

(2011) 01 P&H CK 0036
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 18133-CAT of 2005

Union of India (UOI) and Others

APPELLANT

Vs

Kewal Singh and Another

RESPONDENT

Date of Decision : 18-01-2011

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14, 2.2(b)(2), 9(2)(b)(2)

Citation : (2011) 162 PLR 429

Hon'ble Judges : Tej Pratap Singh Mann, J; M.M. Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The instant petition at the instance of Union of India and its officers filed under Article 226 of the Constitution is directed against order dated 19.7.2005 (P-3) passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for brevity, "the Tribunal") allowing the Original Application filed by the applicant-Respondent No. 1. The Tribunal has quashed charge memo dated 28.9.2004 (A-1) as also the orders dated 10.2.2005 (A-2 and A-3) whereby the Presenting Officer and the Inquiry Officer were appointed to hold an inquiry against the applicant-Respondent No. 1.

2. Facts in brief are set out here. The applicant-Respondent No. 1 started his service career as Sub Inspector, CBI and gradually rose to the level of Superintendent of Police, CBI. On 30.11.2000, he retired from service on attaining the age of superannuation and was granted entire pensionary benefits. On 28.9.2004, almost 4 years after his retirement, he received a charge-sheet (A-1) wherein the main charge against him was that while functioning as SP, CBI at Jabalpur Branch in the year 2000, he in his capacity as Head of Office, submitted his pension papers to the Pay & Accounts Officer, CBI, New Delhi on 31.5.2000 along with Form No. 7 indicating at column No. 16 that no departmental or judicial proceedings were pending against him. He is alleged to

have attached a certificate in his own favour indicating therein that no departmental or judicial proceedings were pending against him. On 31.5.2000, in fact, he had full knowledge of the fact that a charge memo dated 19.8.1999 had been issued to him by the disciplinary authority under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for brevity, "the Rules") which was duly served on him on 10.9.1999. This concealment of information by the applicant-Respondent No. 1 about the pending departmental proceedings against him led to the release of various retiral benefits to him which otherwise could have been withheld.

3. The applicant-Respondent No. 1 drew the attention of the Petitioners to the fact that the event which is made the basis of charge-sheet viz. submission of pension papers and giving of a false declaration had allegedly taken place on 31.5.2000 whereas the charge-sheet was issued on 28.9.2004 which is after more than 4 years. He pleaded that as per Rule 9(2)(b)(ii) of the Central Civil Services (Pension) Rules, 1972 (for brevity, "1972 Rules") issuance of such charge-sheet for an event which had occurred more than 4 years back from the date of institution of departmental proceedings was impermissible. But the Petitioners ignoring the provisions of the 1972 Rules issued him letters dated 10.2.2005 appointing the Presenting Officer as well as the Inquiry Officer.

4. Aggrieved by the said action taken by the Petitioners, the applicant-Respondent No. 1 approached the Tribunal with a prayer for quashing the charge-sheet dated 28.9.2004 (A-1) and the orders dated 10.2.2005 (A-2 and A-3) whereby the Presenting Officer and the Inquiring Authority had been appointed. The Tribunal quashed the order dated 28.9.2004 (A-1) and the subsequent orders dated 10.2.2005 appointing the Presenting Officer and the Inquiry Officer (A-2 and A-3) by observing that the provisions of Rules 9(2) (b)(ii) of the 1972 Rules were quite similar to the provisions of Rule 2.2(b)(2) of the Punjab Civil Services Rules, Volume II, which were considered by this Court. Being the jurisdictional High Court reliance was also placed on the judgments of this Court rendered in the cases of Narinder Dev Shanna v. State of Punjab 1996 (2) SLR 270; B.S. Tomar v. Haryana State Minor Irrigation & Tubewells Corporation Ltd. 2004 (4) SLR 424 and Puran Chand v. State of Punjab 2000 (2) RSJ 85. Feeling aggrieved the Petitioners have moved this Court praying for quashing the judgment dated 19.7.2005 passed by the Tribunal.

