

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

(1)

CWP No.7359 of 2014 (O&M)
Date of Decision: February 8th, 2017

Davinder Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

(2)

CWP No.15319 of 2013 (O&M)

Davinder Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Munish Jolly, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG Punjab.

JAISHREE THAKUR, J. (Oral)

By this common order, this court proposes to dispose of two
writ petitions i.e. **CWP No.15319 of 2013 and CWP No.7359 of 2014,**

both titled as '*Davinder Singh vs. State of Punjab and others*'. For the sake of convenience and brevity, facts are being taken out of **Civil Writ Petition No. 7359 of 2014**.

2. The petitioner herein joined as a Clerk in the Industries Department in the year 1972 and was eventually promoted as Superintendent Grade II and continued to work against the said post till he was placed under suspension by an order dated 22nd of September 2009 i.e. 8 days before he was to superannuate. The petitioner was then reinstated by an order dated 29/09/2009 and he then retired on 30.09.2009. After his retirement, a regular charge sheet was issued upon the petitioner vide memo dated to 02.02.2010, to which the petitioner submitted a detailed reply on 12.03.2010. A regular Inquiry was entrusted to the Joint Director SSI and the enquiry officer submitted his report on 01/08/2011 holding that the charges leveled against the petitioner are not proved. In view of the report, the petitioner was exonerated of the charges vide office order dated 17.11.2011 and on his exoneration the period of suspension from 22.09.2009 to 30.9.2009 was treated as spent on duty. The petitioner, who had been issued a No Objection Certificate, was not released his retiral benefits which led to the filing of Civil Writ Petition No. 15319 of 2013. The petitioner was also issued a show cause notice dated 12.03.2012 calling for an explanation with regard to issuance of sale orders of Road Rollers without calling for tenders and loss of certain files. The petitioner submitted a detailed reply to the said notice on 18.4.2012, but no action was taken thereon. The petitioner even served a legal notice upon the respondents seeking for release of his pension and gratuity, but to no avail. The show

cause notice issued pertained to certain road rollers and the department got an FIR registered in the Police Station Sector 3, Chandigarh. An Inquiry was held and since nothing adverse came out against the petitioner, no further action was taken thereon. Despite the clean chit given by the police in its enquiry held, the petitioner was served with a charge sheet vide a memo dated 05.09.2013, on the very same charges regarding which the show cause notice had been issued on 12.03.2012 and the FIR are was lodged. The petitioner submitted his reply to the charge sheet on 09.10.2013 pointing therein that the police had investigated the matter and found no truth in the allegations therein. A supplementary reply was also furnished on 14.10.2013 pointing out that no disciplinary proceedings could be initiated against him and as such prayed for dropping of charges. Aggrieved against the action of non-release of the retiral benefits and the charge sheet issued, these two writ petitions have been preferred.

3. Mr. Munish Jolly, learned counsel appearing on behalf of the petitioner contends that the impugned charge sheet is not sustainable and the same has been served upon the petitioner only to cause harassment and delay in payment of his retiral benefits. It is further contended that after the issuance of a show cause notice, a detailed reply was filed. The matter was also looked into by the SSP Chandigarh, who found no truth in the allegations regarding misuse of his powers of effecting sale without calling for tenders and disposal of road rollers without approval. It is urged that as per Rule 2.2 of Punjab Civil Service Rules, departmental proceedings shall not be instituted with respect to any event which took place more than 4 years before such institution, if such cases not instituted while the officer

was in service before his retirement or during his re-employment. It is contended that the charge sheet has been issued on 05.09.2013, which is after the petitioner had superannuated. The memorandum of charges under Rule 8 read with Rule 2.2. of the Punjab Civil Service (Punishment and Appeal) Rules, 1970 were for misusing powers, and issuance of sale orders for disposal without calling inviting tenders and without obtaining approval from any competent authority. Alleged sale orders were for a period 08.04.2008 to 19.08.2008, and as such, the charge sheet could not have been issued, since the incident pertained to a period prior to 4 years from the date of issuance of the charge sheet.

4. Per contra Mr. Pankaj Mulwani, learned DAG Punjab appearing on behalf of the respondents-State submits that the petitioner herein was charged with fabrication of documents, loss of files preparing a false invoices etc. and as such, had to face disciplinary proceedings. It is argued that on account of the pending charge sheet, the retiral benefits of the petitioner was were not released.

