

Reportable
* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ WP (C) No. 3012 of 2008

% *Reserved on : May 16, 2008*
Pronounced on : July 04, 2008

RPS Panwar . . . Petitioner

through : Mr. H.K. Gupta with
Mr. G.S. Chamman, Advocates

VERSUS

Union of India & Anr. . . . Respondents

through : Mr. R.V. Sinha with
Mr. A.S. Singh, Advocates

CORAM :-

**THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE J.R. MIDHA**

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. The petitioner herein had joined the Department of Telecommunications (for short, 'DOT') as Engineering Supervisor on 19.1.1968 and got promotions from time to time. By the year 1999, he had risen to the rank of ITS Group-A (SAG Level) as GM (Telephones) and was posted at Moradabad. In July 2003, he was transferred as GM (Telephones) to Muzaffarnagar, where on 18.9.2003 he was arrested by the CBI. It was on the basis of FIR registered by the CBI on 12.9.2003 on the allegation of disproportionate assets and his failure to intimate the same to the

authorities. Since his detention exceeding 48 hours, order was passed on 23.9.2003 under Rule 10(2) of the CCS (CCA) Rules, 1965 placing him under deemed suspension with effect from 18.9.2003, i.e. the date of his arrest. Though the petitioner was granted bail after a period of two months, i.e. on 18.11.2003, his suspension continued as it was extended from time to time.

2. The petitioner was also served with the charge sheet dated 25.10.2004 under Rule 14 of the CCS (CCA) Rules. This was followed by another charge sheet dated 13.12.2004 under Rule 16 for minor penalty proceedings in which, after eliciting his reply, displeasure was conveyed. However, insofar as suspension of the petitioner is concerned, his employer kept on extending the same from time to time. Lastly on 15.2.2006, the suspension was extended by 180 days, though the petitioner was attaining the age of superannuation on 30.4.2006. This was followed by letter dated 13.4.2006 stating that the petitioner would continue under suspension even after his retirement. Notwithstanding this, by another order dated 28.4.2006 he was permitted to retire on 30.4.2006. The said Office Memorandum dated 28.4.2006 reads as under :-

“ OFFICE MEMORANDUM

Subject:- Retirement of Officers of DOT/BSNL/MTNL during April, 2006.

On attaining the age of superannuation, Shri R.P.S. Panwar (Staff No. 690), an officer of SAG of ITS Group 'A', presently working as General Manager, BSNL, U.P. (West)

Telecom Circle is permitted to retire from Government service with effect from 30.04.2006 (A/N).

2. Since, Shri R.P.S. Panwar (Staff No. 690), GM, is under suspension and his vigilance clearance is withheld, he may be paid provisional pension only as per Rule 69 of the CCS Pension Rules, 1972.

3. Charge reports may be furnished to all concerned.

(Amarjit Singh)
Under Secretary to the Govt. of India.”

3. The provisional pension of the petitioner was accordingly sanctioned, which he started getting with effect from 1.5.2006. After the retirement, the petitioner was served with another charge sheet dated 5.10.2006 alleging various irregularities committed by him during the period 19.4.1999 to 16.6.2003 while providing and extending the tenure of security guards, which according to the disciplinary authority amounted to misconduct. This was followed by yet another charge sheet dated 15.3.2007 levelling as many as 7 articles of charges. These also relate to the period 2000-03 when the petitioner was posted and functioning as GM (Telephones), Moradabad. Vide his representation dated 6.6.2007, the petitioner challenged the issuance of charge sheets dated 5.10.2006 and 15.3.2007 and initiation of disciplinary proceedings pursuant thereto, served upon him after 30.4.2006, i.e. after his retirement. However, vide communication dated 30.7.2007, his representation was turned down. After receiving the aforesaid rejection, the petitioner preferred OA No. 1658/2007 before the Central Administrative Tribunal, which was filed in September 2007, challenging the issuance of the aforesaid two charge sheets on the ground that after

his retirement no such disciplinary action could be taken. We may note that after the filing of the said OA, two more charge sheets were issued to him on 25.10.2007 and 30.10.2007, which were, naturally, not the subject matter of challenge before the Tribunal as when the OA was filed challenging earlier two charge sheets, these charge sheets were not served. We may also point out that the petitioner has submitted that the disciplinary proceedings were not only in violation of Rules, but were also illegal on the ground of *mala fides* and arbitrariness and further that they were not sustainable as they relate to events which took place more than four years before such institution. The Tribunal has dismissed the OA of the petitioner vide its order dated 31.3.2008 holding that such an action could be taken against the petitioner even after his retirement. Challenging this judgment of the Tribunal the instant petition is preferred.

