(2019) 05 DEL CK 0026

In the Delhi High Court

Case No : Civil Writ Petition No. 4609 Of 2019

Ashok Kumar Garg APPELLANT

Vs

Union Of India And Ors RESPONDENT

Date of Decision : 03-05-2019

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 9(2)(b)(i), 9(2)(b)(ii), 9(6), 9(6)(a)

Citation : (2019) 05 DEL CK 0026

Hon'ble Judges : Vipin Sanghi, J;Rekha Palli, J

Bench : Division Bench

Advocate : Amit Khemka, Daksh Rathore, Arun Bhardwaj, Nikhil Bhardwaj

Final Decision : Dismissed

Judgement

Vipin Sanghi, J

C.M. No. 20508/2019

Exemption allowed, subject to all just exceptions. The application stands disposed of.

W.P.(C) 4609/2019 & C.M. No. 20507/2019

1. The petitioner assails the order dated 25.01.2019 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, (the Tribunal) in O.A. No. 1729/2018. The petitioner's said Original Application has been dismissed by the Tribunal. The petitioner had assailed the initiation of departmental proceedings against him on the premise that the same had not been instituted within a period of 4 years of the event in respect thereof the same was instituted. He placed reliance on Rule 9(2)(b)(ii) of the CCS(Pension) Rules. The said Rule, in so far it is relevant, reads as follows:

"9. Right of President to withhold or withdraw pension

(1) ....

(2)(a) ....

(2)(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment, -

(i) ....

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

(iii) ...."

2. The case of the petitioner was that the period of 4 years in the present case expired on 07.11.2010, whereas the respondents had initiated the proceedings by issuing the memorandum of charge only on 22.11.2010, when the charge memorandum was dispatched with the forwarding letter dated 18.11.2010.

3. The Tribunal has rejected the said Original Application by observing that the issuance of the charge memorandum to the petitioner had taken place on 03.11.2010, when the same was prepared and signed by the issuing authority after obtainment of the Presidential sanction on the same date. The Tribunal has also taken note of Sub Rule (6) of Rule 9 of the CCS(Pension) Rules which, inter alia, provides that :

(6) For the purpose of this rule, -

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date ; and

(b) judicial proceedings shall be deemed to be instituted -

(i) in the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognizance, is made, and

(ii) in the case of civil proceedings, on the date the plaint is presented in the court." (emphasis supplied)

4. Mr. Khemka, learned counsel for the petitioner submits that the issuance of the charge memorandum took place on 22.11.2010, when the letter dated 18.11.2010 - forwarding the memorandum of charge was dispatched to the petitioner. Mr Khemka places reliance on the decision of the Division Bench of this Court in W.P. (C.) No. 3273/2015, Secretary, Ministry of Finance and Another v. Shri B Prasad, decided on 06.04.2015.

He submits that the Special Leave Petition from the said decision has also been dismissed by the Supreme Court in limine.

5. In Shri B Prasad (supra), the proceedings could be initiated against the delinquent officer till 14.07.2008. The Presidential sanction was obtained on 09.07.2008. The memorandum was signed on 11.07.2008, but the intimation vide a covering letter dated 16.07.2008 was sent by registered post on 17.07.2008.

6. In these circumstances, the Tribunal found that the initiation of the departmental proceedings against the delinquent was barred by time. This Court agreed with the said view of the Tribunal and it observed as follows:

