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

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Date of Decision: 26.11.2018

% **W.P.(C) 12470/2018**

P.C. MISRA, DANICS/JOINT DIRECTOR (RETD.)

..... Petitioner

Through: Petitioner in person

versus

UNION OF INDIA AND ORS.

..... Respondent

Through: Mr. Gaurang Kanth, CGSC for R-1&2
Mr. Naresh Kaushik, CGSC with Mr.
Devik Singh and Mr. Lakshay Juneja for
R-3
Ms. Avnish Ahlawat, Standing Counsel,
GNCTD (Services) with Mr. N.K. Singh
for R-4&5

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

VIPIN SANGHI, J. (ORAL)

1. The petitioner has preferred the present writ petition to assail the order dated 15.10.2018 passed by the Central Administrative Tribunal (CAT/ Tribunal) in O.A. No. 100/712/2016. The tribunal has rejected the said O.A. of

the petitioner. The petitioner had preferred the said O.A. to, *inter alia*, assail the disciplinary proceedings undertaken against him vide memorandum/ show-cause notice dated 21.07.2011; the order dated 19.01.2016 passed by the Govt. of India, Ministry of Home Affairs, whereby the President imposed the penalty of withholding 100% monthly pension otherwise admissible to the petitioner, as well as forfeiting his full gratuity on permanent basis. He also sought a declaration that the O.M. dated 04.03.1994 issued by the DOPT, Govt. of India is invalid and inapplicable to cases of pensioners under Rule 9(1) of the CCS (Pension) Rules, 1972 (Pension Rules for short) on the ground that it violates Rule 69 read with Rule 9(4) of the Pension Rules and Article 300A of the Constitution of India, and on the ground that Rule 9(1) of the Pension Rules is violative of the welfare principle of State policy. He sought a declaration that his regular pension and gratuity be sanctioned, and he be allowed commutation of pension in accordance with the Rules. In the alternative, he sought a direction that provisional pension under Rule 9(4) read with Rule 69 of the Pension Rules be continued in accordance with PPO dated 09.03.2011.

2. The petitioner was working as a Selection Grade Officer of NCT of Delhi in DANICS. A Criminal Case No.31/2008 was instituted against him by the CBI on the allegation that he had demanded and received bribe while working as Assistant Commissioner, Sales Tax Department. The Court of the Special Judge-IV (PC Act) CBI, Tis Hazari, Delhi convicted the petitioner for offences punishable under Section 7 and 13(1)(d) of the Prevention of Corruption Act and sentenced him to undergo rigorous imprisonment for a

period of two years and to pay fine of Rs.10,000/-. He was convicted by the Trial Court vide judgment dated 24.05.2010 and he was sentenced, as aforesaid, on 26.05.2010. He attained the age of superannuation on 30.06.2010 i.e. after his conviction. Upon his superannuation, provisional pension was sanctioned in favour of the petitioner on 14.12.2010 under Rule 69 of the Pension Rules.

3. The appointing authority initially passed an order dated 02.02.2012 imposing punishment of withholding 100% pension and forfeiture of gratuity. The petitioner was aggrieved by the same and preferred O.A. No. 1175/2002. The O.A. was disposed of on 13.09.2013. The petitioner was not satisfied with the order, and preferred W.P.(C.) No. 6509/2013 before this Court. During pendency of the writ petition, the appointing authority withdrew the order dated 02.02.2012. After issuance of show cause notice to the petitioner, a fresh order dated 19.01.2016 was passed and, consequently, the aforesaid writ petition was disposed of on 18.05.2016 with liberty to the petitioner to challenge the order dated 19.01.2016. The O.A. in question was then preferred by the petitioner in the aforesaid background.

4. The submission of the petitioner - who appears in person is, firstly, that the findings of guilt recorded by the Trial Court in the criminal trial are perverse and contrary to the evidence on record. He claims that the important witnesses in the case had turned hostile.

5. In our view, the aforesaid submission does not call for determination in the present petition. During the course of arguments, the petitioner has taken us through the judgment. We may only observe that though the recovery of the tainted money was made from PW-9, who was posted as Reader/PA of the petitioner, he had turned approver and implicated the petitioner. The Trial Court found independent corroborative evidence to convict the petitioner in the form of tape-recorded conversation of the petitioner, wherein the petitioner was heard demanding bribe.