4. It is not in dispute that the aforesaid two charge sheets were served upon the petitioner after his retirement/superannuation, which occurred on 30.4.2006. As per Rule 9 of the CCS (Pension) Rules (hereinafter referred to as 'Pension Rules'), charge sheet can be served against a retired officer also under certain conditions, and one of them being that the event for which the charge sheet is issued should be within four years from the date of issuance of the charge sheet. This Rule also stipulates that if the departmental proceedings are instituted against a Government servant before his retirement or during his reemployment, it shall be deemed that those proceedings

are under Rule 9 and shall be continued and concluded by the authority by which they were commenced even after his retirement in the same manner as if the Government servant had continued in service. The Rule also points out that where a Government employee is placed under suspension, then the departmental proceedings shall be deemed to be instituted on the date when he was placed under suspension.

5. Before the Tribunal, case of the petitioner was that the alleged irregularities pertain to a period which was more than four years old and, therefore, no such charge memos could be issued after his retirement. On the other hand, the respondents pleaded that since the petitioner was placed under suspension with effect from 18.9.2003, even when the charge sheets are issued on 5.10.2006 and 15.3.2007 respectively, they shall relate back to the date of suspension and it would be deemed as if the departmental proceedings were instituted from the date of suspension, i.e. 18.9.2003. On that date, the petitioner was very much in service and, therefore, there was nothing wrong in the institution of the departmental proceedings.
6. The Tribunal has accepted the submission of the respondent and dismissed the OA. Before us issue remains the same. Everything turns upon the interpretation of Rule 9, shades whereof have already been highlighted by us.

7. Before we come to the interpretation of this Rule, it would be necessary to take note of the respondents' averments on certain aspects. As per the respondents, the petitioner was placed under suspension in terms of Rule 10(2) of CCS (CCA) Rules, 1965 with effect from 18.9.2003 vide order dated 23.9.2003 consequent upon his detention in CBI custody exceeding a period of 48 hours. The petitioner was due for retirement on superannuation on 30.04.2006, by which time the investigation of CBI could not be concluded. At this juncture, the cases against the petitioner were reviewed and it was found that 10 other departmental cases/complaints against him were pending and it was decided to club all the cases. Accordingly, the respondents issued order dated 13.4.2006. As regards averments made by the petitioner that he was delivered the said order only on 11.1.2007, it is submitted that he deliberately avoided to receive the same and left the headquarters without seeking permission and without informing his whereabouts. Various efforts were made by the Circle Office of the respondents to deliver the order to him, but he avoided to receive it. The CBI took 2½ years in investigating the matter in view of the voluminous records which were to be scrutinized and ultimately filed its charge sheet on 30.6.2006. It is only after those investigations that the allegations against the petitioner in respect of various irregularities were crystallized and, therefore, charge sheet dated 5.10.2006 and 15.3.2007 were issued to him after his retirement. According to the respondents, therefore, there was no delay in issuance of the charge sheets. As soon as the

irregularities came to light the matter was got thoroughly investigated in consultation with the CVC, and finding the petitioner *prima facie* responsible for grave misconduct, departmental proceedings were instituted by the impugned memorandum of charges with the approval of the President of India.

8. Now, let us turn to Rule 9 :-

“9. Right of President 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 pensions shall not be reduced below the amount of rupees three hundred and seventy-five (*Rupees One thousand nine hundred and thirteen from 1.4.2004 – see GID below Rule 49*) 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.

(3) *Deleted*

(4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 69 shall be sanctioned.

(5) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(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.”

We are primarily concerned with sub-rule 2(a) and sub-rule (6) of Rule 9 of the Pension Rules.