4. The proposal to initiate disciplinary proceedings against the respondent under Rule 9(2)(b)(i) of the CCS (Pension) Rules, 1972 was approved by the President on 9th July 2008 and in the notes submitted to the President, the petitioner department itself noted that under the Rules, disciplinary proceedings can be initiated against the respondent till 14th July 2008. Indisputably, the memorandum was signed on 11th July 2008 but the intimation vide covering letter dated 16th July 2008 was sent to the respondent by registered post only on 17th July 2008. This respondent was superannuated from service on 31st December 2004 and the articles of charges based on which the disciplinary proceedings initiated against the respondent pertains to the misconduct of the respondent committed on 15th July 2004. In terms of Rule 9(2)(b)(i) of the CCS (Pension) Rules, 1972, the departmental proceedings, if not instituted while the government servant is in service, then the same would not be instituted in respect of any event which takes place more than four years before such institution against a retired Government servant. The learned Tribunal has correctly interpreted the said rule by stating that the same is a mandatory provision meant to protect the retired employees from departmental inquiry after several years of retirement as such persons are not able to defend their position in their old age. The learned Tribunal is further correct in taking a view that the petitioners themselves have admitted in their own note, when submitted to the President, that the disciplinary proceedings may be issued only till 14th July 2008 but the same could be conveyed to the respondent only by letter dated 16th July 2008 posted on 17th July 2008, communicated to the respondent on 23rd July 2008 and such a communication is clearly beyond the prescribed period of four years and violative of Rule 9(2)(b)(i) of the CCS (Pension) Rules, 1972. On the other aspect also, the learned counsel for the petitioner has not put forward any cogent argument that in case where the evidence sought to be proved is in the nature of documentary evidence, the petitioner is not required to prove the memorandum of charges framed against the respondent with the help of the prosecution witnesses. The learned Tribunal has placed reliance on the judgments in the case of Roop Singh Negi v. Punjab National Bank & Ors. 2009 (2) SCC 570 and LIC of India & Anr., vs. Ram Pal Singh Bisen, 2011 (1) SLJ 201, in support of its reasoning and we find no reason to disagree with the same.

5. The learned Tribunal is also correct in observing that the competent authority has to approve not only the initiation of charge but also the charge itself,

however, in the facts of the present case, the charge framed against the respondent was never approved by the President, and therefore also, the disciplinary proceedings initiated against the respondent got vitiated.

6. In view of the aforesaid discussion, we find no merit in the present petition filed by the petitioner and the same is hereby dismissed. Petitioner is accordingly directed to comply with the directions given by learned Tribunal within a period of two months from the date of this order.

7. Mr. Khemka has also placed reliance on Delhi Development Authority v. H.C. Khurana, 1993 2 SCR 1033, wherein the Supreme Court, inter alia, observed as follows:

"Meanings of the 'word issue' given in the Shorter Oxford English Dictionary include: 'to give exit to; to send forth, or allow to pass out; to let out; .... to give or send out authoritatively or officially; to send forth or deal out formally or publicly; to emit, put into circulation'. The issue of a chargesheet, therefore, means its despatch to the government servant, and this act is complete the moment steps are taken for the purpose, by framing the chargesheet and despatching it to the government servant, the further fact of its actual service on the government servant not being a necessary part of its requirement. This is the sense in which the word 'issue' was used in the expression 'chargesheet has already been issued to the employee', in para 17 of the decision in Jankiraman."

8. Having perused the impugned order and the record, and heard the submissions of Mr. Khemka, we are not inclined to interfere with the impugned order. In our view, the Tribunal has correctly taken note of Sub Rule (6) of Rule 9 of the CCS (Pension) Rules which, unfortunately, was not noticed by the Division Bench while deciding Shri B Prasad (supra).

9. Rule 9(6)(a) creates a legal fiction since it states that "departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date ;

10. The limitation for issuance of the statement/ memorandum of charge, in the context, cannot be construed as narrowly as the petitioner would want us to do. In a Government set-up, the competent authority would issue the charge sheet by preparing/ approving the same, and signing the same. The process of its being dispatched to the delinquent officer may not even be within his personal control. Therefore, merely because there may be some time taken in the process of dispatch of the charge sheet - which is impersonal, in our view, cannot be a reason to construe the regulation of Rule 9(2)(b)(ii) so narrowly, as to defeat the prerogative of the Government to issue a charge memorandum to a delinquent retired officer.

11. In our view, such a hyper - technical view is not called for in matters of

enforcement of discipline. The purpose and object of putting the time limit - within which the departmental proceedings may be instituted in respect of a retired Government servant, is to ensure that he is not haunted with such proceedings after many years of his retirement. The Rule puts a limit of 4 years for that purpose. However, in our view, the said Rule cannot be construed so strictly and technically, as to take away the power of the Government to initiate proceedings when the Presidential sanction has been obtained in time, and the charge memorandum has been signed and issued by the competent authority within time.

12. The decision in H.C. Khurana (supra), in our view, is not attracted in the facts of the present case, since that was not a case dealing with Rule 9 of the CCS (Pension) Rules and the Court was not concerned with interpretation of a clause similar to Rule 9(6) of the CCS (Pension) Rules.

13. For all the aforesaid reasons, we find no merit in the present petition.

14. Dismissed.

