IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 131 of 2015
Date of decision: 22.04.2016

Ramesh Chander Arora ....Petitioner(s)

Versus

State of Punjab and others ...Respondent(s)

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

Present: None for the petitioner.

Mr. Avinit Awasthi, AAG, Punjab.

G.S.SANDHAWALIA, J. (Oral)

The petitioner challenges the order dated 28.01.2002/15.02.2002 (Annexure P-7) vide which, recovery of ₹61,933.97/- has been imposed upon him for the loss on account of shortage of 850.21 quintals of wheat at the Procurement Centre, Ladakha for the year 1982-83. Challenge has also been raised to the appellate order dated 19.08.2013 (Annexure P-10) whereby, the appeal of the petitioner has been dismissed. A further direction has been sought for releasing the full amount of gratuity, leave encashment, GPF etc. alongwith interest from the due date till the date of actual payment.

The pleaded case of the petitioner is that he joined the service on 17.04.1970 as a Clerk with the Food and Civil Supplies Department and was promoted on 31.05.1974 to the post of Inspector. He retired on 30.04.2001 as Inspector Grade-I (Annexure P-1). He filed representations for release of his retiral dues, however, instead of the same, he was slapped with the charge sheet dated 05.07.2001 (Annexure P-6) under Rule 10 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 for imposing minor penalty as provided under Rule 5 and for effecting the recovery of ₹176954.20.

As noticed above, it was on account of the shortage of the wheat crop for the year 1982-83. A perusal of the impugned order would go on to show that two more officials were also charge sheeted and departmental inquiry was held against them in which, the liability of the petitioner had also been fixed. However, the case could not finalized due to the burning of the records and the decision remained pending. Accordingly, the punishment was imposed which has been upheld in appeal.

From the pleadings, it is apparent that the petitioner has relied upon the provisions of Rule 2.2(b) of the Punjab Civil Service Rules, Vol.II to submit that the charge sheet cannot be issued after a lapse of more than 19 years since he had already retired from service on 30.04.2001 and the incident in question was for the year 1982-83 and the allegations are beyond the period of 4 years when charge sheet was issued to the petitioner. The Division Bench of this Court in ***L.B Gupta Vs. Punjab State Electricity Board, 2001 (4) RSJ 127*** and ***Baldhir Singh Vs. State of Punjab & others 2008 (2) ILR (Punjab & Haryana) 163***, in similar circumstances, held that the said recovery orders cannot be sustained.

In ***R.C.Gupta Vs. P.S.E.B. 2002 (1) RSJ 509***, a Division Bench of this Court had quashed the chargesheet dated 26.03.1999 pertained to the allegations of 1984 and the employee had retired on 30.06.1998. Similarly, in ***O.P.Kharab Vs. HVPN Ltd. & others 2007 (1) ILR (Punjab & Haryana) 613*** chargesheet which was issued after 4 years, i.e., on

30.10.2003, in respect of the events commencing from May, 1994 to July, 1994, was quashed by holding that the date of institution was date of the departmental proceedings, especially the date when the chargesheet was issued to the petitioner, as per the explanation to Rule 2.2 (b)(4). Relevant observations read as under:

> *"(7) A perusal of the afore-mentioned Rule shows that the respondents could order the recovery from pension of the whole or part of any pecuniary loss caused to the government if a pensioner is found in a department of judicial proceedings to be guilty of grave misconduct or he had caused pecuniary loss to the government by mis-conduct or negligence during his service provided that such an enquiry has been instituted during the period when the officer was on duty. However, if such an enquiry has not been instituted while the officer was on duty and before his retirement then it cannot be instituted in respect of an event which took place more than four years preceding the institution of such proceedings. In other words, an enquiry can only be instituted in respect of an event which has occurred four years before the date of the institution. The explanation appended to Rule 2.2(b)(4) further clarifies that departmental proceedings would be deemed to have been instituted when the charges framed are issued to him. In other words, the date of institution of departmental proceedings would be the date when the charge sheet is issued to the petitioner."*

The observations of the Division Bench, while taking into consideration the purpose of the rules, would go on to show that it is only to avoid undue hardship to the retirees who may not be in a position to defend themselves after having settled at one place. Relevant observations from

Baldhir Singh (supra) read as under:

> *"6. A bare perusal of the aforementioned Rule makes it clear that Rules 2.2(b)(ii) places a complete embargo on holding of an enquiry against a retired employee for any event which has happened four years prior to the institution of enquiry. In other words, in case a departmental proceeding is to be initiated against an employee after his retirement, it cannot be in respect of an event, which has taken place more than four years prior to the date of the institution of inquiry. The rationale behind the rule appears to be that a retiree should not be subjected to undue hardship in the evening of his life after having rendered satisfactory service to the State. If old matters which have been settled by afflux of time are permitted to be re-opened after expiry of period of four years then a retiree may not be in a position to defend himself because the evidence in his favour may not be available. The co-employee after retirement might have settled at far flung places and memory may not serve such witnesses and the retiree. The 'Sword of Damocles' in the shape of departmental inquiry cannot be kept hanging on the head of the retiree for all times to come and he should be allowed to live in peace after the statutory period of four years of his retirement has come to an end. Moreover, the learned State counsel has not been successfully able to controvert the argument and judgments (supra) relied upon by the learned counsel for the petitioner."*

Recently, the Apex Court in ***SLP (Civil) No.29589 of 2009*** titled ***Punjab State Power Corporation Ltd. Patiala & others Vs. Atma Singh Grewal*** decided on 17.09.2013, also upheld the quashing of the chargesheet by this Court wherein the chargesheet was issued more than 4 years after the retirement on 30.04.2004 for allegations pertaining to May, 2002 to December, 2002 and when the chargesheet was issued on 10.01.2008.

In the present case, as noticed, though there is reference of a show cause notice dated 20.12.1988 to the loss in question but the petitioner had also given a reply on 04.03.1989 which was never acted upon. The department again let the matter drift and took no action for over a decade and only after retirement, the charge sheet had been issued on the basis of which the recovery has been effected in a summary manner on the strength of enquiry report against other employees. Resultantly, even the same cannot be held to be proved in view of the settled principles that the employee would be gravely handicapped to show whether he was negligent for the incident which was almost two decades old. As per the reply filed on behalf of respondent no. 4, the pension had been authorized on 05.02.2001 and gratuity on 24.04.2001.

Resultantly, the impugned order dated 28.01.2002/15.02.2002 (Annexure P-7) cannot be sustained and is quashed. The writ petition is allowed. The respondents shall pay all retiral dues of the petitioner in case they have not been released within a period of two months from the date of receipt of certified copy of the order.

22.04.2016 (G.S. SANDHAWALIA)
shivani JUDGE