



2024:DHC:8856-DB



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

+ **W.P.(C) 11406/2018**

C.S. MALIK

.....Petitioner

Through: **Mr. S. S. Tiwari, Adv.**

versus

**COUNCIL OF SCIENTIFIC & INDUSTRIAL
RESEARCH & ANR**

.....Respondents

Through: **Mr. Bhuvnesh Satija and Mr.
Aniket Khanduri, Advs.**

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT (ORAL)

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14.11.2024

C. HARI SHANKAR, J.

1. This writ petition is instituted by the successful applicant before the Central Administrative Tribunal¹ in OA 4650/2015. Despite succeeding in a large measure in his challenge to the action against him, the respondent still harbours certain grievances against the final decision of the Tribunal, which have persuaded him to invoke Article 226 of the Constitution of India.

2. We have heard Mr. S.S. Tiwari, learned Counsel for the petitioner, and Mr. Bhuvnesh Satija, learned Counsel for the respondent, at some length.



3. Inasmuch the respondent has substantially succeeded in his challenge before the Tribunal, any detailed allusion to facts can conveniently be eschewed.

4. A brief recital is, however, necessary. The respondent was a Senior Deputy Financial Adviser in the Council of Scientific and Industrial Research (CSIR). He was issued a Memorandum dated 31 August 2015², proposing to institute disciplinary proceedings against him under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965³. The memorandum contained a sole Article of Charge which read thus:

“Shri CS Malik, Sr. Deputy Financial Adviser, while functioning in the year 2010 at CSIR Hqrs., New Delhi committed misconduct inasmuch as, he, in the matter of payments to QHFs-Quick Hire Fellows in respect of NISTADS, New Delhi, by his irregular and violative recommendation on 12.01.2010 for making payments to QHFs from P-01 sub-head, from which salary is paid to scientists, led to the accordance of approval by the Financial Adviser and thereby perpetuated the payments made to the tune of over Rs.1.0 crore to QHFs in NISTADS, although no such power was delegated to the officer under the existing rules. By his aforesaid acts of omission and commission, the said Shri Malik exhibited lack of absolute integrity and devotion to duty and acted in a manner unbecoming to a Council servant contravening the Rule 3 (l)(i), (ii) and (iii) of CCS (Conduct) Rules, 1964.”

5. The petitioner, instead of suffering inquiry proceedings, petitioned the Tribunal, seeking quashing of the aforesaid charge sheet dated 31 August 2015.

¹ “the Tribunal” hereinafter

² “the charge sheet” hereinafter

³ “CCS (CCA) Rules” hereinafter



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6. The petitioner, in his Original Application before the Tribunal, raised principally three grounds to challenge the disciplinary proceedings instituted against him. We deal with each of them, and with the findings of the Tribunal one each.

7. The first contention was that the disciplinary proceedings had been instituted after the petitioner had superannuated, which was impermissible, save and except under Rule 9 of the Central Civil Services (Pension) Rules, 1972, by the President. Admittedly, the charge sheet was dispatched to the petitioner at 8:35 pm on 31 August 2015, the day of his superannuation, by speed post, and was delivered to the petitioner on 3 September 2015. It was sought to be contended that, as the charge sheet had been dispatched after the petitioner had left office for the day, the institution of the proceedings was illegal.

8. The Tribunal has not accepted this contention. In rejecting the petitioner's contention, the tribunal has relied on a judgment of the Division Bench of the High Court of Allahabad in *Sushila Devi v District Collector*⁴, which, interpreting FR 56(a)⁵, held that the expression "afternoon" as employed in the said FR 56(a), covered the period from 12 noon till the midnight of that day. Relying on the said decision, the Tribunal has held that, as the charge-sheet was dispatched to the petitioner by speed post before the close of 31 August 2015, it could not be said that the institution was illegal on the

⁴ 2005 SCC OnLine All 1707

⁵ 56 (a) Except as otherwise provided in this rule, every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years:

Provided that a Government servant, who has attained the age of fifty-eight years on or before the first day of November, 2001 and is on extension in service, shall retire from service on expiry of his extended period of service.



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ground that it had been issued, or served, after the respondent had superannuated.

9. Mr Tiwari does not challenge this finding before us.

10. The second ground on which the institution of the disciplinary proceedings was assailed by the petitioner was predicated on the judgment of the Supreme Court in *UOI v B.V. Gopinath*⁶. It was sought to be contended that the charge-sheet had not specifically been approved by the disciplinary authority and that, therefore, the institution of the proceedings was bad. The disciplinary authority admittedly was the Director General, CSIR. The Tribunal has held that, though the charge sheet may not have been specifically approved by the DG, CSIR, it was approved by the Vice President, CSIR who was the superior authority and, therefore, the institution was not imperilled by the judgment of the Supreme Court in *Gopinath*. This submission of the petitioner was also, therefore, not accepted by the Tribunal.

