

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No. 503 of 2016 (O & M)
Date of decision: 06.05.2022

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Balkishan Sobti

....Appellant(s)

Versus

Punjab & Sind Bank and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Ashok Gupta, Advocate,
and Mr. Eklavya Gupta, Advocate,
for the petitioner.

Mr. R. Kartikeya, Advocate,
for the respondents.

G.S.SANDHAWALIA, J. (Oral)

The present letters patent appeal is directed against the order dated 22.01.2016 passed in ***CWP No. 1413 of 2016, Balkishan Sobti vs. Punjab & Sind Bank and others.***

The learned Single Judge did not interfere qua the issuance of the show cause notice dated 18.01.2014 (Annexure P-1) and the charge sheet dated 26.11.2015 (Annexure P-3) mainly on the ground that the statement of allegations showed that transactions had ranged from 09.09.2008 to 25.03.2011. Resultantly, a finding was recorded that since proceedings had been initiated against the petitioner-appellant by the respondents by issuance of show cause notice on 18.01.2014, it would be

within a period of 4 years and, therefore, the argument that there was a bar as such under Regulation 48 of the Punjab & Sind Bank (Employees') Pension Regulations, 1995 (in short '1995 Regulations') was rejected.

Counsel has submitted that the learned Single Judge was in error by taking the show cause notice issued on 18.01.2014 as the date of the initiation of proceedings. It is submitted that in departmental proceedings, it is settled principle that the initiation of proceedings is on the date of issuance of the charge sheet. Counsel has relied upon the celebrated judgment of the Apex Court in ***Union of India and others vs. K.V. Jankiraman and others, (1991) 3 SCR 790***. The three-Judge Bench of the Apex Court was examining the issue of sealed cover procedure which is adopted for the employee who is due for promotion against whom disciplinary proceedings are pending against him at the relevant time. Accordingly, it was held that the relevant date as such is only when the charge memo in disciplinary proceedings and the charge sheet in the criminal prosecution is issued, it can be said that proceedings are initiated against the employee. It was also noticed that some times preliminary investigation take inordinate long time and they are kept pending deliberately and some times never result in the issuance of any charge memo sheet.

In the present case, it is to be noticed that the appellant-petitioner retired on 31.03.2012 as Chief Manager. The show cause notice was issued on 18.01.2014 (Annexure P-1), to which he submitted a reply on 24.04.2014 (Annexure P-2) that being incharge of a large branch, it was not possible to monitor at micro level by checking each and every transaction of

of 36 years and his integrity was not doubted and he was liable to be exonerated from the charge.

It is a matter of record that the main allegations were against one Nachhatar Singh, who was the Ex-Manager (EDP) and retired on 31.08.2007. It has been argued that the appellant-petitioner was neither a defendant in the civil suit filed against Nachhatar Singh by the bank and nor he had been arrayed as an accused in the criminal case which had been registered against Nachhatar Singh. The petitioner was thereafter departmentally charge sheeted on 26.11.2015 (Annexure P-3) and resultantly, approached this Court on the strength of Regulations 48 of the 1995 Regulations. The same read as under:-

“48. Recovery of Pecuniary loss caused to the Bank:-

(1) The competent authority may withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, and order recovery from pension of the whole or part of any pecuniary loss caused to the Bank if in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence or criminal breach of trust or forgery or acts done fraudulently during the period of his service.

Provided that the Board shall be consulted before any final orders are passed.

Provided further that departmental proceedings, if instituted while the employee was in service, shall, after the retirement of the employee, be deemed to be proceedings under these regulations and shall be continued and concluded by the authority by which they were commenced in the same manner as if the employee had continued in service.

(2) No departmental proceedings, if not instituted while the employee was in service, shall be instituted in respect of an event which took place more than four years before such institution;

Provided that the disciplinary proceedings so instituted shall be in accordance with the procedure applicable to disciplinary proceedings in relation to the employee during the period of his service.

(3) Where the Competent Authority orders recovery of pecuniary loss from the pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of employee;

Provided that where a part of pension is withheld or withdrawn, the amount of pension drawn of a pensioner shall not be less than the minimum pension payable under these regulations.”

