

(2010) 09 GAU CK 0081

In the Gauhati High Court

Case No : Writ Petition (C) No's. 904 of 2008 and 264 of 2010

B.S. Yambem

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 01-09-2010

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14
Central Civil Services (Pension) Rules, 1972 — Rule 9, 9(2)

Citation : (2011) 1 GLR 202

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Advocate : N. Kumarjit, for the Appellant; C. Komol, for the Respondent

Judgement

T. Nandakumar Singh, J.—These two writ petitions involving similar question of facts and law filed by the same writ Petitioner against the same Respondents are being disposed of by this common judgment and order.

2. Heard Mr. N. Kumarjit, learned Counsel appearing for the Petitioner and Mr. Ch. Komol, learned CGSC appearing for the Respondents.

FACTUAL BACKGROUND OF WP(C) No. 904 OF 2008

(i) The Petitioner was the Commandant, 61 Bn. CRPF at Imphal. Sometime in between 3.6.1995 and 5.7.1995 one AK-47 Rifle was lost along with some ammunitions from Kote of HQ Company of the said Battalion; and said weapon was last issued to one Lance Naik Man Bahadur. In connection with the said loss of AK-47 Rifle, a court of inquiry was constituted by the CRPF authority. By a letter dated 28.5.1997 of the DIG (Ops), CRPF Imphal the Petitioner was required to give a written statement touching seven points raised in the said letter in connection with the said court of inquiry.

(ii) The Petitioner submitted his written statements of defence vide his reply letter dated 7.4.1998 by explaining the reasons and the circumstances under which he utilized the services of the civilian informers including surrendered/

bailed out members of various U.G. outfits like KCP, PLA, NSCN etc. and such persons were coded as "CAT". Shri N.K. Tewary, VSM, was the IGP (Ops), Manipur and Nagaland, CRPF at the time when the Petitioner was the Commandant of 61 Bn. at Imphal. It is also stated that although there was no written instruction/order from the said IGP, the fact of keeping/engaging "CAT" members in the Petitioner's Battalion can be seen from the letter dated 15.8.1995 of the said IGP(Ops).

(iii) After completing the court of inquiry for the said incident of loss of AK 47 rifles, the Petitioner was "warned" to be more careful and avoid lapses in future on the basis of the report of the court of Inquiry vide letter dated 24.6.1998 of the IGP, NS, CRPF New Delhi and ordered to be recovered a sum of Rs. 3,750 from the Petitioner. The said Court of Inquiry for the loss of the AK-47 rifle against the Petitioner was finally ended with the said minor penalty without giving any opportunity of proper defence to the Petitioner for the said incident of loss of AK-47 rifle for which the Court of Inquiry was conducted and on the basis of its report, minor penalty had already been imposed to the Petitioner. By a subsequent letter dated 15.3.1999 of the same IGP, NS, CRPF, New Delhi the Petitioner was informed that the "warning" dated 24.6.1998 had been withdrawn by taking the ground that it was not commensurate with the gravity of the offence.

(iv) After the said letter dated 15.3.1999 of the IGP, NS, CRPF New Delhi, a departmental inquiry was ordered against the Petitioner under Rule 14 of the CCS(CCA) Rules, 1965 in connection with the same incident of the loss of AK-47 rifle and Articles of Charge were framed vide Memorandum dated 23.6.1999. The Petitioner filed the writ petition, WP(C) No. 720 of 2002 before the Gauhati High Court, Imphal Bench challenging the said letter of the IGP, NS, CRPF, New Delhi dated 15.3.1999 for withdrawing the said minor penalty imposed to the Petitioner for the said incident of the loss of AK-47 rifle without giving any show-cause notice to the Petitioner. This Court, after giving opportunity to the Respondents to file affidavit in-opposition in the said writ petition and also hearing the parties, passed a judgment and order dated 18.5.2006 allowing the writ petition, i.e., WP(C) No. 720 of 2002 by quashing the said impugned judgment and order dated 15.3.1999. Against the said order of the learned Single Judge dated 18.5.2006 for allowing Writ Petition(C) No. 720/2002, the Respondent (the present Respondents in the present writ petition) preferred an intra court appeal, i.e., W.A. 45 of 2006 before the Division Bench of this Court.

(v) The Division Bench of this Court did not interfere with the judgment and order of the learned Single Judge dated 18.5.2006 vide judgment and order dated 7.11.2006 passed in WA No. 45 of 2006. The Division Bench also made an observation, "...it is always open for the authority to initiate fresh action in the matter, if so desired and advised and by complying with the principles of natural justice. In the present case, though not expressly permitted by the learned Single Judge, such a course of action was always open for the Appellants to

adopt and follow. In view of the aforesaid facts, we fail to see how any prejudice has been caused to the Appellants so as to enable us to understand that the present appeal needs to be entertained".

