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

+ W.P.(C) 8762/2015

Date of judgment 14.09.2015

K.P. SHARMA ..... Petitioner

Through : Mr. R.N. Rai, Advocate along with petitioner in person.

versus

UNION OF INDIA AND ORS. ..... Respondents

Through : Mr.Arun Bharadwaj, CGSC/UOI with Mr.Rishi Kapoor, Advocate.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

CM APPL. 19335/2015.

1. Exemption allowed, subject to all just exceptions.

2. Application stands disposed of.

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3. The present writ petition filed under Articles 226/227 of the Constitution of India, the petitioner seeks quashing and setting aside of the order dated 29 January, 2015 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi, whereby, the learned Tribunal dismissed the O.A. bearing No. 354 of 2015 filed by petitioners with regard to grant of retirement terminal benefits and upheld the decision/ order dated 05.06.2014 made by the respondents in compliance of the order dated

07.05.2014 passed by the learned Central Administrative Tribunal in O.A. NO 1559/2014.

4. The facts necessary for the adjudication of the present writ petition are as follows:-

> *"Shri K.P. Sharma (Ex Accounts Officer) retired from the PA wing of Postal Directorate on attaining the age of superannuation on 31.07.2008. As per the report of vigilance branch, the applicant was facing two CBI cases: wherein prosecution sanction has been issued vide Postal Directorate Memo No. 10-1/2005-Vig. dated 21.4.2005 and 10-3/CBI/2006-Vig. dated 23.3.2007. Apart from above cases Shri K. P. Sharma was also facing Departmental Enquiry under Rule 14 vide Postal Directorate Memo No. 10-10/2005-Vig. Dated 18.7.2008. Since the applicant was not clear from vigilance angle at the time of his retirement on superannuation, he is in receipt of provisional pension in terms of Rule 69(1)(b) CCS (Pension) Rules and his other terminal benefits viz. DCRG, part of leave encashment and Commutation of Pension are withheld under the provision of Rule 69 (1)(c) of CCS Pension Rules, 1972, Rule 39 (3) of CCS (Leave) Rules and Rule 4 of CCS (Commutation of Pension) Rules, 1981 respectively."*

5. The petitioner in the present case firstly preferred O.A. No. 1559/2014 before the Central Administrative Tribunal seeking a direction to the respondents to release terminal benefits, i.e., DCRG, Leave Encashment and Commutation of Pension which were withheld. The learned Tribunal disposed of the aforesaid O.A. vide order dated 07.05.2014 with a direction to the respondents to take a final decision within four weeks. The Respondents passed the impugned order dated 05.06.2004 whereby, the terminal benefits of petitioner were withheld under the provision of Rule 69(1) (c) of CCS (Pension) Rules, 1972, Rule 39(3) of CCS (Leave) Rule and Rule 4 of CCS (Commutation of

Pension) Rule, 1981. Being aggrieved by the order dated 05.06.2004 the petitioner filed O.A. No. 354/2015 before Central Administrative Tribunal which was again dismissed. Thereafter, the petitioner preferred a writ petition before this Court seeking the release of his gratuity, leave encashment and commutation of pension.

6. Mr. R.N. Rai, learned Counsel for the petitioner submits that the order passed by the Central Administrative Tribunal is unjust, illegal, arbitrary and against the principles of natural justice.

