

(2021) 04 CAT CK 0020

In the Central Administrative Tribunal

Case No : Original Application No. 2218 Of 2019

Hira Singh Dharamsattu, (Retd. Chief Engineer)

APPELLANT

Vs

Delhi Development Authority & Others

RESPONDENT

Date of Decision : 05-04-2021

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 9(2)(b)

Citation : (2021) 04 CAT CK 0020

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

Bench : Division Bench

Advocate : M.K. Bhardwaj, Sriparna Chatterjee

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J

1. The applicant is working as Chief Engineer in the Delhi Development Authority. He was issued a memo dated 29.04.2015 in relation to the approval for extra work. Almost within one month thereafter, he retired from service on 31.05.2015. He is said to have submitted a reply on 22.06.2015. Not satisfied with the same, the respondents ultimately issued a charge memo dated 19.01.2018. It was alleged that the applicant has deliberately and with a fraudulent intention, entrusted a work costing about 8.6 crores to a contractor as an extra item, instead of calling for a tender. Similar allegation in respect of another charge was that he entrusted work costing 8.43 crores, as extra item to a contractor. The applicant submitted a reply soon thereafter. An inquiry officer was also appointed.

2. During the course of inquiry, the applicant raised certain objections in the preliminary meeting held on 19.06.2016. The same was dealt with through a reply dated 01.07.2009. This OA is filed challenging the charge memo dated 19.01.2018 and reply dated 01.07.2009.

3. The applicant contends that the charge framed against him is factually

incorrect and the second contention is that the charge memo was issued beyond four years from the date of event, in contravention of Rule 9 (2) (b) of CCS (Pension) Rules. He further contends that the reply given by the inquiry officer does not accord with law.

4. The respondents filed a detailed counter affidavit. It is stated that the proceedings were initiated against the applicant as soon as the irregularities were noticed and the plea raised by the applicant as to the limitation mentioned in Rule 9 (2) (b) is not correct. They further submit that the truth or otherwise of the charges can be found only in the course of inquiry and no interference is warranted at this stage.

5. We heard Shri M.K.Bhardwaj, learned counsel for the applicant and Smt.Sriparnachattarjee, learned counsel for the respondents.

6. The proceedings against the applicant commenced with the issuance of the notice dated 29.04.2015. The respondents wanted to ascertain the relevant facts, before taking recourse to the disciplinary proceedings. Within one month thereafter, he retired from service on 31.05.2015 and his reply was given on 26.06.2015. The relevant facts were analysed with reference to the notice and ultimately it was decided to issue a charge memo. Since the applicant retired from service, certain procedure has to be followed and ultimately the charge memo was issued on 19.01.2018. The principal contention urged by the applicant is that the charge memo was issued beyond the time stipulated under Rule 9(2) (b).

7. It is true that Rule 9 (2) (b) mandate that no disciplinary proceedings shall be initiated against a retired employee, with reference to an event which took place beyond four years. In the statement of imputation, the particulars of the work were mentioned. The allegation against the applicant is that he entrusted an altogether independent item of work, involving huge cost, as an extra item to the existing contractor. In the course of description of the work it was mentioned that the date of completion was mentioned as 08.01.2014. The date is the one which is stipulated for completion, and not the one of completion. We also find that in mentioning those particulars is unwarranted.

8. Be that as it may, in matters of this nature, the date of completion either actual or stipulated, does not become relevant. It is only when the actual fraud is noticed that the limitation starts. One cannot disbelieve or suspect the acts of Chief Engineer and follow him with a lens of suspicion. The acts of fraud come to light, a bit late. The reason is that the players in the fraud will take every precaution to ensure that secrecy is maintained. Naturally it would take the administration quite some time, to unearth the fraud. It is from there that one has to reckon the four years period. Viewed from this angle, it cannot be said that there is any delay or infraction of Rule 9 (2) (b) of the CCS (Pension) Rules, in issuing the charge memo. We are not inclined to interfere with the charge memo on the ground referable to Rule 9 (2) (b). The truth or otherwise of the

allegations needs to be examined in the inquiry. Even otherwise the date on which the applicant accorded approval for the extra work is 27.01.2014 and the charge memo was issued on 19.01.2018, 10 days before the expiry.

9. Though it appears that there was some uncertainty as regards the invoking of the relevant provision, the applicant as well as the respondents clearly understood it. The inquiry is already in progress, we are not convinced to interfere with the same.

10. The OA is accordingly dismissed. There shall be no order as to costs.