

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

*Date of Order: February 07, 2018*

+ **W.P.(C) 407/2018 & C.M. 1750/2018**

DR SAMIR KUMAR DAS ..... Petitioner  
Through: Mr. Abhinav Ramkrishna, Advocate

Versus

UNION OF INDIA AND ORS. .... Respondents  
Through: Mr. Vikas Mahajan, CGSC and  
Mr. Sumit Rajput, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE SUNIL GAUR**

**ORDER**

**(ORAL)**

1. Memorandum of 27<sup>th</sup> November, 2017 (*Annexure P-1*) proposes to hold an inquiry against petitioner under Rule 9 of *CCS (Pension) Rules, 1972* for inflicting major penalty is assailed in this petition on the ground that petitioner has been already removed from service on 1<sup>st</sup> December, 2016 and so, petitioner cannot be proceeded against under the *CCS (Pension) Rules, 1972*.

2. It is submitted by petitioner's counsel that petitioner is covered by *Employees' Provident Fund & Miscellaneous Provisions Act, 1952* and is eligible for contributory provident fund, gratuity and hence, *CCS (Pension) Rules, 1972* are not applicable to petitioner. In response to the impugned Memorandum of 27<sup>th</sup> November, 2017 (*Annexure P-1*),

petitioner had sent e-mail of 13<sup>th</sup> December, 2017, which has been responded to by respondent- *Union of India* vide communication of 26<sup>th</sup> December, 2017 (*Annexure P-14*) requiring petitioner to submit a reply to the impugned Memorandum/ Charge-Sheet, which is also assailed in this petition.

3. The precise submission of petitioner's counsel is that petitioner is covered by *Employees' Provident Fund & Miscellaneous Provisions Act, 1952* and Employees'(Conduct, Discipline And Appeal) Rules, 2005 (*Annexure P-10*) of respondent-FCI Aravali Gypsum & Minerals India Limited. Learned counsel for petitioner maintains that there is no provision in the aforesaid Rules (*Annexure P-10*) permitting initiation of departmental proceedings after tenure of petitioner has ended.

4. Upon hearing and on perusal of impugned Memorandum of 27<sup>th</sup> November, 2017 (*Annexure P-1*), respondent-UOI's communication of 26<sup>th</sup> December, 2017 (*Annexure P-14*) and the material on record, I find that the stand taken by petitioner in its Communication of 12<sup>th</sup> December, 2017 (*Annexure P-12*) regarding applicability of *CCS (Pension) Rules, 1972*, goes to the root of the matter. Upon finding the impugned response (*Annexure P-14*) to be unsatisfactory, Respondent- *Union of India* is directed not to insist upon filing of reply to the impugned Memorandum of 27<sup>th</sup> November, 2017 (*Annexure P-1*) till this vital issue is properly addressed by it vide a reasoned order. It is made clear that if respondent- *Union of India* comes to a conclusion that petitioner cannot be proceeded against under the *CCS (Pension) Rules, 1972*, then it be also considered if petitioner can be proceeded against under *The CCS (Conduct) Rules,*

1964. Before proceeding further, the fate of petitioner's Communication of 12<sup>th</sup> December, 2017 (*Annexure P-12*) be made known to petitioner, so that petitioner may avail of the remedy, as available in law, if need be.

5. With aforesaid directions, this petition and application are disposed of.

**(SUNIL GAUR)**  
**JUDGE**

**FEBRUARY 07, 2018**

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