

(2021) 04 CAT CK 0032

In the Central Administrative Tribunal

Case No : Original Application No. 3133 Of 2017, 1518 Of 2020, Miscellaneous Application No. 2994 Of 2019, 1928 Of 2020, 141 Of 2021

M S Hashmi

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 05-04-2021

Acts Referred:

Central Civil Services Conduct Rules, 1964 — Rule 3(1)(i), 3(1)(ii), 3(1)(iii)

Citation : (2021) 04 CAT CK 0032

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

Bench : Division Bench

Advocate : Y. V. Ravi Prasad, Khowaja Siddiqui, Ranjan Tyagi, Anupama Bansal

Final Decision : Allowed/ Dismissed

Judgement

L. Narasimha Reddy, J

1. The applicant is working as Garrison Engineer (Naval Works) in the Military Engineering Service (MES), Ministry of Defence. He was issued a charge memo dated 19.02.2004, alleging that a complaint was received to the effect that he demanded and accepted illegal gratification of Rs.50,000/- on 10.04.2003 from Sri Suresh Garodia of M/s. Kajal Constructions, Mumbai. The applicant submitted his explanation to the charge memo. Not satisfied with that, the Disciplinary Authority (DA) appointed one Lt. Col. T S Sapra as Inquiry Officer (IO) and Sri R K Vazrani as Presenting Officer (PO), through order dated 15.06.2004. A criminal case was also registered against the applicant by the Central Bureau Investigation (CBI). On account of initiation of these proceedings, the DA deferred the departmental proceedings. The applicant was also placed under suspension.

2. The Court of Special Judge for CBI, Mumbai acquitted the applicant, vide judgment dated 31.03.2009 (Special Case No.16/2004). The suspension of the applicant was revoked, through order dated 30.07.2009. The applicant filed a

representation with a prayer to withdraw the charge memo. The DA appointed one Sri S C Goyal, SE as IO in place of Lt. Col. T S Sapra, the earlier IO, through order dated 03.07.2017. One Sri OVVS Reddy, EE was appointed as PO in place of earlier PO, Sri R K Vazrani, through an order of the same date. The applicant filed O.A. No.3133/2017 before the Tribunal with a prayer to declare the action of the respondents in not withdrawing the charge memo dated 19.02.2004 and to set aside the subsequent proceedings dated 03.07.2017, appointing IO and PO, as illegal, arbitrary, discriminatory and unjust; and to set aside them. He has also prayed for consequential benefits, including the promotion.

3. The applicant contends that though the criminal as well as disciplinary proceedings were initiated against him on the same set of allegations, the DA ought to have withdrawn the proceedings, once the Court of Special Judge for CBI, Mumbai acquitted him in the criminal case, after full-fledged trial. He contends that assuming that the DA wanted to proceed with the matter after the criminal case was decided, it ought to have been done immediately and in the instant case, the IO and PO were appointed eight years after the acquittal in the criminal case. Reliance is placed upon certain judgments.

4. The respondents filed a detailed counter affidavit, opposing the O.A. It is stated that though the charge memo was issued in the year 2004, the further proceedings were deferred awaiting the outcome of the criminal case. It is stated that the applicant no doubt was acquitted in the criminal case, but the parameters for adjudication of disciplinary proceedings are substantially different. According to them, the delay in appointment of EO and PO took place in the process of verification of various issues and examination of the matter from different angle.

5. During the pendency of O.A. No.3133/2017, the applicant served upon the respondents, on 27.11.2019, a notice of three months, for voluntary retirement, effective from 01.03.2020. In reply to that, the respondents addressed a letter dated 21.09.2020. It was mentioned that the application for voluntary retirement was not processed on account of the fact that the applicant remained unauthorizedly absent from 16.04.2019 and the vigilance status was not clear.

