

ORISSA HIGH COURT: CUTTACK

W.P.(C) NO.24821 OF 2019

In the matter of an application under Articles 226 and
227 of the Constitution of India.

Union of India & Others Petitioners

-Versus-

Rajani Kanta Mohapatra Opp. Parties

For Petitioners : M/s.P.K.Parhi, DSGI along
with Mr. B.S.Rayaguru, CGC

For Opp. Parties : M/s. N.Biswal.

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
HONOURABLE MR. JUSTICE B.P.SATAPATHY**

DATE OF HEARING & DATE OF JUDGMENT ON:: 25.11.2022

B.P.SATAPATHY, J. Union of India and its instrumentalities have filed the Present Writ Petition challenging the common order dated 30.09.2019 passed by the learned Central Administrative Tribunal, Cuttack Bench, Cuttack (in short 'Tribunal') in O.A No.211/2017 and O.A. No.155/2019 under Annexure-1. Vide the said common order, Tribunal allowed the prayer of the private opposite party with quashing of the proceeding initiated against him on 28.12.2016 as well as the order of punishment imposed vide Order No.4710 dated 29.01.2019.

2. The factual matrix giving rise to the present case is that the private Opposite Party while working as an Office Superintendent in the establishment of National Council for Research in Ayurvedic Sciences, he retired from service on attaining the age of superannuation on 31.01.2013. Much after his retirement, when a proceeding was initiated against him vide Memorandum No.4213 dated 28.12.2016 in respect of an incident, which had taken place in the

year 2002, while the Petitioner was working as an Assistant under the Council, the Opposite Party challenging such initiation of the proceeding approached Tribunal by filing O.A No.211 of 2017.

2.1. The Tribunal while issuing notice, though passed an interim order to the effect that no action shall be taken by the petitioners-authorities herein in pursuance of the memorandum dated 28.12.2016, but the said order subsequently was vacated vide order dated 18.01.2018 due to non-appearance of the learned counsel appearing for the Petitioners-Opposite Party in the said case. After vacation of the interim order, the authority concerned disposed of the proceeding by imposing the final order of punishment on 29.01.2019 i.e. with an order of forfeiture of 5% of monthly pension on permanent basis.

2.2. Challenging such order of punishment passed on dated 29.01.2019 in the proceeding dated 28.12.2016, the Petitioner once again approached the

Tribunal in O.A No.155/2019, by a common order dated 30.09.2019 quashed the impugned order of punishment dated 29.01.2019 by holding that the proceeding dated 28.12.2016 is hopelessly barred by limitation, the Petitioners have filed the present Writ Petition challenging the said common order.

3. Mr. P.K.Parhi, learned D.S.G.I appearing for the Petitioners contended that the proceeding against the Opposite Party was initiated vide Proceeding No.4213 dated 28.12.2016 under Annexure-3 with the following charges:-

“Statement of article of charges framed against Sh. R.K. Mahapatra Ex. Office Superintendent CARIDH, Bhubaneswar (the then Assistant, CCRAS Hqrs.)

Article-I

That while Sh. R.K. Mahapatra was working as Assistant at CCRAS Hqrs. Vide file No.2-5/2001-CCRAS/Estt./Vol on 17.06.2002 submitted a note orders at pre-page and fair U.O. Note for signature of Director and marked to the Office Superintendent Shri N.K. Joshi which was then signed by Shri D.S. Meena, Assistant Director (Coord.) and Deputy Director (Admin) Shri A.L. Vachher which was then signed by the then Director Dr. G. Veluchamy. The U.O. Note signed by Dr. G. Veluchamy, Director was sent to Department of ISM & H on 25.06.2002 mentioning that out

of three posts of Assistant Director (Ayurveda) to be filled by DPC, two pertains to UR and one is reserved for ST. While submitting the UO note to higher authorities Shri R.K. Mahapatra failed to mention the correct rule position that for promotion by selection within Group-A, there is no reservation.

