
Before M.M. Kumar & M.M.S. Bedi, JJ.

O.P. KHARAB,—*Petitioner*

versus

HVPN LTD. AND OTHERS,—*Respondents*

C.W.P. NO. 300 OF 2005

30th October, 2006

Constitution of India, 1950—Art. 226—Punjab Civil Service Rules, Vol. II—RI.2.2(b)—Haryana Civil Service(Punishment and Appeal) Rules, 1987—RI. 7—Haryana State Electricity Board Regulations, 1990—Reg. 7—Issuance of a charge sheet to an Assistant Executive Engineer after more than six years of his retirement—RI.2.2(b) provides that no disciplinary proceedings could be initiated against an employee after his retirement if the event is more than four years old—Charges in charge sheet against petitioner related to an event which occurred more than four years before retirement—Petition allowed, orders issuing charge sheet and appointing Enquiry Officer for holding regular departmental enquiry against petitioner along with consequent proceedings quashed.

Held, that a perusal of Rule 2.2 (b) of Punjab Civil Service Rules, Volume II shows that the respondents could order the recovery from pension of the whole or part of any pecuniary loss caused to the government if a pensioner is found in a department or judicial proceedings to be guilty of grave misconduct or he had caused pecuniary loss to the government by misconduct or negligence during his service provided that such an enquiry has been instituted during the period when the officer was on duty. However, if such an enquiry has not been instituted while the officer was on duty and before his retirement then it cannot be instituted in respect of an event which took place more than four years preceding the institution of such proceedings. In other words, an enquiry can only be instituted in respect of an event which has occurred four years before the date of the institution. The explanation appended to rule 2.2 (b) (4) further clarifies that departmental proceedings would be deemed to have been instituted

when the charges framed are issued to him. In other words the date of institution of the departmental proceedings would be the date when the charge sheet is issued to the petitioner.

(Para 7)

JK Goel, Advocate, *for the petitioner.*

Namit Kumar, Advocate, *for the respondents.*

JUDGEMENT

M.M. Kumar, J.

(1) The prayer made by the petitioner who is a retiree is that the charge sheet dated 30th October, 2003 (Annexure P-1), the order dated 21st July, 2004 (Annexure P-3) imposing a ten per cent cut upon his pension and the letter dated 9th November, 2004 (Annexure P-4) appointing an Enquiry Officer for holding regular departmental enquiry be quashed. It is appropriate to mention that learned counsel for the respondent has stated that the order dated 21st July, 2004 (Annexure P-3) imposing a cut of 10 per cent on the pension of the petitioner was passed without holding enquiry and the same has been withdrawn on 3rd August, 2005 without prejudice to the rights of the respondents to hold enquiry against the petitioner. Therefore the legality of orders dated 30th October, 2003 (Annexure P-1) and order dated 9th November, 2004 (Annexure P-4) survive for our consideration.

(2) Brief facts of the case are that the petitioner was appointed as Draftsman in the erstwhile Haryana State Electricity Board which was later on separated in various Nigams. The petitioner was allocated to HVPN. He retired on 30th June, 1997 from the post of Assistant Executive Engineer from the office of respondent No. 2 on attaining the age of superannuation. After more than six years of his retirement, the Superintending Engineer, respondent No. 2 issued him a charge sheet under Rule 7 of the Haryana Civil Service (Punishment and Appeal) Rules, 1987 read with Regulation 7 of the Haryana State Electricity Board Regulation, 1990. In the summary of charges the following acts of omission and commission are alleged to have been committed by the petitioner :

- “1. That you did not carry out proper inspection of sub-setting of TL No. 98 to 107 during the period May, 1994 to July, 1994.

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2. That you even did not properly supervise the information of bulbs in the piles and casting of piles up to proper length.
 3. That you did not fill up the concrete control register of TL No. 98 to 107 properly and left in blank.
 4. That due to above negligence on your part the Nigam suffered a financial loss of Rs. 50 lacs (approx.)

The above acts of omission and commission on the part of Shri O.P. Kharb constitute a grave misconduct on your part and warranting strict action against you.”

(3) The petitioner sent his reply to the afore-mentioned charges on 13th November, 2003 (Annexure P-2) by taking the stand that under the rule 2.2(b) of the Punjab Civil Service Rules, Volume II no disciplinary proceedings could be initiated against an employee after his retirement if the event is more than four years old. He also submitted that the charges in the impugned charge sheet related to the period prior to 30th May, 1998 and therefore no disciplinary action was to be initiated against him. His reply was considered but it was concluded by the respondents that the petitioner was to ensure to get the work done as per design and quality but he failed to carry out the proper inspection of the infrastructure. It was concluded further that he failed to properly supervise the formation of bulbs in the piles and casting of piles upto proper length. The towers failure was due to negligence on the part of the petitioner. It was further concluded that the officer has caused financial loss to the Nigam by his negligence and cut of 10 per cent in his pension was imposed.

(4) The afore-mentioned order dated 21st July, 2004 (Annexure P-3) was passed without holding any enquiry or appointing anyone as enquiry officer. On 9th November, 2004, respondent authorities issued another letter appointing Shri S.S. Gakhar, Superintending Engineer office of the Chief Engineer, HVPN as Enquiry Officer to conduct a regular departmental enquiry in respect of the charge sheet dated 30th October, 2003 (Annexure P-1). On 6th December, 2004 (Annexure P-5), the petitioner through his counsel served a legal notice. When the matter came up for consideration on 5th December, 2005 we have passed an interim order directing that the enquiry proceedings may continue but no final order be passed.

