

(2010) 05 DEL CK 0261

In the Delhi High Court

Case No : Writ Petition (C.) No. 2222 of 2010

Union of India (UOI) and Another

APPELLANT

Vs

Prakash Chandra and Others

RESPONDENT

Date of Decision : 04-05-2010

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Central Civil Services (Conduct) Rules, 1964 — Rule 3(1)
Central Civil Services (Pension) Rules, 1972 — Rule 49, 9, 9(2)
Constitution of India, 1950 — Article 226

Citation : (2010) 05 DEL CK 0261

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : R.V. Sinha, R.N. Singh and A.S. Singh, for the Appellant; Naresh Kaushik, Aditi Gupta, Amita Kalkal for Respondent No. 2/UPSC, for the Respondent

Final Decision : Dismissed

Judgement

Mool Chand Garg, J.—The present writ petition has been filed by the petitioners to assail the order dated 14.10.2009 passed by the Central Administrative Tribunal, Principal Bench in OA No. 261/2009 which was allowed in favour of the respondent by setting aside the order of punishment imposed against the petitioner after several years of his retirement. Briefly stating the facts of this case are that the respondent who was working as Executive Engineer in the Central Public Works Department (CPWD) retired on superannuation on 31.01.1996. The charge-sheet was served upon the said respondent on 02.12.1998 after obtaining the sanction of the President under Sub-clause (i) of Clause (b) of Sub-rule (2) of Rule 9 of the Central Civil Services (CCS) (Pension) Rules, 1972 on the allegations that while working as Executive Engineer during the period 01.06.1992 to 31.05.1995. It was stated that the said respondent committed certain acts of omission & commission which violates Rule 3(1)(i) and 3(1)(ii) of the CCS (Conduct) Rules, 1964. Accordingly, a memo of charge was

served upon the petitioner leveling charges against him. The charges were denied by the respondent and consequently an Enquiry Officer was appointed. The said Inquiry Officer in his finding held that Article I stood proved against the petitioner while Article II stood proved partly.

2. After serving copy of the inquiry report upon the respondent, the competent authority consulted CVC on the inquiry report and thereafter served upon the respondent a copy of the inquiry report and the advice of CVC.

3. After response was received from the respondent, the competent authority then sought for the advice of UPSC. Based upon the advice of the UPSC, the competent authority imposed a penalty of 25% cut in pension permanently.

4. It is against the said order the respondent filed an Original Application before the Tribunal u/s 19 of the Administrative Tribunals Act which as stated above was allowed. The order of the competent authority in directing cut in pension on permanent basis to the extent of 25% was set aside and directions were given to the petitioners to restore the cut in pay & the arrears be paid within six weeks along with interest at the rate of 8% simple interest per mensem.

5. It would be relevant to take note of Rule 9 of CCS (Pension) Rules reproduced hereunder for the sake of reference

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 (Rupees One thousand two hundred and seventy-five from 1.1.1996 - see GID below Rule 49) 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.

6. A perusal of these rules goes to show that in relation to any alleged misconduct of a public servant committed within a period of four years before his retirement, disciplinary proceedings can be initiated against the said officer with the sanction of the President and, thus, it was competent for the petitioners to have initiated the departmental proceedings. However, it may be observed here that the purpose of holding such an enquiry is with a view that the President can withhold the pension or gratuity either in full or in part with a view to recover whole or part of any pecuniary loss caused to the Government, if in any departmental or judicial enquiry the delinquent officer is found to be guilty of gross misconduct or negligence during the period of service.

7. In the present case even though the respondent retired with effect from 31.01.1996, the petitioners after obtaining sanction of the President in accordance with the provision of Rule 9 served charge sheet upon the respondent for alleged misconduct during the period 01.06.1992 to 31.05.1995 i.e. within four years of the retirement of the respondent.

8. The charge-sheet served upon the respondent reads as under:

ARTICLE-I

The said Shri Prakash Chandra had taken up and executed the aforesaid works without the administrative approval and expenditure sanction of the competent authority thereby violating the provisions of the paras 2.1, 2.2 of CPWD Manual Vol.II (1988 edition) and para 101 (a) of the CPWD Code, 1959.