Sh. R.K. Mahapatra has acted in a manner unbecoming of a public servant by doing above, which also exhibits his doubtful integrity. He has therefore, contravened the rule 3 (1) (i) and (iii) of CCS (Conduct) Rule 1964.”

3.1. Since the proceeding so initiated against the opposite party was with relation to an incident, which had taken place on 17.06.2002, the Opposite Party challenging such initiation of the proceeding approached the Tribunal in O.A No.211 of 2017 *inter alia* on the ground that such initiation of the proceeding is not permissible in view of the provision contained under Rule-9(2)(b)(ii) of CCS (Pension) Rules, 1972. Though learned Tribunal while issuing notice, passed an interim order by restraining the Petitioners not to take any further action in the said proceeding, but when the said interim order was vacated due to none-appearance on 18.01.2018, the Disciplinary Authority passed the final order of punishment on

29.01.2019 by forfeiting 5% of the monthly pension of the opposite party on permanent basis.

3.2. The Opposite Party challenging the order of punishment so passed on 29.01.2019 under Annexure-7, once again approached the Tribunal in O.A No.155/2019, who in turn quashed the order of punishment vide a common order passed on 30.09.2019 under Annexure-1 by holding that the proceeding initiated against the Opp. Party is hopelessly barred by limitation.

3.3. Learned DSGI contended that the Tribunal while quashing the order of punishment vide order under Annexure-1, did not take into consideration the stand taken by the Petitioners more particularly, the notification issued by the Government of India on 23.08.1991 and 4.2.1992 vide Annexure-9-Series. As per the said notification, Departmental Proceeding may be instituted within four years from the date of retirement of a Government servant. The Tribunal also did not take into consideration the fact

that the proceeding against the opposite party was concluded by following the provisions of Rule-14 and 15 of the CCS (CCA) Rules, 1965, whereby the opposite party was provided with all reasonable opportunity of being heard.

3.4. The Tribunal also committed illegality by holding the Departmental Proceeding as time barred taking recourse to the provision contained under Rule-9(2)(b)(ii) of CCS (Pension) Rules, 1972 without proper appreciation of the provision of Article 351-A of the CSR Regulation. Article 351-A of the CSR Regulation provides that subject to its provision the President has the authority to withhold pension or any part when any pecuniary loss caused to Government, if the pensioner is found guilty in any proceeding due to misconduct or to have caused pecuniary loss to the Government by the said misconduct or negligence during his tenure of service period or including service rendered on reemployment after retirement. Article 351-A of the CSR Regulation also provides that such Departmental

Proceeding, if not instituted while the officer was on duty either before retirement or during reemployment, the same shall have been instituted in accordance with law. Article 351-A of the CSR Regulation refers that for the purpose of this Article, Departmental Proceeding shall be deemed to have been instituted when the charges framed against the pensioner soon after the same is detected. Accordingly, it is contended that since the proceeding against the Petitioners was initiated in terms of Article 351-A of the Regulation and the Opposite Party was provided due opportunity of hearing in terms of the provision contained under Rule-14 & 15 of the CCS (CCA) Rules, 1965, learned Tribunal erred in allowing the prayer of the opposite party by quashing the order of punishment imposed against him vide order dated 29.01.2019 under Annexure-7 and also by holding that the proceeding initiated against the Opposite Party on 28.12.2016 is hopelessly barred by limitation.

4. Mr. N. Biswal, learned counsel appearing for the Opposite Party on the other hand submitted that since the Opposite Party retired from Government Service on 31.01.2013 on attaining the age of superannuation, and the proceeding was initiated only on 28.12.2016, that too with regard to an incident which had taken place in the year 2002, the said initiation of the proceeding is not permissible in view of the provision contained under Rule-9(2)(b)(ii) of CCS (Pension) Rules, 1972. Rule-9(2)(b)(ii) of the said Rules is reproduced hereunder:-

“Rule9(2)(b)-The departmental proceedings, if not instituted while Government servant was in service, whether before his retirement, or during his re-employment,

(i) xxxxxxxx

(ii) Shall not be in respect of any event which took place more than four years before such institution”.

