

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

% Judgment Reserved On:20th September, 2010
Judgment Delivered On:21st October, 2010

+ **WP(C) 17221-22/2004**

UNION OF INDIA & ANR. ...Petitioners
Through : Mr.Chandan Sharma, Advocate for
Mr.Rajeev Sharma, Advocate

Versus

S.K.MATHUR & ANR. ...Respondents
Through: Mr.N.Safaya, Advocate

WP(C) 2330/2007

UNION OF INDIA ...Petitioner
Through : Mr.R.V.Sinha, Mr.R.N.Singh and
Mr.A.S.Singh, Advocates

Versus

D.P.SRIVASTAVA ...Respondent
Through: Mr.S.C.Luthra, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MOOL CHAND GARG

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

PRADEEP NANDRAJOG, J.

1. Since common question of law arises for consideration in the two captioned writ petitions arguments were heard in both the matters on 20.9.2010 and decision was reserved. The present judgment decides both the writ petitions. Pertaining W.P.(C) No.17221-22/2004 the relevant facts are that on 28.08.2000 Ministry of Information and Broadcasting,

Government of India issued an Office Order pertaining to respondent No.1 of said petition, who was working as Chief Producer in Doordarshan Kendra, Jalandhar whereby the President placed the respondent No.1 under suspension in terms of Rule 10 of Central Civil Services (Classification, Control and Appeal) Rules 1965 (hereinafter referred to as "CCS (CCA) Rules"), on the ground that the Ministry is contemplating initiation of disciplinary proceedings against the said respondent. On attaining the age of superannuation i.e. 60 years, the respondent No.1 retired from service with effect from 31.08.2000. On 21.10.2002 Ministry of Information and Broadcasting, Government of India issued an Office Order to the respondent No.1 whereby the President accorded sanction for initiation of departmental proceedings against the said respondent in terms of Rule 9(2)(b)(i) of Central Civil Services (Pension) Rules 1972 (hereinafter referred to as "CCS (Pension) Rules"). On the same date i.e. 21.10.2002, Ministry of Information and Broadcasting, Government of India issued a Memorandum to the said respondent informing him that the Ministry has decided to hold a disciplinary inquiry against the said respondent. The gist of the charges leveled against the said respondent was that while working as Chief Producer, Doordarshan Kendra, Delhi between the years 1997-98 the said respondent committed misconduct inasmuch as he awarded contracts of royalty based and freelance programmes to the firms owned by his wife, relatives and friends. Feeling aggrieved by the Office Order and Memorandum dated 21.10.2002 issued by Ministry of Information and Broadcasting, Government of India, the said respondent filed an application under Section 19, Administrative Tribunals Act 1985, before Principal Bench, Central Administrative Tribunal, Delhi. The primary stand taken by the said respondent before

the Tribunal was that the sanction granted by the President for initiation of departmental proceedings against the respondent is in violation of Rule 9(2)(b)(ii) of CCS (Pension) Rules for the reason the sanction granted by the President pertains to the events which took place more than four years before the institution of departmental proceedings against the said respondent whereas Rule 9(2)(b)(ii) prohibits the President from granting sanction in respect of events which took place more than four years before the institution of departmental proceedings against a delinquent employee.

2. Per contra, the stand taken by the Ministry was that Rule 9(6)(a) of CCS (Pension) Rules provides that in case of a government servant placed under suspension the departmental proceedings shall be deemed to be instituted from the date of order of his suspension squarely applies to the present case and thus the departmental proceedings shall be deemed to be instituted against him from the date of order of his suspension i.e. 28.08.2000. As a necessary corollary thereof, the sanction granted by the President for institution of departmental proceedings against the said respondent does not violate Rule 9(2)(b)(ii) of CCS (Pension) Rules inasmuch as the sanction in question pertains to the events which took place about two years of institution of departmental proceedings against the said respondent.

