CGHC010388172019 2026:CGHC:37323

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 9593 of 2019

Order reserved on: 14/08/2026

Order delivered on: 20/08/2026

Order (Full) uploaded on: 20/08/2026

Dr. Shyam Raj Singh, S/o Late Jagdesh Singh, Aged about 68 years, (i). R/o H.No.96, Arihant Nagar, Sarona, Tatibandh, Raipur, Raipur Dist., Chhattisgarh State, PIN 492013. (ii) Saraswati Shishu Mandir Road, Gali No.2, Krishna Nagar, Sangram Colony, Satna, Satna Dist., MP State, PIN 485001.

... Petitioner

versus

1. State of Chhattisgarh, through Principal Secretary, Home Department, Govt. of CG, Mahanadi Bhavan, Atal Nagar, Raipur, Raipur Dist., Chhattisgarh State.
2. Director General (Jail & Reformation Services), Office of Director General (Jails), Headquarters, Raipur Dist., Chhattisgarh State
3. Superintendent, Central Jails, Raipur, Raipur Dist., Chhattisgarh State

... Respondents

For Petitioner	**:**	Dr. Veena Nair, Advocate.
For Respondents	**:**	Mr. Sharad Mishra, Panel Lawyer.

Single Bench: -
Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

For the sake of exposition, this Order is divided in following parts:-

Question of Law Involved

1. The short but important question of law that is involved in the writ petition is, whether the State Government is justified in instituting departmental proceeding against the petitioner of an event which took place more than four years before the institution of such proceeding in violation of Rule 9(2)(b)(ii) of the Chhattisgarh Civil Services (Pension) Rules, 1976 (for short, 'the Rules of 1976') allegedly relaxing the aforesaid Rule in exercise of power conferred under Rule 79 of the Rules of 1976?

Challenge in the Writ Petition

2. The petitioner herein takes exception to the order dated 18-10-2019 (Annexure P-1) passed by the State Government imposing a penalty under Rule 9(5) of the Rules of 1976 directing recovery of ₹

1,09,975/- finding that the petitioner is guilty of misconduct under Rule 3-A of the Chhattisgarh Civil Services (Conduct) Rules, 1965.

Quintessential Facts

3. The petitioner was working on the post of Superintendent, Central Jail, Raipur and eventually, he was superannuated on the said post with effect from 31-8-2010 and thereafter, it is the case of the petitioner that he has been granted and paid all retiral dues including pension and gratuity. On 29-5-2013, charge-sheet was issued to the petitioner alleging that he did not accept the lowest tender and caused loss of revenue to the Government to the extent of ₹ 1,09,975/- and thereafter, by order dated 3-11-2014, instituted departmental enquiry and further, in exercise of power under Rule 79 of the Rules of 1976, relaxed the period of four years as prescribed under Rule 9(2)(b)(ii) of the Rules of 1976 in respect of an event which took place more than four years before such institution. Thereafter, by the impugned order dated 18-10-2019, in exercise of power under Rule 9(5) of the Rules of 1976, the State Government directed recovery of ₹ 1,09,975/- against the petitioner leading to filing of this writ petition.

4. It is the case of the petitioner that the period prescribed in Rule 9(2)(b)(ii) of the Rules of 1976, which prescribes the time limit that departmental enquiry shall not be instituted in respect of an event which took place more than four years before such institution, is imperative and in exercise of power under Rule 79 of the Rules of

1976, such rule could not have been relaxed, as the prescription of time limit of four years in respect of an event which took place more than four years, is mandatory and the time barred action cannot be revived by relaxing the rule, more particularly, the Administrative Department has not passed any order relaxing the rule by recording reasons in writing, only the Finance Department has given its concurrence, which is not the compliance of Rule 79 of the Rules of 1976, therefore, the order impugned dated 18-10-2019 suffers from jurisdictional error and it is liable to be quashed.

Return of the State Government

5. The State/respondents have filed return justifying its action stating inter alia that the period of four years as prescribed under Rule 9(2)(b)(ii) of the Rules of 1976 has been relaxed in exercise of power under Rule 79 of the Rules of 1976 by order Annexure R-8 dated 3-11-2014, which is in accordance with law and the competent authority had also granted permission under Rule 9(2)(b) to institute and hold departmental enquiry against the petitioner. Thus, the rule has been relaxed by virtue of Rule 79 of the Rules of 1976, as such, the writ petition deserves to be dismissed.

