
(2019) 01 CAT CK 0088

In the Central Administrative Tribunal

Case No : Original Application No. 2004 Of 2016

Vinod Behari Mathur

APPELLANT

Vs

Union Of India Through The Secretary And Ors

RESPONDENT

Date of Decision : 21-01-2019

Acts Referred:

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

Central Civil Services (Classification, Control & Appeal) Rules, 1965 — Rule 29(1)(v)

Citation : (2019) 01 CAT CK 0088

Hon'ble Judges : Nita Chowdhury, Member (A), S.N. Terdal, J

Bench : Division Bench

Advocate : Yogesh Sharma, S.M. Zulifqar Alam, Ranny, Purnima Maheshwari, D.K. Singh

Final Decision : Parly Allowed

Judgement

Nita Chowdhury, Member (A)

1. Heard learned counsel for the parties.

2. By filing this OA, the applicant is seeking the following reliefs:-

"(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the order dated 13.03.2014 (Annex.A/1), appellate authority order dated 17.3.2016 (Annex.A/2), Memorandum dated 5.11.2013 (Annex.A/4), order dated 27.6.2011 (Annex.A/3), charge sheet dt. 13.4.2006 (Annex.A/8), IO report, and entire proceedings, declaring to the effect that the same are illegal, unjust, against the rules and against the principle of natural justice and consequently, the applicant is entitled for all the consequential benefits including the arrears of difference of pay and allowances and retirements benefits with interest.

(iii) Any other relief, which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant along with the costs of litigation."

3. Brief facts of the case are that applicant while working as Grade-I (DASS) was issued a major penalty chargesheet on 13. 4.2006, which reads as under:-

"That the said Shri Vinod Bihari Mathur, Grade-I (DASS) while functioning as Sub-Registrar (Pitam Pura), North West District during the period from February, 2005 to October, 2005 committed gross misconduct in as much as with ulterior motive and malafide intention he registered as many as 318 General Power of Attorneys (GPAs) in respect of land/property falling outside the jurisdiction of his office."

The applicant in this case has challenged the entire proceedings as well as orders passed in relation to the said departmental proceedings.

3. During the course of hearing, learned counsel for the applicant besides pleading the grounds to challenge the impugned orders has drawn our attention to the fact that the present applicant retired on 30.9.2011 and the impugned memorandum dated 5.11.2013 of the appellate authority proposed to enhance the penalty imposed by the disciplinary authority. However, he submitted that applicant against the order of the disciplinary authority preferred his appeal 1.8.2011 and while rejecting the appeal of the applicant the appellate authority, which according to the applicant is incompetent, issued a impugned Memorandum dated 5.11.2013 proposing to enhance the punishment awarded by the disciplinary authority, as the applicant stood retired on 30.9.2011 and in such an eventuality, the respondents are duty bound to proceed in the matter in accordance with the provisions of Rule 9 of the CCS (Pension) Rules, 1972 and as per the said Rule, the competent authority is the President of India and not the authority which had rejected the appeal of the applicant which was preferred by him before his retirement. Applicant further contended that he has also filed reply to the said Memorandum as well as appeal dated 5.5.2014 and the same was also rejected by order dated 17.3.2016.

3.1 Counsel for the applicant also placed reliance of the Order of this Tribunal passed in OA 685/2011 in the case of Shri Sri Pal Jain vs. Union of India and others decided on 3.1.2014 and contended that the decision of the Appellate Authority enhancing the punishment of imposed by the Disciplinary Authority by invoking the provisions contained in Rule 29(1)(v) of the CCS (CCA) Rules, 1965 is illegal and arbitrary. In this regard he has submitted that the show cause notice dated 13.4.2016 has been issued after expiry of more than 6 months of the order of the Disciplinary Authority dated 13.3.2014.

4. This Court also raised the query to the said effect to the counsel for the respondents, who in turn, submitted that the appeal of the applicant has been decided by the Lt. Governor being appellate authority vide order dated 13.11.2013 and further another appeal preferred by the applicant was also decided by order and in the name of the President but has not disputed the fact that earlier appeal which was decided after the retirement of the applicant was not passed in accordance with the provisions of Rule 9 of the CC (Pension) Rules, 1972 as the same have not been decided by the President of India, which is the

requirement of the Rules in the cases of retired employees.

5. In view of the aforesaid facts and circumstances of the present case, the orders dated 13.11.2013, 13.3.2014 and 17. 3.2016 are quashed and the respondents are directed to pass a fresh order on the appeal of the applicant as per rules. The respondents are also directed to consider the case of the applicant in the light of the decision of this Tribunal in OA No.685/2011 (supra), if the same is applicable to the facts of this case. If after the final decision, the applicant is still aggrieved, he is permitted to approach this Tribunal in a fresh OA, if so advised, in accordance with the rules.

6. In the result, the present OA is partly allowed in above terms. There shall be no order as to costs.