

(2018) 12 CAT CK 0130

In the Central Administrative Tribunal

Case No : Review Application No. 176 2018, Original Application No. 1470 2015, Miscellaneous Application No. 4381 2018, Contempt Application No. 561 2018

V.K. Gulati

APPELLANT

Vs

New Delhi Municipal Council

RESPONDENT

Date of Decision : 19-12-2018

Acts Referred:

Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 14
Central Civil Services (Pension) Rules, 1972 — Rule 9(2)(a), 9(2)(b)(ii), 9(6)(a)

Citation : (2018) 12 CAT CK 0130

Hon'ble Judges : K.N. Shrivastava, J;S.N. Terdal, J

Bench : Division Bench

Advocate : K.L. Manhas, Sriparna Chatterjee

Final Decision : Disposed Off

Judgement

S.N. Terdal, J

1. Heard Mr.K.L.Manhas, counsel for applicant and Mrs. Sriparna Chatterjee, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In this OA, the applicant has prayed for the following reliefs:

(i) To quash and set aside the impugned Memorandums of charges /charge-sheets dated 10.04.2015 and 13.04.2015 (A1 and A2 respectively) together with the Memo dated 03.12.2013 (A3) as well as all the orders passed in consequence thereof which affect the retiral benefits to the applicant adversely.

(ii) To direct the respondents to allow all the consequential benefits to the applicant without taking into consideration the impugned Memorandums.

(iii) To direct the respondents to pay interest @ 18% per annum for the delayed period of payment of his retiral dues till the date of their actual payment to the

applicant.

(iv) To pass any other order(s)/direction(s) as deemed proper in the circumstances of the case to meet the ends of justice.

(v) To award the applicant the cost of this litigation."

3. The relevant facts of the case are that the applicant was placed under suspension vide order dated 28.10.2010. The applicant retired on 31.10.2010. A departmental enquiry was initiated against the applicant vide Memorandum dated 10.04.2015 and vide another Memorandum dated 13.04.2015 under Rule 14 of the CCS (CCA) Rules, 1965 for as many as 8 Article of charges.

4. Along with the article of charges, statement of imputation, list of witnesses and list of documents were furnished to the applicant. As the applicant neither admitted nor denied the article of charges, an departmental enquiry was held. Before issuing the Memorandum of charges, a Memorandum dated 03.12.2014 was issued by the Director (Vigilance) seeking the explanation of the applicant regarding the various lapses. The applicant has challenged the legality and validity of these Memorandum of charges issued on 10.04.2015 and 13.04.2015 and the memorandum calling for the explanation by the Director of Vigilance dated 03.12.2014.

5. The counsel for the applicant vehemently and strenuously contended that the Memorandum of charges which have been issued under Rule 14 of the CCS (CCA) Rules, 1965 is bad in law. The contention of the applicant is that the respondents-organisation has adopted the CCS (CCA) Rules only in the year 2016 and as such issuing the chargesheet under CCS (CCA) Rules in 2015 is bad in law.

6. The counsel for the respondents has at the time of hearing produced several documents concerning the applicant right from the date of joining of the applicant in the service of the respondents organisation. Though the various service rules applicable to Central Government employees were not specifically adopted by the respondents-organization before 2016 yet from the documents produced by the counsel for the respondents referred to above, it is clear that the respondents have been following all the service rules applicable to Central Government employees in their organization. Further as submitted by the counsel for respondents that the CCS (CCA) rules are standard rules providing reasonable opportunity of being heard to the employees in conducting the departmental enquiry and as such there is no violation of principles of natural justice in conducting the departmental enquiry under CCS (CCA) Rules, though they were not specifically adopted before 2016.

7. The counsel for the applicant submitted that the applicant had retired on 31.10.2010 whereas the charge sheet was issued in 2015 after four years and for the events that took place between 2006-2010 and as such under Rule 9 (2) (b)(ii) of the CCS (Pension) Rules, 1972, the holding of departmental enquiry is

bad in law. The counsel for the respondents submitted that as the applicant was kept under suspension vide order dated 28.10.2010 i.e. before the date of retirement, as such under Rule 9 (2) (a) read with Rule 9 (6) (a) it should be construed that the departmental enquiry was initiated against the applicant while in service and as such the initiation of departmental enquiry is perfectly legal. Rule 9 (2)(a) and Rule 9 (6)(a) is extracted below:

"Rule 9(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.

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Rule 9(6)(a). departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date."

8. In view of the clear provision of Rule 9(2)(a) read with 9(6)(a) of the above said rules and in view of the facts and circumstances of the case that no prejudice or violation of principles of natural justice is caused to the applicant, we are of the opinion that there is no need to interfere with the departmental enquiry initiated under the impugned orders.

9. Accordingly, OA is dismissed. No order as to costs. Interim order dated 18.05.2016 and 04.05.2015 passed in MA 3902/2015 and MA 1719/2016 respectively are vacated. Consequently, RA and CP do not survive and the same are accordingly disposed of.