

(2018) 10 CAT CK 0127

In the Central Administrative Tribunal

Case No : Original Application No. 3776 Of 2016

Praveen Kumar

APPELLANT

Vs

Delhi Development Authority And Ors

RESPONDENT

Date of Decision : 08-10-2018

Acts Referred:

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

Citation : (2018) 10 CAT CK 0127

Hon'ble Judges : V. Ajay Kumar, J;A.K. Bishnoi, Member (A)

Bench : Division Bench

Advocate : R.A. Sharma, D.S. Mahendru

Final Decision : Dismissed

Judgement

A.K. Bishnoi, Member (A)

1. The instant OA has been filed by the applicant seeking the following reliefs:-

"(a) A direction to the respondents to produce or cause production of the records of the case for perusal of this Hon'ble Tribunal.

(b) Quash and set aside the charge sheet dt. 27.9.2016 (Annexure A-1).

(c) A further direction to the respondents to release all the retiral dues of the applicant with 18% interest p.a. till the date they are paid.

(d) A further direction to the respondents to pay all consequential benefits to the applicant.

(e) Pass any other order or orders as deemed fit and proper in the facts and circumstances of the case.

(f) Allow cost of proceedings in favour of the applicant".

2. On 09.11.2016, while issuing notices to the respondents in the O.A., this Tribunal stayed the impugned orders.

3. Briefly the facts of the case, as stated by the applicant, are as follows:-

3.1 The applicant was posted as Assistant Engineer (AE) (Civil) in DDA in the year 2010. He entered the completion certificates regarding certain works, which were also signed by the then Executive Engineer (EE) and the then Superintending Engineer (SE). Similar certificates were signed in respect of certain other works on similar lines by other officers posted in DDA.

3.2 The applicant was transferred from the above division on 31.07.2010 and subsequently superannuated on 30.09.2016. Just before his superannuation, he was served with a charge sheet dated 27.09.2016 under major penalty proceedings on 29.09.2016. Prior to this, he received a Vigilance Memo dated 07.01.2016, alleging certain irregularities committed by him while recording the completion certificate in respect of the work he was looking after. He gave a detailed reply on 22.02.2016. Without considering the above reply, he was issued a charge sheet referred to above.

3.3 The applicant has sought to challenge the charge sheet on the grounds that it related to the alleged misconduct, which is more than 6½ years old and hence is not maintainable as per the provisions of Rule 9(2) of the CCS (Pension) Rules, 1972 and in the light of the law laid down by this Tribunal in the case of K.C. Brahmachary vs. Chief Secretary, Government of National Capital Territory of Delhi & Ors. (1997) 36ATC 419, and by the Hon'ble Delhi High Court in the case of O.P. Gupta vs. Union of India & Anr., 1981 (3) SLR 778.

3.4 The applicant has also contended that the charge sheet suffers from invidious discrimination, delay and laches and non-application of mind.

4. Respondents in their reply have averred that certain allegations were made in press clippings regarding the quality of constructions in the flats constructed by DDA as also regarding grant of completion certificate without work being actually completed. The matter was enquired into and it was found that the completion certificates given on 04.02.2010 regarding certain works suffered from defects and were given even before the completion of essential works in the flats. This report was put up by Chief Engineer (QAC) on 02.04.2013. Initially a call version Memo dated 7.01.2016 was issued to the applicant to which he submitted a reply on 22.02.2016. After detailed departmental investigation, the disciplinary proceedings under Regulation 25 of the DDA Conduct, Disciplinary and Appeal Regulation, 1999 were initiated against the applicant and charge sheet issued on 27.09.2016.

4.1 As regards the submission of the applicant that the respondents had not questioned the then EE and SE, who were In-charge of the works regarding which the applicant has been charge-sheeted, it has been replied in the counter affidavit that they had retired from service on 31.10.2012 and 31.07.2014 respectively and the cause of action being more than 4 years old, as per Rule 9(b)(ii) of CCS (Pension) Rules, 1972, no action could be taken. Respondents have also denied that the charge sheet does not disclose any misconduct and

have stated that they were duly recorded in the statement of imputations.

4.2 Several other averments have been made as regards factual details in the charge sheet in response to the submissions made by the applicant in the OA. However, there is no need to record them here, as they are not material to the issue under consideration.

5. The applicant has filed rejoinder on 22.05.2017 in which the contents of the OA have been more or less repeated.

6. Heard the learned counsels of both the parties and perused the material available on record.

7. The main issue to be decided in the present OA is whether institution of departmental proceedings by issuance of charge sheet to the applicant just before his retirement for alleged occurrence of misconduct committed about 6½ years makes it bad in law and liable to be set aside.

8. A plain reading of Rule-9 of the CCS (Pension) Rules, 1972 reveals that it imposes no restriction on the institution of departmental proceedings prior to retirement and it also does not contain any reference to limitation regarding time gap between the occurrence of misconduct and the institution of departmental proceeding in relation to it if it is done before retirement.

9. The applicant in support of his case has mainly relied on the cases of K.C. Brahmachary (supra) and O.P. Gupta (supra).

10. We have gone through the law laid down in K.C. Brahmachary (supra). It is in relation to continuation of departmental proceedings after retirement and is based on a very different set of facts from that which exists in the present case. Hence, the same cannot be applied in the present case.

11. The case of O.P. Gupta (supra) is also based on a very different set of facts and the judgment also relates to continuation of the departmental proceedings after retirement. Hence that too has no application here.

12. The applicant has also raised the issue of invidious discrimination. Since the applicant was in service when the charge sheet was issued to him while the EE and SE referred to had already superannuated, they were governed by different provisions of the rules. That being the case, the contention of the applicant regarding invidious discrimination is erroneous as the two situations have been differentiated by law and not by the choice of any individual. The other grounds raised in the OA mainly relate to matter of details and it is not for this Tribunal to go into them while deciding on the basic issue of validity of the charge sheet and the institution of departmental proceedings.

13. In view of the above discussion, we find that the applicant has failed to show that the institution of departmental proceedings and issuance of charge sheet in the present case is not in accordance with law.

14. Accordingly, the OA is dismissed, and the stay order dated 9. 11.2016 is vacated. No order as to costs.