ARTICLE-II

The said Shri Prakash Chandra accorded technical sanction for Rs. 6,31,500/- and accepted the tender for the amount of Rs. 6,54,254/- for the aforesaid work but actually executed the work costing Rs. 16,54,700/- without obtaining prior approval for the huge deviations from the competent authority and also without accord of administrative approval and expenditure sanction and revised technical sanction of the competent authority, thereby violating the provisions of paras 2.38, 25.2, 25.3 of the CPWD Manual Vol. II (1998 Edition).

By the above acts of omission and commission, the said Shri Prakash Chandra failed to maintain absolute integrity and exhibited lack of devotion to duty, thereby violating Rule 3(1)(i) and 3(1)(ii) of the CCS (Conduct) Rules, 1964.

9. The respondent has denied the charges against him. Accordingly, a departmental inquiry was held against him. The Inquiry Officer submitted a report dated 11.08.2004 whereby the inquiry officer held that the first Article of charge stood proved against the respondent in full while the second charge was proved in part. The relevant observation by the inquiry officer in this regard are reproduced hereunder:

6.2.6. In view of the discussions above in paras 6.2.2 to 6.2.5 and considering the pleadings put forth by PO, CO and the evidence available on record the article-I of charge stands partly proved as the CO actually executed the alleged work of an amount of Rs. 16,33,125/- and not of the alleged amount of Rs. 16,54,700/-.

7.0 FINDINGS:

7.1 Charge under Article-I stands proved as indicated in para 6.1.10

7.2 Charge under Article-II stands partly proved as indicated in para 6.2.6

(REPORT CONCLUDED)

(M.C.Bansal)

INQUIRY OFFICER

S.E.(INQUIRY)

10. A perusal of the paragraph 6.2.5 of the inquiry report goes to show that basically the allegation against the respondent are of procedural violation. The relevant extract is reproduced hereunder:

6.2.5 Para 25.4 of CPWD Manual Vol.II (1988 edition) provides.

If deviations from the sanctioned plans and estimate becomes necessary, these should ordinarily be first discussed by the JE/AE, with the Executive Engineer and if he agrees in principle, then the proposal should be formulated. The Executive Engineer shall be responsible to obtain the prior sanction of the competent authority to such sanction of the competent authority to such deviations...: I agree with the deposition of PW-2 who in his deposition submitted that during the year 1994-95, the CO in the capacity as Executive Engineer was competent to accord technical sanction to an estimate to the extent of Rs. 7.00 Lac for strengthened division. Beyond this amount the Technical sanction was to be accorded by the higher authority competent to sanction. It appears that the CO knew from the very beginning that the total estimated amount of all the requisitioned works under Exb.P-1 would be beyond his financial competence to accord TS and to invite tender, therefore to keep the TS amount and the tenders within his own competence, the CO technically sanctioned the detailed estimate

and invited the tenders only for the work of changing rooms though in the requisition from the Principal of the school 3 other works were also indicated. As detailed in para 6.2.4 above, the CO got the work executed at serial Nos. 2 & 4 of the requisition letter in addition to work at serial No. 1 for which tenders had been invited and accepted by him, by deviating the quantities of agreement i.e. Exb. P-3. Though the CO executed the work for an amount of Rs. 16,33,125/- against the technically sanctioned estimate of Rs. 6,31,500/- but, he did not obtain any prior sanction of the competent authority to execute such heavy deviations. In the instant case there is nothing on record to show ever, any proposal to have been initiated by the CO to obtain the prior approval of the higher authority competent to sanction such deviations. The whole work had been carried out in the tenure of the CO. It was for the CO to have initiated the case for obtaining the revised Technical sanction of the competent authority. There is nothing on record of inquiry which may suggest that the CO had ever initiated any such proposal. Thus he did not obtain any revised Technical sanction. It is also concluded in para 6.1.7 above that the CO executed the alleged work without obtaining the AA&ES of the competent authority. Thus I hold that the CO executed the alleged work by violating provisions of paras 2.38, 25.2, 25.3 and 25.4 of the CPWD Manual Vol. II (1988 edition) and para 101(a) of the CPWD code 1959.