A perusal of the above would go on to show that there is a bar as such if the proceedings are not instituted while the employee was in service, for events which took place more than four years before such initiation. The purpose as such is apparently clear that it is to protect retirees as such and does not permit the bank as such to initiate such departmental proceedings after the fixed time frame.

Counsel has also relied upon the judgment of Division Bench of the Delhi High Court in **LPA No. 673 of 2015, Punjab & Sind Bank vs. Nand Lal Phatnani** decided on 09.10.2015 (Annexure P-6). The Division Bench was dealing with the same regulation itself which is a question

competent authority to initiate departmental proceedings against a pensioner is curtailed under sub-Regulation 2 of Regulation 48. Resultantly, while discussing Regulation 351 of Civil Services Regulations, it came to the conclusion that it was *para materia* with Regulation 48 and resultantly, dismissed the appeals of the bank wherein the charge sheets had been issued to the employees in question beyond a period of 4 years.

Similar issue has also been adjudicated by this Court wherein, Rule 2.2 (b) of the Punjab Civil Services Rules have been discussed wherein also, there is a bar as such for a period beyond 4 years. Reference can be made to the judgment of the co-ordinate Bench in ***O.P. Kharab vs. HVPN Ltd. and others, 2007 (2) SCT 49*** wherein, it has been held as under:-

“7. A perusal of the aforementioned Rule shows that the respondents could order the recovery from pension of the whole or part of any pecuniary loss caused to the Government if a pensioner is found in a department or judicial proceedings to be guilty of grave misconduct or he had caused pecuniary loss to the Government by misconduct or negligence during his service provided that such an enquiry has been instituted during the period when the officer was on duty. However, if such an enquiry has not been instituted while the officer was on duty and before his retirement then it cannot be instituted in respect of an event which took place more than four years preceding the institution of such proceedings. In other words, an enquiry can only be instituted in respect of an event which has occurred four years before the date of the institution. The explanation appended to Rule 2.2(b)(4) further clarifies that departmental proceedings would

be deemed to have been instituted when the charges framed are issued to him. In other words, the date of institution of departmental proceedings would be the date when the charge-sheet is issued to the petitioner.

8. On the basis of the aforementioned principle laid down in Rule 2.2(b) it has to be concluded that the charges are more than four years old from the date the charge-sheet was issued. It is evident from the facts that the charge-sheet was issued to the petitioner on 30.11.2003 in respect of events commencing from May, 1994 to July, 1994 or at best of the year 1998. On the date of issuance of charge-sheet all those allegations were in respect of an event which has occurred more than four years ago. The principle adopted in explanation to Rule 2.2(b)(4) is a wholesome principle which has backing of judicial precedents.”

The defence which has been taken by the bank in the written statement as such that the event can be calculated till the year 2012 which is the date of retirement is not acceptable as the details of entries alongwith the charge sheet would show that the amounts which were debited by Nachhatar Singh pertain from the period 03.12.2009 to 15.05.2010.

In such circumstances, we are of the considered opinion that the events as such which had taken place, were beyond the period of 4 years and merely because the petitioner retired on 31.03.2012 would not bring it within the limitation of 4 years as per the defence which has been taken in the written statement.

Keeping in view the above, we are of the considered opinion that the learned Single Judge failed to exercise jurisdiction as such and has committed a serious error by not exercising the extra ordinary writ

jurisdiction and permitted continuation of the departmental proceedings,

which are apparently time barred.

Accordingly, the appeal is allowed by setting aside the judgment of the learned Single Judge dated 22.01.2016 passed in **CWP No. 1413 of 2016, Balkishan Sobti vs. Punjab & Sind Bank and others** and by allowing the said writ petition and quashing the show cause notice dated 18.01.2014 (Annexure P-1) and charge sheet dated 26.11.2015 (Annexure P-3).

All miscellaneous applications also stand disposed of accordingly.

(G.S. SANDHAWALIA)
JUDGE

06.05.2022
shivani

(VIKAS SURI)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No