



W.P.No.9734 of 2021 & W.M.P. No.10340 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2022

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

and

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P.No.9734 of 2021 &
W.M.P. No.10340 of 2021

1. Union of India
Rep. by Secretary Ministry of Commerce &
Industries Department of Industrial Policy & Promotion
Government of India
Udyog Bhavan
New Delhi 110 011.
 2. Salt Commissioner,
Office of the Salt Commissioner,
Government of India,
No.2A, Lavan Bhawan Marg, Jhala Doongri
Jaipur 302 004.
 3. The Chief Controller of Accounts,
Ministry of Commerce and Industries,
Udyog Bhavan, New Delhi 110 011.
- ...Petitioners

Vs.

1. The Registrar,
Central Administrative Tribunal,
Chennai 100 104



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2. H.K. Sharma

Assistant Salt Commissioner (Retired)

Flat No.103/3B/Phase 6,

Sidhachal, Thane (W) 400 610

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari and call for the records and quash the order passed in O.A. No.310/1128/2018 on 3.6.2020 by CAT Chennai.

For Petitioners : ME Sarshwathy, Sr. Panel Counsel
for Govt. of India

R1 : Tribunal

For R2 : Mr. Karthik Raja

ORDER

(R.HEMALATHA, J.)

The present Writ Petition is filed against the orders of Central Administrative Tribunal in O.A. No.310/1128/2018 dated 03.06.2020 praying for issue of a writ of certiorari calling for the records of the same and quashing the said order.

2. The petitioners are Union of India represented by Secretary, Ministry of Commerce and Industries, New Delhi, Salt Commissioner, Jaipur and Chief Controller of Accounts, Ministry of Commerce and Industries, New Delhi, while the respondents are Registrar, Central



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Administrative Tribunal, Chennai (R1) and H.K. Sharma, Assistant Salt Commissioner (Retired)Thane (R2).

3.Briefly and quickly into the facts of the case :

- i. The second respondent H.K.Sharma who was the Assistant Salt Commissioner was promoted as Deputy Salt Commissioner on adhoc basis on 01.08.2013 and was posted to the office of Deputy Salt Commissioner, Mumbai.
- ii. Subsequently in the Departmental Promotion Committee (DPC) meeting held on 22.07.2014 his name was approved for promotion as Deputy Salt Commissioner on a regular basis. It was also conveyed to the second respondent.
- iii. However, on 01.08.2014 he was placed under suspension for certain alleged irregularities / misconduct and the promotion was kept under sealed cover. However, his junior one Dr.R.S.Kashyap was promoted on 08.08.2014 with effect from 22.07.2014.
- iv. The suspension of the second respondent was revoked on 04.11.2014 on expiry of 90 days as per rule.
- v. A memorandum of charge dated 12.08.2015 was issued to the second



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respondent for certain alleged acts of his which was in contravention to the Rule 3 (1) (ii) of CCS (conduct) Rules 1964. The second respondent's reply for the charge memo was received on 28.10.2015.

vi. In the meanwhile, the second respondent filed O.A.No.310/01039/2015 in Central Administrative Tribunal, Chennai and based on the directions gave another representation dated 09.12.2015 which was rejected by the first respondent on 17.12.2015. He was also reverted back to his substantive post of Assistant Commissioner of Salt by order dated 21.07.2015 after completion of one year.

vii. Aggrieved over the denial of his promotion and release of promotion to his junior with effect from 22.07.2014, the second respondent approached the Central Administrative Tribunal in O.A.No.310/00202/2016 in which it was ordered on 13.07.2016 that the promotion be issued to him from 22.07.2014 as against his junior Dr. Kashyap.

viii. This order of the Central Administrative Tribunal was dismissed by this Court in W.P.No.2684 of 2017 filed by the present petitioners.

ix. The order of this Court in W.P.No.2684 of 2017 was not challenged



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by the second respondent and instead a new O.A.No.310/00375/2017 was filed by him in the Central Administrative Tribunal, Chennai, challenging the charge memo dated 12.08.2015 praying for quashing the same on the ground that no specific approval of the Disciplinary Authority under Rule 14 (3) of CCS (CCA) Rules for framing of charges was obtained. It was quashed on technical grounds. This order was dated 31.08.2017.