Rejoinder on behalf of the Petitioner

6. A short rejoinder has been filed on behalf of the petitioner stating that exercise of power under Rule 79 of the Rules of 1976 is totally unwarranted, it is not a valid exercise of power and it cannot be exercised to take exemption from the rigors of the Pension Rules

which requires to make the payment of retiral dues like pension and gratuity to a Government servant in the next month. Rule 79 of the Rules of 1976 cannot be interpreted in favour of the respondents for shielding them from their neglect or delay in discharge of their statutory duties towards the retired employee. As such, the writ petition deserves to be allowed.

Submission on behalf of the Writ Petitioner

7. Dr. Veena Nair, learned counsel appearing on behalf of the petitioner, would make submissions as under: -

    1. Rule 9(2)(b)(ii) of the Rules of 1976 is mandatory and the departmental proceeding is barred by limitation, as action has not been in accordance with the time prescribed in Rule 9(2)(b)(ii). By relaxing Rule 79 of the Rules of 1976, such a period cannot be extended and the alleged relaxation in exercise of power under Rule 79 will be totally arbitrary and unbridled exercise of power by the State Government.

    2. Rule 79 of the Rules of 1976 has not been complied with, even otherwise, no reasons have been recorded in exercise of Rule 79 except the concurrence of the Finance Department and the period of limitation which the rule-making authority has prescribed for initiating departmental proceeding conferring power to the State Government in respect of an event which took place more than four years before such institution, cannot be extended in alleged exercise of the power of relaxation.

Such a relaxation in rule is totally unwarranted, unsustainable and bad in law and liable to be set aside.

Submission on behalf of the Respondents

8. Mr. Sharad Mishra, learned State counsel appearing on behalf of the State/respondents, would submit that the State Government has rightly relaxed Rule 9(2)(b)(ii) of the Rules of 1976 in exercise of power under Rule 79 of the said Rules and as such, the writ petition deserves to be dismissed.

9. I have heard learned counsel for the parties and considered their rival contentions made herein-above and also gone through the record with utmost circumspection.

Proceeding before the State Government

10. In order to deal with the issue, it would be appropriate to notice the proceeding that has taken place against the petitioner.

11. The petitioner stood superannuated from the post of Superintendent, Central Jail, Raipur on 31-8-2010. Thereafter, on 22-1-2013, the Council of Ministers in exercise of power conferred Rule 9(2)(b) of the Rules of 1976, granted permission to institute departmental proceeding against the petitioner, which states as under: -

मंत्रिपरिषद् आदेश

(कार्यसूची में सम्मिलित विषय)

(आयटम क्रमांक–71.3)

दिनांक 22 जनवरी, 2013

विषयः प्रकरण क्रमांक–31/06 में छत्तीसगढ़ लोक आयोग की अनुशंसा अनुसार डॉ. श्यामराज सिंह, तत्कालीन अधीक्षक, केन्द्रीय कारागार गृह, रायपुर के विरूद्ध कार्यवाही बाबत्।

निर्णयः निर्णय लिया गया कि डॉ. श्यामराज सिंह, (सेवानिवृत्त), तत्कालीन अधिक्षक, केन्द्रीय कारागार गृह, रायपुर के विरूद्ध छत्तीसगढ़ सिविल सेवा (पेंशन) नियम–1976 के नियम–9 के अंतर्गत आरोप पत्रादि जारी करने एवं विभागीय जांच संस्थित करने की कार्यवाही की जाए"

कृपया समयावधि में अनुसांगिक कार्रवाई करें।

सही/–
(सुनिल कुमार)
मुख्य सचिव

12. Since the alleged misconduct as apparent from the impugned order Annexure P-1 is of the years 2004-05 & 2005-06 and from the order dated 22-1-2013, those were the events which took place more than four years before such institution and institution of disciplinary proceedings was apparently barred under Rule 9(2)(b)(ii) of the Rules of 1976, the State Government placed the case before the Finance/Administrative Department to relax Rule 9(2)(b) of the Rules of 1976 in exercise of Rule 79 for instituting disciplinary proceeding against the petitioner and accordingly, the concurrence of the Finance Department, as provided under the proviso to Rule 79 was obtained, which states as under: -

> "वित्त विभाग प्रशासकीय विभाग से प्राप्त प्रस्ताव के संबंध में लेख है कि पेंशन नियम 1976 के नियम–79 में प्रदत्त शक्तियों के अंतर्गत पेंशन नियम–9 (2) (बी) के शिथिलीकरण हेतु वित्त प्रशासकीय विभाग द्वारा इस शर्त के साथ सहमति दी जाती है कि प्रशासकीय विभाग सहमति संबंधी आदेश में उन कारणों को स्पष्ट रूप से लेखबद्ध करेगा जिसके आधार पर उक्त सहमति न्याय संगत और साम्यपूर्ण है।"
>
> (मान. मुख्यमंत्री जी द्वारा टीप अनुमोदित)

