

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD
(Circuit Bench at Nainital)

Original Application No. 331/428/2017

Dated: This the 21st day of February 2019.

PRESENT:

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

HON'BLE MR. MOHD. JAMSHED, MEMBER (A)

Shri B.S. Sidhu son of Late Jagdev Singh, aged about 61 years, R/o 2, Police Officers Colony, Kishanpur, Dehradun.

... Applicant

By Adv: Shri A.K. Pandey

V E R S U S

1. Union of India through the Secretary, Ministry of Home, Government of India, New Delhi.
2. The Chief Secretary, State of Uttarakhand, Dehradun.
3. The Principal Secretary (Home), State of Uttrakhand, Dehradun.

... Respondents

By Adv: Shri D.S. Shukla/Shri Rajesh Sharma/Shri Vikas Pandey

O R D E R

BY HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

1. The present O.A. has been filed by applicant B.S.Sidhu under Section 19 of the Central Administrative Tribunal Act, 1985 seeking the following reliefs:

- "(i) Issue a suitable order or direction in the nature of mandamus quashing the charge sheet dated 29.04.2016 issued by the respondent No.2.
- (ii) Issue a writ, order or direction in the nature of mandamus direct the respondents to paying the full pension, gratuity and other retiral consequential benefits to the applicant from the date of the superannuation dated 30.4.2016 till the actual date of payment with interest.
- (iii) Issue other and further order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

(iv) Award the cost of the O.A. to the applicant".

2. Case of applicant B.S. Sidhu is that he retired as Director General Police, (D.G.P) State of Uttarakhand on 30.4.2016. The charge sheet dated 29.04.2016 was not served upon the applicant, as per, Rule 8 (5) All India Services (Discipline and Appeal) Rules 1969 (hereinafter referred to as the "Rules") since some person put the charge sheet in the vicinity of the applicant without taking any endorsement from the applicant or his family member or the employee at the gate of his residence, and which was actually seen by the applicant on 01.05.2016.

3. We may refer to Rule 8 (5) which reads as under:-
 "The disciplinary authority shall deliver or cause to be delivered to the member of the Service a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the member of the Service to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person".

4. It is the case of applicant that the charge-sheet dated 29.4.2016 issued under Rule 8 of the Rules was not served upon the applicant till the date of his retirement on 30.4.2016 and, therefore, the said charge sheet is liable to be quashed and the applicant is entitled to get pension and other retiral benefits.

5. Applicant further refers to Rule 6 (1) sub section (b) (i) of All India Services (Death cum Retirement Benefits) Rules, 1958 which reads as:

"(b) such departmental proceeding, if not instituted while the pensioner was in service, whether before his retirement or during his re-employment;
 (i) shall not be instituted save with the sanction of the Central Government ;

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

(iii) shall be conducted by such authority and in such place or places as the Central Government may direct and in accordance with the procedure applicable to proceeding on which an order of dismissal from service may be made;

Therefore, as per the O.A., pension of applicant cannot be withheld and nor can the departmental proceedings can be instituted after retirement save in compliance with Rule 6 (b) (i) of All India Services (Death cum Retirement Benefits) Rules, 1958".

6. In the counter affidavit filed on behalf of respondent Nos. 2 and 3 (Principal Secretary (Home), it has been stated that the charge-sheet dated 29.4.2016 was properly served upon the applicant on 29.4.2016. It is the case of respondents that the charge sheet dated 29.04.2016 served upon the applicant by S.S.P, Haridwar on 29.04.2016, as per, receipt (Annexure CA- 17 to the C.A) which exercise was carried out as per letter dated 29.04.2016 of ADGP (Admin.) and on 30.04.2016, when the charge sheet was handed over to the applicant by Mahesh Chandra, Confidential Assistant to DGP, Uttarakhand.
7. The limited question is whether the charge sheet was received by the applicant before his retirement or after his retirement and the result of this finding would have a bearing on the charge sheet and consequential disciplinary proceedings initiated against the applicant.
8. We have heard and considered the arguments of the learned counsels for the parties and gone through the material on record as well as the written arguments. Both the learned counsels have reiterated pleas taken by them in their pleadings as to whether the chargesheet was served upon/received by applicant either pre or post retirement as well as the question of

inordinate delay in filing the chargesheet as alleged by applicant.

