

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A NO. 060/00763/2014

Date of decision : 23.4.2015

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)**

Jasbir Singh Cheema son of Sh. Gian Singh Cheema, Deputy Superintendent of Police (Retired), resident of House No.1402, Sector-40-B, Chandigarh.

...APPLICANT

BY ADVOCATE: Shri Puneet Gupta.

VERSUS

1. Chandigarh Administration through Secretary, Department of Home, Deluxe Building, Sector-9, Chandigarh.
2. The Inspector General of Police, Chandigarh Administration, Police Headquarters, Sector-9 Chandigarh.

...RESPONDENTS

BY ADVOCATE: Shri Aseem Rai

ORDER

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J):-

The present OA is directed against memorandum/charge sheet dated 14.08.2014 served upon applicant vide letter dated 21.08.2014.

2. The facts, which led to filing of the present Original Application, are that the applicant entered into the service of the Police Department as Assistant Sub Inspector on 21.05.1973. During his service career he earned promotion as Sub Inspector on 22.07.1980, Inspector on 12.10.1987 and as Deputy Superintendent of Police vide order dated 02.01.2008 with effect from 11.10.2005. After rendering 42 years of service with the Administration, the applicant retired from service on attaining the age of superannuation on 30.04.2010. On his retirement he was paid all his pensionary and retiral dues, including 100% pension, gratuity, leave encashment, group insurance benefits etc. It is the case of the applicant that he was awarded as many as 187 commendation certificates by the Administration and was also awarded United Nations Police Medal in the year 1998 when he served the United Nations Police from 1996-1998. After demitting the office of Deputy Superintendent of Police he is working as Consultant with the Mahatma Gandhi Institute of Public Administration, Punjab, Sector-26, Chandigarh. He was shocked and surprised when he was slapped with the impugned memorandum dated 14.08.2014 under Rule 2.2 (b) of the Punjab Civil Service Rules, Volume-II containing the articles of

charge in respect of recruitment which took place in May, 2007. The said memorandum has been communicated to the applicant on 21.08.2004. Hence the Original Application.

3. The applicant has challenged the impugned orders on the ground that the same is in violation of Rule 2.2 (b) of the Punjab Civil Service Rules, Volume-II, which mandates that a delinquent official cannot be charge-sheeted in respect of an event which took place more than four years before such institution. In support of the above, Shri Puneet Gupta, learned counsel appearing on behalf of the applicant argued that the action of the respondents shows colourable exercise of power and also in ignorance of rule 2.2 (b) of the Punjab Civil Service Rules, Volume-II. He submitted that the charges pertain to the period May, 2007 whereas the applicant retired from service on 30.04.2010 and has now been issued a charge-sheet on 14.08.2014, which is beyond the time limit prescribed under the relevant rule. He, therefore, prayed that the charge-sheet be quashed. To buttress his submission he placed reliance upon the following judgments:

- i) Sub Inspector Puran Chand (Retd.) v. State of Punjab, 2000 (3) SCT 515 (DB);
- ii) L.B. Gupta v. Punjab State Electricity Board, Patiala, 2002 (1) SCT 285.
- iii) Punjab State Electricity Board, Patiala v. Atma Singh Grewal and others, LPA No.752 of 2009, decided on 20.08.2009.
- iv) Punjab State Power Corporation Limited, Patiala v. Atma Singh Grewal, SLP (C) No.29589 of 2009 decided on 17.09.2013.

v) Dr. Ishar Singh v. State of Punjab and another, 1994 (1) SCT 563 (FB).

4. Upon notice, the respondents contested the claim of the applicant by filing their detailed written statement wherein they admit this fact that the applicant retired from service on attaining the age of superannuation on 30.04.2010 and the charge-sheet has been issued for an incident which occurred in May, 2007. The only excuse which has come-forth for not issuing the charge-sheet at the relevant point of time is that the matter was under investigation and after having a report from CBI, who recommended regular departmental action against the defaulter official, the impugned charge-sheet has been issued, which was recommended in the year 2011 and thereafter the matter remained pending with the Adviser to the Administrator for approval and immediately after approval of the same, which was accorded in the month of August, 2013, the charge-sheet was issued. In support of the above, Shri Aseem Rai, learned counsel appearing on behalf of the respondents did not dispute the factual accuracy with regard to rule 2.2 (b) of Punjab Civil Service Rules, Volume-II and was not in a position to contradict the settled law as cited by the learned counsel for the applicant. He however, submitted that since the matter was pending with the department for taking a final decision, therefore, the delay cannot fatal the cause against the applicant.

