

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 270

CWP-5842-2022

Date of decision : 07.12.2022

Raj Pal

..... Petitioner

VERSUS

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr.B.S.Rana, Senior Advocate, with
Mr.Nayandeep Rana, Advocate, for the petitioner.

Mr.Tapan Kumar Yadav, DAG, Haryana.

DEEPAK SIBAL, J. (ORAL)

Through the present petition the petitioner seeks quashing of order dated 05.10.2021 through which under Rule 12.2(b) of the Haryana Civil Services (Pension) Rules, 2016 (for short, the Rules) a regular departmental inquiry has been ordered to be held against him on the ground that between the years 1986-88, while he was posted as an Inspector in the Haryana Police at Karnal, he had also passed his LLB course from Rajasthan and therefore could not have been present at two places at the same time.

The facts, in brief, which are required to be noticed for adjudicating upon the instant petition are that on 15.11.1981 the petitioner was recruited as a Constable in the Haryana Police. Thereafter he earned promotions to the posts of Head Constable, Assistant Sub Inspector, Sub Inspector and in the year 2009 was promoted as an Inspector from which post he superannuated on 30.06.2019. After attaining the age of superannuation he was granted one year's extension in service which came to an end on 30.06.2020. Thereafter, on 05.08.2021 the Additional Chief Secretary, Department of Home, Haryana accorded necessary permission to initiate a departmental inquiry against the petitioner under Rule 12.2(b) of the Rules on

the basis whereof the Superintendent of Police, Commando (H) Newal, Karnal passed an order dated 05.10.2021 through which the petitioner was informed that a regular departmental inquiry had been ordered against him. Alongwith such order a charge-sheet was also served upon the petitioner as per which the alleged misconduct by him was that between the years 1986-88, while he was posted at Karnal, he had undergone his LLB course from Nehru Memorial Law College, Hanumangarh, Rajasthan and Mehrisi Dayanand Saraswati University, Ajmer, Rajasthan and since he could not have been present at both the places at the same time he had fudged the record at either place. The petitioner represented to the inquiry officer informing him about the legal bar under Rule 12.2(b) read with Rule 12(5)(a) of the Rules as per which after the petitioner had retired from service he could not be departmentally proceeded against for a misconduct which had taken place beyond four years from the date of institution of the departmental proceedings. When the petitioner did not receive any response to his afore representation and the respondents intended to continue with the inquiry proceedings, he knocked the doors of this Court through the instant petition for the aforesaid relief.

Learned senior counsel appearing for the petitioner submits that the petitioner retired from service on 30.06.2019 and that even the extension of his service for one year ended on 30.06.2020 and since after his retirement he was sought to be departmentally proceeded against for an alleged misconduct which took place between the years 1986-88 which was well beyond four years from the date of the petitioner's retirement, the impugned departmental proceedings were barred under Rule 12.2(b) read with Rule 12(5)(a) of the Rules.

In support of the afore contention reliance was placed on the following judgments: -

1. *Punjab State Power Corporation Ltd., Patiala and others vs. Atma Singh Grewal* (2014) 13 SCC 666;
2. *Baldhir Singh vs. State of Punjab and others* 2008 (4) SCT 652;
3. *Sub Inspector Puran Chand (Retd.) vs. State of Punjab and others* 2000(3) SCT 515; and
4. *L.B.Gupta vs. Punjab State Electricity Board, Patiala* 2002 (1) SCT 285.

Per contra, learned State counsel submits that after the petitioner had superannuated he was given one year's extension in service and during this period a complaint was received against the petitioner that between the years 1986-88, while he was posted at Karnal, he had also undergone the LLB course from Rajasthan and since he could not be present at two places at the same time he had apparently wrongly shown himself present at either place. On the basis of the said complaint a discreet inquiry was held which went against the petitioner. Accordingly, a regular departmental inquiry was rightly ordered against the petitioner.

Learned counsel for the parties have been heard and with their able assistance the record has been perused.

Rules 12.2(b) and 12(5)(a) of the Rules, which are relevant, are reproduced as under: -

- “12. Right of Appointing Authority to withhold or withdraw pension.
- (1) xxx xxx xxx
 - (a) xxx xxx xxx
 - (b) xxx xxx xxx
 - (2)(a) xxx xxx xxx
 - (2)(b) The departmental proceedings, if not instituted while the Government employee 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, and
 - (iii) shall be conducted by such authority and at such place 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 in relation to the Government employee during his service.
 - (3) xxx xxx xxx
 - (4) xxx xxx xxx

(5) for the purpose of this rule-

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government employee or pensioner, or if the Government employee has been placed under suspension from an earlier date, on such date.”