9. Applicant's case is that he was not served with the charge sheet before his retirement on 30.04.2016. In this regard, his pleading, as per, relevant part of para 4.12 of the O.A. is:-

"That the factual position is that the charge sheet was not served upon the applicant as per the provisions contained in law as some messenger/stranger put the charge sheet in the vicinity of the applicant without taking the endorsement of the applicant or his any family member or the employee on gate of his residence."

"after the date of superannuation of the applicant the charge sheet was left at the residence of the applicant"

".... and straight away for the very first time the alleged charge sheet dated 29-04-2016 was sent to the residence of the applicant through an unknown messenger which was actually seen by the applicant on 01.05.2016 for the first time and the said aspect is established beyond doubt as there is no acknowledgment, service or proclamation by the authority concerned."

In support of his contention, learned counsel for applicant relied upon (i) Union of India Vs. Dinanath Shantaram Karekar, AIR 1998 SC 272, (ii) R.D.Meena Vs. F.C.I, 2017 (2) MPLJ 359 (iii) Brij Mohan Vs. State of U.P, 2017 (2) AWC 1110 (iv) Union of India Vs. Sabu Jseph 2016 (332) ELT 396 (v) State of Punjab Vs. Amar Singh Harika, 1966 AIR (SC) 1313 and (vi) Dulu Devi Vs. State of Assam, AIR 2016 SC 2152. In the said citations, the principle laid down is regarding as to when the delivery of the charge-sheet is complete upon the charged officer.

Learned counsel for the applicant on the question of inordinate delay in alleged issuance of chargesheet relied upon the (1) State of Madhya Pradesh Vs. Bani Singh, AIR 1990 SC 11308, (2) State of Punjab Vs. Chaman Lal Goyal, 1995 (2)

SCC 570 (3) M. Balakrishnan Vs. Corporation of Madurai, 1995 2 CTC 589 (4) P. Anand G. Vs. Principal Commissioner, 2007 5 CTC 723 and Kootha Vs. Commissioner, 2009 (1) MadLJ 761 which lay down that inordinate delay requires the chargesheet to be quashed.

10. On the other hand, the case put forth by respondents is that charge sheet was served upon the applicant on two occasions before his retirement i.e. by Mahesh Chandra, Confidential Assistant to the D.G.P., Uttarakhand and by Senthil Avoodai Krishnaraj S., the then S.S.P. Haridwar.
11. In this regard, affidavit has been filed by Mahesh Chandra wherein he has given the sworn statement that on 29.04.2016, he was serving as Confidential Assistant to the D.G.P., Uttarakhand, when on 29.04.2016 he received a post/envelope which was addressed to the applicant and he gave a receipt (Annexure - 1) and he handed over the envelope to the applicant on 30.04.2016 when he returned back to his office from an out station trip and that he personally handed over the envelope said to be containing the copy of charge sheet to the applicant.
12. As per the affidavit, Senthil Avoodai Krishnaraj S., the then S.S.P. Haridwar has stated therein that:-
 1. That the deponent is presently posted as S.P. Vigilance Dehradun and was then S.S.P Haridwar on 29.04.2016 and 30.4.2016 when the service of the charge sheet was effected upon Shri B.S. Sidhu, the then D.G.P Uttarakhand, who is the original applicant above name.
 2. That the deponent had been directed by the office of the A.D.G.P (Administration), Police Headquarters, Dehradun, vide letter dated 29.04.2016, to effect the service of a copy of the charge sheet on Shri B.S. Sidhu, the then D.G.P Uttarakhand, on his visit to Haridwar in the evening of 29.04.2016. A copy of the

letter of A.D.G.P dated 29.4.2016 is being annexed herewith and marked Annexure 1.