5. Learned Counsel for the Petitioner-Union of India has argued that proceedings pursuant to charge memo dated 19.8.1999 (P-4), which was deliberately not mentioned in Column No. 16 of Form No. 7 filed on 31.5.2000 by the applicant-Respondent No. 1, were in progress, during the period ranging from the date of his retirement i.e. 30.11.2000 to the date of passing of the order dated 9.7.2004 (P-5) and a penalty of imposition of 20% cut in pension was imposed. It was only after the said order dated 9.7.2004 that the eventuality to proceed with the matter had arisen. It has been submitted that when the order of penalty of imposition of 20% cut in pension was passed that the opportunity to issue a

charge sheet dated 28.9.2004 (A-1) had arisen which is within 4 years of the event as per Rule 9(2)(b)(ii) of the 1972 Rules. Learned Counsel has further argued that during the pendency of the charge-sheet dated 19.8.1999 (P-4) it was the duty of the applicant-Respondent No. 1, being Head of the Office, to convey the true and correct facts for the release of pensionary benefits, hence the order dated 19.7.2005 (P- 3) passed by the Tribunal is liable to be quashed.

6. No one has appeared on behalf of the applicant-Respondent No. 1. However, Respondent No. 1 has submitted in his written statement that the plea of the Petitioners is contrary to Rule 9(2)(b)(ii) of the 1972 Rules which specifically provides that the "event" must be within four years of the institution of proceedings. In the instant case the event had occurred on 31.5.2000, which is undisputedly more than four years preceding the date of institution of inquiry as the inquiry was instituted on 28.9.2004.

7. After hearing the learned Counsel for the Petitioners and on careful perusal of the paper book we find that a short question for determination before us is whether departmental proceedings can be instituted against a retired employee in respect of an event which has taken place four years preceding the date of institution of a departmental inquiry. The aforesaid bar has been created by Rule 9(2)(b)(ii) of the 1972 Rules which prohibits institution of an inquiry against a retired officer for an event which had taken place more than four years before such institution. The relevant extract of Rule 9(2)(b) of the 1972 Rules is reproduced below:

9(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) 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, (emphasis supplied) 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 the departmental proceedings in which order of dismissal from service could be made in relation to the Government servant during his service.

8. A bare perusal of the aforementioned Rule makes it clear that there is a complete embargo on holding of an enquiry against a retired employee for any event which has taken place four years prior to the institution of enquiry. In other words, in case a departmental proceeding is to be initiated against an employee after his retirement, it cannot be in respect of an event, which has taken place more than four years prior to the date of the institution of the inquiry. Moreover, the Tribunal has placed reliance on various judgments delivered by this Court interpreting the provisions of Rule 2.2(b)(2) of the Punjab Civil Services Rules, Volume II, which is pari material to Rule 9(2)(b)(ii) of the 1972 Rules and reads

thus:

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

(i) Shall not be instituted save with the sanction of the Government.

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

9. We therefore find no merit in the contentions raised by the learned Counsel for the Petitioners because on the plain reading of Rule 9(2)(b)(ii) of the 1972 Rules there is complete bar on holding of an inquiry in respect of an event that has taken place more than four years preceding the date of institution. Even otherwise on principle such a rule is desirable because a retired employee shall be permitted to sit back and enjoy evening of his life rather than searching his memory chip to figure out what has happened four years ago. Moreover, the question has been adjudicated and finally settled in various Division Bench judgments of this Court in the cases of Baldhir Singh v. State of Punjab ILR (2009) (P&H) 163 and O.P. Kharab v. HVPN Ltd. ILR (2007) (P&H) 613.

10. On the basis of statutory rule, principle and precedents it becomes evident that the Tribunal did not commit any error of law warranting reversal of its judgment. The Tribunal has taken the correct view. Therefore, this petition is dismissed while affirming the judgment of the Tribunal quashing the charge-memo issued by the Petitioners on 28.9.2004 (A-1) and orders dated 10.2.2005 (A-2 and A-3) whereby the Presenting Officer and the Inquiry Officer were appointed.

11. No order as to cost.