

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

CWP-13269 of 2015

Date of decision: 25.11.2019

Jagir Chand Jossan

.... Petitioner

versus

State of Punjab and others

.... Respondents

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Peeush Gagneja, Advocate
for the petitioner.

Ms. Sunint Kaur, AAG, Punjab.

Mr. Gagandeep Grewal, Advocate
for respondent No.4.

HARSIMRAN SINGH SETHI, J. .

In the present writ petition the charge sheet dated 30.07.2013 (Annexure P/1), which has been issued to the petitioner; enquiry report submitted by the Enquiry Officer to the said charge sheet dated 29.04.2014 (Annexure P/2) and order of punishment dated 30.04.2015 (Annexure P/4), are under challenge.

The facts as stated in the present writ petition are that the petitioner, who was working as Assistant Municipal Engineer with the department of Local Government retired on attaining the age of superannuation on 31.05.2009. After approximately four years of his retirement, he was served with a charge sheet dated 30.07.2013 (Annexure

P/1) and the allegations in the said charge sheet were that the petitioner did not appear as a witness in the enquiry proceedings, which were being conducted against one Hakam Singh and Rohtash Garg, Assistant Engineers, in respect of the charge sheets issued to them on 18.11.2011.

The petitioner filed reply to the said charge sheet stating therein that after his retirement, the petitioner never received any communication for appearing as a witness in the enquiry proceedings, which were being conducted against Hakam Singh and Rohtash Garg and, therefore, in the absence of any communication, no charge can be lodged against the petitioner for not appearing as a witness. After an enquiry, the petitioner was held guilty by the Inquiry Officer and ultimately the punishment was imposed by the punishing authority on 30.04.2015, imposing a cut of 10% in the pension of the petitioner for a period of two years.

Upon notice of motion, respondents have filed reply. In the reply, respondents have defended the order of punishment on the ground that once the petitioner was listed as a witness in the enquiry proceedings held against Hakam Singh and Rohtash Garg, though, petitioner might have retired but it was his duty to appear as a witness and due to the non-compliance of the said direction to appear as a witness, the petitioner has rightly been imposed punishment of 10% cut in his pension for a period of two years.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The question which arises for consideration of this Court is that as to whether a retired employee can be issued a charge sheet after a period of four years of his retirement and further, a retired employee, who has been

listed as a witness can be imposed punishment by holding disciplinary proceedings in case he/she does not appear in an enquiry, which was being held against the third person.

In respect of the first question of law, rules governing the service are clear. Rule 2.2 (b) of the Punjab Civil Services Rules, Chapter II Volume II creates a bar for issuance of charge sheet against an employee after his/her retirement, in case, allegations are four years old at the time of serving of charge sheet. The relevant Rule 2.2(b) of the Punjab Civil Services Rules is as under:-

"2.2 (b) No such judicial proceedings, if not instituted while the officer was in service, whether before his retirement or during his re-employment shall be instituted in respect of a cause of action which arose or an event which took place more than four year before such institution."

In the present case, the petitioner retired on 31.5.2009 and the charge sheet was served to him in July, 2013, which is beyond four years after his retirement. Therefore, the petitioner could not have served a charge sheet after four years of his retirement and issuance of the charge sheet was beyond the jurisdiction of the respondents.

Learned counsel for the respondents raises an argument that charge sheet was issued to Hakam Singh and Rohtash Garg in the year 2011 and once the petitioner was listed as a witness and as he has failed to depose before the Enquiry officer, the department was well within its right to hold disciplinary proceedings against him. From the arguments, it is clear that the disciplinary proceedings were being held against the petitioner in respect of the incident, which has occurred after his retirement. No rule has been shown, as to whether, an employee can be charge sheeted for holding

disciplinary proceedings in respect of the incident, which had occurred after his/her retirement. Disciplinary proceedings can only be held in respect of an act, which an employee has committed during the course of his service career. Therefore, charge sheeting the petitioner by the respondents on the ground that the petitioner failed to appear before the Enquiry officer as a witness in an enquiry which was conducted against Hakam Singh and Rohtash Garg, is not correct beyond jurisdiction of the respondents. In the absence of any rule, once the master and servant relationship is over, no disciplinary proceedings can be held, therefore, holding of disciplinary proceedings by the respondents against the petitioner after retirement and that too in respect of an incident which happened after retirement, is not at all permissible. Therefore, issuance of charge sheet by the respondents to the petitioner was beyond their jurisdiction.

Even otherwise, nothing has come on record as to whether the petitioner was served to depose before the Enquiry Officer, in an enquiry proceedings, which were being held against Hakam Singh and Rohtash Garg. Learned counsel for the respondents states that letters were sent to the petitioner on the address which was available with the department. Learned counsel for the petitioner argues that those letters were sent to Shri Mukatsar Sahib, whereas, the petitioner was residing at Jalalabad after retirement and those letters were never received by the petitioner. Once the petitioner did not receive any communication for appearing as a witness, holding the petitioner guilty of the charges is contrary to the facts and, therefore, punishment which has been imposed upon the petitioner cannot be sustained.

Even otherwise, the charge against the petitioner is non-appearance as a witness in an enquiry proceedings, which were being conducted against a third person and punishment imposed is 10% cut in pension for a period of two years, as such the punishment is totally disproportionate to the allegations, which have been lodged against the petitioner. There is no allegation against the petitioner causing any financial loss during his service career, but he has been imposed punishment of 10% cut in pension for a period of two years for not appearing as a witness in an enquiry proceedings, which have been conducted against third person and that too after his retirement.

Keeping in view the facts recorded above, not only issuance of charge sheet was beyond the jurisdiction of the respondents but even otherwise, the petitioner has been imposed punishment, which is not at all commensurate to the allegations alleged against him. In view of the fact that petitioner was never served for appearing as a witness, consequent charge sheet dated 30.07.2013 (Annexure P/1) and consequential proceedings, such as enquiry report dated 29.04.2014 (Annexure P/2) and impugned order dated 30.04.2015 (Annexure P/4) are set aside.

Respondents are directed to release the amount, which has been deducted from the pension of the petitioner. As the charge sheet, in pursuance of which, 10% cut was imposed in the pension of the petitioner was issued beyond the jurisdiction of the respondents, the petitioner will also be entitled for interest @ 9% per annum on the amount, which the respondents will refund in pursuance to this order.

Let amount alongwith interest be calculated and be released to the

petitioner within a period of two months from the date of receipt of certified copy of this order.

25.11.2019
aarti

(HARSIMRAN SINGH SETHI)
JUDGE

- | | | |
|----|--------------------------------|--------|
| 1. | Whether speaking/non-speaking? | Yes/No |
| 2. | Whether reportable? | Yes/No |