3. That in the evening of 29.04.2016, when the then D.G.P Shri B.S. Sidhu was at Hotel Godwin, the deponent handed over the copy of the charge sheet personally to him, however, Shri B.S. Sidhu, being the head of the force of the Uttarakhand State Police, the deponent could not ask for receiving of the same, however, the deponent put note over the letter of the A.D.G.P that the copy of the charge sheet has been handed over to Shri B.S. Sidhu, the then D.G.P Uttarakhand, and also sent the report on 30.04.2016. A copy of the report dated 30.04.2016 is being annexed herewith as Annexure 2".
13. As per the letter dated 20.02.2018 of Chief Secretary, Government of Uttarakhand, two copies of charge sheet were prepared and sent to the Police Head Quarter and received by Confidential Assistant to the D.G.P., Uttarakhand on 29.04.2016 and since applicant was out of station on 29.04.2016, one copy of charge sheet was sent to Addl. D.G.P (Admin.) for service upon the applicant, where ever he may be. The same sent by Police Administration to S.S.P., Haridwar who served the same upon the applicant in hotel Godwin, Haridwar. Since, applicant was out of his Head Quarter on 29.04.2016, and was to retire on 30.04.2016, therefore, two copies of charge sheet were prepared.
14. In the present case, the case projected by applicant is that he did not receive the charge-sheet till after the date of his retirement and in this regard the stand of applicant is that the charge sheet was not served upon him but that some messenger/stranger put the charge-sheet in the vicinity of the applicant without taking the endorsement of the applicant or his family member or employee on the gate of his residence and that the charge-sheet was left at his residence which was actually seen by the applicant on 01.05.2016 and this is

established as there is no acknowledgement, service or proclamation by the authority concerned.

15. On the other hand, it comes out in the affidavit of Senthil Avoodai Krishnaraj S., the then S.S.P. Haridwar and he had given the copy of the charge-sheet to the applicant before his retirement. This fact of service of charge-sheet upon the applicant on 29.04.2016 by Senthil Avoodai Krishnaraj S., the then S.S.P. Haridwar is clear from his affidavit wherein he has specifically sworn that he had personally handed over the copy of charge-sheet to the applicant on 29.04.2016 and as also the reason for not asking for the receipt of the charge-sheet but that he put a note over the letter of the A.D.G.P that the copy has been handed over to the applicant.
16. It is a settled law that in cases like the instant OA when the question of fact is in dispute, a fact is said to be proved on the touchstone of preponderance of probability. It has been held by the Hon'ble Apex Court in Dr. N.G.Dastane v. Mrs. S.Dastane, AIR 1975 SC 1534 that "The normal rule which governs civil proceedings is that a fact can be said to be established if it is proved by a preponderance of probabilities." And in R.V.E. Venkatachala Gounder v. Arulmigu Viswesarawami, 2003 (4) CCC 299 (SC), it was held by the Hon'ble Supreme Court of India that "A fact is said to be 'proved' when, if considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of a particular case, to act upon the supposition that it exists." And it was further held by the Hon'ble Apex Court that "Being a civil case, the plaintiff cannot be expected to proof his title beyond any reasonable doubt; a high degree of probability lending assurance of the availability of title with him would be enough to shift the onus on the defendant and if the defendant does not succeed in shifting

back the onus, the plaintiff's burden of proof can safely be deemed to have been discharged."

17. It may be mentioned that in the OA, it has been averred that there has been a delay in serving the charge-sheet pertaining to the incident which is many year back and therefore, the applicant cannot be charge-sheeted after such an inordinate delay. This contention cannot be accepted since the incident is not of more than 4 years.
18. Considering the material on record in the shape of affidavits of both sides as well as pleadings of the parties on preponderance of probabilities, we are of the view that charge-sheet was served upon the applicant on 29.04.2016 before his retirement.
19. In view of the facts and circumstances of the case, we are of the view that no good ground is made out by the applicant for issuance of directions in the present O.A. Accordingly, O.A. being meritless is dismissed. No order as to costs.

(Mohd. Jamshed)

Member (A)

(Rakesh Sagar Jain)

Member (J)

Manish/-