3. Vide impugned judgment and order dated 10.03.2004, the learned Tribunal held that second part of Rule 9(6)(a) does not apply in case of a pensioner for the reasons: - (i) a reading of Rule 9(6)(a) shows that the intention of the Legislature was that second part of the said Rule which provides that in case of a government servant placed under suspension the departmental proceedings shall be deemed to be instituted

from the date of order of his suspension should not apply in case of a pensioner evident from the fact that the words “government servant” and “pensioner” find mention in first part of the said Rule whereas only the word “government servant” finds mention in second part of the Rule; (ii) in view of ratio laid down in the decisions of Division Bench of Karnataka High Court and Hyderabad and Madras Bench of Tribunal reported as State of Karnataka v R.S. Naik (1983) 3 SLR 285, K.P. Rao v AG, API 1987 (4) ATC 756 and S. Ramanujam v Commissioner of Departmental Inquiries 1985(4) SLR 530 respectively, the suspension of a government servant who is allowed to retire automatically lapses and thus a pensioner can never be under suspension and brought within the ambit of second part of Rule 9(6)(a); (iii) if it is held that second part of Rule 9(6)(a) applies in case of a pensioner the same would render provision of Rule 9(2)(b) [which requires that where departmental proceedings are not instituted against an employee before his retirement or during his re-employment the same cannot be instituted after his retirement unless three conditions prescribed therein are satisfied] redundant and nugatory for in that case the institution of departmental proceedings in respect of a pensioner who was placed under suspension shall always be deemed to be before his retirement; and (iv) if it is held that second part of Rule 9(6)(a) applies in case of a pensioner the same would result in a conflict with Rule 9(2)(b). As a necessary corollary to the aforesaid, the Tribunal held that the departmental proceedings shall be deemed to be instituted against the respondent No.1 from the date of issuance of memorandum/charge sheet to him i.e. 21.10.2002 and therefore the sanction accorded by the President is illegal as it violates Rule 9(2)(b)(ii).

4. Relevant facts pertaining to W.P.(C) No.2330/2007 are that on 28.07.1997, Department of Communications, Ministry of Communications, Government of India issued an Office Order to the respondent who was working as Area Manager, Indore whereby the President placed the respondent under suspension in terms of Rule 10 of CCS (CCA) Rules on the ground that the Ministry is contemplating initiation of disciplinary proceedings against the respondent. On attaining the age of superannuation i.e. 60 years, the said respondent retired from service with effect from 31.07.1997. On 02.12.1998 Department of Communication, Ministry of Communications, Government of India issued an Office Order to the said respondent whereby the President accorded sanction to the Ministry for initiation of departmental proceedings against the said respondent in terms of Rule 9(2)(b)(i) of CCS (Pension) Rules. On the same date i.e. 02.12.1998 Department of Communications, Ministry of Communications, Government of India issued a Memorandum to the said respondent informing him that the Ministry has decided to hold a disciplinary inquiry against the said respondent. The gist of the charges leveled against the said respondent was that while working as DMT, Ghaziabad and Director Telecom (North) between the years 1986-87 the said respondent failed to discharge his duties properly and committed grave misconduct inasmuch as acted favorably in respect of a firm named M/s Grandeur Furnishings and purchased a car from the sister concern of the said firm without obtaining previous sanction from the prescribed authority.

5. Vide order dated 25.05.2002, the Disciplinary Authority held the respondent to be guilty of the charges leveled against

the said respondent and inflicted the penalty of 25% cut in pension for a period of five years upon him.

6. Feeling aggrieved by the Office Order and Memorandum dated 21.10.2002 issued by Ministry of Information and Broadcasting, Government of India and the order dated 25.05.2002 passed by the Disciplinary Authority, the said respondent filed an application under Section 19, Administrative Tribunals Act 1985, before Principal Bench, Central Administrative Tribunal, Delhi. The said respondent assailed the validity of the sanction granted by the President on the ground of violation of Rule 9(2)(b)(ii) of CCS (Pension) Rules. Likewise, the Ministry sought the refuge of Rule 9(6)(a) of CCS (Pension) Rules to justify initiation of departmental proceedings against the said respondent.

7. Following the law laid down by the Tribunal in the afore-noted judgment dated 10.03.2004 (which is impugned in W.P. (C) No.17221-22/2004) that second part of Rule 9(6)(a) does not apply in case of a pensioner, vide impugned judgment dated 21.09.2006 the Tribunal allowed the application filed by the said respondent.

