CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

...

Chandigarh, this the 17th day of January, 2020
(Reserved on 10.01.2020)

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CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MR. MOHD JAMSHED, MEMBER (A)

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I. ORIGINAL APPLICATION NO.060/00496/2019

Rajnish Kumar Sharma, aged 69 years, S/o Late Sh. Ram Partap Sharma, XEN Electricity Operation Divn. No. 3, Sector 19, Chandigarh (retired), R/0 Flat No. A-302, Rail Vihar, Sector 4, MDC, Panchkula – 134114. Group 'A'

....Applicant

(Present: Mr. R.K. Sharma, Advocate)

Versus

1. Union Territory, Chandigarh Administration through its Administrator, Sector 6, Chandigarh – 160015.
2. Advisor to the Administrator, Union Territory, Chandigarh Administration, U.T. Civil Secretariat, Sector 9, Chandigarh – 160009.
3. Secretary Engineering, Chandigarh Administration, UT Secretariat, Sector 9, Chandigarh – 160009.
4. Chief Engineer-cum-special Secretary (Engg.), Engineering Department, Sector 9, Chandigarh – 160009.
5. Sh. B.K. Srivastava, IAS (Retired) R/0 House No. 44, Sector 24 A, Chandigarh – 160023 (Inquiry Officer)

..... Respondents

(Present: Mr. Aseem Rai, Advocate)

II. ORIGINAL APPLICATION NO.060/00506/2019

Gursewak Singh Mast, aged 61 years, S/o Late Sh. Gurdit Singh Mast, XEN Electricity Operation Divn. No. 1 (Retired),

U.T. Chandigarh, R/o House No. 736, Sector 43 A, Chandigarh – 160043, Group 'A'

(Present: Mr. R.K. Sharma, Advocate)

Versus

1. Union Territory, Chandigarh Administration through its Administrator, Sector 6, Chandigarh – 160015.
2. Advisor to the Administrator, Union Territory, Chandigarh Administration, U.T. Civil Secretariat, Sector 9, Chandigarh – 160009.
3. Secretary Engineering, Chandigarh Administration, UT Secretariat, Sector 9, Chandigarh – 160009.
4. Chief Engineer-cum-special Secretary (Engg.), Engineering Department, Sector 9, Chandigarh – 160009.

..... Respondents

(Present: Mr. Aseem Rai, Advocate)

ORDER

SANJEEV KAUSHIK, MEMBER (J)

1. This order shall dispose of two above captioned OAs as the question of law involved therein are identical and minor variation in the facts here and there will not change the ultimate relief claimed in these O.As. For the sake of convenience, the facts are taken from O.A. No. 060/00496/2019.

2. Applicant has approached this Tribunal by filing this O.A. under Section 19 of the Administrative Tribunals Act, 1985, seeking quashing of charge sheet dated 01.03.2018 (Annexure A-1), order dated 01.05.2019 (Annexure A-2) and preliminary inquiry report dated 28.07.2016 (Annexure A-2/A).

3. Before coming to arguments addressed by the learned counsel for the parties, the undisputed facts which led to the filing of the O.A. are that the applicant retired as XEN (Electricity Operation Divn. No. 3) w.e.f. 31.12.2007, on attaining the age of superannuation. For the first time, the applicant was served with show cause notice dated 26.09.2011 on a plea that the respondents have decided to initiate departmental action under Rule 8 of Punjab civil Services (Punishment & Appeal) Rules, 1970 (hereinafter referred to as 'Rules of 1970') for committing misconduct in terms of Rule 3 of Govt. Employee (Conduct) Rules, 1966. For the alleged misconduct pointed out in the show cause notice the period was from 2005 to 2008. In the show cause notice, it has been alleged that while the applicant was working as XEN (Electricity Operation) in Division No. 3, he misappropriated the amount of Rs.89,84,184/-. Applicant filed reply to show cause notice dated 26.09.2011, but without considering the contention raised by him in the reply, the respondents ordered preliminary inquiry vide order dated 30.03.2016. Again the applicant submitted a representation dated 26.05.2016 against the order of preliminary inquiry and submitted that the action of the respondents is in violation of proviso to Rule 2.2 (b) of Rules of 1970 which provides that no departmental proceedings shall be initiated against a retired employee in

respect of any event which took place four years prior to the service of charge sheet.

