

CWP-11949-2015

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2023:PHHC:104046

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

CWP-11949-2015 (O&M)

Date of decision: 10.08.2023

Dr. K.K. Sharma

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. K.S. Dadwal, Advocate for the petitioner.

Mr. Charanpreet Singh, AAG, Punjab.

SANJEEV PRAKASH SHARMA, J. (Oral)

CM-10002-CWP-2015

Allowed as prayed for subject to all just exceptions.

Main Case

1. Heard learned counsel for the petitioner and learned counsel for the respondents-State on merits of the case also as the petitioner is a senior citizen having retired on 31.10.2005.

2. Learned counsel for the petitioner has assailed the charge-sheet and departmental proceedings initiated against the petitioner, vide memorandum dated 17.10.2014, whereby the charge-sheet has been issued to the petitioner under Rule 8 (12) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 on the orders of the Governor in terms of Rule 2.2 of the Punjab Civil Services Vol-II, which empowers the Governor to initiate departmental enquiry against a retired

Government servant. Learned counsel for the petitioner submits that the charge levelled against the petitioner relates to the period for the year 2004-05 alleging carelessness on his part resulting in benefiting certain persons and thereby causing loss to the Government. Learned counsel for the petitioner has referred to the provisions of Rule 2.2 (b) of the Punjab Civil Rules Vol.-II to submit that the departmental proceedings which have not been instituted while the petitioner was in service cannot be instituted with respect of any event which took place more than 04 years before such institution. Learned counsel has explained that the date of issuance of charges to the officer or pensioner would be the date of institution of departmental proceedings. He, therefore, submits that as the charge-sheet has been issued on 17.10.2014 and the petitioner retired on 31.10.2005, the event for which the charges have been framed relates to the period more than 04 years before the date of issuance of the charge-sheet and in fact, is almost 15 years old. Further the petitioner stood retired in the year 2005 and till 2014, the respondents have not filed the charge-sheet against him, and therefore, he submits that the departmental proceedings initiated on the basis of memorandum dated 17.10.2014 be quashed and set aside. He relies on law laid down by this Court with reference to the concerned Rule in the case of **D.K. Kaushal Vs. Punjab State Warehousing Corporation and another**, 2010 (7) SLR 709 and also relies on the judgment passed by the Supreme Court in case of **Punjab State Power Corporation Ltd., Patiala & Ors. Vs. Atma Singh Grewal**, 2014 (13) SCC 666.

3. *Per contra*, learned counsel for the respondents-State

submits that as the matter was placed before the department by the CBI who have conducted an enquiry in relation to a newspaper report published on 06.05.2008, it was recommended by the CBI to initiate departmental proceedings against the concerned officers. The petitioner was holding the post of Director, Ayurveda and during his tenure it was found that excess amount has been released to certain persons which has resulted in causing loss to the State Government. Learned counsel further submits that the Department has therefore, on the basis of advise of the CBI, placed the matter before the Governor and in terms of the orders of the Governor, the charge-sheet has been issued. The State should therefore be allowed to continue the departmental proceedings.

4. I have considered the submissions.

5. From the reply which has come on record, it is apparent that the departmental proceedings have been instituted against the petitioner solely on the basis of recommendations of the CBI, who did not find any criminality against the petitioner but has recommended a departmental action alleging negligence of the petitioner while holding the post of Director. So far as the law relating to conducting departmental enquiry against a retired official is concerned, Rule 2.2 (b) of the Punjab Civil Services, Vol.-II provides as under:-

“(b) The Government further reserve to themselves 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 or part of any pecuniary loss caused to Government, if, in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including

service rendered upon re-employment after retirement:

Provided that—

(1) Such departmental proceedings, if instituted while the officer was in service, whether before his retirement or during his re-employment, shall after the final retirement of the officer, be deemed to be a proceeding under this article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service;

(2) Such departmental proceedings, if not instituted while the officer was in service whether before his retirement or during his re-employment—

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

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

(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the officer during his service.

