



Raj Kumar, Mohinder Singh and Daljit Singh retired on 31.08.2009; 31.12.2009; 31.01.2007 & 31.05.2007, respectively and the audit took place in the year 2010. It is further submitted that case of the petitioners is squarely covered by the judgment rendered by the Hon'ble Supreme Court in ***Union of India and others Vs. KV Jankiraman, (119) 4 SCC 109.***

3. Learned counsel for the respondents are not in a position to controvert the fact that at the time of retirement of the petitioners, there was no charge sheet pending against the petitioners and the recovery from the retiral dues were made only on the basis of some audit objections. Further, no show cause notice and order has been communicated to the petitioners indicating the reasons for making the impugned recoveries post retirement. The issue involved in the present writ petition is no longer *res integra*.

4. I have heard learned counsel for the parties and perused the record of the case with their able assistance.

5. The observations made by a three-Judge Bench of the Hon'ble Supreme Court in ***KV Jankiraman's case (supra)***, speaking through Justice P.B. Sawant, read as under: -

“16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the



charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many-cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it would not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy. It was then contended on behalf of the authorities that conclusions nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows:

"(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;

(2)

(3)



(4) the sealed cover procedure can be resorted only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before.”

6. Further, case of the petitioners is squarely covered by a judgment passed by the Division Bench of this Court in ***CWP-3567-2006 (Atam Bodh Sharma Vs. State of Haryana and others)***, decided on 09.10.2006, wherein it has been held that the retiral dues of an employee cannot be withhold merely on the premise of pendency of an FIR, if presentation of challan before the jurisdictional Court is pending on the date of his retirement. Speaking through Justice M.M. Kumar, following was observed: -

“4. A perusal of the Explanation 2(i) makes it evident that judicial proceedings would be deemed to have been instituted on the date on which challan is submitted to a criminal Court. In the present case it is conceded position that challan has not been presented so far against the petitioner although he had retired on 31.3.2005 and the FIR was registered against him on 21.8.2003. The principle laid down in the aforementioned explanation has been fully supported by the judgment of Hon'ble the Supreme Court in the case of Union of India v. K.V. Jankiraman, 1991(3) SCT 317 (SC) : (1991) 4 SCC 101. The question before the Court was that whether for the purposes of sealed cover procedure mere contemplation of disciplinary inquiry of criminal proceedings could be deemed to be pending and it was held as under:

"On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal



prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be restored to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point....."

(Emphasis added)

5. There is another reason for us to accept the prayer made by the petitioner. A Division Bench of this Court has taken the view that respondent cannot invoke Rule 2.2(b) on the excuse that criminal case has been pending till the trial Court has declared the pensioner as guilty. It is only after the decision of the trial Court that a competent authority has to apply its mind and then to conclude whether any punishment under Rule 2.2(b) is to be imposed. After quoting Rule 2.2(b) and the proviso 1, a Division Bench of this Court in the case of Manohar Singh v. Punjab State Electricity Board, 2006(2) SCT 103 (P&H): 2006 (2) RSJ 316, has observed as under:

"12. A bare perusal of the aforesaid rule shows that it can be invoked if in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his services. In the present case, the enquiry proceedings had already concluded against the petitioner and he had been punished by orders dated 16.11.2000 (Annexure P-6) and 26.8.2002 (Annexure P-9). Therefore, the petitioner is correct in his submission that no departmental proceedings were pending against him at the time of his superannuation on 31.5.2003. In our opinion, the respondents cannot invoke Rule 2.2(b) on the ground that the



case in FIR No.112 of 1999 is still pending against the petitioner. The sine quo non for invoking Rule 2.2(b) is that the pensioner has been found guilty in a departmental or judicial proceeding which had continued after the superannuation of the employee. This view of ours finds support from the judgment of the Supreme Court in the case of High Court of Punjab and Haryana v. Amrik Singh, 1995 (2) SCT 613 (SC) : 1995(1) SLR 236. In Para 4 of the aforesaid judgment, it is observed as follows:

"4. Rule 2(2) of the Pension Rules, Clause (b) clearly mentions thus:

"2(2)(b) the Government further reserves to themselves the right to withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and right of ordering the recovery from the pension of the whole or part of any pecuniary loss caused to Government. If, in a departmental or judicial proceeding, the petitioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon reemployment after retirement.

A reading thereof clearly indicates that the disciplinary authority, consequent upon the result of the departmental or judicial proceedings, should record a finding whether the delinquent has committed grave misconduct or negligence during the period of his service including the service rendered upon re-employment after retirement.

6. In the present case also there is no conclusion of the trial. Even the challan has not been presented. Therefore, the respondents merely on the basis of registration of the FIR on 21.08.2003, are not within their rights to withhold the pension or pensionary



benefits of the petitioner. Therefore, the impugned order dated 15/22.2.2006 (P-7) is liable to be set aside.”

7. In view of the above discussion, present petition is allowed and the respondents are directed to release the amount so recovered from the petitioners after their retirement, in favour of the petitioners, along with interest @ 6% per annum from the date it became due till its actual realization. Such exercise be carried out within a period of three months from the date of receipt of certified copy of this order.

8. All the pending miscellaneous application(s), if any, shall stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

24.09.2025

Neha

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No