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

% **Date of Decision: 18th January, 2021**

\+ **W.P.(C) 9356/2020**

THE LT. GOVERNOR OF DELHI & ORS. .....Petitioners
Through: Mrs. Avnish Ahlawat, Standing Counsel with Mrs. Tania Ahlawat, Mr. N. K. Singh and Ms. Palak Rohemetra, Advocates

versus

SHEELA VOHRA .....Respondent
Through: Mr.M.K.Bhardwaj, Advocate

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE ASHA MENON

JUDGMENT

ASHA MENON, J: (Oral)

CM No.30168/2020

Exemption allowed, subject to all just exceptions.

W.P.(C) 9356/2020, CM APPL. 30167/2020

1. The petition has been heard by way of video conferencing.

2. This writ petition has been filed under Article 226 read with Article 227 of the Constitution of India by the Government of NCT of Delhi against the order dated 29th February, 2020 passed in O.A. No.2319/2019

by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'CAT').

3. The brief facts as are relevant for the purposes of the present petition are that the respondent was working as a Grade-I DASS Officer with the petitioners and posted as Food Supply Officer (FSO), In-charge of Circle-29, Tilak Nagar, in the Food and Supply Department, Govt. of NCT of Delhi in May, 2013. On 22nd July, 2015, a complaint was received about the pilferage of specified food articles from the Public Distribution System (PDS) in West District from the area MLA and taking cognizance of the same, a door-to-door survey was conducted by the Inspecting Team. According to the petitioners, the respondent had furnished the wrong information by downloading the address details of card holders from the online PDS portal, which were factually not correct, instead of downloading addresses from the NFS portal, which contained the correct information. Thus, the door-to-door survey became a futile exercise for more than one month.

4. The respondent was suspended pending initiation of disciplinary proceedings vide order dated 27th June, 2016, which was subsequently revoked on 27th September, 2016 as advised by the Suspension Review Committee. On 31st October, 2016, disciplinary proceedings for imposition of minor penalty under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 was initiated against the respondent which culminated in imposition of a penalty of *"reduction to a lower stage in the time scale of pay by one stage for a period of one year, without cumulative effect and not adversely affecting her pension"* on her with immediate effect vide order dated 14th February, 2017.

5. In the meantime, a One-Man Inquiry Committee was constituted of Sh. S.N.Sahai, IAS, the then Principal Secretary (Home) to examine any collusion between the Fair Price Shop Licensees and staff of Food & Supplies Department and to identify pilferage, if any, for fixing responsibility on the erring officers/officials in Circle-29 (Tilak Nagar). This Committee submitted its Report on 2nd June, 2017. Thereafter, the respondent was issued a memorandum dated 21st August, 2017 by the Assistant Commissioner (West), Department of Food & Supplies, for the lapses as indicated in the One-Man Committee Report at paras 3.3, 3.4, 3.5, 3.6, 3.7, 3.8 & 3.9 to ascertain her views before proceeding further in the matter. The petitioners submit that on examining the version of the respondent, the same was not found satisfactory and therefore, the decision was taken to initiate disciplinary proceedings against her for imposition of major penalty. The respondent was accordingly placed under suspension vide order dated 30th August, 2018.

6. The respondent challenged this order of suspension vide O.A. No.2319/2019 seeking its quashing and release of gratuity, leave encashment, commuted value of pension, etc., to her, since only the provisional pension under Rule 69 of the CCS (Pension) Rules, 1972 had been released to her.

7. The CAT vide order dated 29th February, 2020 allowed the O.A. and set aside the impugned order of suspension. The present petitioners being the respondents before it, were directed to release the retiral benefits to the applicant i.e. the respondent herein, if they had withheld the same on account of suspension.

8. Before us, the learned counsel for the petitioners, Mrs.Avnish

Ahlawat submitted that the order of the CAT was completely erroneous as it failed to consider the provisions of Rule 69 of the CCS (Pension) Rules, 1972 where, upon suspension, provisional pension alone is payable to the suspended official upon retirement. She submitted that the respondent alone was responsible for the pilferage of the food supplies as the FSO alone was responsible for the monitoring of the PDS in Circle-29 (Tilak Nagar) and so the respondent was liable being the Circle In-charge. We may point out here that when asked to show where the respondent had been named in the One-Man Inquiry Committee Report, the learned counsel was unable to point out any such specific observations and it appears that her arguments are based only on inferences drawn from the Report. Admittedly, the respondent alone was not working in the said department/Circle-29 and in all the paragraphs quoted, there is no specific reference to any evidence that *prima facie* connected the respondent to the defalcation.

9. We also find some force in the contention of Sh. M.K.Bharadwaj the learned counsel for the respondent, who had appeared on advance notice, that the respondent could not be subjected to a second inquiry on the same set of facts. There is no dispute that the respondent had been charge-sheeted for furnishing incorrect details of the beneficiaries of the PDS in the locality and even as per the petitioners, she had made amends by furnishing the correct details within a few days. She has also suffered a minor penalty.

