

\*

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

%

Date of decision: July 27, 2017

+

W.P.(C) 626/2016

MEHAR SINGH RATHEE

..... Petitioner

Through: Dr. Amit George, Adv. with Mr.  
Alex Joseph, Adv.

versus

UNION OF INDIA

..... Respondent

Through: Mr. Jaswinder Singh, Adv. with Mr.  
Kavindra Gill, Adv.

**CORAM:-**

**HON'BLE MR JUSTICE V. KAMESWAR RAO**

**V. KAMESWAR RAO, J. (ORAL)**

1. The present petition has been filed by the petitioner with the following reliefs:-

*"It is therefore most respectfully prayed that this Hon'ble Court may be pleased to:-*

*(i) Issue an appropriate writ in the nature of the mandamus or any other writ, order or direction in the like nature quashing the Order No. F.No. 1/3/2006 - IT&IIC dt. 06.08.2012 and directing the respondent to grant pension with all pensionary benefits and cghs facilities, as granted to other employees with all arrears and interest @ 18% p.a. and all consequential benefits with all arrears,*

*(ii) Issue an appropriate writ in the nature of the mandamus or any other writ, order or direction declaring the termination of the petitioner illegal and the petitioner may be permitted to avail VRS Scheme benefit with all consequential benefit, arrears, and Pass any other/further order(s) in favour of the petitioner, which this Hon'ble Court may deem fit, just & proper in the above mentioned facts & circumstances,*

*(iii) Direct the respondent to pay the cost of the legal proceedings to the petitioner and*

*(iv) Pass any such further order or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in favour of the Petitioner and against the respondents."*

2. The impugned order dated August 06, 2012 is, in fact a communication to the Assistant Registrar (Law), NHRC, New Delhi, from the respondent whereby the respondent had narrated the facts of the case leading to the termination of the services of the petitioner. I may state here, the said communication is not a communication addressed to the petitioner. Be that as it may, the petitioner is seeking a direction against the respondent to grant pension with all benefits and CGHS facilities as granted to the other employees with interest @ 18% per annum.

**The Facts:-**

3. The case of the petitioner is that, Indian Investment Centre (IIC) was established in the year 1960 under Administrative Control of the respondent. On December 05, 1980, the petitioner was appointed as Stenographer, Grade-D in the Central Social Welfare Board. On February 13, 1989, the petitioner joined the IIC as Senior Stenographer on permanent absorption basis after giving technical resignation from the Central Social Welfare Board. It is his case that on August 29, 2003, he was placed at the disposal of the Department of Company Affairs, on loan basis and was posted as OSD in the Competition Commission of India. The Competition Commission of India vide order dated July 19, 2004 appointed the petitioner to the post of Senior Private Secretary in the scale of Rs.7500-12000 on deputation basis.

4. On October 27, 2004 the Union Cabinet took a decision to transfer the work of IIC to Ministry of Overseas Indian Affairs and directed that the personnel, building and

equipment of the IIC be utilized by the Ministry of Overseas Indian Affairs. It is the case of the petitioner, on January 28, 2005, a memorandum notifying Special Voluntary Retirement Scheme (SVRS) was issued by the IIC. This memorandum was challenged by the petitioner along with the other employees of IIC in this Court by way of a writ petition being W.P.(C) No. 7170-95/2005. As per the petitioner, the same was decided by this Court on April 26, 2005 with the directions, the petitioners are free to apply for the SVRS.

5. Insofar as the contention of the petitioners in the said writ petition that their services are being terminated contrary to the Policy, the Court granted liberty to them to take appropriate action in that regard. It is his case, on April 27, 2005 he gave a representation to the IIC seeking clarification regarding the implementation of SVRS but no reply was forthcoming. The petitioner did not opt for SVRS, which resulted in the IIC issuing notice dated April 29, 2005 under Rule 13 of the IIC Service Rules to the petitioner stating that on expiry of three months from the date of service of the notice, his services shall stand terminated.

6. On June 06, 2005, the petitioner made a representation to the Ministry of Indian Overseas Affairs to utilize his services. In the meantime, in June, 2005 itself, the Competition Commission of India sought approval of the IIC/Department of Economic Affairs for extension of deputation of the petitioner for a further period of one year as, his term of deputation was expiring on July 15, 2005. It is the stand of the petitioner, the extension was sought with an intention that formalities for absorption of the petitioner shall be completed in the meantime. The IIC declined the request of the

Competition Commission of India. It is the case of the petitioner that the Competition Commission of India wrote to the Ministry of Company Affairs seeking their approval to appoint the petitioner as Senior Private Secretary. In any case, the petitioner was relieved from the Competition Commission of India with effect from July 16, 2004 on July 28, 2005. In August, 2005, the petitioner filed a writ petition being W.P.(C) No. 12119/2005 challenging the memorandum dated April 29, 2005. On completion of pleadings, the High court disposed of the petition by holding that every effort should be made by the respondent to ensure that the stand indicated in the letter dated July 26, 2005 is given effect to, as far as possible. The petitioner was called upon to make a representation, which was to be considered by the respondent. Pursuant thereto, the petitioner on April 12, 2006 made a request to the Department of Economic Affairs and Ministry of Overseas Indian Affairs to implement the order regarding offering some form of employment.

7. The petitioner refers to communications between Department of Personnel and Training and Ministry of Overseas Indian Affairs. He filed a Contempt Petition No. 1503/2016 before this Court. On December 11, 2016 the claim of the petitioner with respect to grant of employment was rejected by the respondent. Thereafter, in the year 2012, the petitioner approached the National Human Rights Commission seeking direction to the respondent to release the pension, retirement dues, CGHS facility along with interest on delayed payments. On August 06, 2012, the respondent informed the NHRC that the petitioner is not eligible for pension under the Scheme adopted by the

IIC as he did not retire on July 31, 2005 under SVRS and his services were terminated after giving three months notice.