4.1. Since there is a clear bar for initiation of the proceeding in respect of any event which took place more than four years before such institution of the Departmental Proceeding, the proceeding initiated on 28.12.2016 in respect of an incident which had

taken place in the year 2002 is not maintainable. The Opposite Party challenging the initiation of the proceeding *inter alia* on the aforesaid legal provision approached the Tribunal in O.A No.211 of 2017 and vide order dated 11.04.2017 while directing learned counsel appearing for the Petitioners to obtain instruction, as an interim measure directed that no action shall be taken against the Opposite Party in pursuance of the Memorandum dated 28.12.2016. But during pendency of the matter and due to none-appearance of the engaged counsel on 18.01.2018 when the interim order was vacated, taking advantage of the same, the Petitioners disposed of the proceeding with passing of the order of punishment on 29.01.2019 under Annexure-7.

4.2. The opposite party being aggrieved by the said order of punishment approached learned Tribunal in O.A No.155 of 2019. The Tribunal took up both the O.A No.211 of 2017 and O.A. No.155 of 2019 and placing reliance of the provision contained under

Rule-9(2)(b)(ii) of CCS (Pension) Rules, 1972 held the initiation of the proceeding as barred by limitation and consequentially was inclined to quash the order of punishment passed on 29.01.2019 under Annexure-7, in view of the provision contained under Rule-9(2)(b)(ii) of CCS (Pension) Rules, 1972, the proceeding in respect of any event which had taken place in the year 2002 is not maintainable, learned Tribunal has rightly quashed the order of punishment by holding the proceeding are barred by limitation and no illegality or irregularity has been committed by the learned Tribunal.

4.3. The CCS (Pension) Rules, 1972 is framed under Article -309 of the Constitution of India, the CSR Regulation framed by the council cannot override the statutory provision of CCS (Pension) Rules, 1972. Since the very initiation of the proceeding is barred in the eye of law, it is immaterial as to whether the opposite party was given an opportunity of hearing in the proceeding itself. Not only that challenging the very initiation of the proceeding, the opposite party

approached learned Tribunal in O.A. No.211 of 2017 and during pendency of the matter the final order of punishment since was passed on 29.01.2019, O.A No.155 of 2019 was filed challenging the said order. Learned Tribunal while taking up both the matters passed the common order on 30.09.2019 under Annexure-1. Hence, it is contended that learned Tribunal has rightly passed the order and no interference is called for by this Court.

5. Mr. Biswal in support of his aforesaid submissions relied on the decisions of the Hon'ble Apex Court reported in,

(1) AIR-1996 SC-1656 (State of U.P. & Others vs. Krishna Pandey)

(2) AIR-2016 SC-4107 (Brajendra Singh Yambem vs. Union of India & Others)

(3) 2013 (II) OLR 513 (State of Orissa and Others vs. Prabodh Kumar Pal).

5.1. The Apex Court in Paragraph-3 & 6 of the judgment in the case of **State of Uttar Pradesh** (supra) has held as follows:-

“3. The only provision brought to our notice is Rule 351-A which reads as under:

The Governor reserves to himself 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 part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave mis-conduct, or to have caused pecuniary loss to Government by misconduct or negligence, during his service, including service rendered on re-employment after retirement: Provided that

a) such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment

i) shall not be instituted save with the sanction of the Governor,

ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings, and

iii) shall be conducted by such authority and in such place or places as the Governor may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made.

b) judicial proceedings, if not instituted while the officer was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a) and

c) the Public Service Commission, U.P., shall be consulted before final orders are passed.

Explanation - For the purpose of this article –

a) departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him, or if the officer has been placed under suspension from an earlier date, on such date; and

i) in the case of criminal proceedings, on the date on which a complaint is made, or a charge sheet is submitted, to a criminal court; and

ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made, to a civil court.

Note:- As soon as proceedings of the nature referred to in this article are instituted the authority which institutes such proceedings shall without delay intimate the fact to the Audit Officer concerned.

