

Neutral Citation No. - 2025:AHC-LKO:29288

AFR

Reserved

Court No. - 3

Case :- WRIT - A No. - 4265 of 2024

Petitioner :- Narendra Singh

Respondent :- State Of U.P. Thru. Prin. Secy. Nagar Vikas Lko. And 2 Others

Counsel for Petitioner :- Mridula Saxena, Manish Misra, Sarvesh Kumar Saxena

Counsel for Respondent :- C.S.C.

CONNECTED WITH

Case :- WRIT - A No. - 6945 of 2024

Petitioner :- Narendra Singh

Respondent :- State Of U.P. Thru. Prin. Secy. Nagar Vikas Anubhag Lko. And 2 Others

Counsel for Petitioner :- Sarvesh Kumar Saxena, Gaurav Upadhyay, Manish Misra, Mridula Saxena

Counsel for Respondent :- C.S.C.

Hon'ble Rajesh Singh Chauhan, J.

1. Heard Sri Manish Misra and Sri Sarvesh Kumar Saxena, learned counsels for the petitioner and Sri Pankaj Patel, learned Additional Chief Standing Counsel for the State-opposite parties.
2. Both the aforesaid writ petitions have been filed by one and the same petitioner, therefore, with the consent of learned counsel for the parties, both the writ petitions have been connected and are being decided by a common judgment.
3. On the basis of arguments so advanced by the learned counsel for the parties in both the writ petitions and pleadings so exchanged therein, the question involved in the writ petitions is that as to whether departmental inquiry would be treated to have been initiated with effect from the date when the order for initiation of departmental inquiry is issued or from the date when the charge-sheet is issued to the charged employee seeking defence reply.
4. In the first writ petition i.e. Writ-A No.4265 of 2024, the

petitioner challenged the order dated 19.01.2016 passed by the Director, Local Bodies Directorate, Lucknow initiating the departmental inquiry against the petitioner after about ten months from his retirement on the minor allegations for some work, which was allegedly done by him, in the year 2010-11; though no charge sheet was issued immediately after the impugned order dated 19.01.2016. The impugned order dated 19.01.2016 was issued invoking Regulation 351-A of Civil Service Regulations (hereinafter referred to as “the CSR”). The provision of Regulation 351-A of the CSR would not be applicable in the present case inasmuch as such departmental inquiry could have been initiated against a retired employee, if the alleged misconduct has been committed by the retired employee within four years from his retirement or from the order initiating departmental inquiry but in the present case, the allegations are related to the year 2010-11, the petitioner retired from service on 31.03.2015 and order for initiating departmental inquiry issued on 19.01.2016.

5. In the first writ petition, the specific query was raised by this Court vide order dated 02.08.2024 as to whether any charge sheet was issued to the petitioner, if so, any short counter affidavit may be filed brining on record the copy of charge sheet and outcome of the departmental inquiry, if any; then, copy of one charge sheet dated 16.07.2024 was given to the petitioner for conducting the departmental inquiry relating to the alleged incident of the year 2010-11. Challenging the charge sheet dated 16.07.2024, the petitioner filed second writ petition i.e. Writ- A No.6945 of 2024.

6. The brief information relating to the petitioner is that the petitioner was initially appointed as Junior Engineer (Civil) on 07.01.1987 and further given the status of Ad-hoc employee w.e.f. 07.03.1995 under Rule 31 of the U.P. Palika (Centralised Service) Rules, 1966. Since no regularization and no retiral benefits have been paid to the petitioner, so he agitated his grievances through representation to the department and in reply, the department has

justified its action on the ground that the departmental proceeding is pending against the petitioner.

7. Sri Misra has submitted that this is an admitted position as per affidavits filed by the respective parties of the writ petitions that the petitioner retired from service on 31.03.2015 from the service of Nagar Panchayat and his services are covered by U.P. Palika (Centralised Service) Rules, 1966. It is also an admitted fact that charge-sheet was issued to the petitioner after 9 years and 5 months of his retirement i.e. 16.07.2024.

8. Sri Misra has further submitted that the work done in the Nagar Panchayat, Shohratgarh, Siddharthnagar for which the alleged charge-sheet has been belatedly issued against the retired person (petitioner) was of the year 2010-11 and the charge-sheet, which has been issued against the petitioner, was also issued against the Chairman of said Nagar Panchayat having somewhat identical charges in the year 2015 itself. Further, prior to retirement of the petitioner an explanation was called from him on 23.03.2015 and 15 days' time was given to submit reply, but before submission of reply, the petitioner retired from service on 31.03.2015. Further, the petitioner was neither suspended nor any charge-sheet was issued while he was in service.

