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

Date of Decision: 09.04.2019

\+ W.P.(C) 3308/2017 & C.M. No.14432/2017

SATYA PRAKASH ..... Petitioner
Through: Mr.R.K. Saini, Adv.

versus

CHAIRMAN CUM MANAGING DIRECTOR, BHARAT SANCHAR NIGAM LTD. & ORS ..... Respondents
Through: Mr.Sameer Agarwal, Adv. for R-1 & 2.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J (ORAL)

1. The petitioner assails the order dated 02.11.2016 passed by the learned Central Administrative Tribunal in Original Application Nos.3866/2014 & 1872/2015. In the first Original Application, the petitioner assailed the Order dated 30.04.2012, the Office Order dated 28.03.2013, the Order dated 30.01.2014 and Office Order dated 31.01.2014 regarding his suspension from service. He also sought direction for release of his actual pension in place of provisional pension, gratuity, commutation of pension and leave encashment. He also sought release of his full salary for the period between 30.04.2012 to 17.05.2013, when he was under suspension, which suspension was ultimately revoked.

2. We are primarily concerned with the order passed in the first Original Application. The petitioner at the relevant point of time, was serving as a Deputy General Manager in Bharat Sanchar Nigam Limited (BSNL). On 30.04.2012, he was placed under suspension on the ground that disciplinary proceedings were contemplated against him, which suspension was eventually revoked on 17.05.2013. The petitioner attained the age of 60 years on 10.01.2014, and was due to retire on 31.01.2014, as per the service rules. One day prior to that date, i.e., on 30.01.2014, he was placed under suspension in exercise of power under Rule 30(1)(a) of the BSNL Conduct, Disciplinary & Appeal Rules, 2006 on the ground that disciplinary proceedings were contemplated against him. Thereafter, he was served with a charge-sheet on 27.02.2015 under Rule 36 of the BSNL Conduct, Disciplinary & Appeal Rules, 2006, which was challenged by him in the second Original Application. It appears that the petitioner was also granted provisional pension in view of the aforesaid development. The Tribunal did not find merit in the petitioner's Original Applications and, therefore, rejected the same.

3. At the outset, we may note that the CCS (Pension) Rules, 1972 are applicable to the petitioner who was earlier employed with the Department of Telecommunication and was absorbed in the BSNL upon its creation. This fact is so stated by the respondents in their pleadings. We are, firstly, concerned with Rule 9 of the CCS (Pension) Rules, and the same in so far as it is relevant, reads as follows:-

"*"9(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.]

4. The submission of Mr.Saini, learned counsel for the petitioner is that under Rule 9 of the CCS (Pension) Rules, the President has reserved to himself the right to withhold pension or gratuity, or both, either in full or in part, or withdraw pension in full or in part, whether permanently or for a specified period for the purpose of ordering recovery. The said recovery is in respect of any pecuniary loss caused to the Government on account of the pensioner's proven grave misconduct or negligence during the period of his service. Mr. Saini submits that in the present case, the charge against the petitioner relates to his having manipulated the marks of certain candidates, while re-checking some of the papers, in relation to an examination held in the year 2010 in which he had acted as an examiner. Mr.Saini

submits that the nature of the charge itself is such, that there is no question of making any recovery, since no pecuniary loss is claimed to have been suffered by the Government on account of the alleged misconduct. Even in the charge-sheet issued to the petitioner, there is no allegation that his alleged misconduct has caused any pecuniary loss to the Government.

5. Mr.Saini further submits that in so far as the withholding of leave encashment is concerned, the same is neither covered by Rule 9 of the CCS (Pension) Rules, nor under the CCS (Leave Rules), which are relied upon by the respondent. He states that Rule 39(3) of the CCS (Leave Rules), specifically provides that leave encashment may be withheld if "*in the view of such authority there is a possibility of some money becoming recoverable on conclusion of proceedings against him*". He submits that till date, no order has been passed by the competent authority holding that there is a possibility of any money becoming recoverable from the petitioner upon conclusion of the proceedings against him.

6. Learned counsel for the respondent has supported the impugned order. He submits that presently the petitioner is not entitled to pension or gratuity under Rule 9 of the CCS (Pension) Rules, since disciplinary proceedings were pending against him at the time of his retirement, which proceedings stood initiated by his suspension before his superannuation. He further submits that even leave encashment is not payable to the petitioner, since it is likely that recovery may have to be effected against him. He submits that the examination, the results whereof the petitioner had manipulated, may

have to be recalled and the said examination may have to be re-conducted, which would entail pecuniary loss to the respondents.

7. Having heard learned counsel, we are of the view that so far as the petitioner's claim for pension and gratuity is concerned, the same has no merit.

