

**SUPREME COURT OF INDIA**

Union of India & Ors.

Vs.

Ganesh Prasad Sharma

C.A.No.1843 of 2008

(H.K.Sema and Markandey Katju, JJ.)

05.03.2008

**ORDER**

(arising out of SLP(C)No.11914 of 2006)

1. Leave granted.

2. Heard the parties.

3. The respondent, Shri Ganesh Prasad Sharma, was working as Senior Accounts Officer, O/O PGM, Patna. It is stated that during the period 1999-2000 he failed to maintain absolute integrity and devotion to duty and committed gross misconduct in as much as he acted in a manner prejudicial to his Department. It is also alleged that he has acted in a manner unbecoming of a Government servant thereby contravening the provisions of Rule (1)(i)& (iii) of CCS(Conduct) Rules, 1964 (in short 'Rules'). A memorandum of chargesheet has been served upon the respondent on 25.2.2003. He retired on 28.2.2003. It appears that the conduct of the respondent along with one Kaniya Lal was inquired into by the CBI. The CBI has exonerated both of them, however, observed that departmental proceedings may be initiated against them. Kaniya Lal was retired on superannuation on 28.2.2002 and, therefore, departmental proceedings could not be initiated against him. Under Rule 9(2)(a) & (b) Swamy's Pension Compilation Incorporating CCS Pension Rules provides thus: (2)(a) The departmental proceedings referred to in sub-rule(1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

4. Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

“(b) The department 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 President,

(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 in such place as the President 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 servant during his service. In the case of Kaniya Lal since he was retired on superannuation with effect from 28.02.2002 no departmental proceeding was initiated against him. The Tribunal was of the view that since no departmental proceeding has been initiated against Kaniya Lal, the departmental proceeding against Shri Ganesh Prasad Sharma, respondent herein is also not tenable in law and set aside the disciplinary proceeding. The writ petition of the appellant having failed to produce any result this appeal has been filed by the appellant.”

5. In the case of the respondent herein, Shri Ganesh Prasad Sharma, the memorandum of charges was instituted on 25.2.2003. He retired on 28.2.2003 after the disciplinary proceedings initiated against him. This would show that when the departmental proceedings were initiated against him on 25.2.2003 he was very much in service and, therefore, both the Tribunal and the High Court fell in error in quashing the disciplinary proceedings initiated against the respondent herein. The cases of Kaniya Lal and Ganesh Prasad Sharma, respondent herein are distinctly different. In the view that we have taken both the orders of the Tribunal and the High Court are set aside. The department may continue with the disciplinary proceedings against the respondent herein, Shri Ganesh Prasad Sharma and pass appropriate order. Since the proceedings are pending from 2003 we direct the appellant to complete the disciplinary proceedings preferably within six months from today. We clarify that we do not express any opinion on the merit of this case.

6. The appeal is disposed of accordingly.