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

% **Date of Decision: 21.01.2019**

\+ W.P.(C) 574/2019

RAJ KUMAR SEHGAL ..... Petitioner
Through Thakur Sumit, Adv.

versus

UNION OF INDIA AND ORS. ..... Respondents
Through Mr. Arun Bhardwaj, Adv.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE A.K.CHAWLA

VIPIN SANGHI J. (ORAL)

CM APPL. 2577/2019

Exemption allowed, subject to just exceptions.

W.P.(C) 574/2019

1. The petitioner has preferred the present writ petition to assail the order dated 24.08.2018 passed by the Central Administrative Tribunal, Principal Bench (CAT) in OA No. 3015/2016.

2. The petitioner had preferred the said OA to claim interest on delayed release of retiral dues. The petitioner was issued a charge-sheet on

25.01.2007, wherein, the following Articles of Charge were framed against him :

"Article – I

> *Shri R.K.Sehgal, while posted as Income-tax Officer, Ward 12 (3), New Delhi, during the period from 06.06.2005 to 31.12.2006, issued notices u/s 148 of the Income-tax Act, 1961, in 31 cases for the A.Y. 2005-06, listed in the Annexure-II, with the intention of completing assessments in these cases under scrutiny in clear violation of the guidelines captioned as 'Procedure for selection of cases for scrutiny for corporate assessees reproduced on pages 24 to 28 of the Action Plan document for 2006-07. He has thus shown lack of integrity, lack of devotion to duty and conduct unbecoming of a Government servant and thereby he contravened clauses (i), (ii) and (iii) of sub-rule (1) of Rule 3 of the Central Civil Services (Conduct) Rules, 1964.*

Article – II

> *Shri R.K.Sehgal, while posted as Income-tax Officer, Ward 12 (3), New Delhi, during the period from 06.06.2005 to 31.12.2006, issued notices u/s 148 of the Income-tax Act, 1961, in 31 cases for the A.Y. 2005-06, listed in the Annexure-II, on flimsy grounds such as 'donations debited to P&L account', 'TDS not deposited in time', 'wrong figures of profit after tax has been taken', 'wrong claim of deduction u/s. 80G has been made' etc. He has thus shown lack of integrity, lack of devotion to duty and conduct unbecoming of a Government servant and thereby he contravened clauses (i), (ii) and (iii) of sub-rule (1) of Rule 3 of the Central Civil Services (Conduct) Rules, 1964."*

3. The petitioner retired on 31.01.2007. Under Rule 9 of the CCS (Pension) Rules, 1972, inquiry proceedings were continued. The said

inquiry proceedings were closed on 24.12.2013, with the following order:

> *"AND WHEREAS on denial of the charges by the Charged Officer, an oral enquiry was instituted. The inquiry report was submitted on 13.04.2012. It was considered and examined in detail.*
>
> *AND WHEREAS after careful examination and analysis of the IO's report, CO's comments on the enquiry report and the report of the erstwhile Disciplinary Authority, the Disciplinary Authority had decided to drop the disciplinary proceedings.*
>
> *NOW, THEREFORE, the President is pleased to drop the disciplinary proceedings initiated vide Memo No. No. CIT-IV/PS(RKS)/2006-07/245 dated 25.01.2007 subject to conveying displeasure of the Government to Shri R.K.Sehgal, ITO (Retd.), the charged officer."*

4. On the passing of the aforegoing order, the petitioner sought release of his retiral dues. The retiral dues thus, came to be paid to the petitioner, though, in instalments, which is taken note of by the Tribunal. The petitioner approached the Tribunal with his claim for interest on delayed release of his retiral dues. He asserted that since he retired on 31.01.2007, and his retiral dues were released 6-7 years later, he was entitled to interest on the belated payment. The Tribunal partly allowed the petitioner's claim. In the impugned order, the Tribunal had taken note of the Govt. instructions issued under Rule 68 of CCS (Pension) Rules, 1972. The said Rule deals with the aspect of the right of the Govt. servant to claim interest on delayed release of gratuity. The instructions issued by the Govt. under the said Rule, which have been noticed by the Tribunal, read as follows:

"Govt. of India's Decisions (copy enclosed) is as under:

> *(1) Admissibility of interest on gratuity allowed after conclusion of judicial/departmental proceedings1. Under the rules, gratuity becomes due immediately on retirement. In case of a Government servant dying in service, a detailed time-table for finalizing pension and death gratuity has been laid down vide Rule 77 onwards.*
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> *2. Where disciplinary or judicial proceedings against a Government servant are pending on the date of his retirement, no gratuity is paid until the conclusion of the proceedings and the issue of the final orders thereon. The gratuity if allowed to be drawn by the competent authority on the conclusion of the proceedings will be deemed to have fallen due on the date of issue of orders by the competent authority.*
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> ***3. In order to mitigate the hardship to the Government servants who, on the conclusion of the proceedings are fully exonerated, it has been decided that the interest on delayed payment of retirement gratuity may also be allowed in their cases, in accordance with the aforesaid instructions. In other words, in such cases, the gratuity will be deemed to have fallen due on the date following the date of retirement for the purpose of payment on interest on delayed payment of gratuity**. The benefit of these instructions will, however, not be available to such of the Government servants who die during the pendency of judicial/disciplinary proceedings against them and against whom proceedings are consequently dropped.*
>
> *4. These orders (paragraph 3) shall take effect from the 10th January, 1983.*

