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

\+ LPA 506/2016

HARISH CHANDER

..... Appellant

Through Mr Vimal Wadhawan, Adv.

versus

DELHI TRANSCO LTD & ANR

..... Respondent

Through Mr S.K. Chaturvedi, Adv. for R-1
Ms Sumit Pushkarna, Standing Counsel with Mr Siddharth Nagpal, Adv. for R2

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE SUNITA GUPTA

O R D E R

% **14.09.2016**

1. The appellant – Harish Chander by this Intra-Court Appeal impugns the order dated 03.08.2016 passed by learned Single Judge whereby the writ petition challenging the imposition of a penalty of withholding of gratuity and pension permanently under Rule 9 of the CCS (Pension) Rules, 1972 imposed vide order dated 30.12.2015 has been dismissed.

2. Learned counsel for the appellant submits that as per the information received by the appellant under the Right to Information Act, two persons, namely, Satish Gupta and Nand Gopal who have also been convicted under the Prevention of Corruption Act are drawing regular pension. Our attention is also drawn to the decision of the Supreme Court in ***H.L. Gulati* v *Union of India (UOI) & Ors*** [Civil Appeal No.8224 – 8225 of 2011] decided on 26.02.2015.

3. We have considered the submissions and hold that the pleas of the appellant are unacceptable and should be rejected. The appellant was initially appointed as a Wireman Grade II and was promoted to the post of Junior Engineer. In 1991, the Central Bureau of Investigation had charge-sheeted the appellant in a trap case. By the judgment dated 14.01.2005, the appellant was acquitted by the trial court as the prosecution was unable to prove their case. The appellant was separately charge-sheeted and by the judgment dated 16.7.2008, convicted for having acquired disproportionate assets under Section 13(2) read with Section 13(1) (e) of the Prevention of Corruption Act, 1988. By the order on sentence dated 18.07.2008, the appellant was sentenced to undergo rigorous imprisonment for a period of two years with a fine of Rs.50,000/-, and in default, to undergo simple imprisonment for six months. Assets equivalent to Rs.6,23,056.34 were directed to be forfeited to the State.

4. The conviction of the appellant was upheld vide order dated 10.11.2014 in Crl. Appeal No. 650/2008 with one modification. The substantive sentence of imprisonment was reduced to one year rigorous imprisonment. The direction that disproportionate assets of the value of Rs.6,23,056.34 would be forfeited was affirmed. The imposition of fine of Rs.50,000/- was also upheld.

5. The appellant has paid the fine and also deposited Rs.6,23,056.34. He has undergone and suffered the sentence of rigorous imprisonment.

6. After the appellant’s conviction was upheld by the High Court, vide order dated 30.12.2015, penalty of withholding of gratuity and

pension permanently under Rule 9 of the CCS (Pension) Rules, 1972 was passed by respondent No.1

7. The primary and core submission of the appellant is that the penalty and punishment imposed is disproportionate and harsh. However, we find the submission to be fallacious and unmerited. If the appellant was still in service, upon conviction, action would have been taken against the appellant in accordance with the applicable rules. Conviction would have ordinarily resulted in an order of dismissal. In the present case, the appellant had retired from service on 31.08.2007. He was, therefore, given provisional pension as criminal case CC No.50/1992 was pending against him.

8. In ***State of Maharashtra vs. Balakrishna Dattatrya Kumbhar,*** (2012) 12 SCC 384, the Supreme Court has held that "Corruption is not only a punishable offence but also undermines human rights, indirectly violating them, and systematic corruption, is a human rights' violation in itself, as it leads to systematic economic crimes." Conviction in a case of disproportionate assets, therefore, warrants the imposition of a penalty that not only serves as a punishment for the grave and serious offence but also acts as a deterrent. The appellant's conviction having attained finality, the order passed under Rule 9 of the CCS (Pension) Rules, 1972 is not an order which is not commensurate with the charge. The penalty and punishment imposed on the appellant is neither disproportionate nor unconscionable.

9. Reliance placed on the decision in the case of ***H.L. Gulati*** (supra) is misconceived. In the said case, the appellant before the Supreme Court was charge-sheeted for grave misconduct. The

Supreme Court held that the delinquency established against the appellant was of negligence and not of grave misconduct. However, in view of the time gap, as the delinquency related to 1992 to 1994, instead of remitting the matter for a fresh decision, the Supreme Court exercised their powers under Article 142 of the Constitution of India to inflict appropriate punishment.

10. The reliance placed on the reply given under the Right to Information Act, 2005 would not also further the case of the appellant as facts relating to the case of Satish Gupta and Nand Gopal are not on record.

11. The appeal has no merits and is accordingly dismissed.

SANJIV KHANNA, J

SUNITA GUPTA, J

SEPTEMBER 14, 2016/*rs*