8. Aggrieved by the afore-noted judgments dated 10.03.2004 and 21.09.2006 passed by the Tribunal, Union of India has filed the above-captioned petitions under Articles 226 and 227 of Constitution of India.

9. From the afore-noted conspectus of facts, it is clear that the cardinal question which has arisen for consideration in the present case(s) is whether second part of Rule 9(6)(a) which provides that in case of a government servant placed under suspension, the departmental proceedings shall be deemed to be instituted from the date of order of his suspension, applies

to the case of a pensioner or not. As already noted hereinabove, the Tribunal has answered the aforesaid question in the negative. Is the Tribunal correct in holding so?

10. Rule 9 of CCS (Pension) Rules reads as under:-

“9. Right of President to withhold or withdraw pension:- (1) The President reserves to himself the right of withholding a pension or gratuity, or both either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement:

Provides that the Union Public Service Commission shall be consulted before any financial orders are passed:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees four hundred and seventy-five (Rupees Four thousand five hundred from 1.1.2006--See GID below Rule 49) per mensem.

(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:

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

(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 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.

(3) Deleted.

(4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under Sub-rule 9(2), a provisional pension as provided in Rule 69 shall be sanctioned.

(5) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) 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 servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted-

(i) in the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognizance, is made, and

(ii) in the case of civil proceedings, on the date the plaint is presented in the Court.”

11. As already noted herein above, four reasons have been given by the Tribunal to conclude that second part of Rule 9(6)(a) does not apply in case of a pensioner. Let us proceed to examine the correctness of each of the reasons given by the Tribunal.

In re: Reason No. (i):-

12. The first reason given by the Tribunal to conclude that second part of Rule 9(6)(a) does not apply in case of a pensioner is that the words “government servant” and “pensioner” find mention in first part of the said Rule, whereas only the word “government servant” finds mention in second part of the Rule and hence the Rule cannot apply to a pensioner.

13. We are afraid the aforesaid reason given by the Tribunal is most fallacious.

14. Upon superannuation, the relationship of master and servant between the government and the government servant comes to an end and thus a pensioner i.e. a retired government servant can never be under suspension. In such circumstances, the legislature could not have used the word ‘pensioner’ while dealing with a situation pertaining to suspension. Insofar as use of words ‘government servant’ and ‘pensioner’ in first part of Rule 9(6)(a) is concerned, the first part stands on a different footing than the second part, for the same deals with situation pertaining to issuance of charge

sheet and a charge sheet can be issued to a pensioner in terms of Rule 9(2)(b).

In re: Reason No. (ii):-

15. The second reason given by the Tribunal to conclude that second part of Rule 9(6)(a) does not apply in case of a pensioner is that suspension of a government servant who is allowed to retire automatically lapses and thus a pensioner can never be under suspension and brought within the ambit of second part of the rule 9(6)(a).

16. The first and second reasons given by the Tribunal are contradictory to each other. While on one hand the Tribunal has held that a pensioner can never be under suspension on the other it has held that second part does not apply in case of a pensioner for the word 'pensioner' does not find a mention therein. We fail to understand how could legislature use the word 'pensioner' in the context of suspension when a pensioner can never be under suspension.

17. Be that as it may, the normal rule is that upon superannuation, the relationship of master and servant between the employer and the employee comes to an end and in such a situation it is not open to the employer to take any disciplinary action against the employee. However, the same is permissible provided the service rules applicable to the employee provides for such a contingency. To deal with cases where either departmental proceedings or judicial proceedings are pending or in contemplation at the time of the retirement of a government servant, Rule 9 of CCS (Pension) Rules has been framed. A bare reading of Rule 9 shows that Rule 9 deals with situations arising post-retirement of a government servant.

18. If the interpretation given by the Tribunal to second part of Rule 9(6)(a); that upon retirement of a suspended government servant his suspension automatically lapses and thus he can never be under suspension and brought within the ambit of second part of the rule is accepted as correct, the consequence which arises therefrom is that second part of Rule 9(6)(a) dealing with suspension would be rendered meaningless as it would relate to a situation arising pre-retirement of a government servant which is not the scope of Rule 9.