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5. We have given our thoughtful consideration to the entire matter and have perused the pleadings available on record with the able assistance of the learned counsel appearing for the respective parties.

6. The solitary contention at the hands of the applicant, which is to be answered, is whether or not the respondents can proceed against a delinquent employee for an incident which occurred four years prior to his date of retirement in terms of rule 2.2 (b) of the Punjab Civil Service Rules, Volume-II? For better appreciation the same reads as under:

"2.2(b) The Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings, to have been guilty of grave misconduct or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement.

Provided that-

(1) such departmental proceedings, if instituted while the officer was in service whether before his retirement or during his re-employment shall after the final retirement of the officer, be deemed to be a proceeding under this rule and shall be continued and concluded by the authority by which it was commenced in the same manner and as if the officer had continued in service.

(2) Such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment,-

(i) shall not be instituted save with the sanction of the Government;

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(ii) shall not be in respect of an event which took place more than four years before such institution ; and

(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal service could be made in relation to the officer during his service:

(3) No such judicial proceedings, if not instituted while the officer was on duty, whether before his retirement or during his re-employment shall be instituted in respect of a cause of a cause of action which arose or an event which took place more than four years before such institution.

The Public Service Commission should be consulted before final orders are passed. "

7. A careful perusal of rule 2.2 (b) would show that in case a departmental proceeding is initiated against an employee after his retirement it cannot be in respect of an event which took place more than four years from the date when the proceeding is initiated. It is clear from a conjunctive perusal of the pleadings that in the case in hand the charge-sheet was issued on 14.08.2014 where the incident in question in respect to which he has been proceeded against related to the year 1997, i.e., beyond the prescribed limit of four years. It is obvious that the issuance of the charge-sheet is wholly unacceptable in law, as the same is clearly barred by the provisions of rule 2.2 (b) of the Punjab Civil Service Rules, as extracted above. Our view also finds support from the judgment of the Hon'ble jurisdictional High Court in the case of **Sub Inspector Puran Chand (Retd.)** (supra) and the

judgment in the case of **Punjab State Electricity Board, Patiala v. Atma Singh Grewal and others** (supra), where Hon'ble Mr. Justice J.S. Khehar (as he then was) considered the similar controversy in the above two decisions and have approved the decision of the learned Single Judge in the case of **Narinder Dev Sharma v. State of Punjab and another**, 1996 (2) SLR 270 by holding that the charge-sheet for an incident more than four years prior to the date of retirement is not sustainable in terms of clause (2) of rule 2.2 (b) of the Punjab Civil Service Rules.

8. Now dealing with the sole argument raised by the respondents that the delay has occurred on account of investigation of the matter and thereafter the matter was pending with the Adviser to the Administrator. This plea has also been considered by a Division Bench of the Hon'ble jurisdictional High Court in the case of **L.B. Gupta v. Punjab State Electricity Board** (supra) where in para-2 where the Hon'ble jurisdictional High Court has negated the same. The other judgments cited by the respondents in the case of **Dr. Ishar Singh v. State of Punjab and another**, 1994 (1) SCT 563 (FB) that is not applicable to the facts and circumstances of the case. There is no dispute that if a charge-sheet had been issued prior to retirement then it can continue even after the retirement but in the present case the charge-sheet has been issued after the retirement for an incident prior to four years of his retirement, which as per the above indicated law

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cannot. Accordingly, this judgment also does not help the respondents.

9. In the aforementioned background, we are left with no option but to accept the Original Application and accordingly the impugned orders dated 14.08.2014 and 21.08.2014 are quashed and set aside.

10. No order as to costs.

San.
(SANJEEV KAUSHIK)
MEMBER (J)

Uday Kumar Varma
(UDAY KUMAR VARMA)
MEMBER (A)

Place: Chandigarh

Dated: 23.4.2015

'San.'