(3) 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 years before such institution”

x x x x x

6. From the perusal of the aforesaid Rule, it is apparent that if the enquiry has not been instituted while the officer was in service, the same can be instituted even after his retirement. However, there is an embargo that such institution shall be only in respect of an event which has taken place within 04 years from the date of institution of the charge-

sheet and if the event when the delinquency is alleged is relating to the period more than 04 years back, the same cannot be a subject matter of the departmental enquiry. The principle underlying the aforesaid provision is to put at rest any proceedings against a retired person who is retired long back.

7. In Punjab State Power Corporation Ltd., (supra), the Apex Court was examining a judgment of the High Court and observed as under:-

“2. The Respondent filed the Writ Petition in the High Court seeking quashing of the said charge sheet on the ground that it was barred in view of Rule 2.2.(B) of the Punjab Civil Service Rules 2 reserves right with the Government to withhold or withdraw a pension or a part of it under certain circumstances viz. when in judicial proceedings or departmental proceedings, such an employee is found to have committed grave misconduct or negligence. It also provides for recovery of peculiar loss, if caused. However, second proviso to the aforesaid provision stipulates the time limit within which the departmental inquiry can be instituted, in respect of an ex-employee if it was not stated while such a Government officer was in service. The precise language of second proviso is as follows:-

“Such departmental proceedings, if not instituted while the officer was in service whether before his retirement or during his re-employment:-

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

(ii) shall not be in respect of any event which took place more than four years before such institution; and if he has retired, the event should not be more than 4 years old.

iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the officer during his service.

3. *In the present case since the changes were of the year 2002 and charge sheet served in the year 2008, it was manifest that the alleged event took place much more than 4 years before the serving of charge sheet and after his retirement. In this ground the learned Single Judge quashed the said chargesheet dated 7.1.2008. The petitioners chose to file appeal before the Division Bench which has also been dismissed by the Division Bench vide impugned judgment dated 20.8.2009.*

4. *After hearing the Counsel for the parties we are of the opinion that in view of aforesaid admitted facts, second proviso of Rule 2 states at the face of the petitioner and no fault can be found in the judgment of the High Court.”*

8. The High Court in the said case had also imposed a cost of Rs.10,000/- for preferring an appeal against the judgment of Single Bench which too was examined by the High Court. However, for the present, the said issue does not require to be discussed.

9. In D.K. Kaushal's case (supra), this Court examined the matter and observed as under:-

“The aforesaid Rule in unambiguous terms spells out that there is absolute prohibition for holding an enquiry against a retired employee in respect of any event which had occurred more than four years earlier to initiation of the enquiry. In the present case, the alleged shortage relates to the years from 1995 to 1997 and the petitioner had retired on 30.11.2006. Admittedly, the initiation of enquiry by issuing charge-sheet on 20.3.2008 is beyond the period of 4 years as contemplated under the proviso (2) to Rule 22 (b) of the Rules. The present charge-sheet, thus, could not be validly issued. Learned counsel for the respondents could not justify the initiation of enquiry in respect of shortage relating to the years from 1995 to 1997 except reiterating the stand as noticed earlier. The argument of the learned counsel for

the respondents, thus, cannot be accepted. Similar matter with regard to an employee of the respondent-Corporation in respect of shortage of wheat relating to the year 1998-99 where the employee had retired on 30.11.2006 and the action was sought to be initiated by charge-sheet on 16.5.2007, this Court in Raghubir Singh's case (supra) (Annexure P-9) had allowed the writ petition and quashed the chargesheet dated 16.5.2007.”

10. While the conduct of the respondents is found to be wanting and without application of mind, this Court finds that at the request of the CBI, the charge-sheet was instituted which could not have been done without examining the provisions of the Rules. The proceedings initiated are contrary to Rule 2.2 (b) of the Punjab Civil Services Vol-II, therefore, found to be illegal and are accordingly held to be *non est* and accordingly quashed. The petitioner would be entitled to draw all his retiral benefits if not being paid.

11. The Writ Petition is allowed.

12. No costs.

13. Pending CM(s), if any, shall stand disposed of accordingly.

10.08.2023

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(SANJEEV PRAKASH SHARMA)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No