[G.I., Dept. of Per. & A.R., O.M. No. F.7 (1)-P.U./79, dated the 11th July, 1979 and No.1 (4)/Pen. Unit/82, dated the 10th January, 1983.]" (emphasis supplied)

5. Thus, guidelines for application of Rule 68 have been laid down by the aforesaid instructions. The Tribunal has held that the acquittal or exoneration of the petitioner with displeasure in the disciplinary proceedings could not be equated to an *"Honourable acquittal"*. Consequently, interest has been denied to the petitioner for the period upto the closure of the departmental proceedings. For the subsequent period, however, interest was awarded to the petitioner on the several components of retiral dues.

6. The submission of the learned counsel for the petitioner is that the penalty under Rule 9 of the CCS (Pension) Rules, 1972 could be imposed only upon the Govt. finding as a result of departmental proceeding that the government servant was guilty of grave misconduct or negligence during the period of his service. He submits that in the present case, no such finding has been returned in the departmental proceedings and, on the contrary, the subject proceedings were closed against him. Learned counsel further submits that the Tribunal has gone beyond the order closing the proceedings against the petitioner, by looking into the allegations made against the petitioner in the charge-sheet. The Tribunal has founded its opinion on Statement of Imputation of Misconduct or Misbehaviour in support of the Articles of Charge, wherein, para 3 records as follows :

*"**In his explanation furnished vide his letter dated 29.11.2006, Shri Sehgal has admitted the lapse stating that there was some confusion or lack of understanding on his part in issue of***

> ***notices u/s 148 in these cases and sought permission for withdrawal of notices u/s 148 in 22 cases where the assessments in consequence of such notices are still pending. From a perusal of the explanation of Shri R.K. Sehgal, it is clear that he was deliberately selected these 31 cases for scrutiny by issuing notices u/s 148 clearly violating the guidelines laid down for selection of cases of corporate assessees for scrutiny in the Action Plan for 2006-07.*** *By the above said act, Shri R.K. Sehgal, ITO, has shown lack of integrity, lack of devotion of duty and conduct unbecoming of a Government servant and thereby he contravened clauses (i), (ii) and (iii) of sub-rule (1) of Rule 3 of the Central Civil Services (Conduct) Rules, 1964. He is, therefore, liable for disciplinary action under the Central Civil Services (Classification, Control and Appeal) Rules, 1965." (emphasis supplied)*

7. Learned counsel submits that recording of *"displeasure"* in the order passed by the disciplinary authority while closing the proceeding is of no consequence, since displeasure is not one of the penalties provided for under the CCS (CCA) Rules and, in any event, is not misconduct of a grave nature, or negligence, as contemplated under Rule 9 of the CCS (Pension) Rules.

8. On the other hand, learned counsel for the respondent supports the impugned order. In his submissions, the issue of payment of interest on delayed release of pensionary benefits is covered, in principle, by Rule 68 of CCS (Pension) Rules, 1972 and the instructions issued thereunder. He submits that the issue is not with regard to the release of the pensionary dues to the petitioner, since, these have actually been released. In his submission, the aspect of payment of interest has to be seen in the light of the fact whether the disciplinary proceedings were unfounded; malafide, or, whether the Govt. servant was unnecessarily subjected to such proceedings, without

any justification. In such eventuality, the exoneration/acquittal could be stated to be “Honourable”. Mere dropping of the disciplinary proceedings against a retired government servant does not lead to the conclusion that the exoneration is “Honourable.”

9. Having heard the learned counsel for the parties, we find no merit in the present petition. Reference made to Rule 9 of the CCS (Pension) Rules, in our view, is misplaced. The petitioner has not been subjected to any penalty by resort to Rule 9. He has been released his entire retiral dues. The issue that arose for consideration before the Tribunal was whether the petitioner is entitled to interest on delayed payment of pensionary benefits. For that, Rule 68 is relevant. It is in that light, the Tribunal examined the allegations made against the petitioner – to determine, whether the charge-sheet was frivolous, malafide, unfounded or unjustified. The allegation made against the petitioner was that he had issued 31 notices to the assessees at the fag end of his service. The allegation was that the issuance of the said notices was with ulterior motives. It is in that light that the Tribunal has relied upon para 3 of the Statement of Imputations of Misconduct. On a reading of the same, it appears that the petitioner admitted that in 22 of these cases, the notices had been issued by him due to some confusion or lack of understanding on his part and he himself sought liberty to withdraw the same. Such explanation coming from someone, who is on the verge of his retirement, had to be taken with a pinch of salt. Thus, in our view, the Tribunal correctly concluded that exoneration of the petitioner was not an “Honourable acquittal/exoneration”. Considering the fact that the petitioner had retired, and the notices issued by him under Section 148 of the Income

Tax Act in 31 cases were still to be finalized, it appears that the respondent department took a lenient view of the matter.

10. In these circumstances, we find no reason to interfere with the impugned order.

11. Dismissed.

VIPIN SANGHI, J

A. K. CHAWLA, J

JANUARY 21, 2019/rc