9. It is clear from clause (a) of sub-rule (6) of Rule 9 that for the purpose of Rule 9, departmental proceedings are treated to have been instituted on the date on which the statement of charges is issued to the Government servant or pensioner. However, if the Government servant has been placed under suspension from an earlier date, then they are deemed to have been instituted on the date of suspension. Clause (a), thus, talks of departmental proceedings, whereas clause (b) of sub-rule (6) deals with judicial proceedings, criminal as well as civil. Insofar as criminal proceedings are concerned, these are deemed to be instituted on the date on which the complaint or report of a Police Officer is made, of which the Magistrate ultimately takes cognizance. If sub-rule (6) of Rule 9 is applicable to the present case, then the proceedings will be deemed to be instituted on 18.9.2003 when the petitioner was in service and thereafter it would continue under this Rule by virtue of sub-rule 2(a).
10. The moot question, however, is as to whether clause (a) of sub-rule (6) of Rule 9 applies even when a Government servant retires while under suspension but till that time charge sheet is not issued, which comes to be issued subsequent to the date of retirement. Contention of learned counsel for the petitioner was that sub-rule (6) will have no application for two reasons :-
- (i) on the retirement of a Government servant, relationship of employer-employee ceases to exist and even when a person was facing suspension, such suspension also comes to an end on

the date of retirement. Therefore, if the charge sheet is issued on a subsequent date after his retirement as on the date of issuance of charge sheet, he is no more under suspension. Sub-rule (6), therefore, would not apply in such a situation; and

- (ii) in the present case, even otherwise the suspension of the petitioner was not in contemplation of departmental proceedings, but in contemplation of criminal proceedings. In fact, it was a deemed suspension on the ground that the petitioner had been arrested by the CBI and he remained in custody for more than 48 hours. The suspension was, therefore, relatable to the criminal case and no orders were passed suspending him in contemplation of disciplinary proceedings. On this ground also, argued the learned counsel for the petitioner, sub-rule (6) could not have been applied to the present case.

11. We may deal with the second submission in the first instance. Rule 10 of the CCS (CCA) Rules provides for suspension. It could be during the pendency of or in contemplation of disciplinary proceedings. It could also be during the pendency of or in contemplation of criminal proceedings, as is clear from the reading of Rule 10, the relevant portion whereof is as under :-

“10. SUSPENSION

(1) The Appointing Authority or any authority to which it is subordinate or the Disciplinary Authority or any other authority empowered in that behalf by the President, by general or special order, may place a Government servant under suspension -

- (a) where a disciplinary proceeding against him is contemplated or is pending; or
- (aa) where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or
- (b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:

Provided that ”

12. It is, thus, clear that the suspension can relate to either disciplinary proceedings or criminal proceedings. In the present case, deemed suspension order was passed under sub-rule (2) of Rule 10 of the CCS (CCA) Rules, which is manifest from its bare perusal :-

“ ORDER

WHEREAS a case against Shri R.P.S. Panwar, General Manager (Telecom), Muzaffarnagar, in respect of a criminal offence is under investigation.

AND WHEREAS, the said Shri R.P.S. Panwar was detained in custody on 18.09.2003 for a period exceeding forty-eight hours.

NOW, THEREFORE, the said Shri R.P.S. Panwar is deemed to have been suspended with effect from the date of his detention i.e. 18.09.2003 in terms of sub-rule (2) of Rule 10 of CCS (CCA) Rules, 1965 and shall remain under suspension until further orders.

By order and in the name of the President.

(D.P. Saini)
Under Secretary to the Govt. of India”

It is clear that it was because of his detention exceeding 48 hours that he was treated under deemed suspension. This suspension was extended from time to time. The orders passed extending the suspension after every 180 days are identically worded with change of dates. Therefore, purpose would be served in taking note of one

such order. While extending suspension, order dated 19.4.2004 *inter alia* stated as under :-

“WHEREAS, a case against Shri R.P.S. Panwar, GM, Muzaffarnagar, in respect of a criminal offence is under investigation and he is under suspension with effect from 18.09.2003 vide this office order of even number dated 23.09.2003.

xx xx xx”

13. However, a very significant development took place after passing of orders dated 15.2.2006, which has changed the nature of suspension order. As pointed out above, the petitioner was to attain the age of superannuation on 30.4.2006. The case of the continuation of the petitioner's suspension beyond superannuation was, therefore, considered by the President and orders dated 13.4.2006 was passed stating that he would continue to be under suspension till finalization of all cases and decision on treatment of suspension period would be taken only on the conclusion of all such cases. This order does not limit the scope of cases to criminal case alone but, in no uncertain terms, mentions about the departmental cases as well, as is clear from the operative portion of the said order dated 13.4.2006, which is as follows :-

“NOW THEREFORE, the President has carefully considered the case of Shri R.P.S. Panwar and keeping in view that 10 departmental cases, in addition to a criminal case in which he was formally placed under deemed suspension, are pending against him, has ordered that Shri Panwar will continue to be under suspension till finalization of all the cases (departmental/criminal) and a decision on treatment of his suspension period will be taken only on conclusion of all such cases, depending on the outcome thereof

By order and in the name of the President.”

