

(2023) 08 DEL CK 0197

In the Delhi High Court

Case No : Civil Writ Petition No. 11179 Of 2023, Civil Miscellaneous Application
No. 43443-44 Of 2023

Satyendra Nath Singh Deputy Inspector General Csf (Retired) **APPELLANT**

Vs

Union Of India Through Its Secretary & Ors **RESPONDENT**

Date of Decision : 23-08-2023

Acts Referred:

Central Civil Service (Pension) Rules, 2021 — Rule 8(2)(c)(ii)
Odisha Civil Services (Pension) Rules, 1992 — Rule 7, 7(2)(b)

Citation : (2023) 08 DEL CK 0197

Hon'ble Judges : Sanjeev Sachdeva, J; Manmeet Pritam Singh Arora, J

Bench : Division Bench

Advocate : Arun Bhardwaj, Kumud Ranjan Mishra, Rizwan, Vijay Joshi,
Abhishekh Gupta, Geetanjali Tyagi, Devesh Tripathi

Final Decision : Disposed Of

Judgement

Sanjeev Sachdeva, J

1. Petitioner impugns charges contained in Memorandum of Charges dated 29.05.2023.

2. Petitioner joined the service of the Central Industrial Security Force as an Assistant Commandant on 16.09.1991. Petitioner rose to the rank of Deputy Inspector General and superannuated on 30.11.2022. At the time of superannuation of the petitioner, certificates were issued by the competent authority certifying that there was no departmental proceeding pending or contemplated against the petitioner. All retiral benefits of the petitioner were thereafter released.

3. On 14.06.2023, as per the petitioner, the impugned Memorandum of Charges dated 29.05.2023 has been served on the petitioner. Learned senior counsel for the petitioner, inter alia, contends that the Article of Charge No. I is barred by limitation.

4. Learned senior counsel for the petitioner submits that though petitioner has impugned the entire charge-sheet as a whole, he, however, restricts his challenge to Article of Charge No. I on the ground that it is barred by limitation in terms of Rule 8 (2) (c) (ii) of Central Civil Service (Pension) Rules, 2021. He reserves the right of the petitioner to raise all available defenses qua Articles of Charge No.II and III at an appropriate stage.

5. Learned senior counsel further relies on the decision dated 17.05.2023 of the Supreme Court in W.P. (C) 1042/2021, Suchismita Mishra Vs. High Court of Orissa & Ors. to contend that proceedings are deemed to be initiated on the date when statement of charges is issued.

6. Learned senior counsel for the petitioner further submits that that the charge-sheet being a composite charge-sheet cannot be split into two and if the plea of the petitioner is accepted, the respondents would be required to take fresh steps in the matter and as such no inquiry could be conducted prior to the respondents taking a view in the matter.

7. Rule 8 (2) (c) (ii) of Central Civil Service (Pension) Rules, 2021 reads as under:-

"8. Power to withhold or withdraw pension-

(2) x x x x x

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

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

x x x x x

Explanation.- For the purpose of this rule,-

(1)(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;

8. Rule 8 (2) (c) (ii) and the explanation mandates that departmental proceedings, if not instituted while the government 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.

9. Article of Charge No.1 issued to the petitioner reads as under:-

"That Shri Satyendra Nath Singh while posted and functioning as Deputy Inspector General, CISF NZ-II during the period from 01.03.2019 to 17.01.2020, issued posting order in respect of HC/GD Ravi Ji Bhat from SHEP Salal to NFL

Bhatinda vide DIG/NZ-II HQrs, SO No. 04/2019 issued under letter No. (904) dated 04.04.2019 (at Srl. No. 02), cancelling his earlier posting order to DHEP Dauliganga in violation of NZ-I HQrs SO No.110/2018 issued under letter No. (1096) dated 28.12.2018, which was in compliance to NS HQrs direction, i.e., a senior formation.

Thus, Shri Satyendra Nath Singh, Deputy Inspector General (Retired) failed to maintain devotion to duty, upright conduct and decorum expected from a Gazetted Officer and thereby violated the provisions contained in Rule 3 (1) (i), (ii), (iii) & (ix) of CCS (Conduct) Rules, 1964 and acted in a manner unbecoming of an officer of his rank in an Armed Force of the Union - CISF. Hence, the charge."

10. Article of Charge No. I deals with a posting order issued on 04.04.2019 by the petitioner. The charge-sheet dated 29.05.2023 has been served on the petitioner on 14.06.2023. Even if the date of the initiation is taken as 29.05.2023, the same pertains to the posting order issued by the petitioner on 04.04.2019 i.e., more than four years prior to the initiation.

11. Reference may be made to the decision of the Supreme Court in Suchismita Mishra (supra), wherein the Supreme Court while considering Rule 7(2)(b) of the Odisha Civil Services (Pension) Rules, 1992, which are pari materia to the Rule in issue, has held as under:-

"13. From the very scheme of Rule 7 of Rules, 1992, it needs no interpretation that in reference to the officer/employee, who stood retired from service, inquiry indeed can be initiated against him/her, provided sanction is obtained from the Government and must be during the period of 4 years before such institution and the Explanation added to the scheme of Rules makes it abundantly clear that proceedings shall be deemed to be instituted on the date on which the statement of charges are issued to the Government servant/pensioner, as the case may be."

12. The Supreme Court in Suchismita Mishra (supra) has held that in terms of Rule 7 (2), inquiry could be initiated against an officer who stood retired from service, provided sanction is obtained from the Government and act must be during the period four years before such institution. Initiation has been explained by the Supreme Court to mean that the proceeding shall be deemed to be instituted on the date on which statement of charges are issued to the government servant.

13. Per contra, learned counsel for respondents submits that with regard to Article of Charge No.1, explanation was sought from the petitioner on 29.09.2020 and on the letter seeking explanation certain documents were sought for by the petitioner, which were supplied to the petitioner on 12.03.2021 and 09.03.2022. He submits that in the facts of the case, the initiation is within four years.

14. Without prejudice to the above and in view of the above objection raised by the petitioner and the stand of the respondent that on account of an explanation being sought, the issue was alive and the initiation was within four years, we deem it expedient to dispose of this petition with a direction to the respondents to treat the petition of the petitioner as a representation qua Article of Charge No.I and take a view thereon within a period of six weeks. The decision be communicated to the petitioner. It would be open to the petitioner to take his remedies in law in case petitioner is aggrieved by the decision of the respondents on the representation of the petitioner.

15. Petition is accordingly disposed of in the above terms. It is clarified that this Court has neither considered nor commented on the merits of the contention of the parties. All rights and contentions of the parties are reserved.

16. Dasti under signature of the Court Master.