सही/–
अवर सचिव
छत्तीसगढ़ शासन
वित्त विभाग

13. But, however, there is nothing on record that as per Rule 79 of the Rules of 1976, reasons have been recorded by the Administrative Department granting consent and relaxing the rule under Rule 79, except the concurrence by the Finance Department as noted herein-above. Thereafter, on 29-5-2013, charge-sheet was issued to the petitioner on the following charges: -

> <u>आरोप</u> :–
>
> आपके द्वारा वर्ष 2004–05 एवं 2005–06 में केन्द्रीय जेल, रायपुर में बंदियों एवं उद्योगों हेतु लगने वाली सामग्रियों के क्रय में गंभीर अनियमितताएं बरती गई है। न्यूनतम निविदा को स्वीकार नहीं किया गया और राजकीय राजस्व की हानि पहुचाई गई। केवल सफेद कागज के क्रय में ही रूपये 1,09,975/– की हानि शासकीय राशि की पहुचाई गई है, जोकि छ0ग0 सिविल सेवा (आचरण नियम) 1965 के नियम 3 का उल्लघन है।
>
> आपने ऐसा कर स्वयं को अनुशासनात्मक कार्यवाही करने के लिए दोषी ठहराया है।

14. Thereafter, finally, by order dated 18-10-2019 (Annexure P-1), the State of Chhattisgarh had passed the impugned order of punishment upon the petitioner, which states as under: -

> **छत्तीसगढ़ शासन**
गृह (जेल) विभाग
:: मंत्रालय ::
<u>महानदी भवन, नवा रायपुर, अटल नगर</u>
>
> **–:: आदेश ::–**
>
> नवा रायपुर, अटल नगर, दिनांक 18/10/2019
>
> **क्रमांक एफ 3– <u>13/तीन</u> – <u>जेल/2009</u>** :: प्रमुख लोकायुक्त, छत्तीसगढ़ लोक आयोग, रायपुर द्वारा पारित आदेश दिनांक 13.09.2011, में डॉ. श्यामराज सिंह तत्कालीन अधीक्षक, केन्द्रीय जेल रायपुर के विरूद्ध सफेद कागज क्रय में रूपये 1,09,975/– की शासकीय राशि का क्षति पहुंचाना पाया गया है एवं श्री श्यामराज सिंह के विरूद्ध अनुशासनात्मक विभागीय कार्यवाही संस्थित की जाकर आरोप स्थापित होने पर यथोचित शास्ति अधिरोपित की जाने की अनुशंसा की गई है।

2/ छत्तीसगढ़ लोक आयोग का उक्त आदेश जिस कदाचरण के संबंध में है, वह कदाचरण दिनांक 11.07.2006 को किया गया था। डॉ0 श्यामराज सिंह, जेल अधीक्षक के पद से दिनांक 31.08.2010 को सेवानिवृत्त हो चुके थे।

3/ उक्त स्थिति में माननीय लोकायुक्त की अनुशंसा के प्रचलन हेतु संभव अनुशासनात्मक कार्यवाही के संबंध में आदेशानुसार सामान्य प्रशासन विभाग, विधि विभाग का अभिमत प्राप्त करते हुए अभिमत अनुसार वित्त विभाग की सहमति प्राप्त कर मंत्रिपरिषद में अनुमोदन प्राप्त किया गया।

मंत्रिपरिषद् आदेश दिनांक 22 जनवरी, 2013 में लिये गये निर्णय अनुसार डॉ. श्यामराज सिंह (सेवानिवृत्त), तत्कालीन अधीक्षक, केन्द्रीय कारागार गृह, रायपुर के विरूद्ध छत्तीसगढ़ सिविल सेवा (पेंशन) नियम–1976 के नियम–9 के अंतर्गत आरोप पत्रादि जारी करने एवं विभागीय जांच संस्थित करने की कार्यवाही की गई।