6. In any event, these aspects would be considered by the appellate Court, as, against his conviction, the petitioner has already preferred his criminal appeal before this Court. It is for the appellate court to consider the aspect about the correctness of the judgment dated 24.05.2010 by which the petitioner stands convicted, as aforesaid. As on date, he stands convicted. It is not the petitioner's case that during pendency of his Criminal Appeal, his conviction has been stayed by the Appellate Court. Merely his sentence has been suspended.

7. The next submission of the petitioner is that the tribunal has wrongly proceeded on the basis that the order dated 19.01.2016 was passed by the Govt. of India under Rule 19 of the CCS (CCA) Rules, 1965. He submits that the order has been passed by resort to Rule 9 of the CCS Pension Rules, 1972. He submits that Rule 19 of the CCS (CCA) Rules could not have been invoked, since the petitioner had already superannuated on 30.06.2010 i.e. before the passing of the order dated 19.01.2016.

8. The further submission of the petitioner is that his provisional pension had been sanctioned under Rule 9(4) read with Rule 69 of the Pension Rules, in view of the fact that the petitioners appeal against his conviction and sentence was pending before this Court. The petitioner vehemently submits that an appeal is a continuation of the original proceedings, and unless and until the conviction of the petitioner is upheld by the appellate court, it cannot be said that the said conviction and sentence has attained finality.

9. The petitioner further submits that Rule 69(1)(b) of the Pension Rules states that provisional pension shall commence from the date of retirement up to, and including, the date on which “*after the conclusion of the departmental or judicial proceedings, final orders are passed by the competent authority*”. The submission is that in view of the pendency of the criminal appeal, it cannot be said that the judicial proceedings stand concluded.

10. The petitioner has submitted that pension is not a bounty, and the same has been earned by the petitioner on account of his past service. The same cannot be forfeited, as such forfeiture would lead to petitioner’s financial distress and penury. He has placed reliance on the following decisions in support of his submission:

- i) ***Uma Shanker Bharti v. Chief Controller of Defence Accounts (P) & Ors.***, 1995 LawSuit (All 765);
- ii) ***N.K. Suparna v. Union of India***, 2004 SCC online Kar 444

- iii) ***Union of India & Anr. v. CAT, Chandigarh Bench***, CWP No.982 of 2007 decided on 19.11.2010 by the Punjab & Haryana High Court.
- iv) ***State of Jharkhand & Ors. V. J.K. Srivastava & Anr.***, (2013) 12 SCC 210.

11. On the other hand, Mr. Kanth, Ld. Standing Counsel appearing for respondent no.1 and 2 submits that mere pendency of the criminal appeal does not come in the way of the government in passing an order by reference to either Rule 19 (i) of the CCS (CCA) Rules, or Rule 9(1) of the Pension Rules. He has sought to place reliance on the decision of the Supreme Court in ***Union of India v. V.K. Bhasker***, (1997) 11 SCC 383, wherein the Supreme Court ruled that pendency of the appeal against conviction would not be a ground to assail the order of dismissal passed by reference to Rule 19(i) of the CCS (CCA) Rules. He also refers to the observation made by this Court in its judgment rendered in ***U.O.I. v. Shri J.P. Sharama***, W.P.(C.) No. 6465/2003 decided on 04.07.2008. This Court observed that the right of the President under Rule 9(1) of the Pension Rules is not in any way fettered by the mere fact that the government servant is released his gratuity and pension, since it is always open to the President to withdraw the pension in full, or in part, and to order recovery from the pension or gratuity, of the whole or any part of the pecuniary loss caused to the government, as may be established in the departmental or judicial proceedings. Thus, the mere fact that the petitioner was granted provisional pension vide order dated 14.10.2010 does not estopp the

government from passing the order dated 19.01.2016 withholding 100% of the pension of the petitioner and forfeiting the gratuity. Reliance has also been placed on the decision of a learned Single Judge of the A.P. High Court, Mr. Justice Naveen Rao in ***B.V. Koteswar Rao v. State of Telangana***, in W.P.(C.) No.15812/2017 decided on 14.03.2018.

12. Having heard learned counsel for the parties, perused the impugned order and the record, we are of the view that there is no merit in the present petition and the impugned order does not call for interference.