5. I have heard the counsel for the parties and have with their resistance perused the record of the case.

6. Rule 2.2 (b) and (c) of the Punjab Civil Service Volume 11 is reproduced hereunder:

“2.2. (b) The Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if, in a departmental or judicial proceeding,

the pensioner is found guilty of grave mis-conduct or negligence during the period of his service, including service rendered upon re-employment after retirement :

provided that –

(1) Such departmental proceedings, if instituted while the officer was in service, whether before his retirement or during his re-employment, shall after the final retirement of the officer, be deemed to be a proceeding under this article and shall be continued and concluded by the authority by which it was commenced the same manner as if the officer had continued in service;

(2) Such departmental proceedings, if not instituted while the officer was in service whether before his retirement or during his re-employment-

(i) shall not be instituted save with the sanction of the Government ;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) XXXXXX”

7. A reading of the rule clearly prohibits initiation of departmental proceedings against the person who has retired in respect of any event which took place more than 4 years before such institution. There is no ambiguity in the specific language of the statute, which clearly prohibits of starting disciplinary departmental proceedings against an officer, who has since retired, for an event which took place 4 years prior to such institution. It is further specified that in case the department is to proceed against an officer, for an event prior to four years, prior sanction has to be obtained from the Government.

8. In the instant case, the event allegations in the charge sheet

pertained to the period 08.04.2008 to 19.08.2008 which is 4 years prior to the date, when the charge sheet was issued on 05.09.2013. The argument that the departmental proceeding had been initiated on 12/03/2012 when a show cause notice had been issued is untenable. In '**Narinder Dev Sharma vs State Of Punjab and others**' 1996(1) S.C.T. 623, this court has held that a departmental inquiry can not be treated to have been initiated till the competent authority has framed charge sheet and not when a show cause notice has been issued, which reads as under:-

“6. The phrase 'initiation of departmental inquiry' has not been defined in Rule 2.2 but it has been judicially interpreted. A departmental inquiry cannot be treated to have been initiated till the competent authority frames a charge-sheet and issues the same to the concerned employee. A contemplated inquiry whatever be the stage of contemplation cannot be equated with an inquiry initiated by the issue of charge-sheet. While interpreting the provisions of All India Civil Services (Discipline and Appeal) Rules, 1969, their Lordships of the Supreme Court in P.R. Narayanan v. Union of India, 1972 SLR 219, held that an inquiry cannot be said to have been initiated against a member of All India Service till the charge- sheet/statement of allegation has been issued to him. That was a case in which suspension of the petitioner was called in question on the ground that the Government had exercised the power of suspension before the initiation of inquiry. While upholding the contention of the petitioner that suspension could not have been ordered without the initiation of inquiry, the apex Court held that mere contemplated inquiry cannot furnish basis for taking action for suspension of the employee. In view of the above, it must be held that the notices (Annexures R-1 to

R-3) which were issued to the petitioner by the District Food and Supplies Controller cannot be treated as initiation of an inquiry against the petitioner. It is also important to notice that notices were issued to the petitioner by the District Food and Supplies Controller, Amritsar, i.e. an officer immediately superior to the petitioner. That officer could not exercise power of the disciplinary authority qua the petitioner who was holding the post of Assistant Food and Supply Officer. Thus, by no stretch of imagination, notices Annexures R-1 to R-3 can be treated as action taken by the competent authority to initiate inquiry against the petitioner.”

. Therefore, this court has no hesitation in holding that the charge sheet was issued beyond the period of limitation, as prescribed under the statute and deserves to be set aside.

9. In view of the above, both the writ petitions deserve to be allowed. The retiral benefits of the petitioner have been illegally withheld without the authority or sanction in law. The retiral benefits are the property of the petitioner and he has been deprived of the same. The argument raised that on account of departmental proceedings and the charge sheet the benefits could not be released would have some force in case the respondents had acted in a *bona fide* manner. When the statute itself prohibits the initiation of a departmental inquiry for an event which took place 4 years prior to initiating departmental proceedings, there was no occasion for doing the same. What cannot be ignored is that the petitioner had retired on 30.9.2009, on which date nothing was pending against him and thus retiral benefits should have been released within a specified time

especially when a No Due Certificate had been issued.

10. Resultantly, the impugned charge sheet dated 05.09.2013 and show cause notice dated 30.04.2013 are set aside. The petitioner is held entitled to his retiral benefits along with interest @ 8% per annum from the date the amounts became due. The payments are to be released within a period of two months by the respondents from the date of receipt of certified copy of this order, failing which the interest will be calculated @ 12% per annum.

11. The writ petitions stand allowed accordingly.

February 8, 2017

vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No