

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH**

...

**O.A. No.60/456/2017**

**Date of decision: 17.01.2019**

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).  
HON'BLE MRS. P. GOPINATH, MEMBER (A).**

...

Kashmir Singh, age 61 years, Assistant Engineer (Retired) (Group A), aged 61 years, office of the Sub-Divisional Engineer, Sub Division No.9, under Executive Engineer CP Division No.6, Chandigarh, R/o House No.155, Dasmesh Enclave, Zirakpur, Punjab, Mohali. Group A.

**... APPLICANT**

**VERSUS**

1. Union of India through Secretary, Ministry of Home Affairs, North Block, New Delhi.
2. Union Territory through Administrator, Union Territory, Sector-9, Chandigarh.
3. The Advisor to the Administrator, Union Territory, Deluxe Building, Sector-9, Chandigarh.
4. Chief Engineer, Engineering Department, Chandigarh Administration, Deluxe Building, Sector-9, Chandigarh-160009.

**... RESPONDENTS**

**PRESENT:** Sh. J.R. Syal, counsel for the applicant.  
Sh. Mukesh Kaushik, counsel for the respondents.

**ORDER (Oral)**

**SANJEEV KAUSHIK, MEMBER (J):-**

1. Present O.A. is directed against order dated 21.04.2016 passed by disciplinary Authority inflicting punishment of cut in pension to the tune of 25% and order dated 16.01.2017 passed by the appellate authority, whereby punishment order has been modified by reducing cut in pension from 25% to 10%.
2. Broadly, facts are not in dispute.
3. We have heard learned counsel for the parties.
4. Learned counsel for the applicant raised a legal plea that the charge sheet dated 18.01.2016, under Rule 10 of Punjab Civil Services (Punish and Appeal) Rules, 1970, upon which the impugned orders are based, could not be issued to him because prior to issuance of charge-sheet, the applicant had retired on 31.03.2015, therefore, the very basis of the charge sheet is wrong.
5. To substantiate his plea, learned counsel submitted that under Rule 10 of Punjab Civil Services (Punishment and Appeal) Rules, 1970 (for short 1970 Rules), a charge sheet can be issued to an employee, who is in service and since applicant stood retired on 31.03.2015, which is prior to issuance of charge sheet, therefore, it cannot be issued under the said rule. He submitted that after retirement, an employee can be proceeded under Rule 2.2 (b) of Punjab Civil Services Rules, Volume II, only that too with prior sanction of Govt. Since after retirement of the applicant, Chandigarh Administration becomes central government and there is

no prior approval from them, therefore, the very foundation of disciplinary action is illegal.

6. Respondents while resisting the claim of the applicant have filed a detailed written statement and have submitted that pointed plea has not been raised by the applicant earlier before the Appellate Authority, therefore, applicant cannot be allowed to raise this plea at this stage. However, Sh. Mukesh Kaushik, learned counsel for the respondents is not in position to rebut the legal proposition that charge sheet cannot be issued to applicant under Rule 10 of 1970 Rules.
7. We have given our thoughtful consideration to the entire matter and have perused pleadings available on record.
8. The plea raised by the applicant is legal one which he can take before this Court, even if he had not taken it before the departmental authorities. Rules 10 of the 1970 Rules empowers departmental authorities to proceed against an employee who is in service, which reads as under:-

“10. **Procedure for imposing minor penalties**—(1) Subject to the provisions of sub-rule (4 – A) of rule 8 sub – rule 3 of rule 9, no order imposing on a Government employee any of the penalties specified in clauses ( I ) and ( iv ) of rule 5 shall be made except after-

- ( a ) informing the Government employee in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken , and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal;
- ( b ) holding an inquiry in the manner laid down in sub – rules (3) to (23) of rule 8, in every case in which the punishing authority is of the opinion that such inquiry is necessary;

- ( c ) taking the representation, if any submitted by the Government employee under clause (a) and the record of inquiry, if any , held under clause (b) into consideration :
  - (d) recording a finding on each imputation of misconduct or misbehaviour; and
  - (e) consulting the Commission where such consultation is necessary.
- (2) The record of the proceeding in such cases shall include –
- (i) a copy of the intimation to the Government employee of the proposal to take action against him;
  - (ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;
  - (iii) his representation, if any;
  - (iv) the advice of the commission, if any;
  - (v) the findings of the punishing authority and also the report of the inquiring authority in case an inquiry has been held under clause (b) of sub- rule(1); and
  - (vii) the orders on the case together with the reasons therefore.”

Admittedly, the applicant was not in service when charge sheet was issued to him on 18.01.2016 as he stood retired prior in time on 31.3.2015, therefore, he cannot be subjected to departmental proceedings by issuance of charge sheet under Rule 10 of 1970 rules. Rule 2.2 (b) sub rule 2(i) of Chapter II (Vol.II) relating to grant of pension deals with retirees and empowers government to initiate proceedings against them after their retirement. This can only be initiated with the sanction of government. The same reads as under:-

“(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, in a departmental or judicial proceeding, the pensioner is found guilty of grave mis- conduct or negligence during the period of his service, including service rendered upon 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 article and shall be continued

and concluded by the authority by which it was commenced the same manner as if the officer had continued in service;

(2) 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 the Government;**

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

Perusal of the above also makes it clear that disciplinary proceedings can only be initiated with the prior sanction of the government and the word 'Government' in the case of the applicant will be Administrator.

9. On a query, learned counsel for the respondents fairly admitted that no sanction was obtained before initiating proceedings against the applicant and that charge sheet has been issued under Rule 10 of the 1970 Rules, as if he was in employment, which cannot be done.
10. Accordingly, the order passed by the Disciplinary Authority and Appellate Authority is hereby set aside being based on a charge sheet issued without jurisdiction. Matter is remitted back to the respondents to initiate proceedings in accordance with law, if so desired. No costs.

**(P. GOPINATH)**  
**MEMBER (A)**

**(SANJEEV KAUSHIK)**  
**MEMBER (J)**

Date: 17.01.2019.  
Place: Chandigarh.

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