19. An interpretation which results in rejection of words occurring in a statute as meaningless has to be avoided. It is not a sound principle of interpretation to brush aside word(s) occurring in a statute as being inapposite surplusage; if they can have appropriate application in circumstances conceivably within the contemplation of the statute. While interpreting statutes the courts should always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. The legislature is deemed not to waste its words or to say anything in vain. (See the decision of Supreme Court reported as Mithilesh Singh v Union of India (2003) 3 SCC 309).

20. In that view of the matter, second part of Rule 9(6)(a) should be interpreted in a manner so that it does not become meaningless and surplusage. When interpreted in the said manner, the result which emerges is that second part of Rule 9(6)(a) pertains to a situation where a government servant was under suspension at the time of his retirement.

In re: Reason No.(iii) and (iv):-

21. The third and fourth reasons given by the Tribunal to conclude that second part of Rule 9(6)(a) does not apply in

case of a pensioner is that if Rule 9(6)(a) is interpreted to mean that it applies to a pensioner the same would render Rule 9(2)(b) as otiose and redundant and result in conflict with Rule 9(2)(b).

22. Rule 9(1) is an enabling provision which empowers the President to withhold the pension or gratuity or both either in full or in part; to withdraw the pension in full or in part, either permanently or for a specific period and to order recovery from the pension or gratuity of the whole or part of any pecuniary loss caused to the Government, provided that the pensioner is found guilty of grave misconduct or negligence during the period of his service in any departmental or judicial proceedings. The two provisos appended to Rule 9(1) regulate and limit the aforesaid power of the President.

23. Rule 9(2)(a) expands the scope of Rule 9(1) by prescribing that departmental proceedings instituted against a government servant, while he was in service, shall after his retirement, be continued and concluded in the same manner as if the government servant had continued in service. Rule 9(2)(b) goes a step further and, subject to various safeguards, empowers the government to initiate departmental proceedings against the retired government servant even after his retirement.

24. Rule 9(4) makes provision for payment of provisional pension in terms of Rule 69 to a government servant who has retired and departmental/judicial proceedings are instituted against him or departmental proceedings are continuing against him in terms of Rule 9(2). Rule 9(5) pertains to a situation where the President decides not to withhold or

withdraw pension but orders recovery of pecuniary loss from the pension.

25. Rules 9(6)(a) and 9(6)(b) are “deeming provisions” prescribing date of institution of departmental/judicial proceedings in certain specific situations.

26. From the aforesaid, it is clear that each clause of Rule 9 operates in different fields and there is no conflict between any of them. Whereas Rule 9(2)(b) provides that no disciplinary proceedings shall be instituted against a retired government servant unless three conditions prescribed therein are satisfied Rule 9(6)(a) provides for date of institution of departmental proceedings in certain specific situations. Where is the conflict between the two? None whatsoever.

27. As regards the fact that if second part of Rule 9(6)(a) is interpreted to mean that the same would apply to the case of a pensioner it would render Rule 9(2)(b) redundant, suffice would it be to state that all cases where a deeming provision is added to a section, it is in a sense not in consonance with the main section. A deeming provision has always the effect of either enlarging or limiting the scope of the main section. But, so long as the Legislature has power to enact deeming provisions, they are perfectly valid. (See the decision of Andhra Pradesh High Court reported as Tholasi Venkatanumuswamy v Commercial Tax Officer (1974) 33 STC 497 (AP).

28. In the decision reported as St. Aubyn v Attorney General (1952) AC 15 the Court of Appeals explained the effect of the word “deemed” as follows:-

“The word ‘deemed’ is used a great deal in modern legislation. Sometimes it is used to impose for the

purposes of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain, and what is, in the ordinary sense, impossible.”

29. In the decision reported as East End Dwellings Co. Ltd v Finsbury Borough Council (1952) AC 109 the Court of Appeals made following pertinent observations with regard to interpretation of a “deeming provision”:-

“If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed for accompanied it....The statute says that you must imagine a certain state of affairs; it does say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.”