9. Sri Misra has submitted that the opposite parties took permission under Regulation 351-A of the CSR for initiating the proceedings against the petitioner on 19.01.2016, but thereafter eight years have passed, no proceeding has been initiated against the petitioner. Ultimately, when the petitioner filed petition before this Court, the charge-sheet has been issued with an inordinate unexplained delay of about nine years and five months and as per settled law, the proceedings against a retired employee cannot be initiated on such a belated stage even when the authority concerned took permission of proceedings under Regulation 351-A of the CSR.

10. Since the charge-sheet has not been issued to the petitioner on or before his retirement and thereafter, four years have already passed

from the date of permission taken under Regulation 351-A of the CSR for initiating proceeding against the petitioner for the alleged misconduct done in the year 2010, so in any manner the proceedings initiated by the department against the petitioner are legally not sustainable.

11. Sri Misra while referring the dictum of the Apex Court in re; **Union of India v. K.V. Jankiraman, (1991) 4 SCC 109, UCO Bank v. Rajinder Lal Capoor, (2007) 6 SCC 694, Coal India Limited v. Saroj Mishra, (2007) 9 SCC 625, UCO Bank and others v. M.B. Motwani (dead) through LRs and others, 2023 AIR (SC) 5628 and State Bank of India and Others v. Navin Kumar Sinha, 2024, LawSuit (SC) 1018**, has submitted that the departmental proceedings would be treated to have been initiated only when the charge-sheet is issued.

12. Sri Misra has also referred the judgments of the Apex Court in re; **State of Madhya Pradesh v. Bani Singh, 1990 AIR (SC) 1308, Umesh Kumar Sinha v. State of U.P. & Others, 2021 (6) All LJ 778 and Amresh Shrivastava v. State of Madhya Pradesh & Ors, 2025 4 JT 174/2025 LawSuit (SC) 434**, by submitting that there should be no delay in initiating the proceedings against the charged employee.

13. In support of his argument that sanction granted under Regulation 351-A of CSR would be valid if the sanction was granted for the alleged misconduct took place within four years from the date of retirement of the employee, he has placed reliance upon the judgments of this Court in re; **U.P. Power Corporation Limited and 4 Others v. Anil Kumar Sharma and Another, Special Appeal Defective No.646 of 2021 and Sunil Kumar Kushal v. State Urban Development Authority and Others, Writ-A No.43796 of 2007**.

14. *Per contra*, Sri Pankaj Patel has submitted that since the decision was taken by the competent authority to initiate the departmental inquiry against the petitioner, vide order dated 19.01.2016, so for all practical purposes, initiation of departmental

inquiry would be treated w.e.f. 19.01.2016, not from the date the charge sheet has been issued on 16.07.2024. He has placed reliance upon the judgments of the Apex Court in re; **Delhi Development Authority v. H.C. Khurana, (1993) 3 SCC 196** and **Union of India v. Kewal Kumar, (1993) 3 SCC 204**. In re; **H.C. Khurana** (supra), Sri Patel referred para-9, whereas in re; **Kewal Kumar** (supra), he has referred paras 2 to 8.

15. Sri Patel has been confronted on para-9 in re; **H.C. Khurana** (supra) wherein the Apex Court has observed that “we have no doubt that the decision to initiate disciplinary proceedings cannot be subsequent to the issuance of the charge-sheet, since issue of the charge-sheet is a consequence of the decision to initiate disciplinary proceedings. Framing the charge-sheet, is the first step taken for holding the enquiry into the allegations, ...”, Sri Patel could not dispute the aforesaid observation of the Apex Court.

16. Further, Sri Patel could not demonstrate from paras 2 to 8 in re; **Kewal Kumar** (supra) to the effect that the departmental inquiry would be treated to have been initiated from the date when the order for initiation of departmental inquiry is issued. As a matter of fact, the facts and circumstances in re; **Kewal Kumar** (supra) are altogether different wherein the FIR was registered by the CBI against Kewal Kumar and on the basis of lodging FIR, his promotion etc. was kept in sealed cover.

17. Sri Pankaj Patel has also been confronted on the point as to whether the provision of Regulation 351-A of CSR has been rightly applied in the present case inasmuch as the alleged incident took place in the year 2010-11 but the order for initiation of departmental inquiry issued on 19.01.2016 i.e. after about five years whereas the sanction under Regulation 351-A of CSR could have been sought in respect of an event which took place not more than four years before the institution of such proceedings, Sri Patel could not defend the impugned order dated 19.01.2016. Even the period of four years had

already expired when the petitioner retired on 31.03.2015.