11. It is also a matter of record that the UPSC advise was sought by the petitioners and it is based upon the said advice the petitioners have passed the impugned order which was assailed before the Tribunal.

12. The Tribunal has considered the matter and have also taken note of the advice rendered by the UPSC in Para 4 of the order.

4. The UPSC have tendered their advice in the matter vide their letter No. F.3/367/2006/SI dated 21.6.2007 (copy enclosed). After a thorough analysis of the evidence on record, the Commission have inter alia observed that the Charged Officer has contended that there is no allegation of financial loss to the Government due to the Charged Officer's violation of the provisions in certain paragraphs of CPWD Manual (Vol.II), and that, if there is no loss suffered by the Government, even the President does not have any right to initiate any departmental proceedings. The Commission have found this contention of the Charged Officer, as not tenable, since fresh departmental proceedings can be instituted only in case of grave misconduct or negligence committed during the period of service including service rendered on re-employment after retirement.

4.2 The Commission also considered that, in the instant case, relevant provisions in the rules have been thrown to the winds by the Charged Officer. There was no emergency to undertake the work without the approval of the competent authorities, since the date of requisition made by the Principal (June, 1993) and the date of award of contract (December, 1994) are wide apart. Considering this aspect, the Commission consider that mala fides are strongly suspected on the part of the Charged Officer, and, therefore, Government suffering any financial

loss on account of Charged Officer's misconduct, is not an issue. Based on their analysis, the Commission have held Articles I and II of the Charge as fully proved.

13. The disciplinary authority simply acted on the advice of UPSC while imposing the punishment of 25% permanent cut in the pension of the respondent. The reasoning given by the disciplinary authority is available at page 64 of the paper book which reads as under:

3. The President considered the findings of the Inquiring Authority in consultation with the Director General (Works), CPWD, as well as the Central Vigilance Commission (CVC), and a copy each of the Inquiry Report and the advice of the CVC, was made available to the Charged Officer to enable him to make such representation in the matter as he wished to make. The representation dated 28.7.2006, so submitted by him, has duly been considered by the President in consultation with the Union Public Service Commission (UPSC).

4. The UPSC have tendered their advice in the matter vide their letter No. F-3/367/2006/SI dated 21.6.2007 (copy enclosed). After a thorough analysis of the evidence on record, the Commission have inter alia observed that the Charged Officer has contended that there is no allegation of financial loss to the Government due to the Charged Officer's violation of the provisions in certain paragraphs of CPWD Manual (Vol.II), and that, if there is no loss suffered by the Government, even the President does not have any right to initiate any departmental proceedings. The Commission have found this contention of the Charged Officer, as not tenable, since fresh departmental proceedings can be instituted only in case of grave misconduct or negligence committed during the period of service including service rendered on re-employment after retirement. The Supreme Court has held in Union of India and Others Vs. Shri B. Dev, that, having caused a pecuniary loss to government is not a necessary requirement for the purpose. The Court observed in para 13-

One of the powers of the President is to recover from pension, in a case where any pecuniary loss is caused to government, that loss. This is an independent power in addition to the power of withdrawing or withholding pension. The contention of the respondent, therefore, that Rule 9 cannot be invoked even in case of grave misconduct unless pecuniary - loss - is caused to the Government, is unsustainable" (GB Singh's Hand Book for Disciplinary Authorities - 6th edition, April, 2001 (page 296). (The position also emerges from DOP & T OM No. 28027/3/87-Estt(A) dated 29.6.1990).

