

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

1) CWP No.18374 of 2015 (O&M)
Date of decision: 10.09.2015

N.D.Bawa

... Petitioner

Versus

State of Punjab and another

... Respondents

2) CWP No.18340 of 2015

Roshan Lal Sethi

... Petitioner

Versus

Punjab Water Supply & Sewerage Board

... Respondent

CORAM: HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr. R.D.Bawa, Advocate,
for the petitioner (in CWP No.18374 of 2015)

Mr. Varinder Shukla, Advocate,
for the petitioner (in CWP No.18340 of 2015)

Mr. Anil Sharma, Addl. A.G.Punjab

AMOL RATTAN SINGH, J.(Oral)

In both these petitions, the petitioners have challenged the two separate charge sheets issued to them, after their retirement from service from the respondent Punjab Water Supply and Sewerage Board. The primary ground of challenge is that the charge sheets have been issued to them more than four years after the cause of action arose to the respondents and as such, the disciplinary proceedings are barred in terms of Section 2.2 (b) of the Punjab Civil Services Rules, Volume-II, which are admitted to be applicable to the employees of the Board also.

The petitioner in CWP No.18374 of 2015, who retired as a

Superintendent Engineer, was working as an Executive Engineer with the Board at the time that the work in question, i.e. laying of a sewer pipe, was undertaken by the respondent-Board, between 15.11.2010 to 26.04.2011, along the Moga-Ludhiana National Highway. The said work was not found satisfactory and the petitioners have been charged with having had the sewer line laid without obtaining any 'No Objection Certificate' from the PWD (B&R) and for not shifting existing utilities, so as to ensure that the sewer was laid as per correct alignment, which led to the abandonment of the sewer line, thereby causing a loss of Rs.1.13 crores to the Board. The loss is stated to have been caused due to dereliction in performance of duties.

Notices had been issued, in both these cases, to the respondents, on 01.09.2015 and records pertaining to the disciplinary proceedings and with regard to the work in respect of which the charge sheets had been issued, were ordered to be produced in Court. An interim order was also passed in both the cases, that though disciplinary proceedings may continue, they would not be finalized till the next date of hearing, i.e. today.

2. The record having been produced, now for the sake of convenience, reference is being made first to the petitioner in CWP No.18374 of 2015, after which the case of the petitioner in CWP No.18340 of 2015 would also be considered.

3. Mr.Sharma, learned Additional Advocate General, has produced in Court today, the measurement book of the work in question, which shows that the petitioner in CWP No.18374 of 2015, as XEN-in-charge of the work, last signed the measurement book on 26.04.2011.

The charge-sheet (impugned in this petition), was issued to the petitioner on 16.04.2015 (Annexure P-8).

Therefore, as the work is shown to have continued till 26.04.2011, the contention that was raised by the petitioners, with regard to Rule 2.2(b) of the Punjab Civil Services, Volume-II, on the ground that the work was actually complete on 01.04.2015, is wholly unfounded, as per learned State Counsel.

Other than that, Mr. Sharma has submitted that the fault with regard to the work conducted, was found in the year 2013 and therefore, the cause of action actually arises from that date.

4. Learned counsel for the petitioners, on the other hand, stressfully argued that, as a matter of fact, the work was actually complete on 01.04.2011/08.04.2011, as the measurement book was complete.

I am not inclined to agree with this contention, in view of the fact that the measurement book was actually signed on 26.04.2011 and thereafter, there would have been also a clearance, after the inspection note of the Chief Engineer. Even *de hors* the Chief Engineers' inspection note/clearance certificate, the fact is that the measurement book continued to be in operation and was, eventually, signed on 26.04.2011. Hence, I would not consider the work to have been completed before that date, for the purpose of barring disciplinary proceedings under Rule 2.2(b) aforesaid. The relevant part of the said rule is reproduced below:-

2.2. (a) Future good conduct is an implied condition of every grant of a pension. The Government reserve to themselves the right of withholding or withdrawing a pension or any part of it if the pensioner be convicted of serious crime or be guilty of grave misconduct.”

XXXXX

XXXXX

XXXXX

XXXXX

(b) The Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if, in a departmental or judicial proceeding, the pensioner is found guilty of grave mis-conduct or negligence during the period of his service, including service rendered upon re-employment after retirement:

Provided that:-

- (1) Such departmental proceedings, if instituted while the officer was in service, whether before his retirement or during his re-employment, shall after the final retirement of the officer, be deemed to be a proceeding under this article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service;
- (2) Such departmental proceedings, if not instituted while the officer was in service whether before his retirement or during his re-employment-
 - (i) shall not be instituted save with the sanction of the Government;
 - (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 Government 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 officer during his service.
- (3) No such judicial proceedings, if not instituted while the officer was in service, whether before his

retirement or during his re-employment shall be instituted in respect of a cause of action which arose an event which took place more than four years before such institution; and

The Public Service Commission should be consulted before final orders are passed.

Explanation.- For the purpose of this rule-

(a) a departmental proceeding shall be deemed to be instituted on the date on which the statement of charges is issued to the officer or pensioner, or if the officer has been placed under suspension from an earlier date, on such date;

xxxxx xxxxx xxxxx xxxxx”

Hence, as per sub clause (ii) of clause 2 of the proviso to Rule 2.2 (b), no disciplinary proceedings can be initiated more than four years after the event, in respect of which proceedings have been initiated, has taken place.

As per explanation (a) to the proviso, it has been stated that departmental proceedings would be deemed to have been instituted on the date of issuance of statement of charges.

5. In view of the above, with the charge sheet having been issued on 16.04.2015 and the work actually having not been completed, at least till 26.04.2011, the charge sheet was obviously issued within a period of four years, though just within that time limit.

CWP No.18340 of 2015

6. The disciplinary proceedings in this case, as already noticed, arise from the same cause of action as in CWP No.18374 of 2015, with the charge sheet in this case having been issued on 10.04.2015. The petitioner in this case was a Junior Engineer deployed on the same work, during the

relevant period.

Thus, the charge against the petitioner in this petition also, is almost identical to the charge against the petitioner in CWP No.18340 of 2015.

The charge sheet has also been challenged on merits, stating, *inter alia*, that the work eventually was completed by the National Highway Authority of India; however, admittedly, utilities, i.e. sewerage line etc., were laid by the respondent Board, after which the work was completed and stated to have been handed over to the NHAI on 28.09.2011.

7. The issues with regard to the merits of the charges were neither pressed, nor are being gone into further detail, as there is no material before this Court to adjudicate upon the merits of the charges, at such a preliminary stage. Obviously, the merits of the allegations against the petitioners in both these cases, would be gone into during the course of the enquiry ordered to be conducted.

8. Since the challenge to the charge sheet is primarily on the ground that it has been issued beyond the mandatory period prescribed in Rule 2.2(b) of the Punjab Civil Services Rules, Vol.2, and that, as already held hereinabove by this Court, is not a sustainable argument, in the face of the record, both these writ petitions are dismissed. Of course, nothing stated hereinabove, will be taken to be a comment on the merits of the charges against the petitioners, which they would be, naturally, at liberty to refute in the disciplinary proceedings.

10.09.2015
vandana/dinesh

(AMOL RATTAN SINGH)
JUDGE