4/ अपचारी अधिकारी डॉ0 श्यामराज सिंह, सेवानिवृत्त, जेल अधिक्षक को विभाग के ज्ञापन दिनांक 29.05.2013 द्वारा आरोप पत्रादि जारी किया गया। डॉ0 सिंह द्वारा आरोप –पत्रादि का प्रतिवाद उत्तर प्रस्तुत न करते हुए आरोपों से संबंधित सुसंगत अभिलेखों की मांग की गई। जेल मुख्यालय द्वारा उनके चाहे अनुसार उन्हें दो बार अभिलेख भी उपलब्ध कराये गये किंतु उनके द्वारा प्रकरण में विलंब किया गया। डॉ0 सिंह द्वारा आरोप–पत्र का प्रतिवाद उत्तर प्रस्तुत न करने के कारण वित्त विभाग की सहमति अनुसार छत्तीसगढ़ सिविल (पेंशन) नियम, 1976 के नियम–9(2) (बी) (ii) में उल्लेखित 04 वर्ष की समय– सीमा के बंधन को शिथिल करते हुए उक्त पेंशन नियम तथा छ.ग. सिविल सेवा (वर्गीकरण, नियंत्रण तथा अपील) नियम, 1966 के नियम 14 के अंतर्गत डॉ. श्यामराज सिंह, जेल अधीक्षक (सेवानिवृत्त) के विरूद्ध विभाग के आदेश दिनांक 05.11.2014 द्वारा विभागीय जांच संस्थपित करते हुए श्री एस.एस. तिग्गा, अधीक्षक, केन्द्रीय जेल, बिलासपुर को जांचकर्ता अधिकारी एवं श्री एन.के. शर्मा, सहायक जेल अधीक्षक, केन्द्रीय जेल, बिलासपुर को प्रस्तुतकर्ता अधिकारी नियुक्त किया गया।

5/ डॉ0 श्यामराज सिंह (सेवानिवृत्त) के विरूद्ध केन्द्रीय जेल रायपुर में जेल अधीक्षक के रूप में पदस्थी अवधि के दौरान क्रय की गई सामग्रियों में अनियमितता बरतने के प्रकरण में निम्नलिखित आरोप पर विभागीय जांच संस्थित की गईः–

> **1. आपके द्वारा वर्ष 2004–2005 एवं 2005 –06 में केन्द्रीय जेल रायपुर में बंदियों एवं उद्योगों हेतु लगने वाली सामग्रियों के क्रय में गंभीर अनियमितता बरती गई न्यूनतम निविदा को स्वीकार नहीं किया गया और राजकीय राजस्व की हानि पहुंचाई गई। केवल सफेद कागज के क्रय में ही रूपये 1,09,975.00 हानि शासकीय राशि की पहुंचाई गई है। जो छत्तीगढ़ सिविल सेवा (आचरण नियम) 1965 के नियम 3 का उल्लंघन है, आपने ऐसा कर स्वयं को अनुशासनात्मक कार्यवाही करने के लिए दोषी ठहराया है।**

6/ जांचकर्ता अधिकारी, द्वारा नियमानुसार विभागीय जांच सम्पन्न कर जांच प्रतिवेदन में सेवानिवृत्त जेल अधीक्षक, डॉ0 श्यामराज सिंह पर लगे आरोप क्रमांक 01 प्रमाणित पाया गया।

7/ जांचकर्ता अधिकारी द्वारा प्रस्तुत जांच प्रतिवेदन पर अपचारी अधिकारी का अभ्यावेदन प्राप्त किया गया। उनके द्वारा प्रस्तुत अभ्यावेदन पर महानिदेशक, जेल का बिन्दुवार अभिमत/टीप प्राप्त की गई है। महानिदेशक, जेल द्वारा उपचारी

अधिकारी डॉ0 श्यामराज सिंह द्वारा प्रस्तुत अभ्यावेदन में उल्लेखित बिन्दु ग्राह्य योग्य नहीं होने का उल्लेख करते हुए अमान्य किया जाना लेख किया गया।

8/ प्रकरण के जांचकर्ता अधिकारी द्वारा प्रस्तुत जांच प्रतिवेदन एवं अपचारी अधिकारी के अभ्यावेदन का महानिदेशक, जेल से प्राप्त अभिमत पर विचारोपरांत अमान्य किया गया। अपचारी अधिकारी द्वारा हानि पहुंचाये गये शासकीय राशि 1,09,975.00/– का समायोजन सेवानिवृत्त अधिकारी, डॉ, श्यामराज सिंह तत्कालीन जेल अधीक्षक, केन्द्रीय जेल रायपुर से किये जाने का अनन्तिम प्रशासकीय निर्णय लिया जाकर छत्तीसगढ़ लोक सेवा आयोग की सहमति प्राप्त की गई।

