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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 6660/2019**

CHANDER DEV

..... Petitioner

Through: Mr. R.S. Kaushik with Mr. Basab
Sengupta, Advs.

versus

NORTH DELHI MUNICIPAL CORPORATION AND ANR.

..... Respondent

Through: Ms. Biji Rajesh with Mr. Gaurang
Kanth, Advs. for R-1.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

03.07.2019

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C.M. No. 28106/2019

Exemption allowed, subject to all just exceptions. The application stands disposed of.

W.P.(C) 6660/2019 & C.M. Nos. 28104, 28105/2019

Issue notice. Ms. Biji Rajesh accepts notice on behalf of the respondents.

With the consent of the learned counsel for the parties, we proceed to dispose of the petition.

The petitioner has assailed the order dated 25.02.2019 passed by the

Central Administrative Tribunal, principal Bench, New Delhi, (the Tribunal) in O.A. No. 904/2015. The Tribunal has rejected the said Original Application wherein he had assailed the charge sheet dated 18.12.2014 issued to him. The petitioner had joined the respondent corporation in the year 1983. At that stage, he had claimed that he was ST category candidate and had submitted his certificate in that regard.

It appears that it was alleged that the certificate submitted by him was not genuine and consequently, FIR No. 299/1994, PS Kashmiri Gate was registered. Charge sheet was filed in the case and charges were framed against the petitioner. Eventually he was acquitted by the Trial Court i.e. Learned ASJ, North Delhi vide judgment dated 18.12.2009.

The petitioner retired from service on 31.12.2010. Much after his retirement, he was issued the charge sheet in question dated 18.12.2014 on the same charge, namely that he had submitted a false ST certificate at the time of his initial appointment in the Corporation. The second charge in the charge sheet related to issuance of fake/ bogus appointment letter in the Education Department, South zone without any authority, in respect whereof FIR 377/2005, registered at PS Hauz Khaz was pending trial in the District Court, Saket.

The petitioner assailed the said charge sheet on the ground that since he had retired from service on 31.12.2010, in terms of Rule 9(2)(b)(ii) of the CCS Pension Rules, 1972, he could not be charge sheeted in respect of an incident which occurred four years earlier.

The submission of learned counsel for the petitioner is that the Tribunal has failed to correctly read and appreciate the purport of Rule 9(2)(b)(ii) of the CCS Pension Rules, 1972 and it has wrongly proceeded on

the basis that since the charge sheet has been issued within four years of the date of retirement, the same was within limitation.

Learned counsel submits that in terms of Rule 9(2)(b)(i), the sanction of the President was also required to be taken in the present case but the same was not obtained prior to the issuance of the charge sheet and only an ex post facto sanction was obtained from the corporation. The respondent had claimed that the corporation itself was competent to grant the said sanction.

Rule 9(2)(b)(ii) reads as follows:

“9.....

(1).....

(2)(a).....

(b) (i).....

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

(b)(iii).....”

On a plain reading of the said Rule and in view of the judgment of the Supreme Court in ***Brajendra Singh Yambem v. Union of India and Another***, (2016) 9 SCC 20, it is clear that the charge sheet cannot be in respect of an event which took place more than four years before the institution of disciplinary proceedings. Moreover, prior sanction of the competent authority is required before institution of the disciplinary proceedings. In this decision, the Supreme Court has, inter alia, observed as follows:

“A perusal of the above Rule makes it clear that if the disciplinary proceedings are not instituted against the

Government servant by the disciplinary authority while he was in service, then the prior sanction of the President of India is required to institute such proceedings against such a person. It is also clear that such sanction shall not be in respect of an event which took place more than four years before the institution of such disciplinary proceedings.”

Learned counsel for the respondent is not in a position to dispute the fact that neither the prior sanction was obtained and only an ex post facto sanction was obtained from the Corporation. Moreover, it cannot be disputed that the charge sheet relates to the events that took place before the period of four years from the date of the charge sheet.

In the light of the aforesaid, we agree with the submission of learned counsel that the charge sheet itself was incompetent. We, accordingly, allow the petition and quash the charge sheet dated 18.12.2014 issued by the respondent to the petitioner.

The parties are left to bear their respective costs.

VIPIN SANGHI, J

RAJNISH BHATNAGAR, J

JULY 03, 2019

N.Khanna