(vi) It is so well settled that direction of the High Court is to be understood in such a manner that what the court directed is not the direction to do illegality or to do an act which is not permissible under the law. Direction should always be understood in such a manner that the direction so made by the court is only for executing and carrying out an act which is permissible under the law. In the case at hand, the learned Division Bench vide judgment and order dated 7.11.2006 passed in WA No. 45 of 2006 never permitted the Appellants of WA No. 45 of 2006 (the present Respondents in the present writ petition) to initiate fresh disciplinary proceeding for the said incident of the loss of AK-47 rifle in between 3.6.1995 to 5.7.1995 in oblivious of procedure prescribed under the Law/Rules for fresh disciplinary proceeding.

(vii) After the Division Bench passed the judgment and order dated 7.11.2006 in WA No. 45 of 2006 by not interfering with the judgment and order of the learned Single Judge dated 18.5.2006 allowing the writ petition, i.e., WP(C) No. 720/2002, thereby quashing the said letter of the IGP, NS, CRPF, New Delhi dated 15.3.1999, the Director General of CRPF vide his order being No. DIX-7/99-CRC dated 27.6.2008 had withdrawn the said letter of the IGP, NS, CRPF being No. 1.X-27/95-NS-Adm-3 dated 24.6.1998 to initiate suitable disciplinary proceeding for the initiation of fresh action for the said incident of the loss of AK-47 rifle pursuant to the said judgment and order of the learned Single Judge dated 18.5.2006 and also the judgment and order of the learned Division Bench dated 7.11.2006 passed in WA No. 45 of 2006. From the said order of the DGP, CRPF dated 27.6.2008, it is clear that up to the date of passing the said order dated 27.6.2008 the fresh disciplinary proceeding against the Petitioner for the said incident of the loss of AK-47 rifle in between 3.6.1995 to 5.7.1995 had not initiated.

(viii) By the impugned Memorandum being No. D.IX-7/99-CRC dated 22.8.2008 a disciplinary enquiry for the said incident of the loss of AK-47 rifle in between 3.6.1995 to 5.7.1995 had been initiated in a sequel of the sanction accorded by the President under Rule 9 of the CCS(Pension) Rules, 1972. Hence, the Writ Petition (C) No. 904 of 2008 assailing the impugned Memorandum dated 22.8.2008.

FACTUAL BACKGROUND OF WP(C) No. 264 OF 2010.

A departmental enquiry or disciplinary proceeding was initiated against the present writ Petitioner for 3 articles of charge:

1. Petitioner had committed during August 1995 a serious misconduct that on 8.8.1995 in that he sent three vehicles, one Asstt. Commandant and 18 other ranks of his Unit out of the area of operational jurisdiction without the approval of IGP(Ops) Manipur and Nagaland. Two of the above vehicles and 11 men were

later intercepted and apprehended by the Customs and Central Excise authorities at Didarganj check post near Patna on the night of 11.8.1995 as a huge quantity of contraband ganja was found loaded in these vehicles.

2. During the aforesaid period and while functioning in the aforesaid Unit, Petitioner committed a serious misconduct that he fabricated office records to cover up illegal dispatch of CRPF vehicles and men out of operational jurisdiction without proper permission or orders of the competent authority and also tried to secure false medical certificates in respect of Officers and men allegedly involved in the illegal transshipment of ganja from civil hospital on coming to know about the detention of his Unit vehicles and men by Central Excise authorities of Patna on 12.8.1995.

3. Petitioner while posted and functioning as Commandant 61 Bn. CRPF, Mantripukhri, Imphal during August, 1995 committed a serious misconduct that he suppressed the information of arrival of Shri Ram Singh, Asstt. Comdt. (under suspension), 4 Ors. with Civil TATA 608 truck with civilian driver at Bn. Hqrs. on 15/16.9.1995 and kept them hiding at remote Coy location at Mayang Imphal and shown their arrival at Bn. Hqrs. on 0245 hrs. on 17.8.1995 though they were wanted by Central Excise authorities in connection with the seizure of ganja from two trucks of his Unit at Didarganj check post near Patna on the night of 11.8.1995.