9/ अतः राज्य शासन, एतद्द्वारा, डॉ0 श्यामराज सिंह, सेवानिवृत्त जेल अधीक्षक (तत्कालीन जेल अधीक्षक, केन्द्रीय जेल, रायपुर) का कृत्य छत्तीसगढ़ सिविल सेवा (आचरण) नियम 1965 के नियम–3 (क) के अंतर्गत कदाचरण की श्रेणी का आरोप प्रमाणित होने से उनके द्वारा शासन को पहुंचाई गई हानि रूपये 1,09,975/– (एक लाख नौ हजार नौ सौ पचहत्तर रूपये मात्र) की वसूली छत्तीसगढ़ सिविल (पेंशन) नियम, 1976 के नियम–9 (5) के प्रावधानों के तहत डॉ0 श्यामराज सिंह, सेवानिवृत्त जेल अधीक्षक का प्राप्त परिलब्धियों से किए जाने की शास्ति अधिरोपित करता है।

छत्तीसगढ़ के राज्यपाल के नाम से
तथा आदेशनुसार
सही/–
(जनक कुमार)
अवर सचिव
छत्तीसगढ़ शासन, गृह (जेल) विभाग

15. The aforesaid order is sought to be challenged by way of the present writ petition.

<u>Relevant Rule</u>

16. In order to consider the challenge to the aforesaid order dated 18-10-2019, it would be appropriate to notice Rule 9(2)(b)(i) & (ii) which state as under: -

> "**9. Right of Governor to withhold or withdraw pension**.—(1) xxxxxx xxx
>
> (2) (a) xxx xxx xxx
>
> (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 Governor;
>
> (ii) shall not be in respect of any event which took place more than four years before such institution; and
>
> xxx xxx xxx"

17. A careful perusal of the provision contained in Section 9(2)(b)(i) of the Rules of 1976 would show that if the departmental proceedings are not instituted against the Government servant by the disciplinary authority while he was in service, then it shall not be instituted save with the sanction of the Governor, and sanction of the Governor or/ his delegate Council of Ministers/Chief Minister as may be prescribed by the Allocation of Business Rules, is required to be taken. Similarly, Rule 9(2)(b)(ii) of the Rules of 1976 provides that such sanction shall not be in respect of an event which took place more than four years before the institution of such disciplinary proceedings.

18. The usage of the word "shall" in the above-stated Rules 9(2)(b)(i) & (ii) of the Rules of 1976 would show that requirement of sanction from the Government prior to institution of departmental enquiry and which shall not be in respect of an event which took place more than four years before the institution of such proceeding, is mandatory. Such mandatory safeguard is intended to prevent institution of unwarranted proceedings against the superannuated employees. {See **Kadirkhan Ahmedkhan Pathan v.**

Maharashtra State Warehousing Corporation and others[1] (paragraph 29).}

19. The Supreme Court in **Kadirkhan Ahmedkhan Pathan** (supra), while dealing with Rule 27(2)(b)(ii) of the Maharashtra Civil Services (Pension) Rules, 1982, which is the *pari materia* provision to Rule 9(2)(b)(ii) of the Rules of 1976, has held that this provision is benevolent in nature, as it regulates the State's discretion to institute or continue departmental proceedings, and observed as under: -

> "**20.** On appreciation of Rule 27(*b*), it can safely be observed that in cases where the departmental proceedings were instituted post-retirement without obtaining sanction of the government till culmination as specified in the rules and simultaneously if the cause of action of such proceedings arose prior to four years of date of institution, such proceedings could not have been instituted or continued. Therefore, the provision is benevolent in nature, as it regulates the State's discretion to institute or continue departmental proceedings."

20. Rules 9(2)(b)(i) & 9(2)(b)(ii) of the Rules of 1976 are *pari materia* to Rules 9(2)(b)(i) & 9(2)(b)(ii) of the Central Civil Services (Pension) Rules, 1972. The provisions contained in Rules 9(2)(b)(i) & 9(2)(b)(ii) of the Central Civil Services (Pension) Rules, 1972, which are *pari materia* to Rules 9(2)(b)(i) & 9(2)(b)(ii) of the Rules of 1976 came to be considered by their Lordships of the Supreme Court in the matter of **Brajendra Singh Yambem v. Union of India and another**[2] in which their Lordships posed the following question for

1 (2026) 3 SCC 252
2 (2016) 9 SCC 20

consideration with respect to Rule 9(2)(b)(ii) of the CCS (Pension) Rules, 1972:-

> "**31.1**. (i) Whether the impugned judgment and order passed by the Division Bench of the High Court correctly appreciates the scope of Rule 9(2)(b)(ii) of the CCS (Pension) Rules, 1972 in light of the fact that the disciplinary proceedings were initiated more than four years after the alleged incidents?"

