

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) No. 4489/2001**
% **12th February, 2015**

RATTAN LAL ARORA Petitioner
Through: **Ms. Mansi Ajmani, Advocate.**

versus

DELHI VIDHYUT BOARD & ORS. Respondents
Through: **Mr. S.N.Choudhri and Ms. Shruti Choudhri, Advocates.**

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, the petitioner, an erstwhile employee of the Delhi Vidyut Board (DVB), and of which entity the present respondent no.4/BSES Rajdhani Power Ltd. is the successor entity, impugns the order dated 21.3.2001 as per which the petitioner has been imposed the following penalty:

“i) Full gratuity, otherwise admissible to Sh. Arora, had he not been convicted, shall stands forfeited.

ii) His pension would be reduced to Rs. one thousand two hundred and seventy five only per month, permanently.

iii) The period of suspension viz. From 21-1-95 to 30-6-97 would be treated as non-duty for all intent and purposes except payment of pay and allowances which would stand restricted to the subsistence allowance already paid to him during the period."

2. The impugned order has been passed in exercise of Rule 9 of the CCS (Pension) Rules, 1972 (in short 'the Pension Rules') and which entitles the employer to withhold, whether permanently or temporarily, pension and gratuity in case of the employee being held guilty in any judicial proceedings. Petitioner/employee was held guilty of taking a bribe during service as illegal gratification for sanctioning of an electricity connection in terms of the judgment of Sh. V.B.Gupta, Special Judge, Delhi dated 8.9.1999.

3. I may note that when the judgment dated 8.9.1999 was appealed to this Court, the appeal was allowed, however, the State challenged the judgment passed by the High Court in the Supreme Court by a Criminal Appeal No. 532/2004 and this criminal appeal was decided in favour of the State and the conviction of the petitioner was upheld.

4. I am not referring to the quantum of the sentence because the same is immaterial for the purpose of the present proceedings.

5. On behalf of the petitioner, two main aspects are argued. First is that there is no power in the employer after superannuation of an employee to pass orders of withholding pension and gratuity. The second argument is that even assuming that Rule 9 of the Pension Rules applies, once no pecuniary loss is caused to the government, no order can be passed for permanent withholding of pension and gratuity or reducing the amount thereof.

6. Rule 9 of the 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:

Provided that the Union Public Service Commission shall be consulted before any final 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 three hundred and seventy-five (*Rupees Three 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 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 (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.”

7. Rule 9 of the CCS (Pension) Rules has been the subject matter of a decision by the Supreme Court in the judgment in the case of *Union of India & Ors. Vs. B. Dev (1998) 7 SCC 691* and in which judgment the Supreme Court held that the power to withhold pension or gratuity permanently is not limited only to those cases where the government has suffered a pecuniary loss. It has been held that there is power under Rule 9 of the Pension Rules to withhold pension and gratuity even if no pecuniary

loss is caused to the government. The relevant para of the Supreme Court in the case of ***B.Dev (supra)*** is para 11 and which reads as under:-

“11. Rule 9 gives to the president the right of– (1) withholding or withdrawing a pension or part thereof, (2) either permanently or for a specified period, and (3) ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government. This power can be exercised if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service. The power, therefore, can be exercised in all cases where the pensioner is found guilty of grave misconduct or negligence during the period of his service. One of the powers of the President is to recover from pension, in a case where any pecuniary loss is caused to the Government, that loss. This is an independent power in addition to the power of withdrawing or withholding pension. The contention of the respondent, therefore, that Rule 9 cannot be invoked even in cases of grave misconduct unless pecuniary loss is caused to the Government, is unsustainable.”

8. The aforesaid judgment of the Supreme Court has been relied upon by the Division Bench of this Court in the case of ***Tulsi Ram Arya Vs. The Chairman Delhi Transco Limited & Ors.*** in LPA No.219/2013 decided on 22.8.2013 and the Division Bench set aside the judgment of a learned Single Judge of this Court dated 31.1.2013 in W.P.(C) No.618/2001 wherein it was held that there is no entitlement in the employer to permanently withhold pension or gratuity unless pecuniary loss is caused to the government.

9. A reading of Rule 9 of the Pension Rules along with the aforesaid judgments in the cases of ***B.Dev (supra)*** and ***Tulsi Ram Arya***

(*supra*) demolishes the argument urged on behalf of the petitioner because Rule 9 of the Pension Rules specifically provides the entitlement to the employer even after retirement to withhold pension and gratuity in case the employee in judicial proceedings is found to be guilty, and, in fact, it is not a bar to withhold pension and gratuity even if there is no pecuniary loss caused to the government.

10. I may note that the principles of natural justice have been duly followed in this case because the impugned order 21.3.2001 was passed after issuing of show cause notice to the petitioner and considering the reply which was given by the petitioner to the show cause notice.

11. In view of the above, I do not find any merit in the petition and the same is therefore dismissed, leaving the parties to bear their own costs.

FEBRUARY 12, 2015
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VALMIKI J. MEHTA, J.