(5) In the written statement, the stand taken by the respondents is that the order dated 21st July, 2004 imposing a cut of 10 per cent upon the pension of the petitioner has not been acted upon as the order was passed without holding any departmental enquiry against the petitioner. It is for this reason that on 9th November, 2004 (Annexure P-4) an enquiry officer was appointed to hold a regular departmental enquiry. According to the respondents, the petition is premature and it could not be concluded as to whether the petitioner would be exonerated or is likely to be found guilty of the charges. In respect of the provision contained in Rule 2.2 (b) of the Punjab Civil Service Rules, Volume II, (as applicable to State of Haryana) the stand of the respondents is that they are entitled to withhold or withdraw pension or any part thereof in respect of an event which might have taken place not more than four years prior to the date of institution of proceedings. There is thus no dispute that proceedings could be instituted only in respect of an event which has occurred within four years preceding the date of institution of proceedings. The claim however made is that ten number of towers of the Nissang-Kaithal Line fell down on 1st June, 2000. An inspection report of the Committee was submitted on 21st July, 2000 retirement of the petitioner and the charge sheet issued on 30th October, 2003 must be held within time.

(6) After hearing learned counsel for the parties, perusing the writ petition as well as the stand of the respondents we are of the view that this petition deserves to succeed. It is admitted position that the petitioner had retired on 30th June, 1997. A charge sheet against the petitioner could have been issued in respect of an event which has taken place four years preceding the institution of such proceedings. The afore-mentioned legal position would be explicit from the bare reading of Rule 2.2 (b) of Punjab Civil Service Rules, Volume II (as applicable to the State of Haryana) and the same reads as under :

“2.2(b) The Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings, to have been guilty of grave misconduct or to have caused

pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement.

Provided that —

- (1) Such departmental proceedings, if instituted while the officer was in service, whether before his retirement, or during his re-employment shall after the final retirement of the officer, be deemed to be a proceeding under this rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service ;
- (2) Officer was on duty either before retirement or during his re-employment ;
 - (i) shall not be instituted save with the sanction of the Government ;
 - (ii) shall be in respect of any 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 Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made :
- (3) Such judicial proceedings, if not instituted while the officer was on duty either before his retirement or during his re-employment, shall be instituted in respect of an event as is mentioned in clause (ii) of Proviso (2) ; and
- (4) The Public Service Commission should be consulted before final orders are passed.

Explanation.—For the purposes of this rule.

- (1) 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

(2) Judicial proceedings shall be deemed to have been instituted.

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

(ii) in the case of civil proceeding, on the date on which the plaint is presented or, as the case may be, an application is

(7) A perusal of the afore-mentioned Rule shows that the respondents could order the recovery from pension of the whole or part of any pecuniary loss caused to the government if a pensioner is found in a department of judicial proceedings to be guilty of grave misconduct or he had caused pecuniary loss to the government by mis-conduct or negligence during his service provided that such an enquiry has been instituted during the period when the officer was on duty. However, if such an enquiry has not been instituted while the officer was on duty and before his retirement then it cannot be instituted in respect of an event which took place more than four years preceding the institution of such proceedings. In other words, an enquiry can only be instituted in respect of an event which has occurred four years before the date of the institution. The explanation appended to Rule 2.2 (b)(4) further clarifies that departmental proceedings would be deemed to have been instituted when the charges framed are issued to him. In other words, the date of institution of departmental proceedings would be the date when the charge sheet is issued to the petitioner.

(8) On the basis of the afore-mentioned principle laid down in Rule 2.2(b) it has to be concluded that the charges are more than four years old from the date of charge sheet was issued. It is evident from the facts that the charge sheet was issued to the petitioner on 30th November, 2003 in respect of events commencing from May, 1994 to July, 1994 or at best of the year 1998. On the date of issuance of charge sheet all those allegations were in respect of event which has occurred more than four years ago. The principle adopted in explanation to Rule 2.2(b)(4) is a whole some principle which has backing of judicial precedents. In the case of **Union of India versus K. V. Jankiraman (1)** the afore-mentioned principle has been applied

by Hon'ble the Supreme Court to a case of promotion by holding that promotion cannot be deferred to an employee on the basis of mere pendency of departmental proceedings unless a charge sheet has been issued. It is only after the issuance of charge sheet that disciplinary proceedings could be deemed to be pending. Accordingly, the issuance of charge sheet dated 30th October, 2003 (Annexure P-1) and the appointment of Enquiry Officer on 9th November, 2004 (Annexure P-4) are liable to be quashed.

(9) In view of the above, the writ petition is allowed. Order dated 30th October, 2003 (Annexure P-1) issuing charge sheet to the petitioner and the order dated 9th November, 2004 (Annexure P-4) appointing Enquiry Officer for holding a regular departmental enquiry against the petitioner alongwith consequent proceedings of the enquiry officer are hereby quashed.

R.N.R.

Before Viney Mittal and H.S. Bhalla, JJ.

AMARDEEP AND OTHERS,—*Petitioners*

versus

STATE OF HARYANA AND OTHERS,—*Respondents*

C.W.P. NO. 9731 OF 2006

8th August, 2006

Constitution of India, 1950—Art. 226—Admission to MBBS/ BDS courses in private unaided Medical Colleges—Separate entrance test and initiation of independent process of admission for private self financed unaided institutions—Challenge thereto—Provisions of prospectus stipulate that seats in privately managed unaided institutes would be filled up through a separate test conducted by Association of Colleges—State Admission Committee permitting Association of private colleges to conduct their separate entrance test and hold independent counselling—State Government observers duly supervised entrance test and counselling held by Association—Action of respondents does not suffer from any infirmity and illegality—Petition dismissed.