

CWP No.3237 of 1997

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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.3237 of 1997

Date of decision: 27.07.2016

Gurmail Singh Toor

....Petitioner

Vs.

State of Punjab and Anr.

....Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. S.S. Behl, Advocate for the petitioner.

Mr. Roopam Aggarwal, Addl.A.G, Punjab.

Jaswant Singh, J

Petitioner, who was working as Sub Divisional Officer in the Irrigation Department, Punjab, has prayed for issuance of a writ of Certiorari for quashing the charge sheet dated 25.1.1997 (P.4) served upon him whereby a recovery of Rs.5,71,016.84 ps is sought to be effected from him for the loss caused to the Government.

Undisputedly, the petitioner was appointed in the Irrigation Department, Punjab on the post of Junior Engineer on 31.3.1960 and thereafter he was promoted as Sub Divisional Officer on 18.3.1982 and ultimately, retired from service on 31.1.1997. A week prior to the retirement i.e on 25.1.1997, the petitioner was put under suspension vide Annexure R.17 and was issued a charge sheet (P.4) on the same day under Rule 8 (i.e major penalty) of Punjab Civil Servides (Punishment and Appeal) Rules 1970 (hereinafter to be referred as "1970 Rules").

It is contended by learned counsel for the petitioner that the charge sheet was issued in respect of work executed during the period from 1973-74 to 1985-86 and the respondents were well-

aware about the same in the year 1988 but despite that the charge sheet has been issued in January 1997 i.e at the fag end of the retirement of the petitioner and as such the same is liable to be quashed.

On the other hand, learned state counsel has submitted that an explanation of the petitioner was called vide memo dated 28.2.1988 and due to the official procedure, the time was consumed and ultimately the charge sheet was rightly issued to the petitioner for recovery of the huge loss caused to the government.

Heard learned counsel for the parties and perused the paper book with their able assistance.

The charge sheet itself reveals that the period for which the allegations is attributed to the petitioner pertains to the years 1973-74, 1980-81, 1983-84 & 1985-86 and the amount involved is Rs.5,71,016.84 ps. It further reveals that the explanation of the petitioner was called by the then Executive Engineer (Mechanical Drainage Construction Division), Ferozepur, which was duly replied by the petitioner vide his letter dated 16.6.1988 but the same was not found to be satisfactory and thereafter the charge sheet was issued on 25.1.1997. Thus, one thing is clear that the respondents were well aware about the omission and commissions of the petitioner but still they kept silent for pretty long time without any plausible explanation and has woken up from the slumber when the petitioner was going to retire a week after the issuance of charge sheet. Therefore, the action of the respondents, even if not bad on account of malice in law but at the same time it

can be said that the same is highly belated and cannot be appreciated by this Court.

Still further, paper book reveals that further proceedings on the basis of impugned charge sheet was stayed by a Division Bench of this Court while issuing notice of motion vide order dated 09.4.1997 and a period of more than nineteen years have gone by. Even, in para 15 of the reply filed on behalf of the respondents, it is admitted that the record of the Department was destroyed in the year 1998 during floods so now at this stage virtually permitting the charge sheet to proceed against the petitioner would be a futile and unfair exercise. A reference in this regard can be made to the judgment of Hon'ble Supreme court in **State of M.P Vs. Bani Singh and another, 1990 AIR (SC) 1308** wherein it was held as under:

" The irregularities which were the subject-matter of the enquiry is said to have taken place between the years 1975-1977. It is not the case of the department that they were not aware of the said irregularities, if any and came to know it only in 1987. According to them even in April, 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage."

In view of the above, writ petition is allowed and the impugned charge sheet dated 25.1.1997 (P.4) is quashed. If any service benefit of the petitioner is withheld on account of issuance of charge sheet in question, the same shall be released forthwith.

July 27, 2016
manoj

(JASWANT SINGH)
JUDGE