6. It would thus be seen that proceedings are required to be instituted against a delinquent officer before retirement. There is no specific provision allowing the officer to continue in service nor any order passed to allow him to continue on re-employment till the enquiry is completed, without allowing him to retire from service. Equally, there is no provision that the proceedings be initiated as disciplinary measure and the action initiated earlier would remain unabated after retirement. If Rule 351- A is to be operative in respect of pending proceedings, by necessary implication, prior sanction of the Governor to continue the proceedings against him is required. On the other hand, the rule also would indicate that if the officer caused pecuniary loss or committed embezzlement etc. due to misconduct or negligence or dereliction of duty, then proceedings should also be instituted after retirement against the officer as expeditiously as possible. But the events of misconduct etc. which may have resulted in the loss to the Government or embezzlement, i.e., the cause for the institution of proceedings, should not have taken place more than four years before the date of institution of proceedings. In other words, the departmental proceedings must be instituted before lapse of four years from the date on which the event of misconduct etc. had taken place. Admittedly, in this case the officer had retired on March 31, 1987 and the proceedings were initiated on April 21, 1991. Obviously, the event of embezzlement which caused pecuniary loss to the State took place prior to four years from the date of his retirement. Under these circumstances, the State had disabled itself by their deliberate omissions to take appropriate action against the respondent and allowed the officer to escape from the provisions of Rule 351-A of the Rules. This order does not preclude proceeding with the investigation into the offence and taking action thereon”.

5.2. Similarly, the Apex Court in Paragraph- 22, 34, 35, 40 & 41 of the judgment in the case of **Brajendra Singh Yambem** (supra) has held as follows:-

“22. Mr. Lenin Singh Hijam, the learned counsel appearing on behalf of the appellant contends that the initiation of the disciplinary proceedings against the appellant by the Disciplinary Authority in the year 2008, after long lapse of 13 and 14 years of the occurrence

of the alleged incidents in the two cases is violative of Rule 9(2)(b)(ii) of the CCS (Pension) Rules, 1972. In support of the same, reliance is placed on the decision of this Court in the case of State of U.P. & Anr. v. Shri Krishna Pandey[1], wherein it has been held that a government employee cannot be subjected to a departmental enquiry after his retirement from service for any event or occurrence which took place more than four years prior to the date of the institution of the disciplinary proceedings against an employee.

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34. *The learned counsel appearing on behalf of the appellant has rightly placed strong reliance on Rule 9(2)(b)(ii) of the CCS (Pension) Rules, 1972. It is an undisputed fact that the appellant retired from service on 31.08.2006. The learned single Judge of the High Court by way of judgment and order dated 18.05.2006 in Writ Petition No. 720 of 2002 quashed the disciplinary proceedings in the case pertaining to the missing arms and ammunitions. However, liberty was granted to the Disciplinary Authority/Enquiry Officer to conduct the disciplinary enquiry afresh after supplying the copies of the proceedings of the enquiry to the appellant. The said judgment and order of the single Judge was challenged by the respondents by way of Writ Appeal No. 45 of 2006, in which the Division Bench, by judgment and order dated 07.11.2006 upheld the order of the single judge of the High Court. It was only pursuant to this that the fresh memorandum of charges dated 22.08.2008 was issued to the appellant, which was clearly beyond the period of limitation of four years as provided for under the CCS (Pension) Rules, 1972. Similarly, in the case involving the contraband ganja, the single Judge of the High Court by way of judgment and order dated 16.06.2006 passed in Writ Petition No. 805 of 2005 quashed the departmental enquiry under the memorandum of charges dated 14.05.1998. The Division Bench dismissed the Writ Appeal No. 25 of 2007 filed by the respondents vide judgment and order dated 13.11.2008 and upheld the order of the learned single Judge. It was pursuant to this that the fresh departmental enquiry was initiated against the appellant on 16.10.2009 after obtaining sanction from the President of India under Rule 9(2)(b)(i) of the CCS (Pension) Rules, 1972. The appellant challenged the correctness of the sanction and charges framed against him before the High Court of Gauhati, Imphal Bench in W.P. (C) No. 264 of 2010. The High Court quashed the Memorandum of Charges on the ground that it was issued after four years from the date of the alleged incident. Therefore, it was held that the said action of the Disciplinary Authority in initiating disciplinary proceedings is not valid in law as the same was barred by limitation as per the provision of Rule 9(2)(b)(ii) of the CCS (Pension) Rules 1972. This important legal aspect of the case was not considered by the Division Bench of the High Court while setting aside the common judgment and order*

