IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-13804-2021 (O&M)
Date of Decision:06.02.2024

Adarsh Kumar

......Petitioner

versus

State of Haryana and others

......Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Mohnish Sharma, Advocate for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Bhupinder Gupta, Advocate for
Mr. G.S. Madaan, Advocate for respondents No.2 to 9.

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JASGURPREET SINGH PURI J.(Oral)

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *Certiorari* for quashing/setting aside the impugned charge-sheet dated 26.03.2021 (Annexure P-4) issued by respondent No.3 with a further prayer seeking directions to respondents to release gratuity, commutation of pension alongwith interest in favour of the petitioner.

2. The brief factual matrix of the present case is that the petitioner was working as an Assistant Lineman in the office of respondents-Uttar Haryana Bijli Vitran Nigam Limited (hereinafter to be referred to as 'Nigam') and while he was in service he was incharge of the office on the basis of which he had visited some premises and had given a report in the year 2015. On the basis of the aforesaid report, the petitioner was charge-

sheeted vide Annexure P-4 dated 26.03.2021. However, the petitioner had retired on attaining the age of superannuation vide Annexure P-1 on 31.12.2020.

3. Learned counsel appearing on behalf of the petitioner submitted that a perusal of the Annexure P-4/charge-sheet would show that the allegations against the petitioner were that while he was posted as SDO/OP at Sub Division, UHBVNL, Bahalgarh from 16.06.2014 to 26.04.2016, he committed various acts/omissions. The allegations were that he visited the premises of M/s Jai Durga Industries and issued a letter dated 31.08.2015 to the Xen (OP) S/U Sonepat and now it has been found by the respondents-Nigam that the petitioner had given a misleading statement due to which the aforesaid company had entered into a litigation and a stay order was also passed and the respondents-Nigam had suffered losses due to the negligence and lapse on the part of the petitioner.

4. Learned counsel submitted that the petitioner has already retired on 31.12.2020 from the Nigam itself and thereafter a charge-sheet was issued to the petitioner vide Annexure P-4 dated 26.03.2021 pertaining to an event which had taken place more than four years ago and therefore the action of the respondents-Nigam in drawing up a charge-sheet against the petitioner after the retirement was contrary to the Rule 12.2 (b), (5) (a) of Chapter-III of Haryana Civil Services (Pension) Rules, 2016 (hereinafter to be referred to as Rule 12.2). While referring to the aforesaid chargesheet he also submitted that the chargesheet has been issued to the petitioner by invoking the provisions of Haryana Civil Services (Pension) Rules 2016 and UHBVNL Employees (Punishment & Appeal) Regulations 2018. He also

submitted that the Haryana Civil Services (Pension) Rules 2016 are applicable to the respondents-Nigam. He further submitted that in view of the aforesaid condition where there is specific bar under the rules no charge-sheet could have been issued after the retirement of the petitioner for an event which took place more than 04 years preceding the time when the chargesheet was issued and therefore liable to be quashed.

5. On the other hand, learned counsel appearing on behalf of the respondents while referring to the reply filed by the respondents-Nigam, submitted that when the petitioner retired vide Annexure P-1, the retirement was subject to the pending disciplinary proceedings against him. While referring to para No.3 of the reply, he submitted that there were total 05 cases against the petitioner which have been so given in a tabulated form and out of the aforesaid 05 cases which are mentioned against the petitioner, one pertains to the present impugned order (Annexure P-4) and one pertains to an enquiry of the year 2020 which has since been withdrawn by the Nigam itself. He further submitted that in other words there were three more enquiries pending against the petitioner in which show cause notices were issued against the petitioner and even the punishment orders have been passed against him by which 03% cut in pension for a specific period and stoppage of two annual increments were ordered to be made from the pensionary benefits of the petitioner.

6. Learned counsel further submitted that so far as the present charge-sheet which is under challenge in the present case is concerned although the petitioner had reported in the year 2015 on the basis of which charge-sheet has been issued against him but thereafter one committee was

formed to conduct an enquiry and a report was submitted by the committee on 31.08.2020 (Annexure R-3) and on the basis of which a chargesheet has been issued after the retirement and therefore it cannot be said that Rule 12.2 creates any bar qua charge-sheet/Annexure P-4

7. I have heard learned counsel for the parties.

8. The subject matter in the present case only pertains to the charges mentioned in the chargesheet (Annexure P-4) which is under challenge. So far as the other three proceedings/charges against the petitioner which have been so enumerated in the reply filed by the respondents are concerned, punishment orders have already been passed against the petitioner regarding which the petitioner has not raised any grievance. The table which has been so reproduced in para No.3 of the reply is reproduced hereunder:-

