

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Order: January 10, 2018

+ W.P.(C) 249/2018

ARUN KUMAR GOEL Petitioner
Through: Mr. Jayant Mehta, Mr. Himanshu
Gupta and Mr. Rahul Kukreja, Advocates

versus

UNION OF INDIA Respondent
Through: Mr. Arun Bhardwaj, CSGC with
Mr. Abhishek Sharma, Under Secretary
(Vigilance) and Mr. Amindya Bhattachaerjee,
Section Officer (Vigilance)

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

C.M.1057/2018 (Exemption)

Allowed subject to all just exceptions.

C.M.1058/2018

1. Petitioner is an Indian Foreign Service (IFS) Officer, who had retired on 31st March, 2014 and in this petition, he assails the Sanction Order of 21st November, 2017 (*Annexure P-1*) and Memorandum of even date (*Annexure P-2*) issued by respondent in vigilance case No.Q/Vig/843/07/2015, Government of India, Ministry of External Affairs, Vigilance Unit. As per Sanction Order (*Annexure P-1*),

petitioner, while serving as Consulate General of India in Sydney, on 10th February, 2014, had renewed the Lease of Chancery, then located in level 3, 109 Pitt, Sydney without an exit clause and with 15% increase in the rent without prior permission of the Ministry concerned, thereby causing loss of ₹82,22,500/- to the Government Exchequer. Rule 9 of *Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as the CCS (Pension) Rules of 1972)*, mandates that departmental proceedings, if not instituted while the Government servant was in service, shall not be instituted save with the sanction of the President of India and institution of such departmental proceedings shall not be in respect of any event which took place more than four years before such institution.

2. The question raised in this petition is pertaining to the period prior to the institution of the disciplinary proceedings i.e. in respect of the sanction. Learned counsel for petitioner submits that the Sanction Order (*Annexure P-1*) as well as Memorandum (*Annexure P-2*) are bearing two dates i.e. 21st November, 2017 and 23rd November, 2017 and it is not clear on perusal of these two documents i.e. Annexure P-1 & P-2, as to whether the sanction had preceded the Memorandum or *vice versa*. It is pointed out by learned counsel for petitioner that these documents i.e. Annexure P-1 & P-2, are signed by the same officer and from the impugned Sanction Order (*Annexure P-1*), it is not clear that the sanction for institution of disciplinary proceedings against petitioner has been accorded by the President of India as mandated by Rule 9 of CCS (Pension) Rules, 1972.

3. Learned Central Government Standing Counsel for respondent has produced original file to show that vigilance case against petitioner was put up before the concerned Minister seeking sanction to initiate the disciplinary proceedings against petitioner in terms of Rule 9 (b) (i) & (ii) of CCS (Pension) Rules, 1972 and the sanction was duly accorded by the Minister concerned on 4th August, 2017. Attention of this Court is drawn to Note 30 to Rule 14 of *Central Civil Services (Classification, Control and Appeal) Rules, 1965* (hereinafter referred to as *CCS (CCA) Rules, 1965*), which provides that having regard to the Transaction of Business Rules, it is necessary that in case where Disciplinary Authority is the President, the institution of disciplinary proceedings should be approved by the Minister concerned. The office notings produced before the court do reflect that the concerned Joint Secretary had signed the Office Notings on 21st November, 2017 in the name of the President after receiving the sanction from the concerned Minister and the Central Vigilance Commission had approved the Sanction Order (*Annexure P-1*) and thereafter Memorandum (*Annexure P-2*) has been formally issued on 23rd November, 2017. So, the challenge to Sanction Order does not survive as it is evident that the sanction for institution of disciplinary proceedings in terms of Rule 9 of *CCS (Pension) Rules, 1972* was duly accorded in the instant case.

4. Regarding the maintainability of this petition, it is submitted that as per Section 3 (q) of the *Central Administrative Tribunals Act, 1985*, disciplinary matters come within the definition of 'service matters'. Since

institution of disciplinary proceedings against petitioner relate to the period when he was in service, therefore, petitioner needs to be relegated to the Central Administrative Tribunals, Delhi to assail impugned 'Memorandum'.

5. The application is accordingly disposed of while relegating petitioner to avail of the remedies before the Central Administrative Tribunal, Delhi.

W.P.(C) 249/2018 & CM 1056/2018

In view of order passed in C.M.1058/2018, this petition is disposed of while negating challenge to Sanction Order (*Annexure P-1*) and petitioner is relegated to Central Administrative Tribunal, New Delhi to assail the impugned Memorandum (*Annexure P-2*), if so advised. Needless to say that this Court has dealt with the validity of the sanction for institution of disciplinary proceedings and has not dwelt upon impugned Memorandum (*Annexure P-2*).

This petition and the application are accordingly disposed of.

(SUNIL GAUR)
JUDGE

JANUARY 10, 2018

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