



2025:DHC:4093-DB



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

Date of decision: 19.05.2025

+ W.P.(C) 3335/2020 & CM APPL. 11732/2020
SK KAUSHIK

.....Petitioner

Through: Mr.U. Srivastava & Mr.Gaurav
Sarawat, Advs.

versus

DELHI DEVELOPMENT AUTHORITY & ORS

.....Respondents

Through: Mr.Vaibhav Agnihotri,
ASC/DDA with Mr.Vidit
Pratap Singh & Mr.Ankit
Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE RENU BHATNAGAR

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the petitioner, challenging the Order dated 28.01.2020 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as, 'Tribunal') in OA No. 904/2017, titled ***S.K. Kaushik v. Delhi Development Authority & Ors.***, dismissing the said OA filed by the petitioner herein.

2. As a brief background of facts in which the present petition



arises, the petitioner was appointed as a Lower Division Clerk with the respondents in 1976. Thereafter, he cleared the competitive examinations and got promoted to the post of Accountant in 1990, and later to the post of Assistant Accounts Officer in 1993.

3. In 1997-98, while working as an Assistant Accounts Officer, there was an allegation of some fraud having been committed in issuing possession letters of certain flats. The petitioner was placed under suspension on 09.01.1998. RC No.1(A)/1998/CBI/ACU-VIII/N.D, PS:CBI/ACU-VIII/ND dated 29.01.1998 was also registered *inter alia* against the petitioner, under Sections 120B, 420, 467, 468, 471 and 477A of the Indian Penal Code, 1860 (in short, 'IPC') and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (in short, 'PC Act'). A charge sheet in the same was filed on 17.07.2000.

4. While the above proceedings were pending, on 22.08.2008, the petitioner was reinstated in service as his suspension order was revoked.

5. The petitioner states that though the Suspension Review Committee, in its meeting held on 13.03.2007, had decided to initiate departmental action against the petitioner, however, the same was not initiated, and the petitioner eventually superannuated on 30.11.2010.

6. By a Judgment dated 07.11.2014 passed by the learned Special Judge (PC ACT), CBI-08 (Central), Tis Hazari Courts, Delhi, the petitioner was acquitted of all charges in the abovementioned proceedings, however, the learned Special Judge made the following observations:



“41. ... The case investigated by CBI may only be the tip of the iceberg and a special audit by an independent agency may only be able to ascertain in case there are any further cases in which the deposit of the cost of flats may not have been made in accordance with rules. I accordingly direct that a special audit be got conducted by Vice Chairman, DDA in respect of the deposits made by the allottees towards the payments of cost of flats in respect of the SFS Scheme, 1996 by an independent agency to rule out any further cases wherein the payments may not have been deposited in accordance with law. It may also be noticed that even the AAO (S.K. Kaushik) and AO (V.P. Anand) were expected to take due steps for proper verification of such huge payments which should not have been left entirely in the hands of a Dealing Assistant which resulted in a scam of such a nature and reflects gross negligence of duty on their part even though the conspiracy has not been proved against them beyond reasonable doubt. The processing of documents in the Management Section by Dealing Assistant including applications for condonation of delay in some of the cases and consequent issuance of possession letters after approval from the concerned Assistant Director without bothering to check the authenticity of applicants in most of the cases also reflects gross negligence on the part of Gurnam Chand (Dealing Assistant). In view of above, departmental action be initiated against concerned officials Shri S.K. Kaushik AAO, Shri V.P. Anand AO and Gurnam Chand Dealing Assistant for the gross negligence of duty on their part. Also, necessary administrative guidelines be issued by Vice Chairman, DDA to ensure proper cross-checking and verification of challans submitted for payment of cost of the flats at level of AAO/AO to avoid repetition of similar scam.

Vice Chairman, DDA is accordingly directed



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to take necessary action in the matter and action taken report be placed before this court within three months of the receipt of the judgement.”

7. Aggrieved by the above observations and directions, the petitioner preferred a petition, being CRL.M.C. 1118/2015, which was dismissed by this Court, observing as under:

“The present petition has been filed under Section 482 read with Section 483 Code of Criminal Procedure for setting aside and quashing directions/observations made in para no.41 of final judgment and order dated 7th November, 2014 passed by learned Special Judge (PACT), CBI-08 (Central), in case being CC No.97/2011 qua the petitioners.

The sole grievance of the parties is that while passing the order dated 7th November, 2014, the learned Judge made certain observations which reads as under:-

“In view of the above, departmental action be initiated against concerned officials Shri S.K. Kaushik AAO, Shri V.P. Anand AO and Gurnam Chand Dealing Assistant for the gross negligence of duty on their part. Also, necessary administrative guidelines be issued by Vice Chairman, DDA to ensure proper cross-checking and verification of challans submitted for payment of cost of the flats at level of AAO/AO to avoid repetition of similar scam.”

I have heard learned counsel for the parties at length. I do not find any ground for expunging the remarks made by the Court below.

Needless to say that the observation made by the learned Special Judge is for initiating proceedings by the administrative authorities and rest is the subject matter of the



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administrative authority to deal with in the matter.

With the above observation made above, the present petition and application are disposed of.”

8. Based on the observations made by the learned Special Judge, the respondents then proceeded to issue the Impugned Charge Memo dated 01.02.2017 against the petitioner. The petitioner challenged the same by way of the above O.A. before the learned Tribunal. However, the learned Tribunal, as noted hereinabove, dismissed the said O.A., by observing therein that a cumulative effect of various Clauses in sub-rule (6) of Rule 9 of the CCS (Pension) Rules, 1972 would be that the proceedings against the petitioner were pending till 31.03.2016, the date on which the case preferred by the petitioner against the order of the criminal court was disposed of by this Court, therefore, the Charge Memo having been filed within four years of the same, was within the limitation stipulated under Rule 9 of the CCS (Pension) Rules, 1972.

