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HIGH COURT OF CHHATTISGARH, BILASPUR
Writ Petition (S) No.1264 of 2013

Udho Prasad Sharma, S/o. Shri S.P. Sharma, aged about 60 years, R/o. MD 35 C.G. Housing Board Colony, P.S. Saraswati Nagar, Kota, Raipur, District Raipur (CG)

---Petitioner

Versus

1. Chhattisgarh State Civil Supplies Corporation Ltd. Through its Chairman, Hitwad Bhawan Avanti Vihar, Telibandha, Raipur (CG)
2. The Managing Director, Chhattisgarh State Civil Supplies Corporation Ltd. Hitwad Bhawan Avanti Vihar, Telibandha, Raipur (CG)
3. Company Secretary & Enquiry Officer, Chhattisgarh State Civil Supplies Corporation Ltd. Hitwad Bhawan Avanti Vihar, Telibandha, Raipur (CG)

---Respondents

For Petitioner	:	Mr.Sunil Pillai, Advocate
For Respondents	:	Mr.N.K.Vyas, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

C A V Order

30/11/2015

1. Overriding issue falling for consideration would be whether the respondent/Corporation is entitled to continue the disciplinary proceedings after superannuation of the petitioner without any express provision in applicable service Rules?

2. The petitioner was Manager in the erstwhile Madhya Pradesh State Civil Supplies Corporation and upon re-organization of the State, services of the petitioner were allocated to the Chhattisgarh State Civil Supplies Corporation constituted in the State of Chhattisgarh. He was placed under suspension and regular disciplinary proceeding was instituted by an order dated 14.2.2008 (Annexure P/3) for petitioner's carelessness for loss to the Corporation followed by other charge-sheet dated 29.8.2008 (Annexure P/4) with an allegation of misappropriation by the transporter appointed by the petitioner. Both the disciplinary proceedings remained unconcluded even after retirement of the petitioner on 31.1.2013 and disciplinary proceedings continued against him even after his retirement. The petitioner herein has challenged the legality of continuation of disciplinary proceedings after his retirement on the ground that the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (hereinafter referred to as “CCA Rules”), which is applicable to him as Corporation servant, does not authorize the respondent/Corporation to continue the disciplinary proceedings against him after his retirement and therefore, continuation of disciplinary proceedings is unsustainable and untenable in law apart from being unauthorized in law.

3. On being noticed, the respondent/Corporation has filed its return stating inter-alia that there is no specific bar in the CCA Rules, which is applicable to the petitioner for continuation of disciplinary proceedings against the retired Corporation servant and as such, looking to the grievous misconduct committed by the petitioner during the course of his service, the respondent/Corporation is absolutely justified in continuing the disciplinary proceedings and to conclude it and as such, the writ petition deserves to be dismissed.

4. Mr.Sunil Pillai, learned counsel appearing for the petitioner would submit that services of the petitioner were governed by the CCA Rules, which is blissfully silent about the continuation of inquiry against the Corporation servant upon his superannuation and as such, de-hors the CCA Rules, the respondent/Corporation has no authority to continue the disciplinary proceedings after his superannuation and continuation of disciplinary proceedings would be without jurisdiction and without authority of law and as such, disciplinary proceedings initiated pursuant to the charge-sheet dated 14.2.2008 (Annexure P/3) and 29.8.2008 (Annexure P/4) deserves to be quashed.

5. I have heard learned counsel appearing for the parties, also considered the rival submissions made therein and gone through the record of the case with utmost circumspection.

6. It is not in dispute that two disciplinary proceedings for misconduct against the petitioner were initiated vide charge-sheet dated 14.2.2008 (Annexure P/3) and 29.8.2008 (Annexure P/4) under the CCA Rules, but disciplinary proceedings could not be concluded before superannuation of the petitioner on 31.3.2013. It is also not in dispute that the CCA Rules applicable to Corporation servant/petitioner nowhere provides or authorizes the respondent/Corporation to continue the disciplinary proceedings after retirement of an employee from the service. Thus, in absence of provision in this regard, in service rules, relevant judgments on this issue may be noticed usefully herein as issue in question has been considered by the Supreme Court on number of occasions. Following decisions may be noticed herein usefully:-

7.1 In a Constitution Bench judgment in the matter of **S. Pratap Singh v. State of Punjab**[1]**,** Their Lordships of the Supreme Court have clearly held that there has to be a specific provision under the law to take action against the person who has ceased to be in service.

7.2 As back as, in the matter of **State Bank of India v. A.N.Gupta and others**[2], Their Lordships of the Supreme Court have categorically held that

1 AIR 1964 SC 72
2 (1997) 8 SCC 60

once an employee ceased to be in the service of the bank, continuation of disciplinary proceedings was not permissible unless there was a specific provision to this effect in the relevant rules.

7.3 Thereafter, in the matter of **Bhagirathi Jena v. Board of Directors, O.S.F.C. and others**[3] it has been held by Their Lordships of the Supreme Court that in the absence of specific provision in the relevant rules applicable to the public servant, the respondent-Corporation had no legal authority to make any reduction in the retiral benefits of the appellant and held as under:-

> "6. It will be noticed from the abovesaid regulations that no specific provision was made for deducting any amount from the provident fund consequent to any misconduct determined in the departmental enquiry nor was any provision made for continuance of the departmental enquiry after superannuation.
>
> 7. In view of the absence of such a

3(1999) 3 SCC 666

> provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30-6-1995, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement."

