

Kamal Kumar Majumdar Vs Union of India (UOI) and Others

Court: Calcutta High Court

Date of Decision: Jan. 11, 2008

Acts Referred: Administrative Tribunals Act, 1985 " Section 19

All India Services (Conduct) Rules, 1968 " Rule 15, 3

All India Services (Discipline and Appeal) Rules, 1969 " Rule 6, 8, 8(2)

Central Civil Services (Pension) Rules, 1972 " Rule 9(2)

Constitution of India, 1950 " Article 226

Citation: (2008) 1 CHN 951

Hon'ble Judges: S.P. Talukdar, J; Aniruddha Bose, J

Bench: Division Bench

Advocate: Kalyan Bandhopadhyay, for the Appellant; R. Chatterjee, for the Respondent

Final Decision: Allowed

Judgement

S.P. Talukdar, J.

The petitioner was a member of the Indian Police Service. Immediately before his retirement on 1st December, 1997, a

Memorandum of Charges was issued against him on 26th November, 1997 whereby an enquiry under Rule 8 of All India Services (Discipline &

Appeal) Rules, 1969 (D.A. Rules) was directed to be held. It was for alleged violation of the provisions of Rule 3(i) of All India Services

(Conduct) Rules, 1968 read with Rule 15(i) of All India Services (Conduct) Rules, 1968.

2. The petitioner by filing an application u/s 19 of the Administrative Tribunal Act, 1985 before the Central Administrative Tribunal (hereinafter

referred to as "the Tribunal"), being O.A. No. 934 of 1998, challenged such proposed initiation of the disciplinary proceeding. By order

dated 20th August, 2004, the Tribunal dismissed the said application.

3. The present application under Article 226 of the Constitution is directed against the judgment and order dated 20th August, 2004.

4. After hearing learned Counsel for both parties and taking into consideration the relevant fact and materials, it appears to be the main contention

of the present petitioner that proceeding under Rule 8 of the D.A. Rules, 1969 can only be initiated for imposing major penalties as specified in

Rule 6. Since the retirement from service w.e.f. 1.12.1997, the provisions of the D.A. Rules, 1969 are not applicable and as such, continuation of

the proceeding is without jurisdiction. With the retirement of the petitioner, it is not possible for the respondents to inflict any major punishment,

such as, dismissal, removal, reduction in rank or compulsory retirement by way of punishment.

5. It was the stand of the petitioner before the Tribunal that the proceeding was initiated under Rule 8(2) of the D.A. Rules, 1969 for inflicting

major punishment and the very purpose of initiation of a proceeding under Rule 8(2) of D.A. Rules, 1969 and the purpose of initiation of

proceeding under Rule 6(1) of D.C.R.B. Rules are completely different.

6. Mr. Kalyan Bandopadhyay, as learned senior counsel for the petitioner, submitted that the Tribunal was not justified in disregarding the settled

principle of law that an enquiry initiated or continued under Rule 6 of D.C.R.B. Rules can only be done, even after a person's retirement, if

some pecuniary loss had been caused to the Government, which was required to be recovered from the pensionary benefits of the employee if he

was found guilty of such charge. It was submitted that the Tribunal was not right in holding that since there is a similar provision under Rule 9(2) of

C.C.S. (Pension) Rules, 1972, proceeding under Rule 8(2) of D.A. Rules, 1969 should be deemed to be a proceeding under Rule 6(1) of

D.C.R.B. Rules. On behalf of the petitioner it was submitted that the impugned order suffers from misappreciation of law and the Tribunal was not

right in holding a proceeding, initiated prior to retirement, shall be deemed to be a proceeding under disciplinary rules even after retirement.

According to learned Counsel for the petitioner, even in Rule 6(1) of D.C.R.B. Rules, it is nowhere stated that a proceeding initiated under the

provisions of Rule 8(2) of D.A. Rules, 1969 shall be deemed to be a proceeding under D.C.R.B. Rules and shall be continued after

superannuation.

7. The essence of argument advanced on behalf of the petitioner is that the initiation of a proceeding under Rule 6(1) of D.C.R.B. Rules is for

recovery from pension. Since recovery from pension or deduction from pension have not been specified as a punishment under the provisions of

Rule 6 of D.A. Rules, 1969, such punishment cannot be imposed on a proceeding initiated for imposition of major penalties under the provisions of

Rule 8(2) of D.A. Rules, 1969.

8. Learned Counsel for the respondent authorities in course of his submission referred to the backdrop of the present controversy. Inviting

attention of the Court to the Memorandum dated 26th November, 1997, it was submitted that an enquiry under Rule 8 of the All India Service

(Discipline & Appeal) Rules, 1969 was proposed to be held against the present petitioner. The Articles of Charge covered various allegations.

Those include that the petitioner claimed to have constructed building in the year 1986-87 at Salt Lake spending an amount of Rs. 2,06,000/- only

whereas on technical inspection, it was certified that the cost for such construction would be Rs. 3,52,000/-. Thus, an amount of Rs. 1,46,000/-

appeared to be disproportionate to his declared sources of income. An amount of Rs. 43,593/- appeared to be disproportionate to his declared

sources of income and remained unexplained for want of cogent evidence and that was for the year 1989.