10. However, the learned counsel for the petitioners insisted that the CAT had erred in setting aside the suspension because the Department was contemplating departmental action against the respondent. It was

argued that setting aside of the suspension was immaterial inasmuch as after the retirement of the respondent, there could be no suspension. However, Rule 69 of the CCS (Pension) Rules would still be applicable and therefore, the CAT erred in directing payment of regular pension and all retirement benefits.

11. The relevant portion of Rule 69 is extracted below for ready reference : -

> *"69.* ***Provisional pension where departmental or judicial proceedings may be pending***
>
> *(1) (a)* ***In respect of a Government servant referred to in sub-rule (4) of Rule 9, the Accounts Officer shall authorize the provisional pension*** *equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant, or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension.* ***(emphasis added)***
>
> *(b) xxxxxx*
>
> *(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon:*
>
> *Provided that where departmental proceedings have been instituted under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, for imposing any of the penalties specified in Clauses (i), (ii) and (iv) of Rule 11 of the said rules, the payment of gratuity shall be authorized to be paid to the Government servant."*

It is urged on behalf of the respondents that under these provisions if an official stood suspended at the time of retirement, then Rule 69 would have application and only provisional pension need be paid. It appears that this was the reason why a day before her retirement, the respondent was suspended. In respect of this action of the petitioners, the CAT has made the following observation:

> *"5. It is rather surprising, if not unfortunate, that Delhi Administration did not appreciate the circumstances, under which an order of suspension can be passed. Instances are not lacking, where the charge memos are issued, just before an employee retires from service, so that the rigors of Rule 9 of CCS (Pension) Rules, 1972 are avoided. Hardly, one comes across an incident where an employee is placed under suspension one day before retirement. The whole exercise is indeed futile, inasmuch as the suspension becomes redundant, once an employee attains the age of superannuation. It is not even mentioned that the applicant shall continue to be in service beyond the date of superannuation."*

12. We are in agreement with this observation of the Tribunal. It must also be noticed that Rule 69, has to be read along with Rule 9 (4) as is clear from the provisions itself extracted hereinabove. Rule 9(4) reads as under:-

> *"9. **Right of President to withhold or withdraw pension***
>
> *(1) to (3) xxx xxx*
>
> *(4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and **against whom any departmental or judicial proceedings are instituted or where***

> ***departmental proceedings are continued*** *under sub-rule (2), a provisional pension as provided in Rule 69 shall be sanctioned."* ***(emphasis added)***

13. In other words, it is Rule 9 which allows payment of provisional pension under Rule 69 when at the time of his retirement a government servant stood suspended in relation to a departmental or judicial proceedings that were already instituted or where departmental proceedings were being continued against him, having been initiated during the service of the retired officer. That position does not hold good in the present case. Even at the time of suspension, a day before her retirement, there were no departmental inquiry proceedings that stood initiated against her or were pending. In fact, till date, no articles of charge have been served to her. If and when the respondent is found guilty of grave misconduct or negligence during service, the right of the President to withhold pension and even direct recovery under Rule 9 would have full play. As rightly observed by the Tribunal, the rigours of Rule 9 were sought to be overcome by an erroneous application of Rule 69. To our mind, when after retirement there can be no suspension and the suspension itself has been found to be *malafide,* there can be no application of Rule 69 in vacuum, just because the petitioners are still "*contemplating*" on taking disciplinary action against the respondent.

14. This leads us to the most fundamental question as to why there has been so much of delay. The One-Man Inquiry Committee Report was submitted on 2nd June, 2017. Though a memorandum was issued to the respondent on 21st August, 2017, which is placed at Annexure-F to the petition at page 174 of the electronic file, till 30th August, 2018, no action

had been initiated against her, despite the claim of the petitioners in the petition that the explanation offered by the respondent was not satisfactory. Significantly, since then, till January, 2021, there has been no movement towards initiation of any departmental inquiry and framing of articles of charge against the respondent. A further delay has been noticed in the filing of the present petition against the order of the CAT dated 29th February, 2020 as the present petition was filed only on 29th September, 2020. No doubt, Covid-19 Pandemic and the lockdown is a handy excuse, but that would not explain the delay between the pronouncement of the impugned order and the lockdown in late March, 2020 and the further fact that the courts have been functioning through Video Conferencing, particularly for urgent matters, since April, 2020. If the petitioners were truly concerned about the defalcation and diversion of supplies, as being against the public interest, they should have immediately rushed to the courts.

15. We find no reason to interfere with the impugned order of the Tribunal. The petition is accordingly dismissed along with the pending application.

16. The judgment be uploaded on the website forthwith. Copy of the judgment be also forwarded to the learned counsel through e-mail.

ASHA MENON, J

MANMOHAN, J

JANUARY 18, 2021/s