7.4 Similarly, in the matter of State of **U.P. and others v. Harihar Bholenath**[4], Their Lordships of the Supreme Court have also taken the note of decision rendered by this Court in the matter of **Bhagirathi Jena** (supra).

4 (2006) 13 SCC 460

7.5 The law laid-down by Their Lordships of the Supreme Court in the matter of **Bhagirathi Jena** (supra) has been followed with approval by the Supreme Court in the matter of **Girijan Cooperative Corporation Limited, Andhra Pradesh v. K. Satyanarayana Rao**[5] and it has been observed in paragraph 14 and 16 as under:-

> "14. There cannot be any doubt or dispute that an employer can initiate a disciplinary proceedings and/or continue the same only in terms of the rules framed by it. It is also a well-settled law that the disciplinary proceedings are initiated only when a charge-sheet is issued.
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> 16. In absence of any rules, therefore, a disciplinary proceeding against a retired employee should not have been continued. The judgment of the High Court, in our opinion, cannot be said to be faulty. We, however, keeping in view the subsequent documents brought

5(2010) 15 SCC 322

> before us by the appellant, would observe that, in future, in any other case or before any other authority, the Corporation would be at liberty to place all the relevant documents and to that effect the question of law raised by the appellant herein shall remain open."

7.6 Very recently, in the matter of **Dev Prakash Tewari v. Uttar Pradesh Cooperative Institutional Service Board, Lucknow and others**[6]**,** judgment rendered in the matter of **Bhagirathi Jena** (supra) was followed with approval by the Supreme Court and held that once the concerned employee is retired from service, continuation of disciplinary proceeding is bad in law by observing in paragraph 8 as under:-

> "8. Once the appellant had retired from service on 31-3-2009, there was no authority vested with the respondents for continuing the disciplinary proceeding even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority it must be held that the enquiry had lapsed and the appellant

6 (2014) 7 SCC 260

was entitled to get full retiral benefits."

7. In view of the aforesaid binding judgments of the Supreme Court, the crystallized legal position as on day is that once an employee ceased to be in the service, departmental enquiry lapses and disciplinary proceeding is not permissible unless there is a specific provision to that effect in the relevant applicable service rules.

8. At this stage, judgments relied upon by Mr.N.K.Vyas, learned counsel appearing for the respondents require to be taken note of. He firstly relied upon a decision in the matter of **U.P. State Sugar Corporation Ltd. & others v. Kamal Swaroop Tondon**[7], in which it has been held by Their Lordships of the Supreme Court that where the Corporation constituted under the Act had initiated proceeding for recovery of financial loss of an employee after his retirement can be continued and it has been followed by the Supreme Court in the matter of **Anant R. Kulkarni v. Y.P. Education Society and Ors.**[8] taking the similar view. Paragraph

7 (2008) 2 SCC 41
8 2013 AIR SCW 2573

17 of the report states as under:-

> “**17**. In U.P. State Sugar Corporation Ltd. case, this Court dealt with a case wherein statutory corporation had initiated proceedings for recovery of the financial loss from an employee after his retirement from service. This Court approved such a course observing that in the case of retirement, master and servant relationship continue for grant of retiral benefits. The proceedings for recovery of financial loss from an employee is permissible even after his retirement and the same can also be recovered from the retiral benefits of the said employee.”

9. Their Lordships of the Supreme Court in the matter of **Dev Prakash Tewari** (supra) have considered the similar argument and distinguished the decision i.e. in the matter of **U.P. State Sugar Corporation Ltd.** (supra) by observing as under:-

> “7. In a subsequent decision of this Court in U.P. Coop. Federation Ltd. v. L.P. Rai, (2007) 7 SCC 81 on facts, the disciplinary proceeding

against employee was quashed by the High Court since no opportunity of hearing was given to him in the inquiry and the management in its appeal before this Court sought for grant of liberty to hold a fresh inquiry and this Court held that charges levelled against the employee were not minor in nature, and therefore, it would not be proper to foreclose the right of the employer to hold a fresh inquiry only on the ground that the employee has since retired from the service and accordingly granted the liberty sought for by the management. While dealing with the above case, the earlier decision in Bhagirathi Jena case was not brought to the notice of this Court and no contention was raised pertaining to the provisions under which the disciplinary proceeding was initiated and as such no ratio came to be laid down. In our view the said decision cannot help the respondents herein"

10. Thus, the reliance placed by learned counsel appearing for the respondents in the matters of **U.P. State Sugar Corporation Ltd. & Ors.**(supra) and **Anant R. Kulkarni** (supra) is not helpful to the respondents as it has already been distinguished by the Supreme Court in the mater of **Dev Prakash Tewari** (supra)

11. Applying the law laid-down by Their Lordships of the Supreme Court in the aforesaid cases to the factual matrix of the present case, it is quite vivid that CCA Rules are applicable to the petitioner. There is no express provision incorporated in the said Rules authorizing the Corporation to continue the disciplinary proceedings after the authority concerned superannuates from service, as such, there is no enabling provision in the relevant rules (CCA).

12. The inevitable consequence of absence of such enabling provision in the CCA Rules would be that the Corporation is denude of its authority to continue the disciplinary proceedings after the petitioner stood superannuated from Corporation employment on 31.1.2013 and necessary fall out would be that disciplinary proceeding issued vide order dated 14.2.2008 (Annexure P/3) and charge-sheet dated 29.8.2008 (Annexure P/4) deserves to and are hereby quashed.

20. Accordingly, the writ petition is allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
JUDGE

B/-