8. Dr. Amit George, learned counsel for the petitioner would urge that denial of pension and other benefits has resulted in wiping out the long years of service put in by the petitioner. According to him, there was a clear representation by the respondent in the counter-affidavit filed in W.P.(C) No. 12119/2005 that the petitioner will be entitled to normal pensionary benefits commensurating with his services. In this regard, he draws my attention to page 97 of the paper book. That apart, he states, the Central Administrative Tribunal has also observed about the commitment made by the respondent that the petitioner would not be deprived of his normal pensionary benefits. In this regard, he draws my attention to page 187 of the paper book. In substance, it is the submission of Dr. George that in terms of the commitment given by the respondent, the petitioner is entitled to the pensionary benefits and it is only to that limited extent, the present petition has been filed. The denial of the same would cause injustice to the petitioner, who lost his job at a very young age. He states, the stand of the respondent justifying the denial of pension and other benefits, on the ground his services have been terminated, apart from being contrary to their stand in the earlier writ petition, is also in violation of principles of natural justice, inasmuch as, the respondent at no point of time, represented to the petitioner that his termination from service would lead to denial of pensionary benefits. Further, he states, termination by giving three months notice of a regular employee has been held as illegal being unconscionable. According to him, even in a case of retrenchment a person is entitled to compensation for the years of

service put in by him. He would rely upon the judgment of the Supreme Court in the case of *Pepsu Road Transport Corporation, Patiala v. Mangal Singh and Ors (2011) 11 SCC 702*, in support of his contentions.

9. On the other hand, Mr. Jaswinder Singh, learned counsel appearing for the respondent would state that the petitioner having not opted SVRS, termination of his services as per Rule 13 of the IIC Rules was effected and the same was not interfered with by this Court in W.P.(C) No. 12119/2005. The termination has the effect of forfeiting the past service of the petitioner. The pension and other benefits were rightly not given to the petitioner. In other words, the petitioner would have been entitled to pensionary benefits only if he had retired on July 31, 2005 under SVRS. According to him, there is no provision under the CCS (Pension) Rules granting normal pension to a terminated employees, therefore the case of the petitioner, being not covered under the Rules, he is not entitled to the same and the commitment made in the earlier proceedings cannot be taken against the respondent, as the same was not in conformity with the Rules.

10. Having heard the learned counsel for the parties, the only issue, which arises for consideration is, whether the respondent is bound by the representation made by them in the counter-affidavit in W.P.(C) No. 12119/2005 (page 97 of the paper book). Before I reproduce the relevant averments in the counter-affidavit in W.P.(C) No. 12119/2005, I need to state that the termination of the petitioner with effect from July 28, 2005 has not been set aside by this Court. In other words, the said termination remains valid. This Court noting the facts of this case, that the petitioner has 24 years and 7 months of

undisputed and satisfactory service, called upon the petitioner to make an application to the respondent considering the feasibility of offering some form of employment to the petitioner. No doubt, the same was rejected in the year 2006, which means the claim of the petitioner for alternative employment stands rejected. But in the counter affidavit in W.P.(C) 12119/2005 (page 97 of the paper book), the respondent has categorically stated as under:-

*“4. Contents of para 4 are wrong and denied. It is reiterated that the petitioner will be entitled to normal pensionary benefits commensurate with his services and thus his plea that he has lost the service benefits of his service of more than 24 years 7 months is wrong and denied.”*

11. Having noted the stand of the respondent in the counter affidavit in W.P.(C) 12119/2005, it is clear that the stand of the respondent was, the termination would not be a bar for the petitioner to get pensionary benefits. It is for the first time in these proceedings a stand has been taken that, the petitioner is not entitled to pensionary benefits on the ground, there is no provision under the CCS (Pension) Rules for giving normal pensionary benefits to a terminated employee. Such a plea cannot be made by the respondent when the petitioner was never informed about the consequence of not opting the SVRS nor the effect of termination on the pensionary benefits. I agree with the submission of Dr. George that the denial of the pensionary benefits has the effect of setting to naught the 24 years and 7 months of service put in by the petitioner, which would be unjust. The termination is not for any misconduct but because of closing of IIC. Even on closure, under Industrial Law, a workman is entitled to compensation. The respondent could have evolved a methodology including agreeing for absorption of the petitioner in CIC, which could have also saved the service put in by the petitioner.

They have not done it presumably under an impression, the petitioner would still get pensionary benefits and had accordingly made commitment of his getting pensionary benefits. The commitment having been made, need to be given effect to, more particularly in the facts of this case and this is possible by treating the termination of the petitioner as retirement under SVRS as on July 31, 2005, to which the petitioner cannot have any grievance, otherwise, in the absence of any provision in CCS (Pension) Rules for grant of pension on termination, the stand of the respondent seems justified. Accordingly, it is directed that the respondent shall treat the termination of the petitioner as retirement under SVRS as on July 31, 2005.

12. Consequent to the above, the respondent is directed to release the pensionary benefits commensurating his service as on July 31, 2005 and arrears thereof till the date of the payment with interest @ 9% per annum within a period of two months from the date of receipt of copy of this order. The respondent shall continue to pay the pension every month in future. Insofar as CGHS facility is concerned, the petitioner shall give representation in that regard, which shall be considered and disposed of by a speaking order within three months from the receipt of the representation. No costs.

**V. KAMESWAR RAO, J**

**JULY 27, 2017/ak**