- x. On the same date i.e. 31.08.2017 the second respondent was superannuated from service. He had also given two representations dated 02.09.2017 requesting the petitioner to issue promotion order and release his retirement benefits. When the representation did not evoke any response, he went ahead filing O.A.No.310/00282/2018 in which Central Administrative Tribunal on 27.02.2018 directed the petitioners to consider his representation as per law. However, his representation was not answered properly and again he approached the Central Administrative Tribunal, Chennai in O.A.No.310/1128/2018. He had prayed for release of promotion with effect from 22.07.2014, regularisation of suspension period from 01.08.2014 to 04.11.2014 and for release of pensionary benefits.



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xi. On 03.06.2020, O.A.No.310/1128 of 2018 was allowed with direction to consider his name for promotion from 22.07.2014, to consider regularisation of suspension period as duty period, to give all pensionary benefits within a period of two months and 6% interest on delayed payment.

This impugned order is the one which is challenged now in this petition.

4. Interestingly, in M.A/310/253/2020 and M.A./310/254/2020 in O.A.No.310/1128/2018 the petitioners had sought condonation of delay in filing the petition and seeking extension of time of three months to comply with the orders in O.A.No.1128 of 2018 and time of two months was granted as extended period.

5. Heard Ms.ME Sarshwathy, learned Senior Panel Counsel appearing for the petitioners and Mr. Karthik Raja, learned counsel appearing for the 2nd respondent.

6. The learned Senior Panel Counsel appearing for the petitioners would contend that the allegation levelled against the second



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respondent were quite serious in nature and the charge memo dated 12.08.2015 was quashed by Central Administrative Tribunal in O.A.No.310/00375/2017 on technical grounds that it was not approved by the Disciplinary Authority. It was also argued that much thought process and legal opinion went into the decision of preferring to issue a fresh charge sheet under Rule 9 of CCS (Pension) Rules, 1972 and therefore, the unavoidable delay due to the corona lock down and other factors ought to have been considered by the Central Administrative Tribunal while allowing the petition in O.A.NO.310/1128/2018.

7. Per contra, the learned counsel for the second respondent contended that as on date of the superannuation i.e. 31.08.2017, no charge sheet was pending nor any contemplated disciplinary action was intimated to him. The provisions of Rule 9 of CCS (Pension) Rules, 1972, is the one relied upon by the petitioners to issue a fresh charge sheet and even after the expiry of more than two years no signs of any major disciplinary action to be initiated against the second respondent was visible nor the charge memo was issued. It was further contended that for certain alleged lapses in the year 2013-2014, no charge memo can be issued now, that is after more than



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three years and withholding the pension and other retirement benefits without any rhyme or reason is clearly an instance of gross injustice meted out to the second respondent. According to him, therefore, the decision of Central Administrative Tribunal, Chennai in O.A.No.310/1128/2018 cannot be faulted with on any ground.

8. Having gone through the entire set of records, which includes confidential internal note sheets of the first respondent, it is very clear that the officials who were to decide on the disciplinary proceedings to be initiated against the second respondent were very casual in their approach. A glaring deficiency is the lack of co-ordination amongst the various officials involved in decision making in such disciplinary matters. It is intriguing that in the preceding notes dated 17.10.2017 of the first respondent it was observed that the technical ground cited by the Central Administrative Tribunal, in O.A.No.310/00375/2017 was not justified and in fact it was a factual error. It is appropriate to extract the following file notings of Ministry of Law & Justice and DIPP regarding the issuance of fresh Charge sheet.

However, if we go by the DoPT advice to implement the



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Orders of Hon'ble CAT and issue a fresh charge sheet with the approval of Hon'ble CIM, under Rule 9 CCS (Pension) Rules, 1972, it may require the sanction of the President with regard to Government of India order under Rule 9 of CCS (Pension) Rules, 1972 as quashing charge sheet may amount to disciplinary proceedings initiated during the service of the charged officer, null and void?

110. Further, if we go by DoPT advice (which is contrary to the advice tendered by D/o Legal Affairs), there is a likelihood of the matter becoming time barred, as the Article 1 of the Charge Memo inter alia indicates that Shri H.K. Sharma while functioning as Deputy Salt Commissioner, Mumbai during the period 2012-14 had not taken appropriate action to protect the interest of Govt. of India.