This order, thus, in no uncertain terms and unambiguously records the decision making process. Having regard to the pendency of 10 departmental cases, in addition to a criminal case, the President had decided that he would continue to be under suspension *“till finalization of all the cases (departmental/ criminal.....”* . Since his continuation was treated, by the said order, pending departmental cases as well, the petitioner cannot argue that the suspension was only with reference to the criminal investigation and had nothing to do with the departmental cases.

We, therefore, do not accept the submission of learned counsel for the petitioner in this behalf.

14. We now proceed to deal with the first submission, namely, applicability or otherwise of sub-rule (6) of Rule 9 to those Government employees who have retired from service. No doubt, in Common Law, after the retirement and/or when there is cessation of employer-employee relationship, there is no question of employee remaining under suspension. If we apply this principle of Common Law, viz. once an employee retires, the employer-employee relationship comes to an end, the sequitur would be that the employer cannot take disciplinary action against his retired employee and punish him for that. However, sub-rule 2(a) of Rule 9 creates legal fiction and for the purpose of departmental action treats such a delinquent officer as an employee of the Government. No doubt, the nature of penalties which can be imposed after retirement are different as it would be absurd to inflict the punishment prescribed

under Rule 11 of the CCS (CCA) Rules on a retired employee. To remove this absurdity, Rule 9 provides for different kinds of punishments, which relate to forfeiture and/or cut in pension and gratuity. It is for this reason the pension and gratuity are not released to the Government employee, against whom the disciplinary proceedings are pending, at the time of retirement and he is only given provisional pension. Once we understand and accept this position, extending this deeming provision or legal fiction, to a situation provided under sub-rule (6) of Rule 9 would also be understandable. The President had passed specific orders dated 13.4.2006 extending the suspension till the conclusion of departmental cases as well as criminal cases. This deemed suspension, for the purpose of departmental cases, would continue even after retirement. Once the matter is looked into from this angle, there is no difficulty in concluding that even when the charge sheets were served after the retirement, the deemed date of initiation of disciplinary proceedings would be the date of suspension.

15. Learned counsel for the petitioner, relying upon the judgment of the Supreme Court in *Bengal Immunity Co. Ltd. v. State of Bihar & Ors.*, 1955 SCR 646, had argued that the legal fiction is to be limited to the purpose for which it was created and should not be extended beyond that legitimate field. There is no doubt about this proposition of law. Having regard to the purpose for which Rule 9 in the Pension Rules has been introduced, as highlighted and discussed in detail hereinabove as well as in para 17 below, our

opinion is in tune with the law laid down by the Apex Court in *Bengal Immunity* (supra) and does not run contrary to the principle laid down therein.

16. We may point out at this stage that learned counsel for the petitioner had referred to and relied upon the same judgments which were cited before the learned Tribunal. The learned Tribunal, after holding that deemed provisions contained in sub-rule (6) of Rule 9 would be applicable to the present case, dealt with those judgments and distinguished all those judgments as not applicable and discussion in this respect can be found in paras 15 & 16 of the judgment of the Tribunal. Since we are in agreement with the reasoning given by the Tribunal and the manner in which the said case law is dealt with, we do nothing more than to reproduce the said paras :-

“15. Now we deal with the cases cited by the learned counsel for the applicant in the OA:-

G. Kumararaj’s case, the issue was whether retiral benefits would be admissible to the applicant who had been suspended on account of registration of case by CBI but no DE had been initiated nor any charge sheet had been filed in the criminal court. It was held that mere registration of a case against him could not be treated as commencement of judicial proceedings and hence retiral benefits were admissible.

Bani Singh’s case, the issue was regarding inordinate delay of over 12 years in initiation of disciplinary enquiry. Hence we do not find it relevant to the present case, facts being different.

Janakiraman’s case, the issue was the procedure to be adopted in the event of promotion of employees against whom departmental proceedings were pending and when sealed cover procedure is to be resorted to. Thus, this case also does not support the applicant’s case herein.

16. Now we also deal with the cases cited by the applicant during the course of hearing:-

Case of **Gurpreet Singh Bhullar and Anr. v. UOI & Ors.**, (2006 SCC (L&S) 658) relates to pendency of a criminal case against a selectee – under Regulation 5(5), IPS (Appointment by Promotion) Regulations, 1955 for provisional inclusion in the select list. It was held by the Hon'ble Supreme Court that proceedings should be treated as pending only if a charge had been framed by the court. The facts of this case are entirely different to the case in hand.