9. Aggrieved by the above, the petitioner has filed the present petition.

10. The learned counsel for the petitioner submits that the learned Tribunal has failed to appreciate that as on the date of the superannuation of the petitioner, there were no disciplinary proceedings pending against the petitioner. By the Judgment dated 07.11.2014 passed by the learned Special Judge (PC Act), the petitioner had also been acquitted of the charges framed under the IPC and the PC Act. The Impugned Charge Memo was only thereafter



issued on 01.02.2017, that too, for incidents that relate back to the years 1997-98 and, therefore, in terms of Rule 9 of the CCS (Pension) Rules, 1972, the Impugned Charge Memo was barred by limitation.

11. He submits that merely because the petitioner challenged the observations made by the learned Special Judge (PC Act) in the Judgment dated 07.11.2014, before this Court, it would not extend the limitation period for issuing the Charge Memo.

12. On the other hand, the learned counsel for the respondents submits that in terms of sub-rule (6) of Rule 9 of the CCS (Pension) Rules, 1972, the departmental proceedings would be deemed to have been instituted on the date on which the officer has been placed under suspension. He submits that in the present case, admittedly, the petitioner had been placed under suspension on 09.01.1998, that is, much before his superannuation and, therefore, the departmental proceedings are deemed to be pending against him on the date of his superannuation.

13. He further submits that there are grave charges against the petitioner, as has also been observed by the learned Special Judge (PC Act). Therefore, the petitioner cannot be allowed to escape the same on technicalities.

14. He submits that the Impugned Charge Memo dated 01.02.2017 was not based solely on the observations made by the learned Special Judge (PC Act) in the Judgment dated 07.11.2014. He submits that, in fact, the petitioner is now seeking to abuse the benefit given to him whereby the departmental proceedings were put on a hold only because the criminal proceedings were pending against him and so as



to not prejudice the defence of the petitioner in the said criminal proceedings.

15. We have considered the submissions made by the learned counsels for the parties.

16. Admittedly, as on the date of superannuation of the petitioner, that is, 30.11.2010, there were no departmental proceedings pending against the petitioner. Additionally, though the petitioner had been suspended on 09.01.1998, he had been reinstated in service on 22.08.2008. Therefore, as on the date of his superannuation, the petitioner was not even under suspension.

17. The relevant portions of Rule 9 of the CCS (Pension) Rules, 1972 read as under:

“9. Right of President to withhold or withdraw pension

1(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 pensions shall not be reduced below the amount of rupees three hundred and seventy-five per mensem.]



(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:*

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) *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,

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

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

xxxx

(6) *For the purpose of this rule, -*

(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 ; and*



(b) judicial proceedings shall be deemed to be instituted –

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made, and

(ii) in the case of civil proceedings, on the date the plaint is presented in the court.”

18. A reading of the above Rules would show that the pension or gratuity, or both, of a pensioner can be withheld or withdrawn only if the departmental proceedings in which the pensioner is found guilty of grave misconduct or negligence, has been instituted while the Government Servant was in service, or where it is instituted after the retirement of the Government Servant, with the sanction of the President, and on a charge which took place not more than four years before such institution.

19. In the present case, the conditions set out in Sub-Rule (2) (b) of Rule 9 are not met by the respondents. The respondents claim that the Departmental Inquiry, though instituted post the retirement of the petitioner, should be deemed to have been instituted while the petitioner was in service. In support of this submission, they rely on Sub-Rule (6) (a) of Rule 9 of the CCS (Pension) Rules, 1972, which states that the departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government Servant or the pensioner, and in case the Government Servant has been placed under suspension from an earlier date, then from the date of his suspension.



20. In the present case, however, as noted hereinabove, the petitioner had already been reinstated in service on 22.08.2008 prior to his superannuation on 30.11.2010. He was no longer under suspension as on the date of his superannuation, therefore, sub-rule (6) (a) of Rule 9 of the CCS (Pension) Rules, 1972 will not come into operation, and the same cannot come to the aid of the respondents.

21. Even the observations made by the learned Special Judge (PC Act) in the Judgment dated 07.11.2014 will not come to the aid of the respondents, inasmuch as, these observations cannot authorise the respondents to act in contravention of the law. If the law does not permit a charge memo to be issued post the retirement of a government employee, it cannot be issued only because of an observation made in a judicial order, where the question as to whether a Charge Memo can at all be issued, was not even a subject matter under determination.

22. As far as the submission of the learned counsel for the respondents that there are grave charges against the petitioner and the petitioner should not be allowed to take shield behind the technicalities of law, in our view, once we have held that a Charge Memo could not have been issued against the petitioner, only because of the perceived grave facts of the case, we cannot allow the same to continue to be in operation in violation of law.

23. Further, the submission of the learned counsel for the respondents that the disciplinary proceedings were not continued only because of the pendency of the criminal case against the petitioner and so as to not cause prejudice the petitioner in his defence, the same also



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does not impress us, as admittedly, no Charge Memo had been issued to the petitioner prior to his superannuation.

24. Accordingly, we find merit in the present petition. The Impugned Order dated 28.01.2020 passed by the learned Tribunal and the Impugned Charge Memo dated 01.02.2017 issued by the respondents are hereby quashed.

25. The respondents shall now proceed to determine the consequential benefits of the petitioner in accordance with law, and release the same to the petitioner within a period of twelve weeks from today.

26. The parties shall bear their own costs.

27. The petition is allowed in the above terms. The pending application also stands disposed of.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

MAY 19, 2025/rv/SJ

Click here to check corrigendum, if any