Inquiry Officer and Presenting Officer were appointed. Over the period, two Inquiry Officers were changed and third one is in place.

4. The applicant submitted a representation dated 16.11.2016 stating that the proceedings are barred under Rule 9 of Pension Rules, since they were instituted beyond four years from the date of incident. A reply was given on 16.05.2017 by the Inquiry Officer stating that according to Rule 9 (6) (a) of Pension Rules, the departmental proceedings are deemed to have been initiated, the date on which, the charge memo was issued, and since the charge memo in this case was issued on 03.11.2010, before the expiry of four years period, which falls on 07.11.2010, the disciplinary proceedings cannot be said to be beyond limitation. This OA is filed challenging the communication dated 16.05.2017.

5. The applicant contends that there was absolutely no basis for initiation of disciplinary proceedings against him after his retirement, and though the order according Presidential Sanction, and the charge memo are dated 03.11.2010, they were not served upon him before 07.11.2010 and accordingly, they are barred in law. He made reference to various events, that have taken place, ever since the charge memo was served upon him.

6. The respondents filed a counter affidavit opposing the OA. It is stated that the acts of indiscipline on the part of the applicant surfaced only after he took voluntary retirement, and the steps, as required under law were taken against him. It is pleaded that the Presidential Sanction was accorded on 03.11.2010, and on the same day, the order and the charge memo, as approved by the Appointing Authority, were dispatched to the applicant. According to the respondents, what becomes relevant, in the context of computation of limitation of four years mentioned under Rule 9 (2) of Rules, 1972, is the date of "institution of proceedings", and such institution in the instant case has taken place on 03.11.2010, which is much ahead of 07.11.2010. It is also stated that the communication dated 18.11.2010, from the office of Chief Commissioner of Income Tax, becomes secondary, once the order dated 03.11.2010 was passed in time. The respondents further stated that the applicant went on making requests for furnishing of documents though the relevant documents were supplied to him, and at a time, when the inquiry was about to conclude, he submitted a representation raising the plea of limitation, and thereafter filed the present OA.

7. We heard Shri Ajesh Luthra, learned counsel for the applicant and Shri Manish Kumar, learned counsel for the respondents.

8. The applicant took voluntary retirement on 19.11.2007 and was also sanctioned the pension. It was about one year thereafter, that the name of the applicant surfaced in the course of inquiry on an assessment in the case of M/s Green World Corporation. The concerned ITO made a statement on 03.07.2008 to the effect that she signed the disputed orders at the behest of the applicant herein. In view of this development, the concerned authority issued a Memo dated 04.11.2009 to ascertain the views of the applicant. Reply to it was given by him on 06.05.2010. The department wanted to initiate action against the applicant since he was not in service by that time; it became necessary to obtain Presidential Sanction under Rule 9 of Pension Rules, 1972. Accordingly the file was moved and the sanction of the President was accorded through proceedings dated 03.11.2010. A charge memo was also issued on the same date.

9. The applicant claims to have received the proceedings in November, 2010. He submitted a representation dated 03.12.2010 denying the charges. The nature of objections raised by him in this representation is as under:-

"I, also register my protest against the proposed Departmental Proceedings as the same are irregular, illegal, baseless, arbitrary, without jurisdiction and proper authority, out of time, biased/prejudiced and having been initiated without proper application of judicious mind and following principles of natural justice as well as the procedure laid down by concerned authorities of Government of India and law laid down by the Hon'ble Apex Court."

Except stating that, the proceedings are "out of time", the applicant did not elaborate as to how the proceedings are barred on that count. Neither the relevant dates were mentioned nor the provisions of law were indicated. He made various representations requesting the successive Inquiry Officers, to furnish documents. It was only on 16.11.2016 that he made a representation to the Inquiry Officer with a request to drop the proceedings on the ground that they were initiated beyond the stipulated time. He mentioned that the charge memo is issued by the controlling officer to him on 18.11.2010, and it was received by him on 23.11.2011. The record discloses that the order, according Presidential Sanction dated 03.11.2010, and the charge sheet of the same date were dispatched to the applicant. As required under the procedure, the order and memorandum dated 03.11.2010 were forwarded to the controlling officer, and they, in turn, forwarded the order and memorandum to the applicant vide covering letter dated 18.11.2010. A perusal of it makes this aspect clear. It reads as under:-

"Sub : Sanction Order Under Rule 9 of the Central Civil Services (Pension) Rules, 1972.

