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

Date of decision: 07.05.2019

\+ W.P.(C) 547/2019 & C.M.APPLN. 17465/2019

SHRI R. K. SINGH ..... Petitioner

Through Mr. R. K. Saini, Adv.

versus

M/S KENDRIYA BHANDAR (CENTRAL GOVT. EMPLOYEES COOPERATIVE SOCIETY LTD.) AND ORS. ..... Respondents

Through Mr. Deepak K. Nag with Ms. Apurva, Advs. for R-1 to 4.
Ms. Anju Gupta with Mr. Roshan Lal Goel, Adv. for R-5.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (ORAL)

1. Vide the present petition, the petitioner seeks a direction thereby quashing the action on part of the respondents in not releasing the superannuation benefits/dues of the petitioner despite his retirement on superannuation on 31.10.2017.

2. In the counter affidavit filed on behalf of the respondents, it is submitted that on 17.03.2017, a report of criminal breach of trust and fraudulent misappropriation of Kendirya Bhandar stock/funds to the tune of ₹78.66 lakhs was reported. Shri Mujeeb Ali was, the then Incharge,

Shalimar Bagh (NDPL) Store, Kendriya Bhandar. Accordingly, a report was made to the Shalimar Bagh Police Station by Kendriya Bhandar for necessary investigation. On the basis of the said report, an FIR No.0099 dated 22.03.2017 was lodged against Shri Mujeeb Ali under Section 409 of IPC by the said Police Station.

3. Sh. Mujeeb Ali was put under suspension and simultaneously, departmental proceedings for the major penalty were instituted against him under KB Service Rules, for violating the provisions of conduct Rules. After holding the departmental inquiry and following the procedure laid down in the service rules, a major penalty of dismissal from service was imposed upon Shri Mujeeb Ali vide order dated 21.03.2018.

4. Learned counsel appearing for the respondents submit that regarding the loss caused by the Incharge of Shalimar Bagh Store was also discussed in the general body of Kendriya Bhandar meeting held on 24.09.2017, wherein it was decided that the case must be pursued effectively to bring the culprits to book. Accordingly, in the meeting of Board of Directors held on 11.11.2017, it was *inter-alia* decided to enquire into the role of other officials/slackness in performance of their duties in checking the incident of loss at Shalimar Bagh Store.

5. Accordingly, a Committee of Board of Directors was constituted to enquire into the matter. In the said meeting no decision was however taken on clearance of the retirement dues of the petitioner, the then Managing Director Kendriya Bhandar who retired from the service on attaining the age of superannuation on 31.10.2017.

6. In the said meeting, it was decided that issue will be considered along with the report of the committee. Thereafter, in the month of September, 2017, an application was filed by the Kendriya Bhandar through his counsel in the Court of MM, Rohini that the police authorities may be directed to speed up the long pending investigation in the case.

7. Accordingly, the Court took cognizance of the matter and thereafter the police authorities submitted a status report in the Court on 17.03.2018, wherein it was informed by them that Shri R.K. Singh (petitioner), Shri Bharat Kumar and Sh. Manwar Singh Rawat, the erstwhile Chairman are required to be examined in the said case, with a view to finalize the investigation. The Police stated that Sh. Mujeeb Ali, in his explanation has named the above persons for collecting the alleged misappropriated money from him, during the demonetization period.

8. Meanwhile, a Committee of the Board of Directors, which was

constituted to inquire into the role of other officials/slackness in performing their duties in checking incidents of loss and to suggest measures to ensure that such incidents may not occur in future, submitted its report.