(ii) Under Memorandum being No-D.IX.33/95-CR Cell date 14.5.1998 issued by the Assistant Director (Estt.), Directorate General, CRPF, New Delhi a regular departmental enquiry under Rule 14 of the CCS (CC & Appeal) Rules, 1965 was initiated against the Petitioner. The Petitioner filed WP(C) No. 805 of 2005 for assailing the said departmental enquiry for the said articles of charge under Memorandum dated 14.5.1998. The learned Single Judge allowed the Writ Petition (C) No. 805 of 2005 after giving the Respondents (present Respondents in the present writ petition) to file affidavit in-opposition and also after hearing the parties vide judgment and order dated 16.6.2006 by quashing the disciplinary proceeding initiated under the Memorandum being No. D.IX-33/95-CR Cell date 14.5.1998 for the said article of charge; however, it was left to the disciplinary authority to conduct departmental enquiry afresh after supplying copies of the proceedings of the court of enquiry and also the translated copies of the documents of the witnesses and documents recorded in Hindi to the Petitioner.

(iii) Pursuant to the order of this Court dated 16.6.2006 passed in WP(C) No. 805/2005 Director General, CRPF New Delhi vide order No. No. IX.33/95-CRC Cell dated 16.10.2009 issued by and in the name of the President, had withdrawn, quashed the said Memorandum No. D.IX-33/95-CRC Cell dated 14.5.1998 for initiating departmental enquiry afresh. Hence, the writ petition No. 264 of 20010 assailing the impugned Memorandum of charge dated 16.10.2009.

2. It is reiterated that the order impugning in WP(C) No. 904 of 2009 is the

Memorandum dated 22.8.2008 for initiating departmental enquiry against the Petitioner for the incident of the loss of the AK-47 rifle and other charge which occurred during the period from 3.6.1995 to 5.7.1995. The order impugning in the WP(C) No. 805 of 2005 is the Memorandum dated 16.10.2009 for the said incident which occurred during August 1995 i.e., from 8.8.1995 to 17.8.1995. It is clear that the impugned memorandums for initiating disciplinary proceeding against the Petitioner are for the incidents occurred more than 10 years ago from the dates of issuance of the impugned Memoranda.

3. For the sake of repetition, it is stated that for the said two incidents, for which the said two impugned memorandums had been issued, the departmental proceedings were initiated, but cancelled and withdrawn in pursuance of the judgment and orders of this Court mentioned above.

4. The only ground for assailing the impugned Memorandum is that under Rule 9(2)(b)(ii) of the CCS (Pension) Rules, 1972 the departmental enquiry shall not be in respect of any event which took place more than 4 years before the institution or, initiation of the departmental enquiry. For easy reference, relation portion of the rule No. 9 is reproduced under:

9. Right of President to withhold or withdraw pension. - (1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement:

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees three hundred and seventy-five (Rupees one thousand nine hundred and thirteen from 1.4.2004 - See GID below Rule 49 per mensem).

(2)(a) The departmental proceedings referred to in Sub-rule (I) if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) The departmental proceedings, if not instituted while the Government servant

was in service, whether before this retirement, or during his reemployment,

(i) shall not be instituted save with the sanction of the President.

(ii) Shall not be in respect of any 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 President 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 Government servant during his service.

5. On bare perusal of the Rule 9(2)(b)(ii) it is crystal clear that departmental enquiry cannot be initiated against an employee even with the sanction of the President in respect of an event which took place more than 4 years before such institution. In the present case, it is clear that the two impugned Memorandums are for the incident and/or event which took place more than 10 years ago before issuing the impugned memorandums for initiation of the disciplinary proceedings.

6. Mr. N. Kumarjit Singh, learned Counsel appearing for the Petitioner, in order to substantiate the case of the Petitioner, placed heavy reliance on the decision of the Apex Court in State of U.P. and Another Vs. Shri Krishna Pandey, where in the Apex Court held that departmental enquiry for embezzlement initiated more than four years from the date of institution is illegal under Regulation 351-A of the Civil Services Regulation, which is pari-materia with the Rule 9(2)(b) of the CCS (Pension) Rules, 1972. For easy reference, paras 3, 4 and 6 of the SCC in Shri Krishna Pandey's case (supra) read as follows:

3. The only provision brought to our notice is Regulation 351-A of Civil Services Regulations which reads as under:

The Governor reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement:

Provided that

(a) 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 Governor.

(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

Governor may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made.

(b) judicial proceedings, if not instituted while the officer was on duty either before retirement or during re-employment, shall be instituted in accordance with Sub-clause (ii) of Clauses (a) and (c) the Public Service Commission, U.P. shall be consulted before final orders are passed.

Explanation. - For the purpose of this article -

(a) departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him, or if the officer has been placed under suspension from an earlier date, on such date; and

(i) in the case of criminal proceedings, on the date on which a complaint is made, or a charge sheet is submitted, to a criminal court; and

(ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made, to a civil court.