In **State of Bihar & Ors. v. Mohd. Idris Ansari** (JT 1995 (4) SC 134) charge sheet was issued to a retired government servant for acts of omission/commission which were atleast 6 years old. While the alleged misconduct of the applicant was in 1986-87, enquiry was initiated in 1993. Hon'ble Supreme Court dismissed the appeal filed by the State Government, as the proceedings were not in consonance with Rule 43(B) of the Bihar Pension Rules, and were time barred being more than 4 years old.

Same was the case in **S. Ramanujam v. Commissioner for Departmental Inquiries and Ors.** (1986 (4) SLR 530) where the Government servant retired on 31.07.1978 and the Memorandum was issued on 31.01.1981 in respect of acts of omission/commission relating to the years 1971 and 1974-75. Application was allowed as charge sheet was barred by limitation of 4 years and he had not been placed under suspension. The facts being different do not advance the case of the applicant.

Learned counsel for applicant also placed reliance on **K. Padmanabha Rao v. Accountant General, API, Hyderabad & Ors.**, (1987 (4) ATC 756). In that case the enquiry proceedings were quashed by the Hon'ble High Court even prior to retirement of applicant. Hence, there was no enquiry under the CCS (CCA) Rules, 1965 pending against him which could be continued under the Pension Rules. It was held that consequent on the judgment of the High Court in W.P. 985/1982, it is not competent for the department to continue with the enquiry commenced against the applicant under the CCS (CCA) Rules even for the limited purpose of withholding or withdrawing his pension in whole or part under Rule 9 of CCS (Pension) Rules. The applicant having been allowed to retire without any conditions, would, therefore, be entitled to full pension, gratuity and other terminal benefits consequent on his retirement. This case also does not support the applicant herein.

With regard to **S.K. Mathur v. UOI & Ors.**, (2005 (2) CAT 286), learned counsel for respondents has submitted that the decision of the Tribunal is under challenge before the Hon'ble High Court. Hence, we cannot take cognizance of this decision.”

No further arguments were advanced before us.

17. The reason for creating this legal provision and curtailing the common law right of the employees is too obvious. A Government employee gets gratuity on his retirement and also starts earning pension, which he continues to get for the remainder of his life. So much so, after his death his family is also entitled to family pension. These benefits are given for rendering long and faithful service by such Government employees. However, if it is found that during his employment he had committed some act of indiscipline or misconduct, it would naturally have bearing on these terminal dues like gratuity and pension. For this reason, when the irregularities committed while in service are noticed and when the disciplinary proceedings are initiated, the Government has taken upon itself the right to continue the same after retirement as well. In such cases, where the gross misconduct is found to have been committed while in service, allowing such a person to earn full pension for rest of his life after retirement may not be proper as the pension is given for not only long service but for sincere and faithful discharge of duties. It is for this reason that even when no inquiry was instituted when the Government servant was in service, provision is made to proceed against him departmentally even after his retirement. However, at the same time, balance is struck by providing that the alleged irregularity should not be of a period more than four years old. This provision obviates the possibility of harassing retired Government servants by digging up old issues.

18. Once the aforesaid position is to be accepted as irrefutable, it is not difficult to find the answer to the issue arising out of the situation at hand. Here the petitioner was suspended while still in service and investigation into the alleged irregularities initiated. It is to be borne in mind that sometimes having regard to the complicated nature of charge, substantial time is taken in the investigation. In the present case itself, the FIR against the petitioner was lodged in September 2003, i.e. much before the petitioner's retirement on 30.4.2006. Keeping in view the fact that the petitioner remained in custody for more than 48 hours, though initially order of deemed suspension was passed, the President chose to extend this order from time to time after re-assessment, keeping in view the seriousness of the charges leveled against the petitioner. In such cases, where the investigation gets completed after the retirement, the very purpose of introducing Rule 9 of the Pension Rules, would be defeated if the contention of the petitioner is accepted and it is held that the provision of deemed suspension would not be applicable.
19. For all these reasons, we dismiss this writ petition with no order as to costs.

(A.K. SIKRI)
JUDGE

(J.R. MIDHA)
JUDGE

July 04, 2008
nsk

WP (C) No. 3012/2008 nsk