4.1 As regards the Charged Officer's defence that he can at the most be blamed for procedural violation since he has not been blamed for any loss caused to the Government, the Commission have found that it is a clear admission of the charges by the Charged Officer. This is adequately supported by the absence of any clarification put forth by the Charged Officer as to why and how he failed to obtain Administrative Approval and Expenditure Sanction, and revised Technical Sanction from the competent authorities. In so far as Charged Officer's

contention about Rule 9(2)(b)(ii) of the CCS (Pension) Rules, 1972 (which provides that departmental proceedings, if not instituted while the Government servant was in service, shall not be instituted in respect of any event which took place more than 4 years before such institution) is concerned, the Commission consider that the cause of action arose when the Charged Officer issued technical sanction (16.8.1994); when he awarded the contract (December, 1994); when the work was completed (27.5.1995); when the completion certificate was recorded by the charged Officer, and, finally, when payments were made by the Charged Officer before he was transferred out from his Division (31.0.1995). Date of issue of the charge sheet being 02.12.1998, the aforesaid rule position is satisfied.

4.2 The Commission also consider that, in the instant case, relevant provisions in the rules have been thrown to the winds by the Charged Officer. There was no emergency to undertake the work without the approval of the competent authorities, since the date of requisition made by the Principal (June, 1993) and the date of award of contract (December, 1994) are wide apart. Considering this aspect, the Commission consider that mala fides are strongly suspected on the part of the Charged Officer, and, therefore, Government suffering any financial loss on account of Charged Officer's misconduct, is not an issue. Based on their analysis, the Commission have held Articles I and II of the Charge as fully proved.

4.3 In the light of their observations and findings, and after taking into account all aspects relevant to the case, the Commission have concluded that, since the charges established against Shri Prakash Chandra, the Charged Officer, Constitute grave misconduct on his part, the ends of justice would be met in this case, if 25% of the monthly pension otherwise admissible to him, is withheld on a permanent basis. They have advised accordingly.

5. The President has found that the evidence on record conclusively establishes both Articles I & II of the charge, though cost of the work executed, was Rs. 16,33,125/- and not Rs. 16,54,700/- as mentioned in Article II of the charge.

6. The President has carefully considered the records of the inquiry, the findings of the Inquiring Authority, the submissions made by Shri Prakash Chandra, the statutory advice tendered by the UPSC, and all other facts and circumstances relevant to this case. Considering the circumstances in totality and on an objective assessment of the entire case, the President has found the said Shri Prakash Chandra guilty of grave misconduct during the period of his service, and has accepted the advice tendered by the UPSC. The President accordingly hereby orders that 25% (twenty five per cent) of the monthly pension already sanctioned to the said Shri Prakash Chandra, be withdrawn on a permanent basis.

14. It is, thus, apparent that the primary reason for imposing the punishment of 25% cut in pension of the respondent is the advice of UPSC which as referred to above proceeds on the basis of violation of the Rules and is not based upon any financial loss to the Government due to Charged Officer's violation of provisions

in certain Paragraphs of CPWD Manual (Vol. II). The Tribunal, therefore, also observed:

7. The instant case is squarely covered by the decision quoted above. The order of the President imposing a punishment of 25 per cent cut in pension permanently is vitiated because it is based on the advice of the U.P.S.C., which is illegal. The order is quashed and set aside.

15. While passing the aforesaid order, the Tribunal also accepted the contentions of the respondent.

The U.P.S.C. has gone totally beyond the charge and based its advice on an allegation, which is not in the Articles of Charges. The President's order is based on the U.P.S.C.'s advice and hence vitiated. The U.P.S.C., it is contended, is an advisory body and has to base its advice on the basis of the report of the inquiry officer. It cannot arrogate to itself the powers to consider the issue on the basis of an allegation to which the Applicant has not been put to notice.

16. Taking into consideration the facts of this case the delay in initiating the departmental proceedings even after the expiry of four years before taking action in the matter inasmuch as the work allegedly executed by the respondent was performed beyond a period of four years of his retirement and inasmuch as the event which happened prior to 03.12.1994 could not have been the subject matter of inquiry which was initiated with effect from 02.12.1998.

17. In any event, taking all the facts of this case into consideration, we do not find it a fit case to interfere with the order of the Tribunal under Article 226 of the Constitution of India. The writ petition is, therefore, dismissed.

18. All the pending applications are also disposed of.