dated 01.09.2010 passed by the learned single Judge in Writ Petition No. 904 of 2008 (arms and ammunitions case) and Writ Petition No. 264 of 2010 (contraband ganja case).

35. It is a well established principle of law that if the manner of doing a particular act is prescribed under any statute then the act must be done in that manner or not at all. The aforesaid legal position has been laid down by this Court in the case of **Babu Verghese & Ors. v. Bar Council of Kerala & Ors.** MANU/SC/0168/1999: (1999) 3 SCC 422, the relevant paragraphs of which are extracted hereunder :

“31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in *Taylor v. Taylor* which was followed by Lord Roche in *Nazir Ahmad v. King Emperor* who stated as under:

“[W]here a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.”

32. This rule has since been approved by this Court in *Rao Shiv Bahadur Singh v. State of U.P.* and again in *Deep Chand v. State of Rajasthan*. These cases were considered by a three-Judge Bench of this Court in *State of U.P. v. Singhara Singh* and the rule laid down in *Nazir Ahmad* case was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law.”

The aforesaid important aspect of the case should have been considered by the Division Bench of the High Court instead of mechanically accepting the argument advanced on behalf of the respondents that the case of the appellant squarely falls under Rule 9(2)(b)(i) read with Rule 9 (2)(b)(ii) of CCS (Pension) Rules, 1972. Therefore, the findings recorded by the Division Bench in the impugned judgment are erroneous in law and are liable to be set aside.

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40. It becomes clear from a perusal of the constitutional provisions and the decisions by constitution benches of this Court referred to supra that the powers under Articles 77(3), 166(3) and 309 operate in completely different fields. It would thus, be clear that the Rules framed in exercise of power under Articles 77(3) and 166(3) cannot be compared while exercising power under Article 309 of the Constitution and framing rules and regulations for recruitment and conditions of service of persons appointed to such posts either in connection with the affairs of the Union government

or a state government. It is for this reason that the statutory exercise of power by the President of India under Rules 9(2)(b)(i) and (ii) of the CCS (Pension) Rules, 1972 cannot be equated with power exercised under Article 77(2) of the Constitution of India. The High Courts and this Court can exercise power of judicial review under Articles 226 and 32, respectively, of the Constitution of India in cases of statutory exercise of power by the President or Governor. In the case of **Dr. Yashwant Trimbak** (supra), this Court held that the power of judicial review is not available in case of executive exercise of power by the President or the Governor. The said observation made by this Court in the said case is not tenable in law in view of the decision of this Court in the landmark judgment of **His Holiness Kesavananda Bharati Sripadagalvaru & Ors. v. State of Kerala and Anr.** MANU/SC/0445/1973: (1973) 4 SCC 225 wherein this Court has clearly held that the power of judicial review is part of the basic structure of the Constitution of India. The relevant portion of the judgment is extracted hereunder:

..The observations of Patanjali Sastri, C.J., in *State of Madras v. V.G. Row* which have become locus classicus need alone be repeated in this connection. Judicial review is undertaken by the courts “not out of any desire to tilt at legislative authority in a crusader’s spirit, but in discharge of a duty plainly laid down upon them by the Constitution”. The respondents have also contended that to let the court have judicial review over constitutional amendments would mean involving the court in political questions. To this the answer may be given in the words of Lord Porter in *Commonwealth of Australia v. Bank of New South Wales*:

“The problem to be solved will often be not so much legal as political, social or economic, yet it must be solved by a Court of law. For where the dispute is, as here, not only between Commonwealth and citizen but between Commonwealth and intervening States on the one hand and citizens and States on the other, it is only the Court that can decide the issue, it is vain to invoke the voice of Parliament.”