4. The solitary ground, which the applicant has raised in this O.A. is with regard to invalidation of the impugned view taken by the respondents for initiating the departmental proceedings against the applicant which is contrary to Rule 2.2(b) of the Rules of 1970 which completely embargo initiation of departmental proceeding against a retired employee for an incident which took place four years prior to retirement.

5. In response to notice of motion, the respondents have filed written statement wherein they did not dispute the factual accuracy, except legal plea that O.A. is pre-mature.

6. We have heard learned counsel for the parties.

7. Mr. R.K. Sharma, learned counsel for the applicant has placed reliance upon a judgments of the Hon'ble Jurisdictional High Court in the cases of **L.B. Gupta Vs. Punjab State Electricity Board**, 2001 (4) RSJ 127 and **Raghubir Singh Vs. Punjab State Warehousing Corporation and another**(CWP No. 10456 of 2007 decided on 11.09.2008). He argued that there is blanket prohibition on initiation of departmental proceedings against a retired employee in relation to an event which transpired four years before the initiation of disciplinary proceedings. He has placed reliance upon proviso to Rule 2.2(b) of Rules of 1970. He has drawn our attention to the

impugned charge sheet, which was served on 01.03.2018 for the incident which took place in the year 2006-07 and the applicant retired on 31.12.2007. He argued that the charge sheet has been issued beyond the period of four years preceding the date of occurrence of the event, therefore, the impugned show cause notice, charge-sheet and preliminary inquiry report are to be quashed and set aside.

8. Mr. Aseem Rai, learned counsel for the respondents, argued what has been stated in the written statement.

9. Having heard learned counsel for the parties and perused the record, it is clear that the impugned charge sheet dated 01.03.2018 is in contravention of proviso to Rule 2.2(b) of Rules of 1970, which prohibit the respondents from issuance of a charge sheet for an event which took place beyond four years. The relevant rule 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 Government;
> (ii) shall not be in respect of any event which took place not more than four years before such institution; and
> (iii) shall be conducted by such authority an 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 "

A perusal of the aforementioned rule-position makes it clear that a complete embargo has been imposed on holding of an inquiry against a retired employee for an event which has

happened four years prior to the initiation of an inquiry. Therefore, a departmental proceeding cannot be initiated against a retired employee in respect of an event that has taken place more than four years prior to the date of institution of such inquiry, as was held by the Hon'ble Jurisdictional High Court in the cases of L.B. Gupta (supra) and Raghubir Singh (supra). It is thus also held that challenge to charge-sheet in the circumstances in maintainable.

10. Secondly in order to save the face, the last noble argument raised by the learned counsel for the respondents was that since the applicant was served with a show cause notice on 26.09.2011 i.e. within four years after the date of occurrence of event, therefore, the action of the respondents is valid. This contention, we are afraid, can be accepted. The issue when the departmental proceedings can be said to be pending has already been put to rest by the Hon'ble Supreme Court, firstly in the case of **Union of India and Others Vs. K.V. Jankiraman and Others,** (1991) 4 SCC 109 wherein it has been held by the Hon'ble Supreme Court that if in a preliminary inquiry, show cause notice has been issued and no charge-sheet has been served upon an employee then it cannot be said that departmental proceedings are pending

against him, as reflected in para 16 and 17 of the judgment which 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 chargesheet 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 should 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:
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> "(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; ( ) .....
>
> (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 . There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion no. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions.
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> We, therefore, repel the challenge of the appellant- authorities to the said finding of the Full Bench of the Tribunal.