6. The applicant filed O.A. No.1518/2020, challenging the order dated 21.09.2020. He contends that once he has completed the stipulated length of service and issued notice of three months, the respondents were under obligation to accept the same. It is stated that the communication dated 21.09.2020 is a belated one and the application for voluntary retirement stood accepted. In this O.A., he prays for pension and other benefits.

7. The respondents filed a counter affidavit opposing this O.A. It is stated that the occasion for an employee, to be permitted to take voluntary retirement arises only when he is free from vigilance, and was on duty. According to the respondents, the applicant was facing disciplinary proceedings, which are subject matter of O.A. No.3133/2017 and apart from that, he was not on duty when he

submitted notice for voluntary retirement.

8. Arguments on behalf of the applicant are advanced by Sri Y.V. Ravi Prasad, learned senior counsel assisted by Sri Khowaja Siddiqui, learned counsel. He contends that the respondents have chosen to keep on hold, the disciplinary proceedings, awaiting the outcome of the criminal case and once the applicant was acquitted in the criminal case, there was absolutely no basis to resume the same. He further submits that though there may be instances where disciplinary proceedings are resumed, despite acquittal of the employee, it would be without any delay and that in the instant case, the resumption was attempted nearly eight years after the acquittal. He placed reliance upon the following judgments:

Hon'ble Supreme Court:

- (i) P.V. Mahadevan v. M.D., Tamil Nadu Housing Board, (2005) 6 SCC 636,
- (ii) State of Madhya Pradesh v. Bani Singh & others, AIR 1990 SC 1308,
- (iii) State of Andhra Pradesh v. N. Radhakishan, (1998) 4 SCC 154
- (iv) Bank of India & others v. Degala Suryanarayana, (1999) 5 SCC 762
- (v) State of Tamil Nadu v. M.M. Rajendran, (1998) 9 SCC 268
- (vi) Ranjeet Singh v. State of Haryana & others (Civil Appeal No.1491/2006) decided on 30.06.2008
- (vii) UCO Bank & others v. Rajendra Shankar Shukla, (2018) 14 SCC 92

Hon'ble Delhi High Court

- (viii) N B Chauhan v. Delhi Development Authority & others, 2004 (6) SLR 566

Hon'ble High Court of Madras

- (ix) K. Subramanian v. The State of Tamil Nadu & others (Writ Petition No.19421/2009) decided on 29.03.2011.

He further submits that the application for voluntary retirement from service ought to have been allowed.

9. In O.A. No.3133/2017, Sri Ranjan Tyagi, learned counsel appeared for the respondents. He contends that the standard of proof and other parameters, that are applicable in judicial proceedings on the one hand and disciplinary proceedings on the other, are substantially different; and acquittal of the applicant in the criminal case, by itself, does not result in closure of the disciplinary proceedings. He submits that the delay in resumption of the disciplinary proceedings after the acquittal was due to some administrative issues and the applicant cannot be said to have caused any hardship on account of that.

10. In O.A. No.1518/2020, the respondents were represented by Smt. Anupama Bansal, learned counsel. She contends that an employee can be permitted to

take voluntary retirement only when he fulfils certain conditions (a) completed stipulated length of service, (b) his being on duty; and (c) being clear from vigilance angle. She contends that in the instant case, except the first factor, the applicant did not fulfil the rest of the two conditions and accordingly, the impugned order was passed on 21.09.2020.

11. The applicant was issued a charge memo way back in the year 2004. The only charge reads as under:-

"Statement of article of charge against Shri Mohammed Sadi Hashmi, Garrison Engineer, Military Engineer Service, Mumbai.

Shri Mohammed Sadi Hashmi while functioning as Garrison Engineer Naval Works, Military Engineer Service, Munkhurd, Mumbai committed gross misconduct by demanding and accepting illegal gratification of Rs.50,000/- on 10.04.2003 from Shri Suresh Garodia of M/s. Kajal constructions, Mumbai to issue the acceptance letter of the tender for Provision of Submersible Pump sets for augmentation of water etc. supply at Coast Guard Air Station, Daman.