13. The submission of the petitioner that the order dated 19.01.2016 has been passed by the government under Rule 19 of the CCS (CCA) Rules is plainly incorrect. The said order dated 19.01.2016, in its material part, reads as follows:

“8. AND WHEREAS, the representation dated 17/07/2015 of Sh. P. C. Misra, the UPSCs advice dated 06.01.2012 and other relevant material on records have been considered by the disciplinary authority. It has been observed that the contentions of the CO cannot be accepted as the Hon’ble Court in its judgment dated 24.05.2010 have adequately rebutted these conditions on the basis of deposition of witnesses, relevant documents and various judicial pronouncements and the Hon’ble Court had convicted the C.O. Further, the UPSC had advised that the pendency of the appeal in higher court is not a bar against taking departmental action under Rule 19 of CCS (CCA) Rules, 1965. UPSC has observed that in terms of DOP&T OM No.371/23/92-AVD-III dated 04.03.1994, with the institution/ completion of disciplinary proceedings including imposition of penalty as prescribed in the relevant disciplinary

*rules, on the basis of conviction imposed on a public servant concerned, may order suspension of the “sentence” passed by the trial court till the final disposal of the appeal. **Thus, there is no bar on the penalty of cut in pension admissible to the CO as he has been held guilty by the trial court for a grave misconduct on his part.** The UPSC has noted that the offences for which the CO has been convicted by the trial court, constitute grave misconduct on his part and considered that the end of justice would be met if the penalty of ‘withholding 100% monthly pension otherwise admissible as well as forfeiture of full gratuity on a permanent basis’, is imposed on the CO.*

*9. **NOW, THEREFORE, in exercise of the powers vested under Rule 9 of CCS (Pension) Rules, 1972, the President, after considering the facts and circumstances of the case, has decided to impose the penalty of ‘withholding 100% (hundred percent) monthly pension otherwise admissible as well as forfeiture of full gratuity, on a permanent basis’, is imposed on Sh. P.C. Misra, Selection Grade Officer of DANICS (Retired). It is, therefore, ordered accordingly in supersession of the order of even number dated 02/02/2012”.*** (Emphasis Supplied)

14. The above extract would show that a reference was made to Rule 19 of the CCS (CCA) Rules only with a view to emphasise that pendency of the appeal against conviction by the trial Court - which conduct also tantamounts to grave misconduct or negligence during the period of service, is not a bar to taking departmental action for punishing the government servant. A perusal of para 9 of the impugned order dated 19.01.2016, as quoted above, shows that the same has been passed by reference to Rule 9 of the Pension Rules, and not by resort to Rule 19 of the CCS (CCA) Rules, as contended by the petitioner.

15. In any event, the settled position in law is that mere reference to an incorrect provision - as being the source of power, is not fatal to the validity of the order if the statutory power, otherwise, resides in the authority passing the order [See, *P.K. Palanisamy v. N. Arumugham*, (2009) 9 SCC 173]. The observations made by the tribunal in para 9 of the impugned order have to be read in the aforesaid context. In any event, the mere reference to Rule 19 of the CCS (CCA) Rules by the tribunal in the impugned order is no ground to interfere with the same.

16. Rule 9 of the Pension Rules and Rule 19 of the CCS (CCA) Rules both provide for imposition of punishment on government servants. Whereas Rule 9 of Pension Rules seeks to empower the government to punish those government servants who have retired from service in respect of their misconduct committed while in service, Rule 19 relates to the power of the government to punish the serving government servant. In the present case, the petitioner was convicted by the trial court on 24.05.2010. He was sentenced, as aforesaid, on 26.05.2010. He superannuated shortly thereafter on 30.06.2010. To deal with such like situations, Rule 69 of the Pension Rules provides for payment of provisional pension to the retired government servant. Between the date of the petitioner's conviction and sentencing on the one hand, and the date of his superannuation on the other hand, there was hardly any time for the government to act and take a consideration decision on the aspect whether action was called for under Rule 9 of the Pension Rules and, if so, the nature of such action that was called for. To study the judgment of conviction and take a

considered decision thereafter required some time. It is obvious that it was in the aforesaid background that the provisional pension was sanctioned to the petitioner under Rule 69 of the Pension Rules on 14.12.2010.

17. The bare fact that what was sanctioned was only “provisional” pension demonstrates that the government did not intend to condone the grave misconduct of the petitioner, in respect of which the petitioner’s stood convicted and sentenced by the trial court. Thus, there was no question of any estoppel applying against the government. Even otherwise, there is nothing to show that the petitioner was held out any representation, at any stage, that the government would not take any action against him - either under Rule 19 of the CCS (CCA) Rules, or after his retirement under Rule 9 of the Pension Rules premised on the grave misconduct established before the trial court and, therefore, the question of the petitioner altering his position to his detriment on the basis of any such representation never arose.