17. The Full Bench of the Tribunal, while considering the earlier Memorandum dated 30th January. 1982 has, among other things, held that the portion of paragraph 2 of the memorandum which says "but no arrears are allowed in respect of the period prior to the date of the actual promotion" is violative of Articles 14 and 16 of the Constitution because withholding of salary of the promotional post for the period during which the promotion has been withheld while giving other benefits, is discriminatory when compared with other employees' who are not at the verge of promotion when the disciplinary proceedings ' were initiated against them.

The Tribunal has, therefore, directed that on exoneration full salary should be paid to such employee which he would have on promotion if he had not been subjected to disciplinary proceedings.

We are afraid that the Tribunal's reference to paragraph 2 of the Memorandum is incorrect. Paragraph 2 only recites the state of affairs as existed on January 30, 1982 and the portion of the Memorandum which deals with the relevant point is the 'last sentence of the first sub-paragraph after clause (iii) of paragraph 3 of the Memorandum which is reproduced above. That sentence reads as follows:

"But no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion".

This sentence is preceded by the observation that when the' employee is completely exonerated on the conclusion of the disciplinary/court proceedings, that is, when no statutory penalty, including that of censure, is imposed, he is to be given a notional promotion from the date he would have been promoted as determined by the Departmental Promotion Committee. This direction in the Memorandum has also to be read along with the other direction which follows in the next sub-paragraph and which states that if it is found as a result of the proceedings that some blame attaches to the officer then the penalty of censure at least, should be imposed. This direction is in supersession of the earlier instructions which provided that in a case where departmental disciplinary proceedings have been held, "warning" should not be issued as a result of such proceedings.

There is no doubt that when an employee is completely exonerated and is not visited with the penalty even of censure indicating thereby that he was not blame worthy in the least, he should not be deprived of any benefits including the salary of the promotional post. It was urged on behalf of the appellant-authorities in all .these cases that a person is not entitled to the salary of the post unless he assumes charge of the same. They relied on F.R. 17(1)' of the Fundamental Rules and Supplementary Rules which reads as follows:

"F.R. 17(1) Subject to any exceptions specifically made in these rules and to the provision of sub-rule (2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties: Provided that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence."

It was further contended on their behalf that the normal rule is "no work no pay". Hence a person cannot be allowed to draw the benefits of a post the duties of which he has not discharged. To allow him to do so is against the elementary rule that a person is to be paid only for the work he bas done and not for the work he has not done. As against this, it was pointed out on behalf of the concerned employees, that on many occasions even frivolous proceedings are instituted at the instance of interested persons, sometimes with a specific object of denying the promotion due, and the employee concerned is made to suffer both mental agony and privations which are multiplied when he is also placed Under suspension. When, therefore, at the end of such sufferings, he comes out with a clean bill, he has to be restored to all the benefits from which he was kept away unjustly. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.

We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not 'found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/ criminal proceedings. However, there may be cases' where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore however, such circumstances when they exist and lay down' an inflexible rule that in every case when an employee is exonerated in disciplinary/ criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz.. "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum:

"However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of

> it, it will record its reasons for doing so." To this extent we set aside the conclusion of the Tribunal on the said point."
> "

11. Subsequently the matter came up for consideration in the case of **Union of India and Others Vs. Anil Kumar Sarkar** (C.A. NO. 2537/2013 decided on 15.03.2013) wherein also after reproducing the law laid down in the celebrated case of K.V.Jankiraman, their lordships have held that merely issuance of show cause notice will not be said to be initiation or pendency of departmental proceedings and it would amount to initiation/pendency from the date when the charge sheet is served upon an employee. Therefore, the second contention raised by the learned counsel for the respondents is liable to be rejected.

12. In view of the above, both the OAs are allowed. The impugned show cause notice, charge sheet and preliminary inquiry report in both the cases are hereby quashed and set aside. No costs.

(MOHD JAMSHED)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 17.01.2020
PLACE: CHANDIGARH

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