11. Mr Tiwari does not join issue on this finding, either.

12. The third ground of challenge was that the charge-sheet did not disclose the commission of any actionable misconduct within the meaning of Central Civil Services (Conduct) Rules, 1964. On this aspect, the tribunal has observed as under:



“13. The original record submitted by the respondents’ counsel supports his contention that the initiation of the major penalty proceedings, draft charge memorandum and the impugned Charge Memorandum were approved by the Vice President, CSIR, who is also the Hon’ble Minister for the concerned ministry, hence, the decision in **B.V.Gopinath (supra)** has no application. As rightly submitted by the learned counsel for the respondents loss of opportunity to appeal cannot vitiate the Charge Memorandum issued by the appellate authority in every case. In the circumstances of the present case, i.e., where the charges are common and levelled against the Director, NISTADS and also the officers of CSIR, Headquarters, we do not find any illegality in issuing the impugned Charge Memorandum by the Vice President, who is the appellate authority.

14. A detailed examination of the original record submitted by the respondents’ counsel, reveals the following:

(a) On receipt of a CVC referred complaint dated 13.06.2012, under PIDPIR regarding the irregular appointments of Quick Hire Fellows in SUPRA Project in NISTADS, the then Hon’ble Minister vide his Note dated 15.05.2014 besides ordering for initiation of major penalty proceedings against Dr. P. Banerjee, the then Director, NISTADS and Members of Selection Committee, and minor penalty proceedings against administrative officials also ordered that a special audit of all payments to QHFs under this Project be done and the first stage advice of CVC should be obtained.

(b) On 28.08.2015, the then Hon’ble Minister & Vice President, CSIR, opined that both NISTADS and CSIR, Headquarters are at fault of engaging persons beyond their competence, thereby making excess payments and causing loss to the exchequer and major penalty proceedings should be initiated against all those responsible at NISTADS and as well as at CSIR, Headquarters.

(c) But on 31.08.2015, i.e., the date of superannuation of the applicant, he was alone issued with a charge memorandum, without issuing any prior memo or show cause notice and providing any prior opportunity to him.

(d) Some of the paras of the Note dated 30.12.2016 read as under: -

“Since Shri CS Malik, the then Sr. Dy. FA, CSIR who was one of the officers identified and involved in the



afore-said irregular payments, his case was referred to the CVC on 31.08.2015 as Shri Malik's retirement was due on the very same day i.e., 31.08.2015 without completing requisite steps and the Commission was apprised of the situation for sending the matter in a very haste manner.

Thereafter, on 07.01.16 (read as 07.04.2016), US (HR) forwarded a copy of note wherein the DG, CSIR, while raising doubts on seeking versions of concerned officers after obtaining the recommendation of the VP, CSIR, had requested the VP, CSIR to review and rescind the case relating to recruitment of QHFs and subsequent booking of expenditure, which was agreed to by the Hon'ble VP, CSIR.

The afore-said position is submitted for consideration and orders as to whether a re-considered advice of the Commission may be obtained in this matter due to – (i) change in scenario where the Hon'ble Vice-President, CSIR, who had earlier ordered for initiation of major penalty proceedings, has approved to rescind the matter as a result of which CVC's 1st stage advice dated 12.04.2016 could not be processed further for issuance of charge-sheets; (ii) the then CVO, CSIR had questioned the authority to review its own decision without consulting CVC; and (iii) one of the involved officer i.e. Shri CS Malik had already been charge-sheeted and being defended before Hon'ble CAT, Delhi. Submitted for consideration order, please."

(e) Note dated 10.07.2017 duly approved upto the Hon'ble Minister, reads as under: -

"The doubt of then CVO on page 33/N is addressed, in seriatim, as under: -

1. Seeking version of the individuals (show cause) is a prerequisite for preliminary investigation and in line with the principle of natural justice, in order to obtain the suspect officers version of 'facts', so that the public servant is not proceeded unjustifiably. After due diligence of the versions/reply, of the accused officers, the then CVO should have placed the matter before the disciplinary authority for



proposed further course of action. This has not been followed in this case as the versions of the individuals were not placed before the disciplinary authority. The then CVO should have taken the 1st stage advice of CVC only after following the prescribed procedure.

(i) Therefore, now that the show cause has been served in respect of five officers in October, 2015 and their versions also examined by the CVC which tendered its advice on 12.4.2016 to initiate major penalty proceedings, the matter may be placed before VP, CSIR without any further delay, with full facts clearly mentioning that the provisions of para 2.3 and 2.6 of Vigilance Manual have been complied with.

(ii) In respect of officers who were served show cause notice in December, 2015, complete facts may be placed before the disciplinary authority afresh for proposing further course of action and thereafter 1st stage advice of CVC may be taken.

