

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7386 OF 2015**

Union of India and anr. .. Petitioners.
vs.
William B. Miranda .. Respondent.

Mr. Vinod Joshi with Smt. N.V. Masurkar for the petitioners.
Mr. A. R. Bhatkar for the respondent

**CORAM: D.H. WAGHELA, C.J. AND
M.S.SONAK, J.
DATE : 29 APRIL 2016.**

P.C.:

1] The challenge in this petition is to the order dated 3 July 2014 made in Original Application No. 483 of 2012 by the Central Administrative Tribunal, Mumbai Bench, Mumbai (CAT), by which, the CAT has quashed and set aside the charge memorandum dated 2 July 2012 issued by the petitioners to the respondent, *inter alia*, on the grounds that the same was issued in breach of Rule 9 (2)(b)(ii) of Central Civil Services (Pension) Rules, 1972 (said Rules).

2] We have heard Mr. Joshi, learned counsel for the petitioner and satisfied that this is not a fit case to interfere with the impugned order in the exercise of our extraordinary and equitable jurisdiction under Articles 226 and 227 of the Constitution of India. The brief reasons for not entertaining this petition are set out hereinafter.

3] The charge memorandum dated 20 July 2012 was issued after the respondent retired from the services upon attaining the age of superannuation on 31 May 2011. The charge memorandum relates to the incident, which is alleged to have taken place in the year 1999-2000. There is material on record, including in the form of admissions by and on behalf of the petitioners that the irregularities which had taken place in the year 1999-2000 were noticed in the year 2005. The incident/charge relates to procedural lapse in not pointing out to the General Manager that certain software purchases were required to be made through open tender basis than on single quotation basis. There was no allegation of any financial embezzlement.

4] Rule 9 (2)(b)(ii) of the said Rules *inter alia*, provides that the departmental proceedings, if not instituted while the government servant was in service, whether before his retirement, or during his reemployment, shall not be in respect of any event which took place more than four years before such institution. Accordingly, the issuance of charge memorandum dated 20 July 2012 and initiation of departmental proceedings almost one year after the respondent retired from the service and in respect of incident of the year 1999-2000, was clearly barred under the said Rules. The CAT has also taken into consideration the petitioners' contention that knowledge of the incident was acquired in the year 2005, by observing that even from the date of knowledge, the issuance of charge memorandum, was barred under the concerned

Rule. There is neither any jurisdictional error nor any perversity in the impugned order made by the CAT.

5] Besides, we find that both the Union of India as well as BSNL, where, the petitioners was posted upon deemed deputation have been taking contradictory positions insofar as disciplinary proceedings against the respondent are concerned. In Writ Petition No.117 of 2013 and Writ Petition No. 3058 of 2015, which were disposed of by us on 30 March 2016, the contention was that the BSNL is the appropriate authority to issue suspension order and initiate such proceedings. In the present case, the petitioner-Union of India justifies the charge memorandum issued by itself and not by the BSNL. The respondent has already retired on 31 May 2011 and at this stage, we are satisfied that no useful purpose will be served in proceeding with the enquiry or delaying the grant of pensionary benefits to the respondent.

6] The suspension order issued to the respondent hardly five days prior to his retirement was struck down by the CAT. In writ petition nos. 117 of 2013 and 3058 of 2015 disposed of on 30 March 2016, we have not interfered with such order made by the CAT. In such circumstances, there can be no doubt about the applicability of Rule 9(2)(b)(ii) of the said Rules to the case of the respondent. The charge memorandum having been issued in breach of provisions contained in said Rule, we are unable to fault the impugned order made by the CAT.

7] For the aforesaid reasons, this petition is dismissed.
There shall be no order as to costs.

CHIEF JUSTICE

(M.S.SONAK, J.)