There is ample evidence in the Constitution itself to indicate that it creates a system of checks and balances by reason of which powers are so distributed that none of the three organs it sets up can become so pre- dominant as to disable the others from exercising and discharging powers and functions entrusted to them. Though the Constitution does not lay down the principle of separation of powers in all its rigidity as is the case in the United States Constitution yet it envisages such a separation to a degree as was found in *Ranasinghe* case. The judicial review provided expressly in our Constitution by means of Articles 226 and 32 is one of the features upon which hinges the system of checks and balances...”

The observation made by this Court in the case of Dr. Yashwant Trimbak (supra) to the extent that orders of sanction granted by the Governor are outside the scope of judicial review, is untenable in law. The same is contrary not only to the law laid down by this Court referred to supra, but also the provisions of Articles 77(2) & 166(2) of the Constitution of India. Therefore, the same has no application to the fact situation for the reason that the President has exercised his statutory power for grant of sanction under Rule 9(2)(b)(i) of the CCS (Pension) Rules, 1972 to initiate the disciplinary action but not the executive action against the appellant.

41. *In the instant case, the action of the Disciplinary Authority is untenable in law for the reason that the interpretation of the CCS (Pension) Rules, 1972 which is sought to be made by the learned ASG on behalf of the respondents amounts to deprivation of the Fundamental Rights guaranteed to the appellant under Part III of the Constitution of India. Therefore, we have to hold that the disciplinary proceedings initiated by the disciplinary authority after obtaining sanction from the President of India under Rule 9(2)(b)(i) of the CCS (Pension) Rules, 1972 are liable to be quashed”.*

5.2. In a pari-materia provision contained under Rule-7(2)(b)(ii) of OCS (Pension) Rules, 1972, this Court in the case of **State of Orissa and Others** as cited (supra), in Paragraphs-8 to 11 has held as follows:-

“8. On conspectus of the rule, it is evident that no period of limitation is prescribed for initiation of a departmental proceeding against a Government employee. Rule 7(2)(b)(ii) of the Pension Rules on which much reliance has been placed by Mr. Das, is quoted hereunder:-

7. Right of Government to withhold or withdraw pension

(1) xx xx xx

2(a) xx xx xx

2(b) such departmental proceedings as referred to in Sub-rule (1) if not instituted while the Government servant was in service, whether before his retirement or during his re-employment-

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

- (ii) shall not be in respect of any event which took place more than four years before such instruction;
- (iii) xx xx xx

9. On cursory perusal of the Rule 7(2)(b)(ii) of the Pension Rules, it is crystal clear that the departmental proceeding as referred in Sub-rule (1), if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall not be instituted in respect of any event which took place more than four years before such institution. In *Noida Entrepreneurs*

Association v. Noida, MANU/SC/0570/2011 : AIR 2011 SC 2112; the Hon'ble apex Court held that the competence of an authority to hold an enquiry against an employee who has retired, depends upon the statutory rules which govern the terms and conditions of his service. The Hon'ble Apex Court in the case of *Bhagirathi Jena v. Board of Directors, O.S.F.C.*, MANU/SC/0260/1999: AIR 1999 SC 1841 in paragraph-7 held as follows:

7. xx xx xx There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.6.1995, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement.

10. After survey of all the decisions, the Hon'ble Apex Court in the case of *Anant R. Kulkarni v. Y.P. Education Society and others*, MANU/SC/0427/2013: (2013) 6 SCC 515 speaking through Hon'ble Dr. Justice B.S. Chauhan for the Bench, in paragraph-24 of the report held as follows:

24. Thus, it is evident from the above, that the relevant rules governing the service conditions of an employee are the determining factors as to whether and in what manner the domestic enquiry can be held against an employee who stood retired after reaching the age of superannuation. Generally, if the enquiry has been initiated while the delinquent employee was in service, it would continue even after his retirement, but nature of punishment would change. The punishment of dismissal/removal from service would not be imposed.