18. The thrust of the petitioner’s submission is that since his criminal appeal is pending before the High Court against his conviction and sentence, and as the sentence has been suspended by the appellate court, his conviction has not attained finality since appeal is a continuation of the original proceedings. He also relies upon Rule 69(1)(b), which provides that the provisional pension shall be authorized during the period commencing from the date of retirement upto and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority. The

submission is that the judicial proceedings cannot be said to have attained conclusion in view of the pendency of the criminal appeal.

19. The aforesaid submission of the petitioner has not merit.

20. In ***K.C. Sareen v. CBI, Chandigarh***, (2001) 6 SCC 584, the appellant was charged for offences under section 13(2) of the Prevention of Corruption Act and sections 120, 201 and 420 IPC. He was convicted at trial, inter alia, under section 13(2) of the Prevention of Corruption Act. The appeal of the appellant before the High Court against his conviction and sentence was admitted and his sentence was suspended. Founded upon the appellant's conviction, the disciplinary proceedings were initiated against him and he was dismissed from service. The appellant moved the High Court to have his conviction also suspended during pendency of his criminal appeal. That application was rejected. The appellant then approached the Supreme Court. The submission of the appellant before the Supreme Court was: "*7. as a trial can logically reach its final end only when the appellate court decides the matter the conviction passed by the trial court cannot be treated as having become absolute... ..*".

21. The appellant placed reliance on the judgment of the Supreme Court in ***Akhtari Bi v. State of Madhya Pradesh***, (2001) 4 SCC 355, wherein the Supreme Court observed that:

"5. Appeal being a statutory right, the trial court's verdict does not attain finality during pendency of the appeal and for

that purpose his trial is deemed to be continuing despite conviction.”

22. The submission of the appellant premised on the observation made in ***Akhtari Bi*** (supra) was rejected by the Supreme Court by observing:

“8. By the said observation this Court did not mean that the conviction and sentence passed by the trial court would remain in limbo automatically when they are challenged in appeal. The said observation was made in a different context altogether when notice of the executive government was drawn to the need to appoint requisite number of Judges to cope up with the increased pressure on the existing judicial apparatus, and for highlighting the consequences of non-filling existing vacancies of Judges in the High Courts. We are unable to appreciate how the said observation can be culled out of the said context for the purpose of using it in a different context altogether such as this where the convicted accused is seeking to have an order of conviction suspended during the pendency of the appeal”.

23. The Supreme Court observed that:

“11. when the appellate court admits the appeal filed in challenge of the conviction and sentence for the offence under the PC Act, the superior court should normally suspend the sentence of imprisonment until disposal of the appeal, because refusal thereof would render the very appeal otiose unless such appeal could be heard soon after the filing of the appeal. But suspension of conviction of the offence under the PC Act, dehors the sentence of imprisonment as a sequel thereto, is a different matter”.

24. The observations made by the Supreme Court in the following paragraph of **K.C. Sareen** (supra) are most pertinent in the present context. The said paragraph reads as follows:

*12. Corruption by public servants has now reached a monstrous dimension in India. Its tentacles have started grappling even the institutions created for the protection of the republic. Unless those tentacles are intercepted and impeded from gripping the normal and orderly functioning of the public offices, through strong legislative, executive as well as judicial exercises the corrupt public servants could even paralyse the functioning of such institutions and thereby hinder the democratic polity. Proliferation of corrupt public servants could garner momentum to cripple the social order if such men are allowed to continue to manage and operate public institutions. **When a public servant is found guilty of corruption after a judicial adjudicatory process conducted by a court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior court. The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction, it is public interest which suffers and sometimes, even irreparably. When a public servant who is convicted of corruption is allowed to continue to hold public office, it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from***

proclaimed corrupt officers on account of the suspension of the conviction, the fallout would be one of shaking the system itself. Hence it is necessary that the court should not aid the public servant who stands convicted for corruption charges to hold only (sic) public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level. It is a different matter if a corrupt public officer could continue to hold such public office even without the help of a court order suspending the conviction.” (emphasis supplied)

25. The position is no different in the present case. The ratio of the aforesaid judgment is clearly applicable in the facts of the present case. The petitioner is liable to be treated as corrupt until he is exonerated by a superior court on merits and not on mere technical grounds – such as lack of, or irregular sanction to prosecute. Mere pendency of his appeal does not even temporarily absolve him from the findings of guilt. Though the petitioner stands convicted and sentenced by the Trial Court, he is nevertheless seeking to assert his claim for provisional pension which, in the fact and circumstances, is equivalent to his regular pension, during pendency of his criminal appeal. Thus, the petitioner is asserting his claim, as if he is a government servant who has retired without any blemish, even though he stands convicted and sentenced by the trial court for conduct which also tantamounts to grave misconduct. He is seeking to draw, on a monthly basis, provisional pension equivalent to his regular and full pension, which would not be recoverable even if his criminal appeal were to be dismissed.