8. The aforesaid sub rule (1) of Rule 9 in the opening para recognizes to the power of the President to withhold pension or gratuity, or both, either in full or in part, or withhold pension in full or in part, whether permanently or for a specified period. The second part relates to recovery from pension or gratuity for the whole, or any part of the pecuniary loss caused to the Government. So far as the power of the President to withhold pension or gratuity is concerned, the same is not dependent upon any pecuniary loss being caused to the Government. Rule 9 seeks to deal with a situation, where a Government servant against whom disciplinary proceedings have been initiated while he was in service, superannuates during the pendency of such disciplinary proceedings. If a Government servant were to be found guilty of serious misconduct while in service, he could be dismissed or removed from service. In either case, he would forfeit his gratuity and pension. The first part of Rule 9(1) only seeks to ensure, that merely because the Government servant may have superannuted while undergoing disciplinary proceedings, he does not fully escape the consequences of his misconduct, and go scot free. Keeping in view the fact that the punishment of dismissal or removal from service cannot be inflicted upon a Government servant who is already superannuated, Rule 9 seeks to make it clear that he could still

be penalized by withholding his gratuity or pension, or both, either in full or in part. It also takes care of a situation where, at the time of his superannuation while still undergoing disciplinary proceedings, the Government servant may have been paid pension and, therefore, the Rule provides that the pension may be withdrawn, either in full or in part. Only in relation to recovery from pension or gratuity, it would be essential for the government to establish pecuniary loss that it has suffered on account of grave misconduct or negligence on the part of the Government servant. Only when there is a basis to effect such recovery, it could be made. Since the petitioner is still undergoing the departmental proceedings, obviously, the petitioner cannot be paid his full pension or gratuity. The petitioner is being paid the provisional pension under Rule 69 of the CCS (Pension) Rules. Even otherwise, Rule 69(1)(C) also specifically provides that no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and the issuance of final orders thereon. Thus, the claim of the petitioner for grant of pension and gratuity at this stage is not justified.

9. So far as the petitioner's claim for leave encashment is concerned, in our view that stands on a different footing. As noticed above, Rule 9 does not say that leave encashment can be withheld or withdrawn by the Government. Stoppage of leave encashment is also not prescribed as a penalty under Rule 14 of the CCS (CCA) Rules, 1965. On the other hand, leave encashment is covered by the CCS (Leave) Rules. Rule 39(3) of the said Rule is relevant and reads as follows:-

> *"(3) The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him,* ***if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him****. On conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any."(emphasis supplied)*

10. The aforesaid Rule would show that the competent authority may wholly or partly, withhold leave encashment in respect of a Government servant who retires on attaining the age of superannuation, while under suspension or while undergoing disciplinary or criminal proceedings, provided the competent authority is of the view that there is a possibility of some money becoming recoverable from him on the conclusion of proceedings against him. In the present case, the respondents have not produced any order to show that a conscious decision has been taken by the Government to withhold the leave encashment due to the petitioner upon his retirement, on account of there being a possibility of some money becoming recoverable from him on the conclusion of proceedings against him. The nature of the charge levied against the petitioner also does not support the withholding of the leave encashment. We cannot agree with the submissions of learned counsel for the respondents that if the charge against the petitioner is

proved, it could also have the effect of nullifying the examination process in which the petitioner is alleged to have manipulated the marks of some of the candidates. Pertinently, the said examination took place in the year 2010. It is not the respondent's case that any of the successful candidates have been put to notice in this regard. It is not claimed that the said examination process has been assailed by any unsuccessful candidate on account of the alleged misconduct of the petitioner, or that the same has been set aside, or the challenge is still pending. We are, therefore, of the view that withholding of leave encashment of the petitioner is not justified.

11. We, accordingly, allow the petition partially by directing the respondent to pay the petitioner his leave encashment dues along with interest at the rate of 8% per annum from the date the same became due, till payment.

12. We may also observe that when notice was issued in this petition, notice was limited to the aspect of consideration of non-payment of gratuity and leave encashment, even though, the petitioner had in his original application also prayed that he be paid the remaining salary for the period of suspension between 30.04.2012 and 17.05.2013, which suspension was revoked on 17.05.2013. The revocation of suspension was followed by his fresh suspension on 30.01.2014 and thereafter, with the issuance of a charge memorandum on 27.02.2015. We, therefore, leave it open to the petitioner to stake his claim for the balance salary for the aforesaid period, if any, after the conclusion of the departmental proceedings, and in the event of his being exonerated in those proceedings.

13. The petition and pending application are disposed of in the aforesaid terms.

(VIPIN SANGHI)
JUDGE

(REKHA PALLI)
JUDGE

APRIL 09, 2019/aa