Note. -As soon as proceedings of the nature referred to in this article are instituted the authority which institutes such proceedings shall without delay intimate the fact to the audit officer concerned.

4. A reading thereof clearly indicates that the Governor reserves to himself the power and right to withhold or withdraw pension or a part thereof, whether permanently or for a specified period, Equally, he has right to order recovery from pension of the whole or part of any pecuniary loss caused to the Government when it is found in a departmental or judicial proceedings that the delinquent was guilty of grave misconduct or has caused pecuniary loss to the Government by his misconduct or negligence while he was continuing in service including the period of his reemployment after retirement. But the conditions precedent are that the departmental proceedings should be initiated only either before retirement or during re-employment and the same shall not be instituted without the sanction of the Governor. It should be in respect of an event which may have taken place not more than 4 years before the institution of such proceedings.

6. It would, thus, be seen that proceedings are required to be instituted against a delinquent officer before retirement. There is no specific provision allowing the officer to continue in service nor any order passed to allow him to continue on re-employment till the enquiry is completed, without allowing him to retire from service. Equally, there is no provision that the proceedings be initiated as a disciplinary measure and the action initiated earlier would remain unabated after retirement. If Regulation 351-A is to be operative in respect of pending proceedings, by necessary implication, prior sanction of the Governor to continue the proceedings against him is required. On the other hand, the Regulation also would indicate that if the officer caused pecuniary loss or committed embezzlement, etc., due to misconduct or negligence or dereliction of duty, then

proceedings should also be instituted after retirement against the officer as expeditiously as possible. But the events of misconduct, etc., which may have resulted in the loss to the Government or embezzlement, i.e., the cause for the institution of proceedings, should not have taken place more than four years before the date of institution of proceedings. In other words, the departmental proceedings must be instituted before lapse of four years from the date on which the event of misconduct, etc., had taken place. Admittedly, in this case the officer had retired on 31.3.1987 and the proceedings were initiated on 21.4.1991. Obviously, the event of embezzlement which caused pecuniary loss to the State took place prior to four years from the date of his retirement. Under these circumstances, the State had disabled itself by their deliberate omissions to take appropriate action against the Respondent and allowed the officer to escape from the provisions of Regulation 351-A of the Regulations. This order does not preclude proceeding with the investigation into the offence and taken action thereon.

(Emphasis supplied)

7. Mr. C. Komol, learned CGSC appearing for the Respondents also strenuously contends that the present writ petition is pre-mature inasmuch as in the present writ petitions what are impugning or assailing are only the Memorandums for initiating departmental proceedings against the Petitioner. In support of his contention, he relied on the decision of the Apex Court in *Union of India and Anr. v. Kunisetty Satyanarayana* (2006) 12 SCC 28. It is well settled that ordinarily no writ petition against a charge sheet or show-cause notice but in exceptional cases High Court quash the charge sheet or show-cause notice if it is found to be wholly illegal. Paras 14, 15 and 16 of the SCC in *Kunisetty Satyanarayana*'s case (supra) read as follows:

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge sheet is that at that stage the writ petition may be held to be premature. A mere charge sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, but the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge sheet or show-cause notice if it is found to be wholly without jurisdiction or for some reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such matter.

(Emphasis supplied)

8. This Court is not disputing the proposition of law made by Mr. C. Komol, learned CGSC but as held by the Apex Court in Shri Krishna Pandey's case (supra) it is also equally settled that this Court can quash, by invoking writ jurisdiction, the disciplinary proceedings or Memorandums or initiation of a disciplinary proceedings if it is found to be wholly without jurisdiction. In the instance case, it is clear that the initiation of the disciplinary proceedings by the impugned order for the incident which took place more than 10 years ago is clearly barred by Rule 9(2)(b)(ii) of the CCS (Pension) Rules, 1972.

9. It is so well settled construction of statute that the whole provision of statute should be read for the purpose of construction and there cannot be construction or interpretation by isolating a part of it without considering the other parts or provisions of the statute. At the last Mr. Komol, learned CGSC made an faint attempt to support the case of the Respondents by reading only Rule 9(2)(b)(i) that since sanction of the President had been obtained, departmental proceedings could be initiated against the Petitioner for the incident which took place more than 10 years ago from the date of issuing the impugned Memorandums for initiating the disciplinary proceedings; such attempt made by Mr. Komol is not sustainable in the eye of law inasmuch as he could not read Rule 9(2)(b)(i) in isolation of other parts of the rule, i.e., Rule 9 more particularly Rule 9(2)(b)(ii).

10. For the foregoing reasons, the impugned Memorandums dated 16.10.2009 and 22.8.2008 are hereby quashed. Parties are to bear their own costs.