26. In our view, the State is not obliged to financially support a government servant who has been found guilty in a case of corruption by the criminal

court— either provisionally (during pendency of this criminal appeal), or otherwise. Such a government servant, who stands convicted in a corruption case, ought to be considered as a parasite and a burden, not only on the government, but on the society at large. There is no reason why public money should be doled out to him, only to await the decision of the appellate court, which is pending at his behest against his conviction and sentence. Of course, the situation could change if, and when, the criminal appeal of the convicted Government Servant is allowed. If the exoneration is on merits, he may be entitled to claim revocation of the Order Under Rule 19(i) of the CCS (CCA) Rules or Rule 9 of the Pension Rules- as the case may be. However, if the exoneration is on purely technical grounds, whereas the findings of fact which constitute grave misconduct remain undisturbed, he may not even be entitled to derive benefit of his exoneration. That would have to be examined by the Government in each case, on the facts of that case.

27. Reliance placed by Mr. Mishra on the judgment in ***Jitender Kumar Srivastava & Anr.***, (supra) is misplaced. In that case, while in service, the government servant was charged under various sections of the IPC and PC Act. When he retired on superannuation, the trial was still not complete. The State of Jharkand, inter alia, sanctioned 90% provisional pension to the respondent. The remaining 10% pension and salary payable during the suspension period was withheld pending outcome of the criminal case/ departmental inquiry against him. He was also paid leave encashment and gratuity. Aggrieved by the withholding of his 10% pension and non release of other dues, the

respondent preferred a writ petition before the High Court. On the direction of the High Court, the respondent made a representation to the government, which was rejected. Consequently, he again approached the High Court and the High Court dismissed the writ petition. The Supreme Court - in the course of its judgment, observed that the right to receive pension had been recognized as a right to property by the Constitution Bench in its decision in ***Deokinandan Prasad v. State of Bihar***, (1971) 2 SCC 330. The Supreme Court also observed that there was no provision or rule for withholding provisional pension, or for withholding pension/ gratuity when the departmental proceedings or judicial proceedings are still pending.

28. The aforesaid material fact distinguishes the present case from ***Jitender Kumar Srivatava*** (supra). As noticed above, in the present case, the judicial proceedings have resulted in the conviction of the petitioner, though his criminal appeal is pending consideration before this court. But as noticed above, for the purpose of invoking Rule 9(1) of the CCS Pension Rules, it is sufficient that the grave misconduct of the government servant has been established in the departmental or judicial proceedings, irrespective of the pendency of the appeal either before a departmental or a judicial authority, as the case may be.

29. In ***N.K. Suparna*** (supra), the petitioner retired on attaining the age of superannuation while being prosecuted before the Special CBI Court in a corruption case. The petitioner stood convicted and sentenced on the corruption charge on 31.12.2001 i.e. one month before attaining the age of

superannuation. The petitioner's appeal before the High Court against the conviction and sentence was preferred and was pending, wherein the sentence awarded to her was suspended. The President of India invoked his power under Rule 9(1) of the Pension Rules and forfeited the pension and gratuity payable to her. The petitioner N.K.Suparna raised a similar plea, that since the criminal appeal was pending, the judicial proceedings have not come to an end and the criminal appeal was a continuation of the trial. The Karnataka High Court interpreted clause (b) of Rule 69(1) of the CCS Pension Rules to mean that a delinquent employee would be entitled to provisional pension from the date of retirement upto and including the date on which the final order may be made by the competent authority after conclusion of departmental or judicial proceedings. The words "*after conclusion of departmental or judicial proceedings*" were interpreted as conclusion of the appellate proceedings and not the original proceedings on the premise that an appeal is a continuation of the original proceedings. The Division Bench held that the final order envisaged under Rule 9(1) of the CCS Pension Rules - in terms of clause (b) of sub rule (1) of Rule 69, would require to be passed by the President only after the conclusion of the departmental or judicial proceedings. The Division Bench observed:

"8. ... In the instant case, since the judicial proceedings, we mean the launching of the prosecution against the petitioner have not been concluded so far in terms of finality, the President of India invoking the power conferred upon him under sub-rule (1) of Rule 9 would not arise. Therefore, the impugned order passed by the President of India in the purported exercise of power

under Rule 9(1) of the Rules should be condemned as one without authority of law inasmuch as the necessary condition to invoke that power did not exist as on the date of the impugned order nor does it exist as on today also”.