111. Therefore, it is felt that we should go by the advice of D/o. Legal Affairs as indicated in para 97(ii) /page 48/Notes/ante.

112. In the light of the above, an appropriate view may be taken as to whether we should go by the advice of DoPt or by the advice of D/o Legal Affairs as indicated below.

(a) DoPT advice - To implement the Hon'ble CAT's order and



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issue a fresh charge sheet with the approval of Hon'ble CIM under Rule 9 of the CCS (Pension) Rules, 1972.

(or)

(b) DoLA advice : To challenge the Hon'ble CAT order dated 31.08.2017 by filing Writ Appeal in High Court, Chennai with application for the stay of impugned order before the Hon'ble High Court as advised by Department of Legal Affairs.

Despite this clear observation in the confidential notes, a decision to issue a fresh charge sheet under Rule 9 of CCS (Pension) Rule, 1972 was preferred and recommended instead of going on a writ appeal in the High Court, Chennai against the orders in O.P.No.310/375/2017. The decision to issue a fresh charge sheet was taken in March 2018. In the same confidential notes the likelihood of the matter becoming time barred if a fresh charge sheet is issued was also discussed. Therefore, it is very clear that though the petitioners could have gone on an appeal to keep the matter alive, they adopted the mode of issue of a fresh charge sheet under Rule 9 of CCS (Pension) Rules 1972 knowing pretty well that it would be time barred since the matter was pertaining to the year 2013-2014.



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9. The Central Administrative Tribunal in O.A.No.310/1128/2018

was categorical that the petitioners not having filed any appeal against the order in O.A.No.310/00375/2017, made the said order final thereby the charge memo dated 12.08.2015 became null and void. It is appropriate to extract the relevant portion of the orders passed by the Central Administrative Tribunal, Madras Bench.

"It seems that the respondents had suspended the applicant as per order dated 01.08.2014 (Annexure A12) and, thereafter, they revoked the suspension by order dated 07.11.2014 on completion of 90 days. Then, the respondent had initiated disciplinary proceedings as per charge memo dated 12.08.2015 for various lapses committed by the applicant in the year 2013-2014 and the said charge memo was quashed by this Tribunal as per order in O.A.375/2017 dated 31.08.2017. The respondent had not filed any appeal and the said order has become final. Thereafter, even though respondents would say that they are processing a 2nd charge memo against the applicant, till date nothing had happened and it is clear there is no major disciplinary action pending against the applicant for withholding the pensionary benefits of the applicant under Rule 9 of the CCS (Pension) Rules.



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8. So, we find no reason even after the lapse of three years after retirement to withhold pension and other retiral benefits. Annexure A3 shows that the departmental promotion committee chaired by UPSC held on 22.07.2014 had recommended the promotion of the applicant's junior, R.S.Kashyap, Assistant Commissioner as Deputy Salt Commissioner. If the applicant is also recommended by the promotion committee, he is entitled to get the benefit of promotion also.

Moreover, till the date of retirement i.e. 31.08.2017 and even after two years no charge memo or any communication was given to the second respondent about any contemplated disciplinary proceedings. In such circumstances, withholding the pensionary benefits, which he is otherwise eligible to draw, is clearly an abuse of authority on the part of the petitioners. Though the petitioners have attributed the delay in issuance of fresh charge sheet to the bulky documents which had to be perused and also to the Covid lock down during the said period, the lapse on their part of not having filed an appeal against the order of the Central Administrative Tribunal in O.A.No.310/00375/17, proved to be a costly one and the second respondent cannot be expected to pay for it in terms of denied promotion and withholding of other pensionary benefits.



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10. In the circumstances, we do not find any reason to interfere with the orders dated 3.6.2020 passed in O.A. No.310/1128/2018 on the file of the Central Administrative Tribunal, Chennai. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(V.M.V.,J.)

(R.H.,J.)

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Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

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V.M.VELUMANI, J.
and
R. HEMALATHA, J.
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To

The Registrar,
Central Administrative Tribunal, Chennai 100 104

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