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

+ W.P.(C) 9262/2018 & CM APPL. 35780/2018 (stay)

GORAKH PAL

..... Petitioner

Through: Mr. Anukul Raj, Ms. Nikita Raj,
Mr. Varun Amar and Ms. Dipti Gupta,
Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Arun Bhardwaj, Advocate with
Mr. Shashwat Sharma and Mr. Nikhil
Bhardwaj, Advocates for UOI.
Mr. Rajiv Kapur and Mr. Akshit
Kapur, Advocates for R-2.
Mr. Naresh Kaushik and Mr. Omung
Gupta, Advocates for R-3.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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25.10.2018

The petitioner has preferred the present application to assail the order dated 20.02.2018 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal') in TA No.28/2005.

By the impugned order, the Tribunal has dismissed the said T.A. of the petitioner. The petitioner had earlier preferred W.P.(C) 4999/2015 before this Court, *inter alia*, to seek quashing of Order No.73/14 dated 29.10.2014 whereby the President of India has been pleased to permanently withdraw W.P.(C) 9262/2018

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100% pension of the petitioner on account of his conviction in Criminal Case No.93 of 1993 under Sections 120-B read with 419/420/467/471 IPC and Section 5(2) read with 5(1)(d) of the Prevention of Corruption Act, 1947. The writ petition was transferred to the Tribunal and was consequently registered as a T.A. The submission of the petitioner is that the show cause notice issued to the petitioner dated 23.12.2011 proposing to withdraw the pension of the petitioner has referred to sub-clause (i) of clause (b) of sub-rule (2) of Rule 9 of the CCS (Pension) Rules (hereinafter 'Rules'). Learned counsel submits that Rule 9(2)(b)(ii) of the Rules states that if the departmental proceedings were not instituted when the Government servant was in service (whether before his retirement or during re-employment), he would not be proceeded against in respect of any event which took place more than four years before such institution. The submission of the petitioner is that in the present case, though the departmental proceedings were instituted in respect of the same conduct which led to his conviction, but those proceedings were never concluded-even though there was no stay operating against the undertaking of the departmental proceedings on account of the pendency of the criminal proceedings in relation to the grave misconduct attributed to the petitioner.

We find absolutely no merits in this petition and the submission of the learned counsel is misconceived. Rule 9(1) of the CCS (Pension) Rules reads as follows:-

“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 a 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 per mensem.”

A perusal of the said Rule shows that the President is empowered to withhold pension or gratuity, or both, either in full or in part, or even to withdraw the pension in full or in part, whether permanently or for a specified period, and the President is also empowered to order recovery from pension or gratuity of the whole or any part of any pecuniary loss caused to the Government if, the pensioner is found guilty of grave misconduct during the period of his service, which includes service rendered upon re-employment after retirement, in any departmental or judicial proceedings.

The question of withholding of gratuity or pension will normally arise where the same has not been released and would normally be released upon the Government servant attaining superannuation. The question of withdrawal of pension would arise where the same has already been granted/released, and is being paid to the pensioner/Government servant on a regular basis. The Rule is wide enough to empower the President to withdraw the pension in full, and that too permanently, where the

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misconduct is found to be grave, either in judicial or in department proceedings. The Rule does not contemplate that the grave misconduct should be established in both – judicial and departmental proceedings, in respect of the same conduct.

Perusal of sub-rule (2) of Rule 9 shows that the same is relevant to cases where departmental proceedings forms the basis of the action that the President may take under Rule 9 of the Rules. It does not relate to action premised upon finding of grave misconduct or negligence in judicial proceedings.

The submission of the petitioner that the respondent itself had placed reliance on sub-rule (2) in the show cause notice dated 23.12.2011, is neither here nor there. Since sub-rule (2) of Rule 9 was not attracted in the facts of the present case, mere reference to it in the show cause notice would not change the position. The Tribunal has rightly appreciated and repelled the said submissions in paragraph 9 and 10 of the impugned order. The relevant extracts whereof reads as follows:-

“From the above order, it is clear that the President has withheld 100% monthly pension otherwise admissible on permanent basis, as well as full gratuity of the applicant, in exercise of the power vested in it under Rule 9(1) of the CCS (Pension) Rules, 1972. It is a well settled principle of law that mentioning of a wrong provision or non-mentioning of a provision does not invalidate an order if the statutory authority had the requisite jurisdiction therefor.

*10. In **Ram Sunder Ram vs. Union of India and others, 2007(9) SCALE197**, it was held thus:*

*“It appears that the competent authority has wrongly quoted Section 20 in the order of discharge whereas, in fact, the order of discharge has to be read having been passed under Section 22 of the Army Act. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law (see **N.Mani Vs. Sageeta Theatre and Ors.** (2004) 12 SCC 2781. Thus, quoting of wrong provision of section 20 in the order of discharge of the appellant by the competent authority does not take away the jurisdiction of the authority under Section 22 of the Army Act. Therefore, the order of discharge of the appellant from the army service cannot be vitiated on this sole ground as contended by the learned counsel for the appellant.”*

In view of the aforesaid we find absolutely no merits in the present petition. Same is dismissed.

VIPIN SANGHI, J

A. K. CHAWLA, J

OCTOBER 25, 2018

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