Shri M.S. Hashmi did not intimate to the office regarding the partnership Deed between his wife and Shri Jadhav & others. She entered into partnership for doing electrical business vide Partnership Deed and Memorandum of Understanding dt.18.02.2003. Said Partnership Deed was executed on the Stamp papers of Rs.500/- each and notarised through Shri J.L. Mhatre, Notary & Advocate, High Court, Thane.

The aforesaid acts on the part of Shri Mohammed Sadi Hashmi, Garrison Engineer, MES, Mumbai shows that while functioning as Government servant did not maintain absolute integrity and acted in the manner as unbecoming of a Government servant, thereby contravened the provisions of Rule 3(1)(i) & (iii) of CCS (Conduct) Rules, 1964."

12. The allegation is that the applicant has demanded and accepted illegal gratification of Rs.50,000/-. The applicant denied the allegations and the DA has immediately appointed the IO and PO in June, 2004 itself. However, the proceedings were kept on hold on the ground that a criminal case, on the same charges is pending adjudication. In matters of this nature, the DA has to tread carefully. It was open to him, to proceed with the disciplinary matter, despite the pendency of criminal case, if, according to him, the method of inquiry and standard of proof, etc. were different. The very fact that he deferred the proceedings, awaiting the outcome of the criminal case, discloses that the purport of charge and the nature of evidence, in both the proceedings, is common; and that it would be better to await outcome of the criminal proceedings. Once the disciplinary proceedings were kept on hold on the grounds mentioned above, the DA was required to respect the outcome of the criminal case. Otherwise, there was no point in keeping the proceedings on hold, for about five years.

13. Giving the benefit of doubt to the DA in this behalf, and assuming that it was competent for him to resume the proceedings despite acquittal, he was required to exhibit an element of promptitude, as was done at the initial stage. The charge memo was issued in February, 2004 and by June, 2004, the EO and PO were appointed.

14. The acquittal of the applicant took place on 31.03.2009. Even to reinstate the applicant, the appointing authority took four months. The order, appointing the EO and PO in the place of those, who were appointed earlier, was passed only on 03.07.2017. With the best of the explanations, such a delay cannot be condoned.

15. What is more shocking is that the proceedings were resumed only when the applicant made a representation on 03.02.2017 with a request to withdraw the charge memo. The representation was made on 03.02.2017 and the order, appointing another EO and PO, was of 3.07.2017. The explanation offered by the respondents in this behalf in the counter affidavit reads:

"Para 4 (13) & (14) : It is a fact that the officer has been acquitted by Hon'ble CBI Court judgment dated 31 March 2009 on technical ground. However, CBI has filed a Criminal Appeal No. 1624 of 2011 on 26 December 2011 before Hon'ble High Court of Bombay against the Hon'ble CBI Court Judgment dated 31 March 2009. The appeal is still pending before Hon'ble High Court, Mumbai.

The representation dated 03 February 2017 was considered by the Competent Authority, MoD. It may be noted that to initiate Regular Department Action for Major Penalty, Charge Memo dated 19th February, 2004, amended on 26th July, 2004, for violation of Rule 3(1)(i) to (iii) of CCS (Conduct) rules, 1964, was served upon the officer and acknowledged by the officer on 27 March 2004. To conduct the Inquiry Proceedings, IO & PO was appointed by the Competent Authority, MoD on 15th June, 2004. However, Centre Vigilance Commission vide their advice dated 19 Oct 2004 had advised to keep the RDA in abeyance till the conclusion of trial proceedings in the Court of Law. Hence, the RDA for Major Penalty against the Officer was not suspended, however, kept in abeyance. After finalization of criminal proceedings, the competent Authority, MoD has decided on 06 March 2017 to continue Disciplinary Proceedings against the officer. Therefore, as the Disciplinary Proceedings for Major Penalty is pending against the officer, the sealed cover cannot be opened for the promotion and grant of consequential benefits to the officer till finalization of RDA for Major Penalty."