Kindly refer to above,

In this regard, I am directed to forward herewith in original order/memorandum F.No.C-14011/13/2010-V & L dated 03.11.2010 and sanctioned order F.No.C-14011/13 (A)/2010-V & L dated 03.11.2010 under Rule 9 of the Central

Civil Services (Pension) Rules, 1972 for necessary compliance at your end.

Kindly acknowledge the receipt for the same."

If this were to be the only method of communication to the applicant, things would have been different altogether.

10. The requirement as to institution of disciplinary proceedings against retired employees within four years from the date of the event is contained under Rule 9 of Rules, 1972. It reads as under:-

"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 hundred and seventy-five 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."

11. The expression employed by the rule making authority is "Institute". It is not difficult to understand the scope of the word "Institute", in the legal parlance. It connotes the phenomenon of setting the process, envisaged by law, in motion and signifies the commencement thereof. In the Concise Oxford Dictionary, the meaning of the word

"Institute" in its verb form is given as "set in motion or established. Begin (legal proceedings)".

12. Sub-rule 6 of Rule 9 of Pension Rules, 1972 also throws some light, on this aspect. It reads as under:-

"(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."

From a reading of this, it becomes clear that the departmental proceedings shall be deemed to be instituted, the date on which the statement of articles of charge is issued. A reference is also made to the event of suspension.

In the field of service law, the orders of appointment become effective from the date on which they are served upon the candidate, whereas the disciplinary proceedings including the order of suspension come into force, from the date on which the proceedings are initiated by the competent authority.

13. The legality of disciplinary proceedings is not made dependent upon the service of same on the concerned employee. The reason is that in a given case, the employee may successfully avoid the receipt of proceedings, and may defeat the very purpose of institution of those proceedings by resorting to such techniques. Obviously, for this, and allied reasons, commencement of the disciplinary proceedings is not made dependent upon the service of the proceedings on the employee.

14. It is not as if that ?service? of the charge memo or other proceedings is insignificant. It is, in fact, a mandatory requirement under sub rule (4) of Rule 14 of the CCS (CCA) Rules. It reads as under:-

"(4) The Disciplinary Authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehavior and a list of documents and witnesses

by which each article or charges is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and state whether he desires to be heard in person."

15. Even where the proceedings are initiated against a retired employee, this procedure under the CCS (CCA) Rules, becomes applicable as is evident from Rule 9 (2) (b) (iii) of the Pension Rules, extracted in the preceding paragraphs. While the objective under Rule 9 (2) (b), is to set the proceedings in motion, the one under Rule 14 of the CCS (CCA) Rules is to protect the interests of the charged officer and to ensure compliance with the principles of natural justice. This subtle distinction is worth being maintainable.

16. When the rule making authority has chosen or employed different expressions, to connote the seeming by similar situations, it must be presumed that it was done with a definite purpose. The courts can interfere if only the strict compliance with the rule in question would lead to absurd results. The applicant is not able to demonstrate any such absurdity, nor is able to show that he has suffered any prejudice, in the process.

17. Reliance is placed upon by learned counsel for the applicant on the judgment of this Tribunal in B. Prasad (Retd.) vs. Secretary, Ministry of Finance and Others (OA No.1016/2014 decided on 01.10.2014). A perusal of the said judgment discloses that the disciplinary proceedings were challenged on several grounds, such as, that they were instituted beyond limitation stipulated under Rule 9 (2) of Pension Rules, 1972, the charge memo was not approved by the appointing authority as required under the judgment of Hon^{ble} Supreme Court in Union of India and others vs. B. V. Gopinath (2014) 1 SCC 351, and that in the charge memo no witness has been cited to prove the charge. The matter was discussed on merits at length, and a specific finding was recorded to the effect that the charge memo was not approved by the appointing authority. We do not find any clear pronouncement to the effect that unless the charge memo is "served" within four years from the date of institution of the proceedings, the proceedings would become nullity. On the other hand, the charge memo was set aside only on the ground that it was not approved by the appointing authority and liberty was given to the concerned authority to pass appropriate orders within two months from the date of receipt of copy of the order.

18. Reliance is also placed on certain other precedents which dealt with the notices under the Income Tax Act etc. That analogy cannot be applied to disciplinary proceedings. We also find from the record that the applicant participated in the proceedings to a substantial extent and raised the objection at a later stage.

19. We do not find any merit in the OA. It is accordingly dismissed. There shall be no order as to costs.