IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate side

Present:
The Hon'ble Justice Arindam Mukherjee

WPA 21575 of 2023

Sri Arunodoy Shit
Vs.
Union of India & Ors.

For the Writ Petitioner	:	Mr. Achin Kumar Majumder Ms. Ananya Adhikary ….Advocates
For the Respondents	:	Mr. Asok Bhaumik Ms. Sabita Ray ….Advocates
Heard on	:	02.12.2024, 06.01.2025 & 13.01.2025
Judgment on	:	**13.01.2025**

ARINDAM MUKHERJEE, J. :

1. The petitioner retired as a Deputy Commandant in Central Industrial Security Force (for short, "CISF") on attaining the age of superannuation with effect from 31^{st} January, 2023. The petitioner had served for thirty eight years which he claims to be without any blemish. The petitioner says that after expiry of more than seven months since his retirement from service the petitioner was served with a purported memorandum dated 1st August, 2023 by the respondent no.4 at his residential address at Chandannagar, district – Hooghly. On a perusal of the chargesheet it will appear that the incidents on the basis whereof the articles of charges were framed relate to the years 2018 and 2020. The petitioner has been alleged of having failed to carry out the order of the superior officer directing him to relinquish his charge of the CISF Unit VMH Kolkata on 2nd June, 2020 pursuant to a general order of transfer dated 27th May, 2020. The petitioner has also been alleged to have committed willful absence without leave (in short, "AWL") from his duty for twenty six days, i.e., from 02.06.2020 to 27.06.2020. The petitioner was also charged with an offence of submitting a medical prescription on 28.06.2020 together with his application in which the doctor declared him fit for joining the duty with effect from 14th June, 2020. The said document is said to have been willfully tampered by the petitioner as 18.06.2020 to cover his unauthorized absence from duty. Although after retirement and prior to receipt of the purported chargesheet dated 1st August, 2023 the petitioner was given the pension but his other retiral benefits were withheld. The petitioner, therefore, filed this writ petition on 1st September, 2023, inter alia, for release of his retiral benefits and to cancel and / or rescind and / or withdraw the purported chargesheet dated 1st August, 2023.

2. Pursuant to an interim order dated 16th October, 2023 the retiral benefits of the petitioner have been released. The petitioner at this stage is seeking for quashing and / or cancellation of the chargesheet dated 1st August, 2023 containing three alleged charges.

3. The petitioner says that on having retired, the employer-employee relationship is no more in subsistence between the petitioner and his employer CISF. No disciplinary proceeding can be initiated after retirement. In the instant case, such disciplinary proceeding has been initiated by issuance of chargesheet after seven months from the date of his retirement. The Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as "the 1972 Rules") or the Central Civil Services (Classification, Control and Appeal) Rules, 1965 does not permit initiation of disciplinary proceedings after retirement, particularly when the petitioner had been given the pension by issuance of pension payment order(in short, "PPO"). It is also the case of the petitioner that had there been any grievance as against the petitioner with regard to incidents allegedly complained of having occurred in the year 2018 and 2020, the petitioner could have been proceeded with prior to his retirement. The issuance of PPO also established that no such grievance was in actuality existing against the petitioner at the time of his superannuation. The petitioner also says that in the memorandum dated 1st August, 2023 there is a reference of an order of the Ministry of Home Affairs dated 19th July, 2023. This order is also subsequent to the petitioner's retirement. The petitioner further says that the chargesheet to initiate the disciplinary proceeding was also not issued in terms of Rule 9 of the 1972 Rules which the respondents contend to have been issued on the basis whereof the disciplinary proceeding has been initiated. The petitioner, however, says that in absence of the chargesheet being issued complying with the requirements laid down in law as in the case of the petitioner, the disciplinary proceedings is simplicitor a proceeding initiated under Rule 8 of the 1972 Rules.

4. In support of the contention that no disciplinary proceeding can be initiated after retirement the petitioner relies upon a judgment reported in **2024 SCC OnLine SC 3369 (State Bank of India & Ors. VS. Navin Kumar Sinha).** Referring to paragraph 31 of the said judgment the petitioner says that it has been clearly held by the Hon'ble Supreme Court that no disciplinary proceeding can be initiated after the delinquent employee officer or officer retires from service on attaining the age of superannuation or after the extended period of service. The petitioner also relies upon a Single Bench Judgment delivered on 16th June, 2004 in **W.P. No.3093(W) of 2003 (Jnanadhir Mohan**

Sen Sharma VS. Union of India & Ors.) to draw the distinction between the disciplinary proceeding initiated under Rule 8 of the 1972 Rules and that which can be initiated under Rule 9 of the 1972 Rules. Referring to the chargesheet issued against the petitioner and inviting the Court to look into the same in the light of the **Jnanadhir Mohan Sen Sharma (supra)** the petitioner also says that the same is under Rule 8 and not under Rule 9 of the 1972 as wrongly alleged by the respondents. The petitioner also relies upon a judgment reported in **2008 (1) CHN 951 (Kamal Kumar Majumdar VS. Union of India & Ors.)** and submits that no disciplinary proceeding can also be maintained under Rule 9 of the 1972 Rules as there is no allegation of any pecuniary loss having been caused by the petitioner to the Central or State Government by the alleged misconduct or negligence during his service. The petitioner, therefore, submits that the chargesheet should be set aside and / or quashed and the petitioner be paid interest for the delay in paying the retiral benefits to the petitioner.