18. Having heard learned counsel for the parties and having perused the material available on record, I am of the considered opinion that invoking the provisions of Regulation 351-A of CSR, the departmental proceedings should be in respect of an event which took place not more than four years before the institution of such proceedings. Admittedly, at the time of retirement or before the retirement of the petitioner, no departmental inquiry was initiated against him and he was not placed under suspension. As a matter of fact, the petitioner retired on 31.03.2015 having unblemished service records. If there was any incident relating to the year 2010-11, the departmental inquiry against the petitioner could have been initiated before 2015 issuing charge sheet against him but in the present case, the departmental inquiry initiated against the petitioner pursuant to the order dated 19.01.2016 and charge sheet has been issued on 16.07.2024, therefore, the impugned order dated 19.01.2016 and charge sheet dated 16.07.2024 are patently illegal, arbitrary, unwarranted, uncalled for and against the provisions of Regulation 351-A of CSR.

19. The Apex Court in re; **K.V. Jankiraman** (supra) has held that “it is only when a charge-memo in a disciplinary proceedings or a chargesheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee.” Further, the Apex Court in re; **Rajinder Lal Capoor** (supra) has held that any proceeding against an employee shall be deemed to be pending only when a chargesheet is issued. Further, the Apex Court in re; **Saroj Mishra** (supra) has reiterated the aforesaid legal position. The Apex Court in re; **M.B. Motwani (dead) through LRs** (supra) reiterating the aforesaid position of law observed that a departmental proceeding is not initiated merely on issuance of show cause notice, rather it is initiated only when a chargesheet is issued because that is the date of application of mind on the allegations levelled against an employee by

the competent authority. Recently, the Apex Court in re; **Navin Kumar Sinha** (supra) has reiterated the aforesaid position of law by observing that the disciplinary proceedings can be initiated only when the charge memo has been issued. If there was any requirement to conduct the departmental inquiry against the petitioner for the alleged incident of the year 2010-11, prompt departmental inquiry could have been conducted but the same has been initiated after five years, vide order dated 19.01.2016 and charge sheet has been issued on 16.07.2024 i.e. after about thirteen years from the alleged incident. The aforesaid inordinate delay initiating the departmental proceedings has been rejected and disapproved by the Apex Court in re; **Bani Singh** (supra) by observing vide para-4 that “there is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage.” The judgment of the Apex Court in re; **Bani Singh** (supra) has consistently been followed by the Apex Court and this Court in so many cases. Since the departmental inquiry is treated to have been initiated w.e.f. the date the charge sheet is issued, so the inordinate delay initiating the departmental inquiry in the present case would vitiate the entire purpose to conduct the departmental inquiry.

20. Therefore, in view of what has been considered above including the case laws so cited by the parties, it is crystal clear that the departmental inquiry would be treated to have been initiated from the date when the charge sheet is issued to the charged employee seeking defence reply. In the present case, limitation of four years under Regulation 351-A of CSR has not been followed by the competent authority as the departmental inquiry has been initiated on 16.07.2024 when the charge sheet has been issued to the petitioner i.e. after about thirteen years from the incident in question, which is not permissible under the law. Not only the above, the order to initiate the departmental inquiry dated 19.01.2016 is also beyond the period of four years from the date of alleged incident which is of the year 2010-

11, therefore, the impugned order dated 19.01.2016 under challenge in Writ-A No.4265 of 2024 and the charge sheet dated 16.07.2024 under challenge in Writ-A No.6945 of 2024 are nullity in the eyes of law, therefore, the same are liable to be set aside/quashed.

21. Accordingly, both the writ petitions are **allowed**. A writ in the nature of certiorari is issued quashing the order dated 19.01.2016 and the charge sheet dated 16.07.2024.

22. A writ in the nature of mandamus is issued directing the opposite parties to pay all consequential service benefits to the petitioner including arrears of pension, all retiral dues, if the same has not been paid as yet, with interest at the rate of 7% per annum from the date those dues accrued till the date of actual payment within a period of two months from the date of receipt of certified copy of this order, failing which the petitioner shall be entitled for the interest at the rate of 10% per annum on the delayed payment.

23. No order as to costs.

[Rajesh Singh Chauhan,J.]

Order Date :- 19.05.2025
RBS/-