7. Learned Counsel for the petitioner contends that Rule 9 of CCS (Pension) Rules, 1972 has a bearing upon the present case for proper adjudication which was not even considered by the respondents in its order dated 05.06.2014. It was further clarified that Rule 9 (1) starkly provides that the right of the Government of withholding pension and gratuity either in full or in part shall only take effect when such pensioner, in any departmental or judicial proceedings, is found guilty of grave misconduct or negligence during the period of service. In the light of the above submission, the counsel contended that the petitioner has not been found guilty yet and thus his terminal benefits cannot be withheld by the respondents till the final decision/order of departmental enquiry. Reliance on behalf of the petitioner is placed upon the judgment of the Supreme Court in the case of ***State of Jharkhand and Ors. Vs. Jitendra Kumar Srivastava and Anr. 2013 (10) SCALE 310*** in which the Apex Court has laid down as under:

> *"11. Reading of Rule 43(b) makes it abundantly clear that even after the conclusion of the departmental inquiry, it is*

permissible for the Government to withhold pension etc. ONLY when a finding is recorded either in departmental inquiry or judicial proceedings that the employee had committed grave misconduct in the discharge of his duty while in his office. There is no provision in the rules for withholding of the pension/gratuity when such departmental proceedings or judicial proceedings are still pending."

8. Per contra, Mr. Arun Bharadwaj, learned counsel for the respondents contended that petitioner is in receipt of provisional pension in terms of Rule 69 (1) (b) CCS (Pension) Rules, 1972 as the case of the petitioner was not clear from vigilance angle at the time of his retirement on superannuation and has been granted only the provisional pension by the respondents. It was further contended that terminal benefits of petitioner i.e., DCRG, part of Leave encashment and Commutation of Pension are withheld under the provision of Rule 69(1) (c) of CCS (Pension) Rules, 1972, Rule 39(3) of CCS (Leave) Rule and Rule 4 of CCS (Commutation of Pension) Rule, 1981.

9. At this juncture, we deem it appropriate to set out the relevant extracts of Rule 9 and Rule 69 of CCS (Pension) Rules, 1972, Rule 39 of CCS (Leave) Rule and Rule 4 of CCS (Commutation of Pension) Rule, 1981 in order to appreciate the respective contentions of the parties:-

Rule 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 the 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 pensions shall not be reduced below the amount of rupees three hundred and seventy five (Rupees One thousand nine hundred and thirteen from 1.4.2004 - see GID Rule 49) per mensem.]
(2) XXX.
(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.

Rule 69: Provisional pension where departmental or judicial proceedings may be pending

(1)(a) XXX.
(b) The provisional pension shall be authorized by the Accounts Officer during the period commencing from the date of retirement up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the Competent Authority.
(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon: Provided that where departmental proceedings have been instituted under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, for imposing any of the penalties specified in Clauses (i),(ii) and (iv) of Rule 11 of the said rules, the payment of gratuity shall be authorized to be paid to the Government servant..

Rule 4: Restriction on commutation of pension

No Government servant against whom departmental or judicial proceedings, as referred to in Rule 9 of the Pension Rules, have been instituted before the date of his retirement, or the pensioner against whom such proceedings are instituted after the date of his retirement, shall be eligible to commute a fraction of his provisional pension authorised under Rule 69 of the Pension Rules or the pension, as the case may be, during the pendency of such proceedings.

> ***Rule 39*: *Leave/Cash payment in lieu of leave beyond the date of retirement, compulsory retirement or quitting of service***
> *(3) The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any.*

10. We have heard learned counsel for the parties and considered their rival submissions. We have also carefully examined the impugned order passed by the Central Administrative Tribunal. It is the case of the petitioner that his terminals benefits i.e. gratuity, commutation of pension and leave encashment have been wrongly withheld by the respondents on superannuation of the petitioner as there was departmental enquiry pending against petitioner and only provisional pension has been paid to him. The short point which comes up for consideration before this court is whether the respondents are entitled to withhold the terminal benefits of the petitioner when departmental proceedings are still pending against him.

11. Generally on superannuation a Government servant would become entitled to payment of his retirement dues including pension. The normal rule is that upon superannuation of an employee, the relationship of master and servant comes to end and in such a situation it is not open for the employer to take any disciplinary

action against the employee. However, the same is permissible provided the service rules applicable to the employee provide for such a contingency.