30. The decision in **N.K. Suparna** (supra) was assailed before the Supreme Court. The SLP was, however, withdrawn by the petitioner on 20.08.2008. Thus, the issue decided by the Karnataka High Court in **N.K. Suparna** (supra) has not received the seal of approval of the Supreme Court.

31. Having given our anxious consideration to the matter, we cannot persuade ourselves to agree with the view taken by the Karnataka High Court in **N.K. Suparna** (supra). Under clause (b) of Rule 69(1), the relevant expression used is “*from the date of retirement upto and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority*”. Pertinently, while making the said rule by resort to proviso to Article 309 of the Constitution of India, the President uses the expression “final” only once i.e. in relation to orders which are passed by the competent authority. However, no such word or expression is used before the word “*conclusion of departmental or judicial proceedings*”. If the intendment of the President - while framing the said rule was to release provisional pension to the government servant upto the date of “*final*” conclusion of departmental or judicial proceedings, the President would have used the said expression “*final*” before the words “*conclusion of departmental or judicial proceedings*”, just as he used the expression “*final*” in respect of the orders to be passed by the competent authority. Thus, the plain grammatical

and literal interpretation of clause (b) of Rule 69(1) does not support the interpretation that the conclusion of departmental or judicial proceedings means the “final” conclusion of departmental or judicial proceedings.

32. Rule 69(2), inter alia, provides that no recovery shall be made from the provisional pension after the conclusion of the proceedings if the pension finally sanctioned is less than the provisional pension, or the pension is reduced or withheld either permanently, or for a specified period. Thus, whatever is released by way of provisional pension to the government is not secured or recoverable from him. Rule 69(1)(a) provides that the provisional pension shall be equal to the maximum pension which would have been admissible on the basis of the qualifying service of the government servant. Thus, if the interpretation sought to be advanced by the petitioner were to be accepted, it would mean that the government would have to pay - month after month, the provisional pension, which – in most cases would be equal to the full pension, even though the government servant stands convicted by the Trial Court of conduct which tantamount to a serious and grave misconduct, merely because his criminal appeal is pending before the higher Court. This could not have been the intendment of the President while framing either Rule 69(1)(b), or Rule 9(1) of the Pension Rules.

33. The decision in the appeal may not come for years for myriad reasons. Firstly, the heavy pendency of criminal appeals would come in the way of disposal of the appeal on an early date. Secondly, even the Government servant/ appellant may seek adjournments to delay the disposal of the appeal.

Is it to be accepted that a government servant - who stands convicted of a corruption charge before a criminal Court, should continue to receive provisional pension, just as good as the full pension, only on account of pendency of his criminal appeal? In our view, the answer to this question has to be an emphatic “No”.

34. If the interpretation of the petitioner were to be accepted, the conviction would not attain finality even for purposes of Rule 19 of the CCS (CCA) Rules, or Rule 9 of the Pension Rules even after dismissal of the Criminal Appeal, because the petitioner would still have a right to prefer a Special Leave Petition under Article 136 of the Constitution of India before the Supreme Court. There would be no end to this process as the petitioner could file one petition after another and seek review, recall, or even file a curative petition. Pertinently, the conviction of the petitioner has not been stayed by the appellate court and only his sentence has been suspended. Therefore, for all purposes, he is a convict. To permit such a convict to draw provisional pension – which in most cases would be equal to the full pension, would be to make a mockery of the law. The same would mean that despite his conviction by the criminal court involving a serious and grave case of misconduct, he would get away without any adversity, and would continue to remain a burden on the State. Thus, in our view, for purposes of Rules 9(1) and 69(1)(b) of the Pension Rules, the judicial proceedings have attained conclusion upon the conviction of the petitioner by the trial Court, and the competent authority is entitled to pass final orders for withdrawing the whole or part of the pension permanently or for a

specified period; for forfeiture of the Gratuity, and; for ordering recovery of the pecuniary loss caused to the government due to the grave misconduct established in the judicial proceedings.