9. Similarly an amount of Rs. 55,282.25 appeared to be disproportionate to his declared sources of income and remained unexplained for want of

satisfactory evidence. The petitioner failed and neglected to submit his declaration of assets from 1.1.1971 to 1.1.1992. The annual return of assets

as submitted by him in the form of declaration of assets as stood on 1.1.1993 to 1.1.1995 were lacking in material particulars and as such,

incomplete in respect of information. During the period from 1992 to 1994, the petitioner purchased certain articles (electronic goods) worth more

than Rs. 10,000/- each in his name as well as in the name of his wife without giving any intimation with the Government.

10. Learned Counsel for the respondents submitted that the charge-sheet, which was issued against the petitioner, was in respect of matters which

arose during his employment. The proceedings were initiated following the provisions of All India Services (Discipline & Appeal) Rules, 1969.

Rule 6 of All India Services (Death-cum-Retirement Benefits) Rules, 1958 (in short "D.C.R.B. Rules") provides that-

(a) such departmental proceeding, if instituted while the pensioner was in service, whether before his retirement or during his re-employment, shall,

after the final retirement of the pensioner, be deemed to be a proceeding under this sub-rule and shall be continued and concluded by the authority

by which it was commenced in the same manner as if the pensioner had continued in service.

(b) such departmental proceeding, if not instituted while the pensioner was in service, whether before his retirement or during his re-employment.

(i) shall not be instituted save with the sanction of the Central Government;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceeding; and

(iii) shall be conducted by such authority and in such place or places as the Central Government may direct and in accordance with the procedure

applicable to proceeding on which an order of dismissal from service may be made;

(c) such judicial proceeding, if not instituted while the pensioner was in service, whether before his retirement or during his re-employment, shall not

be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution.

11. From the materials available on record, it appears that an enquiry was decided to be held against the present petitioner just a few days prior to

his retirement on 30th November, 1997. This was duly communicated to him by Memorandum dated 26.11.1997. It was in respect of Articles of

Charge - I to VI. Rule 8 of the All India Services (Discipline & Appeal) Rules, 1969 deals with the procedure for imposing major penalties. So far

continuation of the proceeding even after retirement of the petitioner by itself is not impermissible, the question as raised in the case is how far the

same is sustainable.

12. Referring to the decision in the case of R.P. Nair and Another Vs. Kerala State Electricity Board and Others, , it was contended on behalf of

the petitioner that the authority can only proceed with a limited type of enquiry and that is an enquiry in regard to withholding or withdrawing

pension, or ordering recovery from pension by reason of any misconduct or negligence during the period in service. And, as submitted by Mr.

Bandhopadhyay, such an enquiry could only be initiated when there is any allegation that the Government, for such misconduct or negligence,

suffered pecuniary loss.

13. In the absence of such charge that the Government suffered any pecuniary loss, there can be no occasion for forfeiting gratuity to the extent of

damage so caused. In this context, reference was made to the decision in the case of Management of Bharat Motors N.R. Pvt. Ltd. and Presiding

Officer, Labour Court, Tirunelveli and Ors. as reported in 1988 (I) L.L.J. 907 as well as Permali Wallance Ltd. and State of M.P. and Ors. as

reported in II L.L.J. 113.

14. Learned Tribunal in the impugned judgment mentioned that the points pressed at the time of hearing before the Tribunal were the ground of

delay and maintainability of the proceedings after retirement.

15. Ground of delay does not appear to have been dealt with in its proper perspective. The fact that more than a decade has passed since

retirement of the petitioner, perhaps, deserves more effective appreciation - that too, having regard to the nature of the allegations which by lapse

of time have rather become stale.

16. It follows from the aforesaid discussion that there is no scope for proceeding with an enquiry when there is no charge that the Government

suffered any pecuniary loss due to any misconduct or negligence of the petitioner.

17. The proceeding, if instituted while the pensioner was in service, such after the final retirement be deemed to be a proceeding under Sub-rule

(1) of Rule 6 of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 and shall be continued and concluded by the authority by

which it was commenced in the same manner as if the petitioner had continued in service.

18. It was contended on behalf of the petitioner that since admittedly the petitioner was allowed to retire from service, the only punishment that can

be inflicted in such enquiry is recovery from pension. This again comes within the ambit of $\frac{1}{2}$ minor penalties, as reflected from Rule 6 of the

said Rules. It was further submitted that there is nothing to suggest that the petitioner has been found, in a departmental or judicial proceeding, to

have been guilty of grave misconduct.

19. Allegations against the petitioner do not include any charge that he caused pecuniary loss to the Central or State Government by misconduct or

negligence during his service. This significant aspect does not appear to have been dealt with by the learned Tribunal. Having regard to the nature

of the charge against the present petitioner, we also do not think it to be just and proper to refer the matter back to the learned Tribunal for

consideration.

20. Considering all such facts and circumstances, we find it difficult to brush aside the grievances, as ventilated on behalf of the petitioner.

21. Thus, we find it difficult to agree with the decision of the learned Tribunal. Accordingly, the application being W.P.C.T. 4 of 2004 be allowed.

Impugned judgment and order dated 20th August, 2004 be set aside. The proceeding against the present petitioner on the basis of the charges as

communicated by Memorandum No. 1506 P & AR (Vig) dated 26th November, 1997, thus, be quashed.

22. Xerox certified copy of the order be supplied to the parties on priority basis after due compliance with necessary formalities

23. I agree.