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24.01.2024
Ct. No. 11
rrc

WP.CT 1 of 2023

(The Secretary, Ministry of Defence, Department of Defence Production & Anr. Vs. Sri Sushanta Sekhar Naskar)

Ms. Susmita Saha Dutta
..... For the petitioners

Mr. Gautam Banerjee
Mr. Raja Ghosh
Ms. Rajashree Das Gupta
Ms. Chumki Das Bairagya
Ms. Priya Dey
...... For the respondent

The present writ petition has been preferred challenging an order dated 25th July, 2022 passed by the learned Tribunal in an original application being OA 350/01201/2019.

The said original application was preferred challenging, *inter alia,* a chargesheet dated 11th June, 2019 issued against the applicant/respondent herein subsequent to his retirement from the post of Additional General Manager on 31st January, 2017. The primary ground of challenge against the chargesheet was that the same had been issued in derogation of the provisions of Rule 9 of the Central Civil Service (Pension) Rules, 1972 (hereinafter referred to as the said Rules). Upon contested hearing, the learned Tribunal arrived at a finding that the disciplinary proceeding had been initiated pertaining an incident that occurred four years before such initiation and that as such the same is not sustainable in view of the provisions of Rule 9(2)(b)(ii) of the said Rules which runs as follows:

'the Departmental Proceedings, if not instituted while the Government servant was in service, whether before this retirement or during his re-employment-

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

By the said order dated 25th July, 2022 the learned Tribunal quashed the charge memo dated 11th June, 2019 with liberty to the respondents/petitioners herein to act in accordance with law. In the midst thereof, the respondent had, however, been disbursed all pensionary benefits including gratuity.

Ms. Dutta, learned advocate appearing for the petitioners submits that the learned Tribunal erred in law in appreciating the date and period which triggered the issuance of the chargesheet against the respondent and the fact that the same was issued pursuant to the sanction accorded by the Hon'ble President under Rule 9 of the said Rules.

Drawing our attention to the contents of the chargesheet, Ms. Dutta submits that a Board of Enquiry was conducted by Ordnance Factory Board (in short, OFB) regarding mismanagement of cash of public fund account of Rifle Factory, Ishapore (in short, RFI) and despite being informed about the misdeeds of the Cashier, the respondent did not take any action or redress the same and as a consequence thereof, the said respondents suffered a financial loss of Rs.2,33,273/-.

She further submits that a complaint was received by the OFB, Vigilance on 20th February, 2017 regarding cash defalcation at RFI. Accordingly, a preliminary enquiry was conducted and as per the report there emerged a *prima facie* mismanagement and suspected defalcation of cash at RFI. The matter was referred to CBI and it registered a regular case *vide* FIR No. 0102017A0028 dated 17th October, 2017 against one Madhu Sudan Mukhopadhyay, ex-cashier of RFI and other unknown persons. Based on the request of CBI, ACB, Kolkata, the Forensic Audit of Cash Book of RIF was carried out for the period from 1st April, 2010 to 5th July, 2016 in order to find out the exact amount of defalcation of cash at RFI and such forensic audit report was submitted on 30th November, 2018. Ignoring such sequence of facts, the learned Tribunal erroneously arrived at a conclusion that the incident which triggered the proceedings, occurred four years before issuance of the chargesheet. Such arguments, as urged, were glossed over by the learned Tribunal and no specific finding was returned on the same. Such infirmity warrants interference of this Court. Reliance has been placed upon the judgments delivered in the cases of *Union of India & Ors. Vs. B. Dev* reported in *(1998) 7 SCC 691* and *V. Padmanabham Vs. Government of Andhra Pradesh & Ors.* reported in *(2009) 15 SCC 537*.

Mr. Banerjee, learned advocate appearing for the respondent denies and disputes the contention of the petitioners and submits that there was no allegation of defalcation of government money or pecuniary loss against the respondent. The chargesheet was issued alleging inaction on the part of the respondent to take appropriate steps to ensure proper maintenance and accounting of cash of the public fund. In view thereof, no proceeding could have been initiated under Rule 9 of the said Rules.

Drawing our attention to a document annexed at page-290 of the petition, Mr. Banerjee submits that the respondent was the Additional General Manager and from the memo dated 27th September, 1989 it would explicit that maintenance of cash accounts in Ordinance Factory would be personal responsibility of the General Manager and not the Additional General Manager.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

Indisputably, there was no allegation of defalcation of Government money or of pecuniary loss against the respondent. The respondent was allowed to retire from his services on 31st January, 2017 and all pensionary benefits have been disbursed and more than two years after retirement, the chargesheet was issued on 11th June, 2019.

In the chargesheet dated 11th June, 2017, it had categorically been stated as follows:-

> *'Being the Controlling Officer of Cash Office, it was incumbent upon Sri S.S.Naskar to provide the Cash Books and relevant records (pertaining to the period April, 2010 to Sep, 2013) to the Audit Team through the Cash Office which was functioning under the control of AGM/Admn. This shows that Shri S.S.Naskar failed to discharge his duties as the Controlling Officer of Cash and in getting the requisite documents submitted to the Audit Team through his subordinate officers/ staffs.'*

The contents of the chargesheet were considered in its totality and not in isolation and upon such scrutiny, learned Tribunal arrived at a finding that the chain of events got triggered since 2010, i.e., almost seven years prior to the retirement of the respondent and that the proceedings pertain to event which took place more than nine years before such institution. In the said conspectus, the petitioners could not have wriggled out of the rigors of Rule 9(2)(b)(ii) of the said Rules and accordingly, the learned Tribunal, in our opinion, rightly quashed the chargesheet with liberty to the petitioners to act in accordance with law.

It is well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make a lot of difference in decision making process. The judgment is a precedent for the issue of law that is raised and decided and not observations made in the facts of any particular case. The judgments upon which reliance has been placed on behalf of the petitioners, are distinguishable on facts.

The learned Tribunal, upon dealing with all the factual issues arrived at specific findings and we do not find any error, least to say any patent error of law in the order impugned.

Accordingly, the writ petition stands dismissed.

There shall, however, be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Partha Sarathi Chatterjee, J.) **(Tapabrata Chakraborty, J.)**