

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of hearing and order : 06.04.2015

+ W.P.(C) 3273/2015 & C.M. Appl. No. 5862/2015 (Stay)
SECRETARY, MINISTRY OF FINANCE & ANOTHER
..... Petitioners

Through: Mr. A.K. Gautam, Advocate

versus

SHRI B PRASAD Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

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KAILASH GAMBHIR, J. (ORAL)

1. By this petition filed under Articles 226 and 227 of the Constitution of India the petitioner seeks issuance of a writ of certiorari for quashing the order dated 10.10.2014, passed by learned Central Administrative Tribunal, Principal Bench, New Delhi, in O.A.No. 1016/2014.

2. Assailing the legality and correctness of the order, Mr. A.K. Gautam, the learned counsel for the petitioner submits that the learned Tribunal has not properly appreciated the Rule 9(2)(b)(i) of the CCS (Pension) Rules, 1972 which clearly provides that the 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 and not on the date on which the same is served upon such government servant/pensioner. The learned counsel for the petitioner also argued that the learned Tribunal has also fell in grave error by not appreciating the fact that the date of limitation for initiating the departmental inquiry in the instant case was 14th July 2008 whereas the charge sheet was issued to the respondent on 11th July 2008. The learned counsel for the petitioner also submitted that the learned Tribunal also erred in holding that the charge sheet was not approved by the Hon'ble President while the fact proved on record is that the major penalty against the respondent was approved by the Finance Minister on 9th July 2008. The learned counsel for the petitioner also argued that the learned Tribunal has also failed to appreciate the legal position that it is not required to prove the charges in the inquiry proceedings, where the evidence sought to be proved is in the nature of documentary evidence. Counsel also argued that the learned Tribunal also did not appreciate the fact that in a catena of judgments, the Hon'ble Supreme Court has taken a consistent view that where there exists sufficient and cogent material on record to sustain the articles of

charges, the court may not interfere at the stage of inquiry proceedings. Based on these submissions, the learned counsel for the petitioner vehemently urges for directing notice of this petition to the respondent.

3. We have heard the aforesaid submissions made by the learned counsel for the petitioner and also gone through the impugned order and the contents of the present writ petition. We have also carefully scrutinised the material on record and we find that the contentions raised by the petitioner in the present petition have been convincingly dealt with by the learned Tribunal in the impugned order and we do not find any tangible ground to disagree with the reasoning given by the learned Tribunal.

4. The proposal to initiate disciplinary proceedings against the respondent under Rule 9(2)(b)(i) of the CCS (Pension) Rules, 1972 was approved by the President on 9th July 2008 and in the notes submitted to the President, the petitioner department itself noted that under the Rules, disciplinary proceedings can be initiated against the respondent till 14th July 2008. Indisputably, the memorandum was signed on 11th July 2008 but the intimation vide covering letter dated 16th July 2008 was sent to the respondent by registered post only on 17th July 2008. This respondent was

superannuated from service on 31st December 2004 and the articles of charges based on which the disciplinary proceedings initiated against the respondent pertains to the misconduct of the respondent committed on 15th July 2004. In terms of Rule 9(2)(b)(i) of the CCS (Pension) Rules, 1972, the departmental proceedings, if not instituted while the government servant is in service, then the same would not be instituted in respect of any event which takes place more than four years before such institution against a retired Government servant. The learned Tribunal has correctly interpreted the said rule by stating that the same is a mandatory provision meant to protect the retired employees from departmental inquiry after several years of retirement as such persons are not able to defend their position in their old age. The learned Tribunal is further correct in taking a view that the petitioners themselves have admitted in their own note, when submitted to the President, that the disciplinary proceedings may be issued only till 14th July 2008 but the same could be conveyed to the respondent only by letter dated 16th July 2008 posted on 17th July 2008, communicated to the respondent on 23rd July 2008 and such a communication is clearly beyond the prescribed period of four years and violative of Rule 9(2)(b)(i) of the CCS (Pension) Rules, 1972.

On the other aspect also, the learned counsel for the petitioner has not put forward any cogent argument that in case where the evidence sought to be proved is in the nature of documentary evidence, the petitioner is not required to prove the memorandum of charges framed against the respondent with the help of the prosecution witnesses. The learned Tribunal has placed reliance on the judgments in the case of ***Roop Singh Negi v. Punjab National Bank & Ors.* 2009 (2) SCC 570** and ***LIC of India & Anr., vs. Ram Pal Singh Bisen*, 2011 (1) SLJ 201**, in support of its reasoning and we find no reason to disagree with the same.

5. The learned Tribunal is also correct in observing that the competent authority has to approve not only the initiation of charge but also the charge itself, however, in the facts of the present case, the charge framed against the respondent was never approved by the President, and therefore also, the disciplinary proceedings initiated against the respondent got vitiated.

6. In view of the aforesaid discussion, we find no merit in the present petition filed by the petitioner and the same is hereby dismissed. Petitioner is accordingly directed to comply with the directions given by learned Tribunal within a period of two months from the date of this

order.

7. The petition as well as pending application are disposed of with no orders as to costs.

KAILASH GAMBHIR, J

I.S. MEHTA, J

APRIL 06, 2015
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