2. As regards note dated 13.4.2016 of the then CVO, CSIR in which question was raised regarding authority to review its own decision without consulting CVC (through this note has not been put up to the competent authority on file), attention is invited to GIO decision No.5 below Rule 14 of CCS (CCA) Rules which provides that the disciplinary authority has the inherent power to review and modify the articles of charge of drop some of the charges or all the charges after the accused Government servant. Further, CVC should be consulted where the disciplinary proceedings were initiated on the advice of the Commission and the intention is to drop or modify any of or all the charges on the basis of the written statement of defense submitted by the accused Government servant. In terms of para 2.11 of Vigilance Manual it has been categorically mentioned that *"The date of commencement of a vigilance case will, in cases in which CVC is consulted, be the date on which the commission tenders its advice."* CVC



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tendered its advice only on 12.4.2016. Therefore, the averments of the then CVO with respect to 'review of own decision by the disciplinary authority' and date of commencement of a vigilance case' is not in conformity with the rules and Vigilance Manual respectively.

3. No comments is needed as Shri CS Malik had already been charge-sheeted and the process is in conformity with para 2.4 and 2.11 of Vigilance Manual. The case is also being defended by CSIR before Hon'ble CAT Delhi.

VP, CSIR may kindly consider the advice of CVC dated 12.4.2016 for initiation of major penalty proceedings in respect of officers mentioned therein and further course of action as per para 1(ii) above in respect of remaining officers.

Sd/-

(Girish Sahni)
DG, CSIR"

15. The main issue is the appointment of Quick Hire Fellows in NISTADS on various dates and continuation of them even after termination of SUPRA Project, i.e., beyond 31.03.2012. Payment of salaries/remuneration to QHFs, for the period they were continued, is a consequential action, though it cannot be denied that the officers in the finance department of CSIR, such as the applicant, were required to object for any payment, if, it was not as per rules."

Thus, the Tribunal specifically held that, though the decision for the mode of payment to be made to the Quick Higher fellows (QHFs) was not made by the petitioner, the petitioner, as an employee of the finance department of the CSIR, was required to object to the mode of payment, if it was not as per Rules.

13. We have difficulty in accepting this line of reasoning in para 15 of the impugned judgment. It may be questionable whether, in the face of the finding that the decision making authority was not the respondent, who was merely an implementing officer, he could be said to have committed any actionable misconduct.

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14. Besides, para 16 of the impugned order is revealing, and reads as under:

“16. Para 1 of the note dated 10.07.2017 (supra), clearly indicate that the respondents proceeded against the applicant, in haste and in violation of the principles of natural justice and discriminately, may be in view of his impending superannuation. Admittedly, though the then Hon’ble Minister, directed to initiate major penalty proceedings against the then Director, NISTADS and others, way back on 15.05.2014, till date, no chargesheet was issued to any other officer, except to the applicant, that too on the date of his superannuation, hastily, and in violation of principles of natural justice. In case of all others, the respondents have issued show cause notices and provided them opportunity to submit their representations and consulted the CVC at various stages. But in case of applicant, no such procedure followed. Even the CVC opinion obtained in few hours. When the respondents are empowered to proceed against the applicant, even after his retirement, if circumstances warrant, under the provisions of CCS (Pension) Rules, 1972, the hasty action against him, in issuing the charge memorandum under Rule 14 of the CCS (CCA) Rules, 1965, without giving him the same opportunity of show cause on par with other officers, is unjustified and unsustainable.”

15. Following the aforesaid discussion from paras 13 to 16, the impugned judgment concludes, in para 17, thus:

17. In the circumstances and for the aforesaid reasons, the OA is allowed and the impugned charge memorandum is quashed, with all consequential benefits. The respondents shall release all the retirement benefits of the applicant within 90 days from the date of receipt of this order, but without any interest, in the circumstances of the case. However, this order shall not preclude the respondents from proceeding against the applicant, as per applicable rules and in such an event, the applicant shall co-operate with the respondents in early completion of the said proceedings. No costs.”

16. Mr. Tiwari has raised two contentions.

17. The prayer clause in this writ petition reads as under:



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“22. That in view of the facts & circumstances of the case as stated above, the petitioners humbly pray that this Hon'ble Court may be pleased to:

PRAYER

- a) Set aside and quash the impugned order dt.13/04/18 in RA 58/18 in OA 4650/15 and para 17 of the order dt.27/10/17 in OA 4650/15 passed by the Learned Tribunal to the extent "but without interest. However, this order will not preclude the respondents from proceeding against the applicant, as per applicable rules and in such an event, the applicant shall co-operate with the respondents in early completion of the said proceedings.
- b) As a consequence of relief (a), being granted, the respondents may be directed to pay interest on delayed payment of retirement benefits to petitioner along with all consequential benefits.
- c) Issue Rule Nisi in terms of prayer (a) & (b) above.
- d) Awards costs.
- e) Pass any other writ/order or directions as may be deemed just & proper in the facts and circumstances of the case.”

