

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

CWP-21824-2020

Reserved on : 24.02.2023

Pronounced on : 26.04.2023

Sat Bhushan

..... Petitioner

versus

Punjab State Warehousing Corporation

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. J.P. Rana, Advocate
for the petitioner.

Mr. Vikas Singh, Advocate
for the respondent.

PANKAJ JAIN, J. (Oral)

Challenge is to the chargesheet dated 30.10.2020 served upon the petitioner by the respondent-Corporation.

2. The petitioner was working as Technical Assistant with the respondent-Corporation and retired from service on attaining the age of superannuation on 31.10.2020. The chargesheet dated 30.10.2020 (P-4) has been served by the respondent-Corporation to the petitioner on 12.11.2020 i.e. after his retirement. The relevant part of the memo dated 30.10.2020 served upon the petitioner reads as under:-

“MEMORANDUM

1. Sh Sat Bhushan TA is hereby, informed that it is proposed to take action against him under Rule 8 of Punishment & Appeal Rule 1970 of Punjab Civil Services Rules on the grounds set out in the enclosed article of charges. The charges are based on the statement of allegations appended thereto.

2. Sh Sat Bhushan, TA through this letter is required to state in writing within a period of 15 days of the receipt of this memorandum by him, whether he admits any or all of the charges levelled against him, the explanation of defense, if any, he has to offer and whether he desires to be heard in person by the punishing authority.

3. Sh Sat Bhushan. TA is further informed that his written statement should be submitted to the undersigned within the specified period and for the purpose, if he so desires, may consult the relevant record in the office of Manager (QC) with his prior permission on any working day before the submission of his reply by the due date. Any record, which he may desire to consult but its exhibition, is considered not in the public interest, can be refused by the Corporation. It is also made clear that failure to consult the relevant record will not be considered valid basis for late submission/non-submission of the reply within stipulated period. If his written statement is not received by the stipulated period, it shall be presumed that he has nothing to say in his defense and ex-parte action in the matter will be taken.

4. Further proceedings on the Charge Sheet/SCN/Recovery Notice shall remain stayed in compliance of orders of the Hon'ble Punjab and Haryana High Court dated 16.09.2015 passed in CWP 27725 of 2013 titled as PSWC Field Employees Union V/S Union of India and others. The final action in the charge sheet shall be taken after the vacation of stay/final disposal of the said CWP.

5. The receipt of this memorandum with enclosures should be acknowledged.

Sd/-
MANAGING DIRECTOR

To

Sh Sat Bhushan, TA
SW Barnala -1
PSWC, Barnala"

3. Counsel for the petitioner has raised a pure legal question alleging violation of bare provision as contained in Rule 2.2(b) of the Punjab Civil Service Rules Vol-II, Part-I. It has been asserted that the chargesheet was served after his retirement relates to an incident of 2018. Resultantly, the present chargesheet cannot survive being hit by proviso 2 of Rule 2.2(b).

4. Per contra, counsel for the respondent is not in a position to controvert the aforesaid facts based upon the record.

5. Having heard counsel for the parties and after perusing the record of the case, this Court finds that in view of an ambiguous mandate of Rule 2.2(b) and the settled law as laid down by this Court in '*Narender Dev Sharma vs. State of Punjab and another*' reported as 1996(2) SLR 270 and that in *Sub Inspector Puran Chand (Retd.) vs. State of Punjab and others*

reported as **2000(2) RSJ 85**, further followed by another Division Bench in the case of **Gurdev Singh vs. State of Punjab and others**, reported as **2004 (2) RSJ 325**, this Court has no hesitation in concluding that the chargesheet cannot survive. In **Gurdev Singh's** case (supra), Division Bench held as under:-

“xx xx xx

5. Rule 2.2(b) of the Rules which contains an embargo on the institution of an enquiry against the retired officer in relation to an event which had taken place more than 4 years before such institution reads as under :

"2.2(b). 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;

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."

6. In **Narender Dev Sharma v. State of Punjab and another, 1996(2) SLR 270**, one of us (G.S. Singhvi, J.) interpreted the above-quoted Rule and held :

"A look at the above-quoted Rule shows that the Government is empowered to withhold pension or a part thereof and recover from the pension payable to an employee the pecuniary loss which may have been suffered by the Government due to grave misconduct or negligence committed by the Government servant during the course of employment. Such an action can be taken on the basis of a departmental inquiry which may have been initiated against the concerned employee before his retirement and which may be pending at the time of his retirement. The departmental inquiry initiated against an employee does not come to an end on his retirement but by operation of the statute it is deemed to be continuing even after his retirement. At the same time, the competent authority is empowered to initiate disciplinary inquiry against the employee

after retirement provided that such inquiry pertains to an incident of four years prior to the date of initiation of the inquiry and the sanction is given by the competent authority for such initiation."

7. In *Sub Inspector Puran Chand (Retd.) v. State of Punjab and others*, 2000(3) SCT 515 (P&H) : 2000(2) RSJ 85, a Division Bench of this Court interpreted Rule 2.2(b) of the Rules and held as under :

"Pointed attention of this Court has been drawn to clause (2) of the aforesaid rule 2.2(b). A careful perusal of the same would show that in case a departmental proceeding is to be initiated against an employee after his retirement, it cannot be in respect of an event, which took place more than four years from the date when the proceeding is initiated. It is clear that the charge-sheet was issued to the petitioner in the instant case on 24.11.1998, whereas the incident in question in respect to which he has been proceeded against relates to the year 1988 i.e. one decade prior to the issuance of the charge-sheet. It is obvious that issuance of the aforesaid charge-sheet is wholly unacceptable in law, as the same is clearly barred by the provisions of clause (2) of rule 2.2(b) extracted above."

6. Keeping in view the aforesaid that, the present writ petition is allowed. Impugned chargesheet dated 30.10.2020 (P-4) is ordered to be quashed. Respondents are directed to release consequential benefits of the petitioner preferably within 08 weeks from the date of receipt of certified copy of the order.

(PANKAJ JAIN)
JUDGE

26.04.2023

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No