12. To deal with cases where either departmental proceedings or judicial proceedings are pending, or in contemplation at the time of retirement of a government servant, Rules 9 and 69 of the Pensions Rules have been framed. Rule 9(1) preserves the right of 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 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 to Rule 9(1) regulate and limit this power of the President.

13. In our opinion, the language of sub-Rule (4) of Rule 9 of the Pension Rules read with Rule 69 makes it abundantly clear that the disciplinary proceedings can be initiated against an employee even after his retirement. By application of these rules on initiation of departmental proceedings, provisional pension is payable and the gratuity amount can be withheld. There cannot be any other interpretation of Rule 9 read with Rule 69 inasmuch as once there is an entitlement to give only a provisional pension, implicit in the same is the entitlement not to pay regular pension. Once only provisional pension is paid, then regular pension can be withheld, it cannot be argued on behalf of the petitioner that complete pension

has necessarily to be paid, and it cannot be withheld if disciplinary proceedings are pending after retirement of an employee. To accept such an argument urged on behalf of the petitioner will negate the literal construction of Rules 9(4) and 69 of the Pension Rules and the legislative intention behind these provisions.

14. So far as pension is concerned, there is entitlement to institute proceedings after retirement of a person, and consequent right to withhold pension except paying provisional pension. We see no difficulty in interpreting Rule 9(1) that even the gratuity amount payable on retirement can be withheld when disciplinary proceedings are initiated against the employee after retirement. In our opinion, sub-Rule (1) of Rule 9 has to be read into two parts. The first part pertains to entitlement and withholding and the second part pertains to recovering from pension and gratuity amounts the pecuniary loss caused after the findings of the departmental authorities or in the judicial proceedings. The expression 'permanently or for a specific period' as found in the first part of sub-Rule (1) of Rule 9 has to be read in context to give it a meaning that withholding is obviously only till the passing of final order of departmental authorities or of a Court and if in the departmental proceedings an employee is held guilty of causing loss then there can be recovery by means of permanent withholding i.e. non-payment of pension and gratuity, and, if there is no loss caused to the organization then in such a case pension and gratuity will have to be paid. There necessarily has to be a difference with respect to interpretation of the language as found in first part of

sub-Rule (1) of Rule 9 with language in the second part of the said sub-Rule 9, otherwise the same will result in frustration of the categorical language of sub-Rule (4) of Rule 9 read with Rule 69 which entitles institution of disciplinary proceedings after retirement and payment only of provisional pension i.e. there being an entitlement to withhold the normal pension on departmental proceedings commencing after retirement. Therefore, we reject the argument urged on behalf of the petitioner that if disciplinary proceedings are initiated, yet entitlement to withhold the terminal benefits of pension and gratuity can only arise after the final order of departmental authorities or final orders in the judicial proceedings. As already held above, withholding can take place on institution of disciplinary proceedings, though recovery or permanent non-payment of the complete pension and gratuity amounts can take place after passing of the final orders of the departmental authorities or by a civil court holding the employee guilty of causing pecuniary loss to the petitioner.

15. With regard to the issue of leave encashment amount payable on retirement is concerned, the language of Rule 39(3) does not provide that on institution of departmental proceedings the department can withhold leave encashment amount after retirement of a person. By its very language, sub-Rule (3) of Rule 39 of the leave rules applies only when proceedings are instituted by issuing of a charge-sheet prior to the retirement of a person. Since in the present case charge-sheet has been issued prior to retirement, there is continuation of disciplinary proceedings which were started

before the retirement of the employee, and therefore, leave encashment amount can be withheld by the department.

16. After perusing the above mentioned Rules we are of this considered view that the respondents are entitled to withhold gratuity, leave encashment and commutation of pension of petitioner till the final orders of departmental enquiry. Thus, there is no infirmity found in the judgment of the Central Administrative Tribunal; resultantly the writ petition is dismissed.

SANGITA DHINGRA SEHGAL, J

G.S.SISTANI, J

SEPTEMBER 14, 2015
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