

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.3091 of 2015(O&M)
Date of decision: 28.08.2015**

Nazar Singh

....Petitioner(s)

Versus

State of Punjab & others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.R.K.Arora, Advocate, for the petitioner.

Mr. H.S.Sethi, Addl.A.G., Punjab
and Mr.Rakesh Verma, Sr.DAG, Punjab.

G.S.SANDHAWALIA, J.

1. Challenge in the present writ petition is to the order dated 16.02.2015 (Annexure P6) whereby the case of the petitioner for granting him extension in service, in terms of the Punjab Government instructions dated 08.10.2012 and 20.09.2013, has been declined.

2. The petitioner was due to retire on 20.02.2014, on completion of his 58 years of service. He submitted his option for grant of extension of service, which was accepted on 20.02.2014 and accordingly, he was granted one year's extension from 01.03.2014 to 28.02.2015. As per the amended Rule 3.26 of the Punjab Civil Services Rules, Volume-1, Part-1, the petitioner applied for the 2nd extension on 02.12.2014, through proper channel, which has now been rejected vide the impugned order on the ground that chargesheet dated 11.02.2015 had been issued to him under Rule 8 of the Punjab Civil Services (Punishment & Appeals) Rules, 1970. Reliance has been placed upon the instructions dated 30.10.2014 and 07.01.2015, for the said denial of the 2nd extension and the petitioner was retired on 28.02.2015.

3. While issuing notice of motion, the petitioner was given interim protection.

4. The defence of the State Counsel is that the case of the petitioner fall within the purview of the instructions and accordingly, he had been ordered rightly retired. Reliance is placed upon the judgment passed by this Court in CWP No.3826 of 2015 titled *Romesh Garg Vs. State of Punjab & others*, decided on 24.04.2015.

5. Counsel for the petitioner has submitted that the chargesheet issued under Rule 8 was only issued on 11.02.2015 and had not even been served upon the petitioner when the impugned order was passed on 16.02.2015 and therefore, cannot validly have been held to be served upon the petitioner. He had filed his reply only on 16.03.2015 and the State Government was yet to take a decision on the same. It was, accordingly, contended that departmental proceedings would only deemed to have been initiated only after the service of the chargesheet, which was done on 26.02.2015, after the impugned order was passed. Reliance has been placed upon the Division Bench judgment of the Bombay High Court in **Shri M.B.Motwani Vs. UCO Bank & others 2009 (6) Mh.LJ 660**, wherein it was held that the departmental proceedings were deemed to have been initiated only with the service of the chargesheet. Relevant observation reads as under:

“23. From the judgment aformentioned in the case of UCO Bank v. Rajendra lal Capoor, where the Supreme Court has considered this very Regulation, it is clear that departmental proceedings shall be deemed to have been initiated only with the service of the charge sheet. In other words, as no charge sheet was served upon the Petitioner till the date of his superannuation, no disciplinary proceedings could be deemed to have been commenced against him in law. Firstly, no Regulation was in force right from 1986 till 1992 and, secondly, even if it is assumed that the old Regulation of 1986 was in force, still the Respondents can hardly take any advantage therefrom as the disciplinary proceedings by issuing actual charge sheet had not been initiated against the delinquent officer prior to his retirement.”

6. Keeping in view the above factual aspect that the chargesheet itself is dated 11.02.2015 and in view of the averments made in the reply to CM No.7425 of 2015, wherein it has been categorically averred that the chargesheet served was received on 26.02.2015, this Court is of the opinion that the matter requires reconsideration by the competent authorities.

7. In similar circumstances, the Division Bench of this Court in LPA No.776 of 2015 titled *Ashok Arora Vs. State of Punjab & others* decided on 20.05.2015, had directed that the State Government shall decide the issue of of the chargesheet within a period of 4 weeks from the date of receipt of certified copy of the order. Relevant portion of the judgment reads as under:

“Since the appellant has been denied extension in service for want of (i) final decision in the first charge-sheet by the Competent Authority and (ii) the decision of the Competent Authority whether or not to proceed against the appellant in the second charge-sheet, we dispose of this appeal by modifying the order passed by the learned Single Judge, but without expressing any views on merits, with a direction to the State Government to take its final decision in respect of the charge-sheet dated 23.09.2013 within a period of one month from the date of receiving a certified copy of this order. Further, the Competent Authority shall within the above-stated period, decide whether the appellant is to be departmentally proceeded with pursuant to the 2nd chargesheet dated 18.02.2015. If the decision to be taken by the State Government exonerates the appellant, we see no reason on record to deny him extension in service.

Let the decision in that regard be taken within one month thereafter.”

8. Accordingly, the order dated 16.02.2015 (Annexure P6) is quashed with liberty to the State Government to firstly decide the reply of the petitioner to the chargesheet, within a period of 4 weeks, from the receipt of a certified copy of this order and thereafter, pass a fresh order in the petitioner's case for continuing in extension, within a period of 2 weeks, thereafter.

9. Writ petition stands disposed of, accordingly.

28.08.2015
sailesh

(G.S. SANDHAWALIA)
JUDGE