Their Lordships considered the issue and held that the period of limitation is prescribed by Rule 9(2)(b)(ii) for initiating departmental enquiry after retirement and if the action is barred by limitation, departmental proceedings could not have been initiated in violation of that Rule, and observed as under: -

> "**40.** The Division Bench of the High Court failed to appreciate the fact that liberty had been granted by the High Court vide its judgment and order dated 7-11-2006 in WA (C) No. 45 of 2006 to the disciplinary authority to take disciplinary action against the appellant. Thus, there was no need for the respondent disciplinary authority to withdraw the memorandum of charges dated 14-5-1998 for the purpose of initiating disciplinary proceedings afresh against the appellant on the same charges by obtaining an order of sanction from the President of India as required under Rule 9(2)(*b*)(*i*) of the CCS (Pension) Rules, 1972. The Division Bench of the High Court in its judgment and order dated 5-8-2013[3] has completely ignored this important legal aspect of the matter, that the prior sanction accorded by the President under the abovesaid Rules was in fact, barred by limitation. Thus, it has committed serious error in law in arriving at the conclusion that the respondent disciplinary authority had obtained due sanction from the President of India to conduct the departmental proceedings against the appellant for the same charges, which action was barred by limitation as provided under Rule 9(2)(*b*)(*ii*) of the CCS (Pension) Rules, 1972. Therefore, the impugned judgment and order passed by the Division Bench of the High Court cannot be allowed to sustain in law."

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3 *Union of India* v. *B.S. Yambem*, 2013 SCC OnLine Mani 114

21. Similarly, in the matter of **State of U.P. and another v. Shri Krishna Pandey**[4], the Supreme Court has held that time-limit has been prescribed for initiating departmental enquiry after retirement and when the departmental enquiry for embezzlement was initiated more than four years after the delinquent was allowed to retire on superannuation, their Lordships of the Supreme Court held that such departmental enquiry is incompetent, as the State had disabled itself by their deliberate omissions to take appropriate action against the respondent (therein) and allowed the officer to escape from the provisions of Regulation 351-A of the Civil Services Regulations. It has been observed by their Lordships in paragraph 6 of the report as under: -

> "**6.** It would thus be seen that proceedings are required to be instituted against a delinquent officer before retirement. There is no specific provision allowing the officer to continue in service nor any order passed to allow him to continue on re-employment till the enquiry is completed, without allowing him to retire from service. Equally, there is no provision that the proceedings be initiated as a disciplinary measure and the action initiated earlier would remain unabated after retirement. If Regulation 351-A is to be operative in respect of pending proceedings, by necessary implication, prior sanction of the Governor to continue the proceedings against him is required. On the other hand, the Regulation also would indicate that if the officer caused pecuniary loss or committed embezzlement etc. due to misconduct or negligence or dereliction of duty, then proceedings should also be instituted after retirement against the officer as expeditiously as possible. But the events of misconduct etc. which may have resulted in the loss to the Government or embezzlement, i.e., the cause for the institution of proceedings, should not have taken place more than four years before the date of institution of proceedings. In other words, the departmental proceedings must be instituted

4 (1996) 9 SCC 395

> before lapse of four years from the date on which the event of misconduct etc. had taken place. Admittedly, in this case the officer had retired on 31-3-1987 and the proceedings were initiated on 21-4-1991. Obviously, the event of embezzlement which caused pecuniary loss to the State took place prior to four years from the date of his retirement. Under these circumstances, the State had disabled itself by their deliberate omissions to take appropriate action against the respondent and allowed the officer to escape from the provisions of Regulation 351-A of the Regulations. This order does not preclude proceeding with the investigation into the offence and taking action thereon."

22. As such, four years is the time-limit/period of limitation prescribed by the rule-making authority by way of Rule 9(2)(b)(ii) of the Rules of 1976 in respect of an event which took place more than four years before the institution of departmental proceedings and such a provision is a mandatory provision well designed to protect the superannuated Government servants from unnecessary harassment after their superannuation.

Power of Relaxation under Rule 79

23. Now, this would bring me to the next question of power of relaxation. It is the case of State Government that four year's period of limitation prescribed in Rule 9(2)(b)(ii) of the Rules of 1976 has been relaxed in exercise of the power conferred under Rule 79 of the Rules of 1976. Rule 79 of the Rules of 1976 which provides power to relax, states as under: -

> "**79. Power to relax**.—Where any department of the Government is satisfied that the operation of any of these rules causes undue hardship in any particular case, the State Government may by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions

as it may consider necessary for dealing with the case in a just and equitable manner :

Provided that no such order shall be made except with the concurrence of the Finance Department."