A harmonious reading of Rules 12.2(b) and 12(5)(a) leads to only one irresistible conclusion that after an employee has retired from service there is a complete embargo on the initiation of departmental proceedings against him in respect of event(s) which may have taken place more than four years prior to the initiation of the departmental proceedings and that the date of initiation of such departmental proceedings is deemed to be the date when a charge-sheet is issued to the concerned government employee/pensioner/government employee placed under suspension. The apparent object behind these Rules seems to be that a retired employee, after the statutory period of four years, should be left to live in peace in the twilight zone of his life. The alleged misconduct on his part should be allowed to settle with the efflux of time. The rationale also appears to be based on the phrase 'let bygones be bygones' for retirees and because memory fades with age as also for the reason that it is not easy for a retiree to have access to the relevant record or his colleagues, who may have also retired and settled elsewhere, making it difficult for him to effectively defend himself.

In *Punjab State Power Corporation Ltd. Patiala's* case (supra) the respondent before the Supreme Court retired from service on 30.04.2004 and was issued a charge-sheet on 07.01.2008 through which he was sought to be departmentally proceeded against for events which had allegedly taken place between 15.05.2002 to 03.12.2002. Since these events were beyond four years from the date of issuance of the charge-sheet to the respondent therein, he assailed the same through a petition filed before this Court by relying on the second proviso to Rule 2.2(b) of the Punjab Civil Services Rules (Vol. II) (for short, the Punjab Rules). The second proviso to Rule 2.2(b) of the Punjab

Rules is similar to Rule 12.2(b) of the Rules and is reproduced below for reference: -

"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; and if he has retired, the event should not be more than 4 years old.

(iii) shall be conducted by such authority and in such place 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 in relation to the officer during his service."

A single judge of this Court after relying on the afore quoted proviso quashed the charge-sheet served upon the respondent therein. In an intra Court appeal such order of the Single Judge was upheld by a Division Bench occasioning the challenge by the respondent's employer before the Supreme Court which challenge was rejected as the Supreme Court was of the opinion that the High Court had rightly applied the afore quoted proviso to quash the charge-sheet.

To the same effect is the judgment of a Division Bench of this Court in *Baldhir Singh's* case (supra) wherein it was held as follows: -

"6. A bare perusal of the aforementioned Rule makes it clear that Rule 2.2(b) (ii) places a complete embargo on holding of an enquiry against a retired employee for any event which has happened 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 inquiry. The rationale behind the rule appears to be that a retiree should not be subjected to undue hardship in the evening of his life after having rendered satisfactory service to the State. If old matters which have been settled by afflux of time are permitted to be re-opened after expiry of period of four years then a retiree may not be in a position to defend himself because the evidence in his favour may not be available. The co-employee after retirement might have settled at far flung places and memory may not serve such witnesses and the retiree. The 'Sword of Damocles' in the shape of departmental inquiry cannot be kept hanging on the head of the retiree for all times to come and he should be allowed to live in peace after the statutory period of four years of his retirement has come to an end. Moreover, the learned State counsel has not been successfully able to controvert the argument and judgments (supra) relied upon by the learned counsel for the petitioner."

Similarly, another Division Bench of this Court in *Sub Inspector Puran Chand's* case (supra), while considering a similar issue, held as follows:-

7. Pointed attention of this Court has been drawn to clause (2) of the aforesaid rule 2.2(b). A careful perusal of the same would show that in case a departmental proceeding is to be initiated against an employee after his retirement, it cannot be in respect of an event which took place more than four years from the date when the proceeding is initiated. It is clear that the charge sheet was issued to the petitioner in the instant case on 24.11.1998, whereas the incident in question in respect to which he has been proceeded against relates to the year 1988 i.e. one decade prior to the issuance of the charge sheet. It is obvious that issuance of the aforesaid charge sheet is wholly unacceptable in law, as the same is clearly barred by the provision of clause (2) of rule 2.2(b) extracted above.”

In the case in hand the facts are not in dispute that the petitioner retired on 30.06.2019 and was issued a charge-sheet on 05.10.2021 through which he was sought to be departmentally proceeded against for an alleged misconduct by him between the years 1986-88. The alleged misconduct by the petitioner is prior to four years from the date of issuance of the charge-sheet. Since by that time he had retired, such action on the part of the State is barred under Rule 12.2(b) read with Rule 12(5)(a) of the Rules and therefore unsustainable. Resultantly, the impugned departmental proceedings against the petitioner are quashed.

The petition is allowed in the above terms.

07.12.2022
shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No