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

\+ W.P.(C) 4632/2016

HARISH CHANDER ..... Petitioner

Through: Mr.Vimal Wadhawan, Adv.

versus

DELHI TRANSCO LIMITED & ANR. ..... Respondents

Through: Mr. S.K. Chaturvedi, Adv. with Mr. Malay Dwivedi, Adv. for R-1
Mr. Sumeet Pushkarna, Adv. with Mr. P. Narayan (Manager) for DVB-ETBF Pension Trust

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

O R D E R

% **03.08.2016**

1. The challenge in the writ petition is to the order dated December 30, 2015 whereby, the respondent No.1 has decided to impose a penalty of withholding of gratuity and pension permanently under Rule 9 of the CCS (Pension) Rules, 1972.

2. Some of the relevant facts are, the petitioner was appointed as a Wireman Grade-II in the erstwhile Delhi Electric Supply Undertaking. He was promoted to the post of Junior Engineer in the year 1999. In 1991, a case was registered against him by the CBI on the charge that he has taken bribe. In view of the pendency of the criminal case, the petitioner was put under suspension on September 5, 1991 and was taken back on duties on

February 2, 1999. It is the case of the petitioner that in 2005, he was acquitted of the charge of bribery. A separate case was also initiated against him for disproportionate assets. The petitioner superannuated on August 31, 2007. As a criminal case with respect to disproportionate assets was pending against the petitioner, the petitioner was granted provisional pension. On July 18, 2008 the allegation of disproportionate assets was proved against the petitioner and he was convicted for two years RI along with fine of Rs.50,000/-. It was also directed that the assets of the petitioner worth Rs.6,23,056.34 be forfeited to the State. The petitioner challenged the judgment dated July 18, 2008 before this Court in a Criminal Appeal No.650/2008. According to the petitioner, this Court in the Criminal Appeal No.650/2008 had modified the sentence to the extent that the imprisonment was reduced to one year RI with fine of Rs.50,000/- and forfeiture of Rs.6,23,056.34.

3. Learned counsel for the petitioner states that the amount of Rs.6,23,056.34/- has since been deposited with the Special Judge, CBI, New Delhi. Learned counsel for the petitioner would urge that the impugned order is bad on the ground that the respondents could not have imposed the penalty of withholding of the gratuity and pension permanently under Rule 9

of the CCS (Pension) Rules as there is no pecuniary loss caused to the Government because of the allegation against him. He would rely upon the judgment of the Calcutta High Court in the case of ***Gour Chandra Sarkar vs. The state of West Bengal and others***, wherein, the Court was considering a *para-materia* provision to contend that where, in the absence of any charge causing pecuniary loss to the Government, the pension and gratuity could not have been forfeited. He would also rely upon an additional affidavit filed today in the Court, to contend that two employees namely Nand Gopal and Satish Kumar Gupta who are also the employees of the erstwhile DVB now Delhi Transco Ltd/Tata Power Delhi Distribution Ltd, against whom serious charges of bribery have been proved were granted full pension and gratuity.

4. On the other hand, learned counsel for the respondent No.1 would contend otherwise and submit that Rule 9 of the CCS (Pension) Rules contemplate that in both the eventualities i.e. in the eventuality, there is a pecuniary loss and where the charge is of grave misconduct and grave negligence, the Rule 9 of the CCS (Pension) Rules can be invoked to withhold the complete gratuity and pension amount permanently. Mr. Pushkarna, learned counsel for respondent no.2 joins the learned counsel for

the respondent No.1 to contend on similar lines. He would rely upon the judgment of the Supreme Court reported as ***(1998) 7 SCC 691 Union of India and others vs. B. Dev*** to contend that the recovery of loss caused to the Government is independent of and is in addition to the power to withdraw and withhold the pension.

5. Having heard the learned counsel for the parties, insofar as the plea of the petitioner that Rule 9 can be invoked only in the case where there is a pecuniary loss, is unsustainable, in view of the judgment of the Supreme Court in the case of ***Union of India and others vs. B. Dev*** (supra) and also in view of the latest pronouncement in the case reported as of ***H.L. Gulati vs. Union of India and Ors MANU/SC/0359/2015.*** In ***Union of India & Ors. vs. B. Dev***, the same question arose, which has been urged by the learned counsel for the petitioner. In para 11, the Supreme Court has stated 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."*

6. Even in the case of ***H.L.Gulati vs. Union of India & Ors.*** (supra), the Supreme Court in para 20 held that it was open to the punishing authority to have passed the punishment order, in terms of the mandate contained in Rule 9 of the 1972 Rules. It was also held that the punishing authority could have passed such an order after giving conclusion that the appellant/delinquent was either guilty of grave negligence or of grave misconduct. It was a different issue that in the said case the Supreme Court held that the delinquency established against appellant was of negligence and not of misconduct. Be that as it may, in the case in hand, the charge of disproportionate assets having been upheld against the petitioner, surely it is a case of grave misconduct/negligence and Rule 9 has been rightly invoked. On the submission of parity with two other employees, the same can't be granted in view of the law and rule position, noted above. No further submission has been made by the learned counsel for the petitioner. Hence, the challenge to the order dated 30th September, 2015 must fail.

7. During the course of the submission, the learned counsel for the

petitioner would submit that even if the petitioner had been convicted, he is entitled to the benefits of leave encashment with interest. The learned counsel for the petitioner concedes that no representation has been made to the respondent No.1. He has drawn my attention to page 52 of the paper-book to submit that the respondent no.1 cannot withhold the leave encashment.

8. The learned counsel for the respondent No.1 states, insofar as the claim of the petitioner of leave encashment is concerned, the same shall be considered and if payable, in accordance with rules, the same shall be paid. If not payable, a communication in that regard shall be sent to the petitioner within eight weeks from the date of communication of this order. It is ordered accordingly. If the petitioner is aggrieved by the communication, he would be at liberty to seek such remedy, as available in law.

9. Petition stands dismissed with regard to the order dated December 30, 2015 and disposed of, insofar as the relief of leave encashment is concerned.

10. No costs.

V. KAMESWAR RAO, J

AUGUST 03, 2016/*ak*