

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**+WP(C) No.6707/2002**

Date of Hearing: 04.10.2007

Date of Decision: 31.10.2007

#M.C. Aggarwal

!

....Petitioner

Through: In person

Versus

\$Union of India

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.....Respondent

Through NEMO

**CORAM :-**

**\*THE HON'BLE MR.JUSTICE A.K.SIKRI**

**THE HON'BLE MR. JUSTICE VIPIN SANGHI**

- 1.Whether Reporters of Local papers may be allowed to see the Judgment?
- 2.To be referred to the Reporter or not?
- 3.Whether the judgment should be reported in the Digest?

**A.K. SIKRI, J.**

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1. The petitioner herein, a few days before his retirement, was served with a charge-sheet dated 22.5.1989. After nine days, i.e. on 31.5.1993, he retired on attaining the age of superannuation. However, inquiry against him continued. Charges were held to be established on the basis of which, penalty of "Censure" was passed against him on 20.6.2000. Since inquiry had continued after the date of his

retirement, before the said punishment was imposed and inquiry was still pending, the petitioner vide his letter dated 26.3.1998 requested the respondent to take him back in the service from 31.5.1993 with all consequential benefits on the ground that disciplinary proceedings could not continue against him after his retirement and the department could hold these proceedings only while retaining him in service till such inquiry is completed and final order is passed therein. He, therefore, stated that as the respondent had decided to continue with the inquiry, he should have been treated in service. He supported this submission by referring to the judgment of the Supreme Court in State of Punjab Vs. Khemi Ram, **AIR 1970 SC 214**, wherein it was held by the Supreme Court that the only course open to the Government was to pass an order of suspension and refuse to permit the concerned public servant to retire and retain him in service till such inquiry is completed and final order passed therein. This request of the petitioner was rejected on 8.5.1998.

2. He thereafter filed OA before the Central Administrative Tribunal (in short the 'Tribunal'), which was dismissed vide order dated 24.5.2000 and at the same time, direction was

given to the respondent to conclude the inquiry within three months. Within one month thereafter, as pointed out above, penalty of censure was imposed on 20.6.2000. The petitioner filed review against the judgment dated 24.5.2000 before the Tribunal and was unsuccessful in his attempt. He thereafter approached this Court by filing writ petition, which was also dismissed by this Court on 16.10.2001 observing that the petition had become infructuous in view of penalty of censure. Permission was, however, given to the petitioner to question the penalty of censure, if so advised. The petitioner, thus, filed departmental appeal against the penalty of censure. As this appeal was not decided, he preferred OA No.1807/2002 seeking a direction that his appeal be decided and relief was also prayed that he be treated as on duty with all consequential benefits. This OA was again dismissed by the Tribunal on 19.7.2002. Review filed there against was also dismissed by the Tribunal on 16.8.2002. However, the respondent vide order dated 26.9.2002 decided to drop the charges while deciding his appeal citing the following reasons:-

“The appeal of Shri M.C. Aggarwal was considered again and it was found that the penalty of “Censure” on retired Government servant is an infructuous penalty. It is, therefore, felt that the end of justice will be met if the charges framed against Shri M.C. Aggarwal are dropped.”

3. According to the petitioner, effect of dropping the charges is that penalty of censure imposed on 20.6.2000 also vanishes to the extent that he be treated on duty for the intervening period, i.e. from 1.6.1993 to 20.6.2000 with all consequential benefits and be given the entire arrears of pay with interest at the rate of 18%. Compensation of Rs.10 lakhs is also claimed for miseries, harassment, financial hardship etc.
4. In this petition under Article 226 of the Constitution, we are concerned with the validity of orders dated 19.7.2002 rejecting OA No 1807/2002 of the petitioner and the orders dated 16.8.2002 vide which his review petition was dismissed.
5. We heard the petitioner, who appeared in person and also filed written arguments. Nobody appeared on behalf of the respondent. The sequence of events narrated above would indicate that same relief that he be treated on duty was claimed by the petitioner by filing OA on previous occasion,

which was dismissed on 26.6.2000 and application seeking review of that judgment was also dismissed on 22.9.2000. Against these orders, writ filed before this Court was also dismissed on 16.10.2001. In view thereof, it was not permissible for the petitioner to seek the same relief again by filing OA No.1807/2000. This OA, therefore, has been rightly dismissed by the Tribunal vide impugned orders dated 19.7.2002 holding that this matter could not be taken up in the said OA again.

6. That apart, we find from the orders dated 24.5.2000 passed on earlier occasion, the Tribunal noted that though after the service of charge-sheet the petitioner had retired, he was informed that the inquiry was continued under Rule 9 of the CCS (Pension) Rules and continuation of inquiry under these provisions was legal and justified. In such circumstances, after the retirement he could not claim that he be treated on Government service even when he had attained the age of superannuation.
7. The contention of the petitioner is based on the judgment in State of Punjab Vs. Khemi Ram (supra). However, that judgment was rendered before the CCS (Pension) Rules, 1972 came into force. Rule 9 specifically empowers the

Government to continue the inquiry even after the retirement and, therefore, no Government employee has right to claim that he be treated on duty after the age of superannuation and be paid salary and other benefits for the period from the date of retirement till the conclusion of the inquiry proceedings. This petition is, thus, devoid of any merits and is accordingly dismissed.

8. Parties are left to bear their own costs.

**(A.K. SIKRI)**  
**JUDGE**

October 31, 2007  
HP.

**(VIPIN SANGHI)**  
**JUDGE**