24. A careful perusal of the above-stated Rule would show that though the power to relax rule is conferred to the State Government, on satisfaction of any Department of the Government, that operation of any rule is causing hardship to any particular case, it is necessarily required to be exercised in a just and equitable manner and to mitigate hardship, if any, caused in a particular case. However, such a power of relaxation cannot be exercised to revive the time barred action and mandatory provision cannot be relaxed. The power of relaxation must be construed strictly and cannot be used as blanket authority to disregard the binding Rule.

25. The *pari materia* provision of power to relax except the proviso contained in Rule 22 of the Haryana Service of Engineers Class I PWD (Public Health Branch) Rules, 1961 came to be considered by the Supreme Court in the matter of **J.C. Yadav and others v. State of Haryana and others**[5] and highlighting the object and purpose of conferring the power to relax, their Lordships of the Supreme Court have held that the object and purpose of conferring this power on the government is to mitigate undue hardship in any particular case, and to deal with a case in a just and equitable manner. It has been observed by their Lordships in paragraph 6 of the report as under: -

5 (1990) 2 SCC 189

"6. The rule confers power on the government to dispense with or to relax the requirement of any of the rules to the extent and with such conditions as it may consider necessary for dealing with the case in a just and equitable manner. The object and purpose of conferring this power on the government is to mitigate undue hardship in any particular case, and to deal with a case in a just and equitable manner. If the rules cause undue hardship or rules operate in an inequitable manner in that event the State Government has power to dispense with or to relax the requirement of rules. The rule does not restrict the exercise of power to individual cases. The government may in certain circumstances relax the requirement of rules to meet a particular situation. The expression "in any particular case" does not mean that the relaxation should be confined only to an individual case. One of the meanings of the expression "particular" means "peculiar or pertaining to a specified person — thing — time or place — not common or general". The meaning of the word particular in relation to law means separate or special, limited or specific. The word 'case' in ordinary usage means 'event', 'happening', 'situation', 'circumstances'. The expression 'case' in legal sense means 'a case', 'suit' or 'proceeding in court or Tribunal'. Having regard to these meanings the expression 'in any particular case' would mean: in a particular or pertaining to an event, situation or circumstances. Rule 22 postulates relaxation of rules to meet a particular event or situation, if the operation of the rules causes hardship. The relaxation of the rules may be to the extent the State Government may consider necessary for dealing with a particular situation in a just and equitable manner. The scope of rule is wide enough to confer power on the State Government to relax the requirement of rules in respect of an individual or class of individuals to the extent it may consider necessary for dealing with the case in a just and equitable manner. The power of relaxation is generally contained in the Rules with a view to mitigate undue hardship or to meet a particular situation. Many a time strict application of service rules create a situation where a particular individual or a set of individuals may suffer undue hardship and further there may be a situation where requisite qualified persons may not be available for appointment to the service. In such a situation the government has power to relax requirement of rules. The State Government may in exercise of its powers issue a general order relaxing any particular rule with a view to avail the services of requisite officers. The relaxation even if

> granted in a general manner would ensure to the benefit of individual officers."

26. Similarly, Justice V.R. Krishna Iyer, in the matter of **Shri Amrik Singh and others v. Union of India and others**[6] has observed that there must be ***undue hardship*** and, further the relaxation must promote the dealing with the case ***"in a just and equitable manner"***.

27. As such, the object of the power of relaxation is obviously to neutralise an injustice as a result of operation of any rule. It has been described to be the reserve power to deal with unforeseen situations or circumstances and it is to be exercised in the public interest with a view to maintain integrity and efficiency in service. (See **R.R. Verma and others v. Union of India and others**[7].)

28. Power to relax rules must be made judiciously keeping in mind the object and purpose. The power is conferred upon the Government to meet any emergent situation where injustice might have been caused to any individual employee or class of employees or where the working of the rule might have become impossible (see **Ashok K. Uppal v. State of J&K**[8]). The power of relaxation must also be expressly conferred (see **Sanjay Kumar Manjul v. Chairman, UPSC**[9]).

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6 (1980) 3 SCC 393
7 (1980) 3 SCC 402
8 (1998) 4 SCC 179
9 (2006) 8 SCC 42

29. In the matter of **Sandeep Kumar Sharma v. State of Punjab**[10], their Lordships of the Supreme Court have however cautioned that arbitrary exercise of such power must be guarded against and that the rule of relaxation must get a pragmatic construction so as to achieve effective implementation of good policy.