35. The decision in ***K.C. Sareen*** (supra) was not brought to the notice of the Karnataka High Court when it decided ***N.K. Suparna*** (supra). The Punjab & Haryana High Court in ***Central Administrative Tribunal, Chandigarh Bench*** (supra), primarily, relies upon ***N.K. Suparna*** (supra) and ***Akhtari Bi*** (supra). Unfortunately, the decision of the Supreme Court in ***K.C. Sareen*** (supra) was not noticed even by the Punjab and Haryana High Court Bench while rendering its decision.

36. In ***V.K. Bhasker*** (supra), the respondent employee had been dismissed from service by resort to Rule 19(i) of the CCS (CCA) Rules consequent upon his conviction in the corruption case. He assailed his dismissal from service on the ground that his criminal appeal was pending. The tribunal allowed the O.A. of the respondent on the premise that his appeal against his conviction and sentence was pending. The Supreme Court set aside the said order by, inter alia, observing:

“5. The Tribunal was, therefore, not right in holding that the respondent could not be dismissed by invoking the provision of Rule 19(i) of the Rules because the appeal filed by him against the conviction and sentence is pending in the High Court”.

37. The petitioner has also placed reliance on the judgment of Allahabad High Court in ***Uma Shanker Bharti*** (supra). In this case, while in service, the

petitioner was charged under section 302 IPC. He was convicted on 22.09.1988 by the learned Additional Sessions Judge. He preferred an appeal, which was admitted. Thereafter, he retired on superannuation on 30.09.1989. He demanded his retiral benefits. The same were denied on the ground that he stood convicted and sentenced to life imprisonment. The submission advanced by the petitioner before the High Court was that when he was convicted, he was not a pensioner but in active service and, therefore, Regulation 4 of the Pension Regulations for the Army, 1961 ('Army Regulation', for short) was not attracted.

38. Firstly, we may observe that a perusal of the judgment shows that not only the conviction, but also the sentence under section 302 IPC had been stayed during pendency of the appeal by the High Court vide order dated 16.03.1990. Consequently, despite the petitioner's conviction under section 302 IPC, on 22.09.1988 he was granted bail on the very next date i.e. 23.09.1988. On this short ground, *Uma Shanker Bharti* (supra) is distinguishable. Though we have reservations with the interpretation given by the Allahabad High Court that the petitioner was not a "pensioner", but in active service while he was convicted and, therefore, Army Regulation 4 was not attracted since the same provides that the competent authority may withhold or withdraw pension if a "pensioner" is convicted of a serious crime, we need not delve into the said issue since the facts, as noticed above, were materially different in *Uma Shanker Bharti* (supra) from the facts in the present case. We may only observe that the expression used is "a pensioner" in Army Regulation 4, since

the pension can be withheld or withdrawn only from a “pensioner”, and not from a serving officer in active service. If the departmental or judicial proceedings was pending when the government servant was in active service, it matters not whether the finding of guilt is returned in the said proceedings before or after the retirement of the government servant. In either case, the government is entitled to take disciplinary action against the government servant. Only the nature of the action/ penalty that may be imposed would vary. Obviously, in respect of a retired government servant, the option to dismiss or remove him from service, or subject him to any other major or minor penalty in terms of Rule 11 of the CCS (CCA) Rules is not available. The government can only withhold or withdraw the pension and/ or gratuity, and make recovery of pecuniary loss suffered by the government.

39. The submission of Mr. Mishra that the withholding of 100% monthly pension and forfeiture of gratuity is unconstitutional has no merit. There is no absolute right in a government servant to receive either pension or gratuity. Under a duly framed law, the same can be withheld and withdrawn. Rule 9 of the Pension Rules, having been framed by the President in exercise of his constitutional power contained in proviso to Article 309 of the Constitution, the same has statutory force in terms of the said Article of the Constitution.

40. For the aforesaid reasons, we find no merit in this petition and dismiss the same leaving the parties to bear their respective costs. We may, however, add that in the eventuality of the petitioner’s criminal appeal succeeding, his claim for pension and other retiral dues, which have been denied to him by

virtue of the order dated 19.01.2016, would need reconsideration in the aforesaid light.

VIPIN SANGHI, J

A. K. CHAWLA, J

NOVEMBER 26, 2018