

CWP No. 8580 of 2014

DECIDED ON: JANUARY 24, 2018

PHOOL KUMAR

.....PETITIONER

VERSUS

STATE OF HARYANA & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Sandeep Goyal, Advocate
for the petitioner.

Mr. RKS Brar, Addl. AG, Haryana.

Mr. P.S. Poonia, Advocate
for respondents No.2 to 5.

JASPAL SINGH, J (ORAL)

Challenge in the instant petition is to the order No. 437/NOD-003, dated September 27, 2016 (P-5), office order No. 462/NOD-003, dated November 03, 2016 (P-6) and office order No. 469/NOD-003, dated November 11, 2016 (P-7) and further for issuance of a writ in the nature of mandamus directing the respondents to release the pension, gratuity and commutation etc along-with interest @24% per annum.

2. Undisputably, petitioner stood retired as Foreman from Kaithal Division of Uttri Haryana Bijli Vitran Nigam Ltd. During the period of his employment with the respondents i.e. prior to March 31, 2013 neither any

inquiry was pending against the petitioner nor any charge sheet was served upon him. However, subsequent to his retirement he was served with show cause notice dated May 23, 2014 (P-2) with an intention to initiate disciplinary proceedings against him under Regulation 8 read with Regulation 4 of HSCB Employees (P&A) Regulation 1990 duly adopted by the Nigam and ultimately, impugned orders (Annexures P-5 to P-7) were passed by the respondents on account of loss caused to the Nigam by the petitioner during his service.

3. During the course of arguments it has been pointed out by learned counsel for respondents No.2 to 5, a sum of ₹11,02,189/- has already been recovered from the petitioner and a sum of ₹79,436/- is still outstanding against the petitioner.

4. The only question which survives for determination in this case as to whether the respondents are within its jurisdiction to impose any penalty or orders for the recovery for any loss caused to the Nigam by an employee after his retirement and the answer to this question is in negative in view of the settled proposition of law.

5. Undoubtedly, the allegations on account of which the afore-said amount has been recovered by the petitioner in compliance of impugned orders or is stated to be still outstanding on account of the allegations which have emanated after the retirement of the petitioner. Such a course is not available to the respondents. There is no such rules and regulations, which prescribes for the initiation of any disciplinary proceedings after the retirement of an employee.

6. At the most, if at all, respondents could have proceeded against the petitioners under the provisions of Rules 2.2 (a) (b) of the Haryana Civil

Services Rules but for that reasons they are suggested to establish that those rules are applicable upon the petitioners. However, in the instant case even no such action under Rule 2.2 (a) (b) of the Haryana Civil Services Rules has been initiated or contemplated against the petitioner by the respondents. In the case of **Hans Raj Sharma vs. Uttar Haryana Bijli Vitran Nigam Limited & others; 2004 (4) SCT 117**; passed by Hon'ble Division Bench of this Court, it has been held that issuance of charge-sheet is *sine-qua-non* for initiation of departmental inquiry. Subsequently, the afore-said authority is relied upon by a Division Bench of this Court in the case of **Ram Narain Dua vs. Dakshin Haryana Bijli Vitran Nigam Ltd. And others; 2007 (1) SCT 161**. On the short ground impugned orders dated 27.09.2016, 03.11.2016 and 11.11.2016 (Annexures P-5 to P7) are not sustainable in the eyes of law and are liable to be quashed.

7. Accordingly, instant petition is allowed and impugned orders dated 27.09.2016, 03.11.2016 and 11.11.2016 (Annexures P-5 to P7) are quashed. Consequently, respondents are directed to refund the amount already recovered from the petitioner that too, along-with interest @ 9% per annum within a period of two months from the date of receipt of certified copy of this order. Similarly, respondents are also directed to release the other retiral benefits, which are due to the petitioner within the afore-said period.

8. In case of non-compliance of order, petitioner shall be at liberty to approach this Court.

JANUARY 24, 2018
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned ***Yes/No***
Whether reportable ***Yes/No***