> *"The committee is of the view that there is no appropriate arraignment in place to maintain the records in Kendriya Bhandar as per requirement and necessity. The concerned officials did not take their respective responsibilities to check the flaws /shortcoming/ deficiencies in the system. None of the officers appears to have ever proposed any steps to improve or streamline the system to make it foolproof as the existing system is not of any worth to control such type of lapses at present or in future. Item wise stock has not been maintained in the store and none has ever bothered to get it maintained. The store incharge is responsible to maintain the Value wise liability only.*
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> *The committee, therefore, suggests that the store wise liability should be maintained at Hq. Godowns while generating the Goods Receipt Note (GRN) to process the invoice of suppliers for payment. The need of the hour is to put in place a foolproof and infallible system to stop/avoid such type of incidents in future. It is further suggested that concerned staff needs to be more vigilant while completing their assigned duties and responsibilities, if any, discrepancies are found in the working of the store or any individual. Till the weaknesses/shortcomings in the existing internal system is not improved immediately, it would be difficult to avoid such sort of irregularities. Misappropriation of funds to the tune of the ₹.78.66 Lakh by NDPL store Incharge happened due to the complete system failure as discussed above. Had every official in the system performed its assigned duties and responsibilities sincerely and candidly, the instant fraud could have been avoided. Possibility of similar frauds in other stores cannot be*

> *ruled out and for this purpose the Accounts Department needs to certify after verifying their records that no such fraud exists in any other store. The complete operational system requires up-dation to achieve the object of the Society.*
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> *The matter was also discussed with Vigilance Officer to ascertain the prevalent procedure / rules etc. for withholding of retirement benefits in such cases. The VIO explained that in terms of Rule 69 of the Pension Rules and gratuity payable to the employee shall be withheld on retirement if any disciplinary/judicial proceedings are instituted against the Government servant before his retirement. The gratuity in such cases will be withheld till the conclusion of the departmental/judicial proceedings and issue to final orders thereon." In the case of Shri R.K.Singh, MD (since retired), the above provision is not applicable, as no disciplinary/judicial proceedings have been instituted/pending against him.*
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> *The decision of the Board of directors not to post persons below the rank of Junior Salesman/Salesgirl or equivalent as Incharge should be followed scrumptiously in its true letter and spirit."*

9. Thereafter, in the meeting held on 24.03.2018, the Board of Directors after considering the report of the Committee decided that the issue of release of payment of retirement dues of Shri R.K. Singh (petitioner) be taken up with CVO who is a serving officer of DOP&T.

10. Accordingly, the case was referred to CVO by the Administration Division of Kendriya Bhandar for the clearance of release of retirement benefits of Shri R. K. Singh, which had been withheld as per the decision of the Board.

11. However, in response to the reference, the CVO vide its note dated 14.12.2018 inter-alia observed as under:-

> *"In view of the position stated above, as no disciplinary/judicial proceedings have been instituted/pending against him role of CVO to take decision on the matter does not arise at this stage and the Board of Directors may take an appropriate view in the matter."*

12. Thereafter, vide letter dated 24.08.2018 the police *inter-alia* informed that they examined Shri R.K. Singh and Shri Manwar Singh Rawat and there is no evidence on record to show that they were involved in this case. It is further recorded that accused Mujeeb Ali just to mislead the investigation has made these allegations.

13. Thus, till 24.08.2018, neither a criminal case is pending against the petitioner nor departmental proceedings is pending.

14. It is stated by learned counsel for the petitioner that till date no departmental proceedings are initiated against the petitioner, which is not disputed by learned counsel for the petitioner.

15. Learned counsel for the respondents submits that vide order dated 26.10.2018 learned MM have shown its displeasure over the conduct of the IO who investigated the case and given clean chits to the officials including the petitioner.

16. The fact remains that neither any criminal case is pending against the petitioner and nor department proceedings are pending against the petitioner, therefore, there is no justification to withhold the retirement benefits of the petitioner.

17. Accordingly, I hereby direct the respondent to release the retirement benefits to the petitioner within four weeks from the receipt of this order.

18. I hereby make it clear that if any departmental action is taken in future by the respondents against the petitioner, the respondents are at liberty to take action as per law.

19. Order *dasti*.

CM APPL. No. 17465/2019

In view of the order passed in the present writ petition, the application has been rendered infructuous and is accordingly, disposed of.

(SURESH KUMAR KAIT)
JUDGE

MAY 07, 2019
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