
(2007) 08 KL CK 0047
In the High Court Of Kerala
Case No : O.P. No. 4717 of 2001

V.M. Shamsuddin

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-08-2007

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14, 14(4), 14(6), 30, 6(4)

Citation : (2007) 3 ILR (Ker) 754 : (2007) 3 KLJ 252

Hon'ble Judges : V.K. Mohanan, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : N. Nagaresh, for the Appellant; S. Radhakrishnan, SC and Lalgi P. Thomas, for the Respondent

Final Decision : Allowed

Judgement

K.S. Radhakrishnan, J.—Petitioner herein was working as Director of Agriculture, Union Territory of Lakshadweep. While so, in July 1994 a case was registered against him by the Special Police Establishment of the Central Bureau of Investigation regarding criminal conspiracy and misuse of official position in awarding a contract for supply of rat poison for an amount of Rs. 17,34,000/- in violation of the extant purchase rules thereby causing pecuniary advantage to the supplier in that case. In the investigation, the allegation was found to be prima facie established against the petitioner and regular departmental proceedings were recommended against the petitioner. It was recommended to initiate proceedings under Central Civil Services (Classification, Control and Appeal) Rules, 1965. Charge sheet was accordingly forwarded to the Chief Vigilance Officer in the Union Territory Administration of Lakshadweep from the Office of Director or Vigilance, New Delhi on 30-6-1997 with a request to serve the same on the petitioner since proceedings have to be initiated under Rule 9 of the Pension Rules read with Rule 14 of CCS (CCA) Rules.

2. Indisputedly the charge sheet was served on the petitioner only on 1-8-1997

after the date of his superannuation. Petitioner was superannuated on 30-6-1997. Petitioner therefore approached the Central Administrative Tribunal stating that the proceedings initiated against him after his retirement is illegal and male fide. Respondents department resisted the petition contending that the charge was investigated and investigation report was submitted to the Central Vigilance Commission and the Commission had advised initiation of major penalty proceedings against the petitioner. Further it was also stated that the charge sheet was issued on 30-06-1997 before the retirement of the petitioner. Tribunal placed reliance on the decision of the apex Court in Delhi Development Authority Vs. H.C. Khurana, ; S. Pratap Singh Vs. The State of Punjab, ; Union of India and Others Vs. Dinanath Shantaram Karekar and Others, etc. and took the view that since charge sheet was issued on 30-6-1997 and even though it was served subsequent to the retirement of the petitioner the department has got the right to initiate disciplinary proceedings. Tribunal took the view that the date of receipt of the charge sheet by the petitioner is of no consequence, and what is relevant is the date of issue of charge sheet. Charge sheet was issued on 30-6-1997 therefore the Tribunal took the view that the department has rightly initiated proceedings under the CCS (CCA) Rules.

3. We may at the out express our anguish and dissatisfaction in the manner in which, the Department Officials including the Vigilance has acted in this case. There has been considerable latches on the part of the department and its officials in initiating proceedings against the petitioner. On going through the entire facts of the case we have got a feeling that there has been an attempt at some level to see that the departmental proceedings initiated against the petitioner should go in default. Charges levelled against him is of serious nature and it is very unfortunate that the officials involved in this case has shown considerable lethargy and gave room for the petitioner to escape from the clutches of law. Charge sheet was sent from Delhi Office on 30-6-1997 which was served on the petitioner only on 1-8-1997. Disciplinary proceedings can be initiated after serving the memo of charges on the person as provided under Sub-rules 4 and 6 of Rule 14 of CCS (CCA) Rules. Relevant portion of the same reads as follows:

The disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article or charges is proposed to be such time as may be specified a written statement of his defence and to state whether he desires to be heard in person.

4. The mode of service of orders, notices are also prescribed under Rule 30 of CCS (CCA) Rules which reads as follows:

30. Service of orders, notices etc.

Every order, notice and other process made or issued under these rules shall be

served in person on the Government servant concerned or communicated to him by registered post.

5. Mode of servicing memo of charges is by tendering the memo in person on the Government servant, which means it must be served before Government Servant's retirement. There is nothing to show that government servant mentioned in Rule 30 or 14 deals with a retired government servant. Another mode of service of notice or order, on the Government servant is through registered post. Facts would clearly indicate that so far as this case is concerned it was sent from Delhi on 30-6-1997 to the Vigilance Officer, Kavarati. ST and of the department is that in the letter addressed to the Vigilance Officer, the charge sheet addressed to the petitioner was also enclosed. They have no case that either from Delhi or from Kavarati the charge sheet was even issued to the petitioner on or before 30-6-1997. In other words, before his retirement, charge sheet was never issued to the petitioner either from Delhi or from Kavarati. In our view, the principle laid down in Delhi Development Authority Vs. H.C. Khurana, would not apply to the facts of this case. Apex Court was examining the scope of issue of charge sheet initiating departmental proceedings under the sealed cover procedure. Following the dictum laid down in Union of India Vs. K.V. Jankiraman, etc. etc., the apex court held that issue of the charge-sheet in the context of a decision taken to initiate the disciplinary proceedings must mean, as it does, the framing of the charge-sheet and taking of the necessary action to despatch the charge-sheet to the employee to inform him of the charges framed against him requiring his explanation; and not also the further fact of service of the charge-sheet on the employee. Court held that the issue of a charge-sheet, therefore, means its despatch to the government servant, and this act is complete the moment steps are taken for the purpose, by framing the charge-sheet and despatching it to the government servant, the further fact of its actual service on the government servant not being a necessary part of its requirement. This is the sense in which the word "issue" was used in the expression "charge-sheet has already been issued to the employee".

6. The above principle would not apply to the facts of this case. This is a case where the charge sheet was never issued to him before his retirement. Charge sheet was sent from Delhi to the Chief Vigilance Officer situated at Kavamti and not the petitioner. If the charge sheet was issued by despatching it to the petitioner on 30-6-1997 from Delhi at least it could have been said that charge sheet has been issued to him before the retirement. The department has forwarded the charge sheet not to the petitioner but to the Vigilance Officer at Kavarati and it was served on the petitioner only on 1-8-1997, after his retirement. Under such circumstances there has not been any compliance with Rule 14 read with Rule 30 of the CCS(CCA) Rules. We are, therefore, inclined to allow this original petition and set aside the order of the Tribunal and also the departmental proceeding initiated against the petitioner.