Sr. No.	***Pending Disciplinary Cases***	***Status***
1.	*SCN No.42/Conf.6492 (VO-7709) dated 24.05.2019*	*Decided vide office order No.481/Conf-6492 (VO-7709) Dt. 20.06.2022 (F/A) and punishment awarded i.e.3% cut in pension of one year of the petitioner (Sh. Adarsh Kumar, AE (Retd.))*
2.	*SCN No. 12/Conf.6826 dt.24.07.2020*	*Decided vide office order no.482/Conf-6826 dt.20/6/2022 (F/B) and punishment awarded i.e.3% cut in pension of one year of the petitioner (Sh. Adarsh Kumar, AE (Retd.))*
3.	*SCN No.46/Conf.6798 dt.2.12.2020*	*Decided vide office order no.119/Conf-6798 dt.6.7.2021 (F/C) and punishment awarded an amount equivalent to stoppage of two annual*

		increments be recovered from pensionary benefits of the petitioner (Sh. Adarsh Kumar, AE (Retd.))
4.	*Charge sheet No.6/Conf-7118 dt.26.03.2021 (Annexure P-4)*	*Pending due to court case*
5.	*Enquiry No.17/Rtk/2020 dt.25.11.2020 (VO-87/2020)*	*Charge Sheet No.6/Conf-7648 (VO-87/2020) Dt. 4/4/2022 (Annexure R1)*

9. A perusal of the aforesaid table and as per both the learned counsel for the parties, so far as Serial Nos. 1 to 3 are concerned, the same were show cause notices and have also attained finality as punishment orders have been passed against the petitioner which is not a subject matter of the present case. So far as Serial No.5 is concerned, as per both the learned counsel for the parties, the enquiry and charge-sheet has since been withdrawn. Therefore the only issue involved in the present case would be with regard to Serial No.4 which is Annexure P-4 which is under challenge in the present case.

10. The only issue involved in the present case as raised by the learned counsel for the petitioner is that the serving of the chargesheet (Annexure P-4) dated 26.03.2021 after the retirement of the petitioner is hit by the bar which is so contained under Rule 12.2. Rule 12.2 is reproduced as under:-

> Rule 12.2 (2)
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> *"(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government employee was in service whether before his retirement or during his re-employment, shall, after the final*

retirement of the Government employee, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service :

(b) The departmental proceedings, if not instituted while the Government employee 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 at 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 Government employee during his service.

11. A perusal of the allegations which are contained in Annexure P-4 would show that it has been mentioned in the statement of allegations that the petitioner visited the premises of the Jai Durga Industries on 31.08.2015 and submitted a report and on the basis of which the aforesaid industry got undue benefit and the matter went into litigation and ultimately purportedly the respondents-Nigam suffered some losses. The petitioner was retired by

passing of an order vide Annexure P-1 by the respondents-Nigam itself although it was so stated that it is 'subject to pending disciplinary proceedings'. A specific query was raised to both the learned counsel for the parties during the course of arguments as to whether qua the present charge-sheet (Annexure P-4) any earlier charge-sheet or any such kind of disciplinary proceedings were commenced qua the present petitioner or not. A categoric response forthcoming is that for the first time the aforesaid charge-sheet was issued after the retirement of the petitioner on 26.03.2021. Therefore it cannot be said that any disciplinary proceeding was pending against the petitioner qua the present charge-sheet at the time of his retirement and therefore the condition which was so stated in the order of retirement qua the present charge-sheet would not be of any significance.

12. As per the aforesaid Rule 12.2 after the retirement of an employee, charge-sheet could not have been issued with regard to an action which took place four years preceding the issuance of charge-sheet and in the present case more than 04 years have passed and therefore the respondent-Nigam is clearly barred under 12.2 Rule for issuance of charge-sheet in this regard.

13. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned charge-sheet at Annexure P-4 qua the petitioner is hereby set aside and quashed. So far as the second prayer of the petitioner for release of pensionary benefits is concerned, the petitioner has already suffered three other punishment orders which respondents may consider in accordance with law. The respondents are directed to calculate all the pensionary benefits admissible to the petitioner subject to the

aforesaid three punishment orders which have been so enumerated at Serial Nos. 1 to 3 of reply filed by the respondents and pay the same to the petitioner within a period of three months from today.

(JASGURPREET SINGH PURI)
JUDGE

06.02.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No