30. In the decision reported as State of Bombay v Pandurang Vinayak Chaphalkar & Ors AIR 1953 SC 244 Supreme Court observed as under:-

“When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the court is entitled to and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion”
(*Emphasis Supplied*)

31. A government employee gets pension on his retirement and continues to get the same for the remainder of his life. So much so, that the family of a government servant is entitled to family pension after the death of government servant. This benefit is given for rendering long and faithful service by the

government servant. However, if it is found that during his employment he had committed some act of indiscipline or misconduct, it should naturally have some bearing on these terminal dues like gratuity and pension. For this reason, when the irregularities committed by a government servant while in service are noticed and the disciplinary proceedings are initiated, the Government has the right to continue the same after retirement as well. In cases where the gross misconduct is found to have been committed by a government servant while in service, allowing such a person to earn full pension for rest of his life after retirement may not be proper as the pension is given for not only long service but for sincere and faithful discharge of duties. It is for this reason that even when no inquiry was instituted when the Government servant was in service, provision is made to proceed against him departmentally even after his retirement. However, at the same time, balance is struck by providing that the alleged irregularity should not be of a period more than four years old from the date of institution of departmental proceedings. This provision obviates the possibility of harassing retired Government servants by digging up old issues.

32. Keeping in view the afore-noted principle regarding the interpretation of a deeming provision that full effect must be given to the statutory fiction and it should be carried to its logical conclusion; the object of enactment of Rule 9 and that the cardinal principle of interpretation that no statute should be interpreted in a manner so as to render part thereof surplusage, full meaning and effect should be given to Rule 9(6)(a). When interpreted in said manner, the result which emerges is that: (i) where a government servant was under suspension at the time of his retirement, the departmental proceedings shall be deemed to be instituted from the date of

his suspension or the date of issuance of charge sheet to him, whichever is earlier and (ii) where a government servant was not under suspension at the time of his retirement, the departmental proceedings shall be deemed to be instituted from the date of issuance of charge sheet to him. In that view of the matter, the Tribunal was not correct in holding that second part of Rule 9(6)(a) does not apply in case of a pensioner.

33. A similar view was taken by a Division Bench of this Court in the decision reported as R.P.S. Panwar v Union of India ILR (2009)1 Del 326. Relevant would it be to note following observations made by the Division Bench:-

“We now proceed to deal with the first submission, namely, applicability or otherwise of sub-rule (6) of Rule 9 to those Government employees who have retired from service. No doubt, in Common Law, after the retirement and/or when there is cessation of employer-employee relationship, there is no question of employee remaining under suspension. If we apply this principle of Common Law, viz. once an employee retires, the employer-employee relationship comes to an end, the sequitur would be that the employer cannot take disciplinary action against his retired employee and punish him for that. However, sub-rule 2(a) of Rule 9 creates legal fiction and for the purpose of departmental action treats such a delinquent officer as an employee of the Government. No doubt, the nature of penalties which can be imposed after retirement are different as it would be absurd to inflict the punishment prescribed under Rule 11 of the CCS (CCA) Rules on a retired employee. To remove this absurdity, Rule 9 provides for different kinds of punishments, which relate to forfeiture and/or cut in pension and gratuity. It is for this reason the pension and gratuity are not released to the Government employee, against whom the disciplinary proceedings are pending, at the time of retirement and he is only given provisional pension. Once we understand and accept this position, extending this deeming provision or legal fiction, to a situation provided under sub-rule (6) of Rule 9 would

also be understandable. The President had passed specific orders dated 13-4-2006 extending the suspension till the conclusion of departmental cases as well as criminal cases. This deemed suspension, for the purpose of departmental cases, would continue even after retirement. Once the matter is looked into from this angle, there is no difficulty in concluding that even when the charge sheets were served after the retirement, the deemed date of initiation of disciplinary proceedings would be the date of suspension."

34. Coming to the facts of the present case(s), petitioners in both the cases were under suspension on the date of their retirement. In view of the conclusion arrived by us in para 32 above, the departmental proceedings shall be deemed to be instituted against the petitioners from the date of their suspension and no part of Rule 9 (2) (b) is violated.

35. As a sequitur to the aforesaid, the writ petitions are allowed and the impugned judgments dated 10.03.2004 and 21.09.2006 passed by the Tribunal are set aside and the original applications filed by the respondents of the two writ petitions are dismissed.

36. Noting that the respondents are retired employees, we refrain from imposing any costs.

(PRADEEP NANDRAJOG)
JUDGE

(MOOL CHAND GARG)
JUDGE

October 21, 2010
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