5. On behalf of the respondents it is submitted that on finding the incidents referred to in the article of charges to have been caused by the petitioner, the employer referred the matter to Ministry of Home Affairs who by an order dated 19th July, 2023 directed initiation of disciplinary proceeding against the petitioner. The chargesheet was thereafter issued and, as such, there is no illegality in the same. In any event, even after retirement the pensionary benefits may be withdrawn and / or relocated or the retiral benefits can be withheld or be forfeited in terms of the provision of Rule 9 of the 1972 Rules. The initiation of the disciplinary proceeding subsequent to the petitioner's retirement is, therefore, justified, the chargesheet should not be quashed and the disciplinary proceeding should be permitted to be brought to a logical conclusion. Till the disciplinary proceedings are concluded the retrial benefits of the petitioner should remain withheld and thereafter shall be dealt with as per the direction of the disciplinary authority.

6. The respondents relying upon a judgment reported in **AIR 2012 SC 2250 (Secretary, Ministry of Defence & Ors. VS.**

Prabhash Chandra Mirdha) contend that mere issuance of chargesheet does not affect the right of an employee. The chargesheet is, therefore, not required to be quashed. That apart in any event a chargesheet is quashed only on very limited grounds which is non-extent in this case.

7. After hearing the parties and considering the materials on record, I find considerable subsistence in the argument of the petitioner. It is admitted position that the petitioner retired on 31st January, 2023 and the chargesheet was issued on 1st August, 2023 for initiating the disciplinary proceeding which is admittedly after seven months from the petitioner's retirement. In view of the ratio laid down in **Navin Kumar Sinha (supra)** the disciplinary proceeding could not have been initiated against the petitioner after he had retired on reaching the age of superannuation under ordinary circumstances. It is also correct as submitted by the petitioner that the chargesheet does not include any charge that the petitioner caused pecuniary loss to the Central or State Government by misconduct or negligence through his service. The allegations are of not obeying the order of the superior, being in unauthorized leaves for twenty six days and tampering his own medical certificate to conceal the actual unauthorized absence. None of its charges fall in the category of causing pecuniary loss during service by misconduct or negligence. It is, therefor, clear that the chargesheet was issued to initiate a simplicitor disciplinary proceeding under Rule 8 and not under Rule 9 of the 1972 Rules as contended by the respondents. No grounds are made out in the chargesheet or the statement of facts to substantiate any loss which is the pivot of the foundation for a chargesheet to be treated under Rule 9 of the 1972 Rules. The correspondences exchanged with the Ministry of Home Affairs also does not disclose any loss to have been suffered by the Government. Assuming without admitting that tampering of document had allowed the petitioner to release excess payment causing loss to government exchequer then also the incident is of 2020 when the petitioner was allowed to join and the petitioner retired on 31st January, 2023. The respondents had sufficient time to initiate disciplinary proceedings against the petitioner prior to his retirement. Having not done so, the respondents are estopped from initiating disciplinary proceedings after 7 months from the date of retirement of the petitioner on reaching the age of superannuation.

8. In the aforesaid facts and circumstances, and in the light of ratio of the judgments cited at the bar the chargesheet dated 1st August, 2023 is hereby set aside and / or quashed. No disciplinary proceeding can or could be initiated or proceeded with and / or further proceeded with in terms of the said chargesheet dated 1st August, 2023. The petitioner is also entitled to interest for the delay in paying his retiral benefits. The petitioner became entitled to receive the retiral benefits within one month from the date of his retirement, i.e., 28th February, 2023. The employer did not release and / or disburse and / or pay the same within said period. The petitioner, therefore, has become entitled to receive interest on the principal sum of his retiral benefits with effect from 1st February, 2023 till actual payment at the rate of 6 % per annum. The interest as also herein should be paid by 30th April, 2025, failing which the rate of interest shall increase to 8 % per annum on the principal sum from 1st February, 2023 till the date of actual payment.

9. The writ petition is, accordingly, **disposed of**.

10. Applications, if any, connected thereto stand disposed of consequently.

11. Parties to act on the basis of a server copy of this order duly downloaded from the official website of this Court without insisting upon production of certified copy thereof.

12. Urgent Photostat certified copy of this judgment and order, if applied for, be supplied to the parties expeditiously after complying with all requisite formalities.

(Arindam Mukherjee, J.)