11. No period of limitation has been prescribed for initiation of a departmental proceeding against a Government servant in OCS (CCA) Rules and the rule is silent in this respect. Thus, the case is required to be examined in the light of the aforesaid Pension Rules.

On a conspectus of Rule 7(2)(b)(ii) of the Pension Rules, it is evident that a departmental proceeding cannot be initiated against a Government servant in respect of any event which took place more than four years before such institution. Article (1) of the statement of imputation would, inter alia, show that the opposite party was working as Executive Engineer, RW Electrical Division, Bhubaneswar from 20.4.2004 to 6.10.2006 and during 2001-02 and 2002-03 repair and maintenance of electrical installations in Government buildings in three different districts were taken up by the Junior Engineer. As the Executive Engineer would have to check-measure as soon as works were completed but he did not do the same intentionally. Thus, the event relates back to the financial years 2001-02 and 2002-03. The disciplinary proceeding was initiated on 11.11.2010 by the Government of Orissa and, accordingly, a memorandum was issued to the opposite party along with articles of charges and statement of imputation. The opposite party had retired from services on 31.10.2008. In view of the fact that the event took place before four years from the date of Institution of the departmental proceeding, we are of the opinion that the initiation of such departmental proceeding is not sustainable in the eye of law. The learned Tribunal is quite justified in quashing the departmental proceeding”.

6. We have heard Mr.P.K.Parhi, learned D.S.G.I appearing for the Petitioners and Mr. N. Biswal, learned counsel appearing for the Opposite Party. On the consent of the learned counsel for both the Parties, this Writ Petition was taken up for final hearing at the stage of admission and disposed of vide the present order.

7. This Court after going through the materials available on record finds that the Opposite Party while working as a Superintendent in the establishment of Central Council for Research in

Ayurvedic Sciences retired from service on 31.01.2013. Much after his retirement, when the proceeding was initiated against him vide Memorandum dated 28.12.2016 under Annexure-3, the Opposite Party challenging the said initiation of the proceeding approached learned Tribunal in O.A No.211 of 2017. The initiation of the proceeding was challenged by the Opposite Party taking recourse to the provision contained under Rule-9(2)(b)(ii) of CCS (Pension) Rules, 1972. After going through the said provision, this Court finds that no Departmental Proceeding can be initiated against a Government servant whether before his retirement or during his reemployment in respect of an incident, which had taken place more than four years before such institution. In the Article of Charges framed against the Opposite Party in the proceeding dated 28.12.2016 under Annexure-3, this Court finds that in respect of an incident, which had taken place on 17.06.2002 the proceeding in question was initiated on 28.12.2016. Therefore, as per the considered view of this Court, the proceeding in respect of an incident,

which had taken place in the year 2002, is not permissible in view of the clear provision contained under Rule-9(2)(b)(ii) of CCS (Pension) Rules, 1972.

8. It is also the view of this Court that since CCS (Pension) Rules, 1972 is framed in accordance with the provision contained under Article-309 of the Constitution of India, the regulation framed by the council being administrative in nature, it cannot supersede the statutory provision framed under Article-309 of the Constitution of India in view of the decision of the Hon'ble Apex Court in the case of **Brajendra Singh Yambem** (supra).

9. Therefore, this Court is unable to accept the submission of Mr. Parhi that in view of Article 351-A of the CSR Regulation, the President is competent to pass an order of punishment against a Government employee even after his retirement.

10. In view of the above, this Court finds no illegality or irregularity with regard to the common order passed by Tribunal on 30.09.2019 under

Annexure-1. While holding so, this Court is not inclined to entertain the Writ Petition and the same is accordingly dismissed. However, there shall be no order as to costs.

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B.P.SATAPATHY,
JUDGE

DR. B.R.SARANGI, J. I agree.

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DR. B.R. SARANGI,
JUDGE

Orissa High Court, Cuttack
The 25th of November, 2022, Subrat (Sr. Steno)

