
(2011) 12 DEL CK 0127
In the Delhi High Court
Case No : Writ Petition (C) 1212 of 2011

MCD

APPELLANT

Vs

Bhagwan Dass

RESPONDENT

Date of Decision : 13-12-2011

Acts Referred:

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

Citation : (2011) 12 DEL CK 0127

Hon'ble Judges : A.K. Sikri, Acting C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Shobhaa Gupta, for the Appellant; Puneet Bajaj, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, Acting Chief Justice

1. The admitted facts in this case are that the Respondent, on attaining the age of superannuation, retired from service on 30th June, 2002. However, vide order dated 28th June, 2002 (i.e., two days before his retirement) served on the Respondent on 29th June, 2002, he was placed under suspension. Thereafter, chargesheet was issued leveling the allegations that the Respondent had, sometime in May, 1995, fraudulently withdrawn money as loan from the GPF accounts of two other employees namely Ganga Popli and Maya Devi. According to the Petitioner, the Respondent did not accept the chargesheet when it was sought to be served upon him, and therefore, notice thereof was published in the newspapers "The Statesman" (English) and "Qaumi Awaz" (Urdu) on 15th September, 2006 and "Punjab Kesari" (Hindi) on 16.9.2006. It resulted in the punishment order dated 26th February, 2007 whereby the Disciplinary Authority imposed penalty of 66% cut for life time from the pension of the Respondent.

2. O.A. No. 551/2010 preferred by the Respondent has been allowed by the Tribunal vide impugned order dated 17th September, 2010 holding that the service of chargesheet in 2005, i.e., after the retirement of the Respondent,

relating to an event which took place much earlier than four years, was time barred. For this purpose the learned Tribunal has referred to Rule 9 of the CCS (Pension) Rules. Rule 9 (2) (b) (ii) in this behalf stipulates limitation period of four years. This Rule mandates that the departmental proceedings if not instituted while the Govt. servant was in service, whether before his retirement or during his re-employment shall not be in respect of any event which took place more than four years before such institution.

3. Admittedly, the incident/event for which the Respondent was charged relates to the year 1995 and the chargesheet dated 15th July, 2005 (served on 18th July, 2005), therefore, related to an event which occurred more than 10 years before issuance/service of chargesheet. Further, this chargesheet was also served after the retirement, therefore, on the application of the aforesaid provisions contained in Rule 9, the chargesheet was clearly time barred.

4. The submission of learned Counsel for the Petitioner is that the complaint was received by the Petitioner from the aforesaid two ladies on 17th February, 2002 and 18th February, 2002, and therefore, four years" period should be reckoned from these dates. On that basis, it is argued that chargesheet served on 18th July, 2005 would be within four years. She argues that since the misconduct came to the notice of the Petitioner only when the complaints were received in February, 2002 and the Petitioner had no knowledge about this misconduct committed by the Respondent earlier, the period of limitation should be counted from these dates.

5. We are not convinced with the aforesaid argument. Having regard to plain language of Rule 9 (2) (b) (ii) the departmental proceedings cannot be instituted in respect of an event which took place more than four years before the institution of the departmental proceedings. The date of knowledge of the event has no place under the said Rule. Had the intention been to provide for the limitation of four years from the date of knowledge, the Rule would have provided so. Moreover, we find such an argument, i.e., that the period from the date of commission of irregularity to the date such irregularity comes to the knowledge cannot be reckoned for ascertaining whether there was any delay in initiating disciplinary proceedings, to have been negated by the Supreme Court in *P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board*, . Similarly, in *State of Bihar v. Mohd. Idris Ansari*, 1995 Supl. (3) SCC 56 it was held that the period prescribed for initiation of disciplinary proceedings is to be computed from the date of happening of the event in relation where to proceedings are initiated.

6. Even when we look into the facts of the case, the complaint was received in February, 2002, the Petitioner must have been fully aware of the fact that the Respondent was going to retire on 30th June, 2002. If the Petitioner wanted, it could have acted with promptitude by issuing chargesheet before the retirement of the Respondent to avoid recourse of Rule 9. If that was not done, it is the Petitioner who is to be blamed for its own inaction.

7. We find another interesting argument, raised in the writ petition. It is contended that the CCS (Pension) Rules are not applicable and the Petitioner has its own DMC Services (Control and Appeal) Regulations, 1959 and the chargesheet was served under these Rules. On this basis, it is sought to be argued that the period of limitation provided under Rule 9 shall not be applicable. If we accept this contention, then the impugned penalty order is, in any case, without jurisdiction. As mentioned above, by the impugned orders dated 7th May, 2007, cut of 66% in the pension of the Respondent was imposed as penalty. However, we find from the reading of the aforesaid Regulation that no such penalty is prescribed. Rule 6 stipulates different kinds of penalties which can be imposed. These are "Minor Penalties" and "Major Penalties" but it does not include any penalty of forfeiture or cut in pension. Thus, such a penalty could not have been imposed at all. In fact, if CCS (Pension) Rules are not applicable and only DMC Services (Control and Appeal) Regulations, 1959 are applicable, then there cannot be any chargesheet against an employee who has already retired and the penalties which are provided in Rule 6 are of the nature which can be imposed only on a serving employee. It has been held in Chandra Singh Vs. State of Rajasthan and Another, that there must exist a specific provision before whole or part of the pension can be withheld or withdrawn.

8. Thus, from whatever angle, the matter is to be looked into, the Respondent could not have been proceeded against departmentally. This writ petition is devoid of any merit and is, accordingly, dismissed.