16. If the pendency of Criminal Appeal filed before the Hon'ble High Court of Mumbai was a justification for non-resumption of the proceedings, there was no need to pass the impugned order. Once the respondents felt it appropriate to resume the proceedings even when the Criminal Appeal is pending, the delay remains unexplained.

17. State of Andhra Pradesh v. N. Radhakishan (supra), the Hon'ble Supreme Court held as under:

"19. It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. the essence of the matter is that the court has to take into consideration all relevant factors and to balance and weight them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. if the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."

18. Similar view was expressed in the other judgments, referred to above. In some cases, the delay was in the very initiation of the proceedings, whereas in certain other matters, the delay was in conclusion of the proceedings. Either way, the Hon'ble Supreme Court held that the delay in initiation or conclusion of the proceedings would adversely affect the rights of the employee.

19. Permissibility of initiation or continuation of the disciplinary proceedings even after the acquittal of an employee on the same set of allegations, was dealt with by the Hon'ble High Court of Madras in K. Subramanian (supra). After referring to the various judgment of Hon'ble Supreme Court on the subject, the High Court of Madras held as under:

"29. In the instant case, disciplinary proceedings have been initiated by the Respondents against the Petitioner after a long period of ten years for the very same charge, which was found not proved by the enquiry officer earlier and which ended in acquittal by a criminal court. This Court is at a loss to understand as to what made the Respondents to initiate the disciplinary proceedings afresh for the very same charge, that too when the said charge was found not proved by the enquiry officer and which ended in acquittal by a criminal court. There is also no satisfactory explanation on the part of the Respondents for the said

inordinate delay. The explanation offered by the Respondents for the delay that the matter was pending before the court of competent criminal jurisdiction cannot be accepted, for the reason that there is no legal impediment to proceed simultaneously against the Petitioner for the alleged misconduct. Had that been proceeded, the Petitioner would know his position at least in an appropriate timeframe about his commission and omission. But, the Respondent has cited some reason that the matter was pending before the criminal court, which could not be the reason for delaying the departmental proceedings. Therefore, the impugned act of the Respondents, in my considered opinion, suffers from legal infirmities."

20. We are of the view that the delay in resumption of the disciplinary proceedings against the applicant in the year 2017, long after the applicant was acquitted in criminal case in March, 2009, remains unexplained and has vitiated the proceedings. What is more startling is the fact that it is when the applicant made representation in February, 2017 with a request to withdraw the charge memo, that the respondents have woken up and decided to resume the proceedings. Not a single reason was mentioned as to what the respondents were doing between 2009 and 2017. Therefore, the impugned order is illegal, arbitrary and untenable. O.A. No.3133/2017 deserves to be allowed.

21. Coming to O.A. No.1518/2020, the request made by the applicant for voluntary retirement from service was rejected by citing two reasons. The first was that the vigilance clearance was not available, obviously because of pendency of disciplinary proceedings; and the second was that the applicant was not on duty and remained absent unauthorizedly. The mere fact that the applicant completed 20 years of service does not clothe him with a right to seek voluntary retirement from service. It is only when other conditions stipulated under the law are complied with, that he can be permitted to take voluntary retirement. It is fairly well settled that a person, who is facing disciplinary proceedings, cannot be permitted to take voluntary retirement. Another requirement is that the employee must be on duty when the application was made in this behalf. Since the disciplinary proceedings are set aside, the applicant can now make a fresh application, after reporting to duty.

22. Therefore, the O.A. No. 3133/2017 is allowed, setting aside the charge memo dated 19.02.2014 and impugned proceedings dated 03.07.2017. The applicant shall be extended the benefits, which were denied to him, on account of pendency of the disciplinary proceedings, in accordance with law.

23. The O.A. No.1518/2020 is dismissed, leaving it open to the applicant to make a fresh application for voluntary retirement from service after reporting to duty.

24. All the M.As. shall stand disposed of.

There shall be no order as to costs.