18. Thus, the grievance of the petitioner is with respect to two aspects of the impugned order. The first is that the impugned order has illegally not granted any interest to the petitioner on the delayed payment of his retiral benefits. The second is that the impugned order has, equally illegally, reserved liberty with the respondents to take further action against the petitioner.

19. Mr. Tiwari's contention is that, as, by the time, the impugned judgment came to be rendered, the petitioner had already superannuated from the service, there could be no question of proceeding with the disciplinary proceedings already initiated and that the only method by which the respondents could proceed would be as



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per Rule 8(1)⁷ of the Central Civil Services (Pension) Rules, 2021⁸. He further submits that, as more than four years have elapsed since the commission of the alleged misconduct, Rule 8 of the CCS (Pension) Rules is also no longer open to invocation by the respondents, by virtue of sub-rule (2)(c)(ii)⁹ of Rule 8.

20. Apropos the second aspect of the challenge, we note that the Tribunal has not granted liberty to the respondent to proceed against the petitioner.

21. The Tribunal has only said that the judgment passed by it would not preclude the respondent from proceeding against the petitioner, *as per applicable rules*.

22. As such, even if the respondents chose to institute any disciplinary proceedings against the petitioner, it would always be open to the petitioner to urge that the proceedings are not sustainable in view of Rule 8 of the CCS (Pension) Rules and the specific time frame envisaged thereunder.

⁷ 8. **Power to withhold or withdraw pension. –**

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement :

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn the amount of such pension shall not be reduced below the amount of minimum pension under rule 44.

⁸ “CCS (Pension) Rules” hereinafter

⁹ (c) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment, -

(i) shall not be instituted save with the sanction of the President in Format 2;

(ii) shall not be in respect of any event which took place more than four years before such

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23. In the event that such an exigency arises, we would direct the respondent to take a decision on the said objection if and when occasion arises for it to be raised, before further proceeding against the petitioner.

24. With respect to the first limb of challenge by the petitioner, we find substance in the petitioner's submission that he was entitled to interest on the delayed payment of retirement benefits. The petitioner has as good as been exonerated by the Tribunal in the impugned order. The Supreme Court has, in circumstances similar to those which arise in the present case held, in *S.K. Dua v State of Haryana*¹⁰, that, even in the absence of any statutory provision in that regard, a writ court is well within its powers to grant interest on delayed payment of retiral benefits. The relevant passages from the said decision may be reproduced thus:

“13. Having heard the learned counsel for the parties, in our opinion, the appeal deserves to be partly allowed. It is not in dispute by and between the parties that the appellant retired from service on 30-6-1998. It is also undisputed that at the time of retirement from service, the appellant had completed more than three decades in government service. Obviously, therefore, he was entitled to retiral benefits in accordance with law. True it is that certain charge-sheets/show-cause notices were issued against him and the appellant was called upon to show cause why disciplinary proceedings should not be initiated against him. It is, however, the case of the appellant that all those actions had been taken at the instance of Mr Quraishi against whom serious allegations of malpractices and misconduct had been levelled by the appellant which resulted in removal of Mr Quraishi from the post of Secretary, Irrigation. The said Mr Quraishi then became Principal Secretary to the Chief Minister. Immediately thereafter charge-sheets were issued to the appellant and proceedings were initiated against him. The fact remains that proceedings were finally dropped and all retiral benefits were extended to the appellant. But

institution;¹⁰ (2008) 3 SCC 44

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it also cannot be denied that those benefits were given to the appellant after four years.

14. In the circumstances, *prima facie*, we are of the view that the grievance voiced by the appellant appears to be well founded that he would be entitled to interest on such benefits. If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of “bounty” is, in our opinion, well founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition *in limine* even without issuing notice to the respondents.”

25. The petitioner had superannuated on 31 August 2015. His retiral benefits came to be paid to him only after the passing of the impugned judgment by the Tribunal.

26. We, therefore, set aside the impugned judgment to the extent it does not grant any interest to the petitioner, and direct the respondent to pay interest, on the retiral dues of the petitioner, for the delay in disbursal thereof, at the presently prevailing GPF rate of interest.

27. Let the needful be done within a period of eight weeks from today.

28. Resultantly, the order dated 13 April 2018 passed by the Tribunal in RA 58/2018 is quashed and set aside.



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29. The writ petition is allowed to the aforesaid extent.

C. HARI SHANKAR, J.

TUSHAR RAO GEDELA, J.

NOVEMBER 14, 2024

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Click here to check corrigendum, if any