30. In the matter of **State of Punjab v. Dr. Rajeev Sarwal**[11], it has been observed by their Lordships of the Supreme Court that a power of relaxation cannot be read into a rule which is explicit as to a particular matter, e.g. where maximum period of study leave prescribed is 24 months, an employee cannot ask for relaxation to exceed that period.

31. Similarly, in the matter of **Suraj Prakash Gupta v. State of J&K**[12], the Supreme Court has held that the exercise of the power of relaxation would be considered to be bad when the reasons for such relaxation are found to be hopelessly insufficient.

Discussion and Analysis

32. It is a well-established principle of law that when a statute prescribes a specific manner for doing a particular act, that act must be performed in that designated manner or not at all {see **Brajendra Singh Yambem** (supra)}. While Rule 79 of the Rules of 1976 vests the State Government with the power to relax rules in cases where its application causes "undue hardship", thereby enabling the matter to be dealt with "in a just and equitable manner", this general power

10 (1997) 10 SCC 298 at 304
11 (1999) 9 SCC 240
12 (2000) 7 SCC 561

cannot be interpreted so broadly as to override or negate specific substantive provisions, such as periods of limitation, explicitly embedded in the governing pension rules.

33. Rule 79 of the Rules of 1976 provides a mechanism for the relaxation of rules, not for their rewriting, which remains exclusively within the domain of the legislature. In the present case, no legally tenable grounds demonstrating undue hardship have been placed on record, and the mere concurrence of the Finance Department does not suffice to meet this mandatory threshold, as the power to relax does not translate into an unfettered power to dispense with the rules altogether.

34. Consequently, the State Government could not lawfully invoke Rule 79 of the Rules of 1976 to bypass the mandatory statutory protection afforded under Rule 9(2)(b)(ii) of the Rules of 1976, which explicitly bars the institution of departmental proceedings against a retired government servant in respect of any event that took place more than four years prior to such institution. Initiating disciplinary proceedings after a staggering delay of 7-8 years from the alleged date of misconduct, under the guise of rule relaxation, constitutes a direct violation of statutory safeguards, rendering such an administrative action fundamentally unsustainable in the eyes of the law. The State must administer the law equitably and without "an evil eye or an unequal hand", because permitting the unbridled exercise of discretionary powers of this magnitude would convert a

tool intended for equity into an engine of oppression, paving the way for systemic abuse against public servants.

35. Accordingly, it is held that in exercise of the power conferred under Rule 79 of the Rules of 1976, the power of relaxation could not have been exercised by the Government to rigor out from the mandate contained in Rule 9(2)(b)(ii) of the Rules of 1976 which mandatorily prescribes that such sanction shall not be in respect of an event which took place more than four years before the institution of departmental proceedings. In the instant case, the alleged event has taken place during the years 2004-05 & 2005-06 and charge-sheet has been issued to the petitioner on 29-5-2013, which is delayed by more than 7-8 years before the institution of such proceedings. As such, the action as held by their Lordships of the Supreme Court in **Brajendra Singh Yambem** (supra) is barred by limitation and thus, departmental proceedings could not have been initiated by the State Government, particularly, when the Administrative Department has not recorded any reasons for grant of relaxation as required by Rule 79 of the Rules of 1976 and only the Finance Department has made concurrence required by the proviso to Rule 79, leaving it for the Administrative Department to accord reasons, which were not recorded at all.

Conclusion

36. The general power to relax rules under Rule 79 of the Rules of 1976 cannot be invoked to bypass or dilute an explicit statutory provision. Rule 9(2)(b)(ii) of the Rules of 1976 sets an absolute bar against initiating departmental proceedings against a retired Government servant in respect of an event occurring more than four years prior to such institution. While Rule 79 provides administrative flexibility to deal with a case in a just and equitable manner to alleviate undue hardship, this discretionary power cannot be extended to override an express, mandatory and statutory restriction. To permit relaxation in teeth of a mandatory and statutory prohibition would be to rewrite the statutory scheme under the garb of administrative discretion. Consequently, any relaxation of the limitation prescribed under Rule 9(2)(b)(ii) by taking recourse to Rule 79 is legally impermissible and unsustainable.

Relief and Cost

37. Consequently, the impugned order dated 18-10-2019 (Annexure P-1) is hereby quashed. The writ petition is allowed to the extent indicated herein-above with no order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma