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

Reserved on: 14.09.2022

Pronounced on: 21.11.2022

+ **LPA 280/2019**

RAM NARAIN

..... Appellant

Through: Mr K.K. Rai, Senior Advocate with Ms Manisha Singh, Mr Anshul Rai, Ms Sreoshi Chatterjee, Mr Priyesh Mohan Srivastava, Advocates.

Versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr Amitesh Kumar, Ms Binisa Mohanty and Ms Priti Kumari, Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. This intra-court appeal is directed against the judgment of the learned Single Judge dated 12.03.2019 passed in W.P (C) 2408/2012 whereby the writ petition of the appellant seeking quashing of Memo dated 12.04.2004, order dated 17.05.2004 (passed by the Disciplinary Authority) and order dated 09.05.2011 (passed by the Appellate Authority) was dismissed.

2. The short question which arises for consideration in the present appeal is whether the appellant who was awarded a major penalty of compulsory retirement after a full-dress departmental inquiry, is entitled to count the period

from 06.11.1989 to 17.05.2004 i.e. the date of suspension till date of punishment, towards qualifying service for grant of pensionary benefits?

3. To answer the above question, the brief facts which need to be noted are that the appellant was appointed as a Stenographer, Gr. III, in the Indian Council of Social Science Research (ICSSR) on 25.10.1980 and while working in that capacity, he was charge-sheeted for assaulting Dr K.K. Sidh, Deputy Director, ICSSR, in the office premises on 06.11.1989. The appellant submitted his written statement explaining his actions but at the same time he admitted to having slapped Dr K.K. Sidh. The Disciplinary Authority finding the explanation of the appellant to be unsatisfactory decided to hold an inquiry and constituted an Inquiry Committee. The appellant participated in the inquiry proceedings which culminated in a report which found the appellant guilty of the charges framed against him.

4. The Appointing-cum-Disciplinary Authority, after examining the report of the inquiry committee, did not find any justified reason to differ from the findings recorded by the Inquiry Committee and vide order dated 21.08.1991 imposed the punishment of compulsory retirement w.e.f. the date of the order.

5. Aggrieved by the order of the Disciplinary Authority, the appellant impugned the same by way of W.P. (C) 2872/1996 filed in this court on the premise that the Inquiry Report was not furnished to the appellant which violated the principles of natural justice as well as the provisions of ICSSR regulations. The learned Single Judge of this court *vide* order dated 23.09.2002 disposed-of the writ petition observing as under:

“...Learned counsel for the respondent has not denied that the inquiry report of the inquiry was not given to the petitioner as has been contended by the petitioner in para (G) of the writ petition. In view of the admitted facts of the case, the order of termination is passed without applying the safeguards of service regulations as well as it has violated the principle of giving reasonable opportunity to the charge officer, thereby making the order of termination illegal.

I quash the order dated 6.11.1989 and 21.8.1991. The petitioner will be re-instated in service with all consequential benefits. However, I grant liberty to the respondent to hold fresh inquiry, if they wish to do so, in accordance with law.

Petition stands disposed of.”

6. Against the aforesaid judgment and order of the learned Single Judge, the employer i.e. respondents 2 & 3 preferred LPA 818/2002. The Division Bench of this court by its judgment dated 14.10.2003 modified the order of the learned Single Judge, the operative part of which reads thus:

“...We accordingly concur with the findings of the learned Single Judge that indeed the impugned order dated 21.8.1991 as well as the order dated 19.8.1992 passed by the Appellate Authority are liable to be set aside. We affirm the finding of the learned single Judge to this effect. However, we do not agree with the relief granted by the learned Single Judge. The relief to which the respondent No. 2 would be entitled to, is, as indicated by the Hon'ble Supreme Court in the judgment in Managing director ECIL's case. We modify the directions as under: -

The impugned order dated 21.8.1991 passed by the Disciplinary Authority and the order dated 19.8.1992 passed by the Appellate authority are quashed. We direct reinstatement of respondent No. 2, with liberty to the appellant to proceed with the Inquiry by placing respondent No. 2 under suspension and continuing with the Inquiry from the stage of furnishing him with the

report. (We may note that during the pendency of the appeal, the report of the Inquiry has been furnished). The appellant would consider the representation of the respondent no. 2 against the inquiry report which he would be entitled to make within three weeks from today. If the respondent no. 2 succeeds and is directed to be reinstated, the appellant would decide as to what benefits the respondent no 2 would be entitled to and in what manner the period of suspension should be treated as a consequence of reinstatement.

The appeal stands disposed of with the directions as above.”

7. The aforesaid order of the Division Bench of this court was challenged, both by the appellant as well as by the respondents, before the Supreme Court by filing Special Leave Petitions. However, the SLPs were dismissed by the Supreme Court.

8. Sequel to the above, the appellant made his representation in terms of the order passed by the Division Bench. The Disciplinary Authority considered and rejected the representation of the appellant by its Memo dated 12.04.2004 observing that the conduct of slapping an officer in the office premises is grave misconduct and thus issued a notice calling upon the appellant to show cause as to why the penalty of compulsory retirement from service should not be imposed on him.

9. The appellant in his explanation to the show cause notice submitted on 20.04.2004 stated that the misconduct, if any, was only on account of the sudden provocation by Dr K.K. Sidh, Deputy Director, by slapping him in connection with the Housing Society dispute and the return slap by the

appellant was not a planned, deliberate or a conscious act, it was on the spur of the moment and an immediate result of the provocation. He pleaded that the proposed penalty of compulsory retirement may be dropped. The appellant also urged that in case he was not re-instated in service, he would suffer irreparable loss and injury.

10. The Disciplinary Authority, having regard to the nature of the misconduct and the previous conduct of the appellant, took a lenient view and imposed the punishment of compulsory retirement from service of ICSSR with immediate effect, *vide* his order dated 17.05.2004. However, considering the age of the appellant, the Disciplinary Authority awarded back wages to the appellant from 06.11.1989 till the date of issuance of the order dated 17.05.2004. It was specifically observed by the Disciplinary Authority that the period from 06.11.1989 till the date of the said order will not count towards pensionary benefits. Since both the parties have placed reliance on the aforesaid order of the Disciplinary Authority, therefore it will be apt to reproduce the relevant part of the same as under:

“...I am, therefore, convinced that retention of a person like Shri Ram Narain in the service of the organization, who committed such grave misconduct of criminal nature would be highly detrimental to the interest of the organization.

Keeping in view the magnitude of the criminal misconduct committed by Shri Ram Narain and considering the long history of the case so far, and also the discipline in the organization, I come to the conclusion, that Shri Ram Narain is not a fit person to be retained further in the services of ICSSR, but considering the chequered history of the case, I am inclined to take a lenient view in the matter. I am of the view that Shri Ram Narain be compulsory retired from the services of ICSSR with immediate

effect.

In the circumstances stated above, even though Shri Ram Narain is not entitled to any back wages and deserves to be dismissed from service for grave misconduct, yet keeping in view his age, he will be paid back wages from 6.11.1989 till the date of issue of this order on compassionate grounds. This period from 6.11.1989 till the date of issue of this order will, however, not count towards pensionary benefits."

11. It is not in dispute that in terms of the aforesaid order of the Disciplinary Authority, the appellant was paid back wages from 06.11.1989 till 17.05.2004, amounting to Rs.12,08,952/- as full and final settlement of his dues, by ICSSR.

12. The order of penalty was appealed against by the appellant before the Appellate Authority. It seems that there was some delay in the disposal of the said appeal which led the appellant to file W.P. (C) 20994/2005 in this court. The learned Single Judge *vide* order dated 25.07.2007 directed the Appellate Authority of ICSSR to decide the appeal of the appellant within a period of two months, in accordance with law. Consequent thereto, the Appellate Authority *vide* Memorandum dated 10.09.2007 opined that the order of the appellant's compulsory retirement was fair and just, and based on an enquiry in which due procedure was observed, therefore, there is no ground for reversing or revoking the order of the ICSSR.

13. The appellant filed yet another writ petition (W.P (C) 9391/2007) contending that the order passed by the Appellate Authority on 10.09.2007 was not a speaking order and that the appellant would be satisfied, if the order passed by the Appellate Authority is set aside with a direction to the Appellate Authority to re-consider the matter afresh and a speaking order is passed

disposing of the appeal after giving the petitioner a personal hearing.

14. The learned Single Judge *vide* order dated 23.02.2011 while (i) quashing the order of the Appellate Authority dated 10.09.2007, (ii) directed the Appellate Authority to consider the matter afresh and pass a speaking order, (iii) disposing-off the appeal within six months.

15. Consequent thereto, the Appellate Authority passed a reasoned order dated 09.05.2011 whereby the Appellate Authority fully agreed with the findings of the Appointing Authority recorded in its order dated 17.05.2004 and did not find any ground for reversing or revoking and/or modifying the order passed by the Disciplinary Authority to compulsorily retire the appellant from service. The Appellate Authority held that the punishment awarded is not disproportionate but is rather inadequate and not commensurate with the gravity of the proven charges of misconduct. The relevant extract from the order of the Appellate Authority reads as under:-

“...That in view of the fact that the repeated misconduct committed by the appellant was of grave nature and also in view of the fact that there is no complaint against the conduct of enquiry committee proceedings or its report wherein the appellant was afforded ample opportunity to defend himself and the principles of natural justice were fully observed, I fully agree with the findings of the appointing author (then Member-Secretary, Shri Bhaskar Chatterjee) dated 17.05.2004 that it is grossly unbecoming of an employee of an organization to physically assault any employee, what to speak of a senior officer, that too within the office premises, itself and irrespective of the same, it also amounts to a criminal misconduct. If such grave misconduct is allowed to go unpunished, it would adversely affect not only the general discipline in the organization but

would also damage the morale of the officers.

As such, I find no grounds for reversing or revoking and/or modifying the order passed by the Council by compulsorily retiring the appellant from services of the organization. The punishment awarded is not disproportionate; but is rather inadequate and not commensurate with the gravity of the proved charges of misconduct. This is my own independent conclusion. The matter now stands closed."

16. The appellant impugned the said order of the Appellate Authority through a writ petition (W.P. (C) 2408/2012) from which the present appeal has arisen. The writ petition was dismissed *vide* order dated 12.03.2019 with the following observation:

"28. It is pertinent to mention here that whenever there were any violations of the procedure or of natural justice, the petitioner time and again approached this Court and accordingly, got the orders in his favour. Pursuant to the directions passed by this Court in the Writ Petition discussed above filed by the petitioner, the proper opportunities were granted and only thereafter, the Disciplinary Authority and the Appellate Authority passed the impugned orders. Moreover, before the incident in question in the year 1988, the petitioner had physically assaulted Shri K.L. Khera, the then Asstt. Director, ICSSR, in the office premises for which he was issued a charge-sheet and upon his tendering an unqualified apology and giving a written assurance of good conduct in future, the petitioner was issued a warning asking him to refrain from nefarious activities. Despite he slapped to Dr. K.K. Sidh as admitted by the petitioner but there is no evidence on record that Dr. K. K. Sidh slapped the petitioner and in reiteration of that he slapped to Dr. K. K. Sidh. Even if it is presumed that the Dr. K.K. Sidh had slapped the petitioner then petitioner instead of slapping in turn ought to make complaint to the concerned authority. Even as per the admission of the petitioner, he has admitted that on 06.11.1989, when the petitioner was passing

through the narrow corridor near the stenographers room, he met Dr. Sidh, who was coming from the opposite side. Due to narrow space, the petitioner requested Dr. Sidh to make way for him. Dr. Sidh was a senior officer whereas the petitioner is on the lower rank. Therefore, there was no reason to ask Dr. Sidh to make way for him. Thus, it proves that the petitioner had created a cause and slapped Dr. Sidh.

29. Keeping in view the past conduct and the incident in question, no leniency is required to be granted in favour of the petitioner. Moreover, he had settled the issue with the respondent by taking amount of ₹12,08,952/- as mentioned above as full and final settlement. I note, regarding the pensionary benefits, the competent authority has passed specific order to this effect whereby it is stated that the petitioner shall not be liable for the pensionary benefits in view of the misconduct committed.”...

17. Mr K. K. Rai, the learned Senior Advocate for the appellant would submit that: (i) the order of Disciplinary Authority dated 17.05.2004 compulsorily retiring the appellant had only mentioned that the period from 06.11.1989 (date of his original suspension) till the date of issue of the said order will not count towards pensionary benefits and there is no specific order passed by the Competent Authority forfeiting the pension of the appellant; (ii) as per the CCS Pension Rules, 1972 (in short ‘Rules’), an employee against whom penalty of compulsory retirement is passed is entitled to receive pension unless the same has been forfeited by the Competent Authority by a separate order; (iii) the order of the Disciplinary Authority categorically states that taking a lenient view of the matter, punishment of compulsory retirement is being passed against the appellant instead of penalty of dismissal but the denial of pension to the appellant has virtually converted the punishment of compulsory retirement into one

of dismissal; and (iv) under Rule 40 of the Rules compulsory retirement from service would not disentitle the delinquent employee to pension altogether but only to a portion thereof.

18. The learned Senior Advocate for the appellant further submits that after the appellant was reinstated, he was again placed under suspension on 25.02.2004, therefore, the interregnum period between initial suspension and reinstatement will have to be counted towards qualifying service, once the punishment order of compulsory retirement was set aside. He further contends that even if the subsequent period during which the appellant was again placed under suspension i.e., from 25.02.2004 till 17.05.2004 is excluded from the qualifying service, the appellant would still qualify for his pension. Furthermore, he urged that the appellant has received full wages along with an increment for the entire period of suspension, therefore, there is implied regularization of the suspension period and accordingly, the appellant shall be deemed to be in pensionable service as on the date of his compulsory retirement i.e., 17.05.2004.

19. While countering the submission made on behalf of the appellant, Mr Amitesh Kumar, the learned Advocate for R-2 & R-3, submits that the charges were fully proved against the appellant and accordingly, the Disciplinary Authority, in exercise of its power under Rule 14 of CCS (CCA) Rules, 1965, imposed the punishment of compulsory retirement from service, and further taking into account all facts and circumstances, ordered that the period of suspension from 06.11.1989 till the date of issuance of the order imposing penalty i.e., 17.05.2004, shall not be

counted towards pensionary benefits. The learned counsel urged that the latter part of the order is in consonance with the provisions of Rule 23 of the Rules and in support of his submission, he placed reliance on the judgment of this court in LPA 100/2013 titled ***District and Sessions Judge, Delhi vs. V. Sanjeev Verma (2013) SCC OnLine Del 1662***. He also submits that the appellant was paid full back wages from 06.11.1989 till 17.05.2004 amounting to Rs. 12,08,952/-, which was the result of a lenient view taken by the disciplinary authority in awarding punishment of compulsory retirement instead of the appellant's dismissal from service.

20. It is not in dispute that the case of the appellant is governed by the Rules which were in vogue at the relevant time. The Rules contain elaborate provisions in Chapter III (Rules 13 to 32), which provide for counting of different periods of service towards qualifying service for deciding the eligibility of an employee for pension. The rival contentions of the parties will have to be assessed on the anvil of the provisions of Rule 23, Rule 24 and Rule 25 of Chapter III. Further, reference has also been made to Rule 40(1) of the Pension Rules by the learned Senior Advocate for the appellant. The said Rules read as under:

Rule 23. Counting of periods of suspension

(1) Time passed by a Government servant under suspension pending inquiry into conduct shall count as qualifying service where, on conclusion of such inquiry, he has been fully exonerated or the suspension is held to be wholly unjustified; in other cases, the period of suspension shall not count unless the authority competent to pass orders under the rule governing such cases expressly declares at the time that it

shall count to such extent as the Competent Authority may declare.

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Rule 24. Forfeiture of service on dismissal or removal

Dismissal or removal of a Government servant from a service or post shall entails forfeiture of his past service.

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Rule 25. Counting of past service on reinstatement

(1) A Government servant who is dismissed, removed or compulsorily retired from service, but is reinstated on appeal or review, is entitled to count his past service as qualifying service.

(2) The period of interruption in service between the date of dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement, and the period of suspension, if any, shall not count as qualifying service unless regularized as duty or leave by a specific order of the authority which passed the order of reinstatement.

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Rule 40 Compulsory retirement pension

(1) A Government servant compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty, pension or retirement gratuity or both at a rate not less than two-thirds and not more than full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement.

21. The circumstances under which the periods of suspension are to be counted towards qualifying service have been delineated in Rule 23 of the Pension Rules. In terms of the initial part thereof, the counting of the period of

suspension towards qualifying service is automatic in the event of twin conditions being satisfied: (i) the government servant should have been fully exonerated and (ii) the suspension has been held to be wholly unjustified. In the present case, none of these conditions are met, since, neither it is a case of exoneration, nor has the suspension been held to be wholly unjustified. On the contrary, it is a case of imposition of a major penalty of compulsory retirement. Therefore, it is the latter part of the Rule that deals with the cases not covered by the former part. In terms of the latter part, there is no automatic counting of the period of suspension towards qualifying service. The import of the latter part of the Rule is that when it is not a case of exoneration, the period of suspension is not to be counted towards qualifying service unless an express declaration by the disciplinary/competent authority to that effect has been made at the time of passing an order of penalty. The competent authority has further to specify the extent of the period which is to be counted. Admittedly, no order containing an express declaration with regard to counting of the period of suspension has been made. In contrast, what has been specifically directed by the competent authority in the punishment order dated 17.05.2004 is that the *“period from 6.11.1989 till the date of issue of this order will, however, not count towards pensionary benefits.”* This being the position, the entire period during which the appellant remained under suspension cannot be counted towards qualifying service.

22. The contention of the learned Senior Advocate for the appellant that since there is no specific order of the Competent Authority forfeiting the pension of the appellant, the period spent under suspension will count towards the qualifying service, is also devoid of merit. There is no provision of law, nor has any been pointed out by the learned Senior Advocate for the appellant,

which warrants the passing of a specific order by the Competent Authority to forfeit pension. The position, as noted above, is rather converse. For counting the period of suspension towards qualifying service for grant of pension, especially in cases of imposition of penalty, other than dismissal or removal, a specific order needs to be passed by the competent authority making a declaration to that effect.

23. The appellant cannot also take advantage of the lenient view taken by the disciplinary authority in awarding full back wages for the entire period of suspension. But for this lenient view, the benefit of back wages amounting to Rs.12,08,952/-, admittedly received by the appellant, would not have enured to him. Had the disciplinary authority awarded a punishment of dismissal or removal instead of penalty of compulsory retirement, it would have entailed forfeiture of the appellant's entire past service under Rule 24 of the Rules, depriving him of the back wages. Therefore, there is no substance in his contention that the denial of pension to him has virtually converted the punishment of compulsory retirement into one of dismissal.

24. The next contention on the appellant's behalf with reference to sub-rule (1) of Rule 40 of the Pension Rules, is that compulsory retirement from service would not disentitle the appellant to pension altogether but only to a portion thereof, is only to be stated to be rejected. Sub-rule (1) of Rule 40 does not deal with the eligibility of an employee for pension nor does it provide as to how the period of suspension is to be dealt with. The said sub-rule only specifies the authority who could grant pension or gratuity to a Government servant compulsorily retired from service by way of penalty and the rates

thereof. The Competent Authority under sub-rule (1) of Rule 40 of the Pension Rules has the discretion to grant pension or retirement gratuity or both, at rates not less than two-thirds and not more than what is admissible to a Government servant on the date of his compulsory retirement. Indeed, the exercise of such discretion and payment of pension or gratuity to a Government servant is dependent on a pre-condition of rendering of qualifying service under the Rules.

25. Lastly, the appellant contends that as the initial termination order dated 20.08.1991 was set aside and the appellant was reinstated by the learned Single Judge vide judgment dated 23.09.2002 passed in W.P.(C) 2872/1996, which was upheld by the Division Bench of this Court vide order dated 14.10.2003 in LPA No.818/2002, therefore, the period of suspension from 06.11.1989 till upholding of reinstatement by the Division Bench ought not to have been excluded from the qualifying service. This submission of the learned Senior Advocate is also devoid of merit. Undisputedly, the period of suspension was not regularized, either as a duty or leave, by a specific order of any competent authority, in terms of sub-rule (2) of Rule 25 of the Rules. Even the order of the learned Single Judge which reinstated the appellant in the first round of litigation or the order of the Division Bench, which modified the order of the learned Single Judge and granted liberty to the respondents to proceed with the Inquiry by placing the appellant under suspension and continuing with the Inquiry from the stage of furnishing him with the report of the Inquiry, did not regularize the period of suspension of the appellant. On the contrary, the Division Bench while modifying the order of the learned Single Judge left it to the discretion of the respondents to decide the manner in which the period of

suspension should be treated in the event of the appellant eventually being reinstated. This being the position, the suspension period up to reinstatement of the appellant could not be counted towards the qualifying service of the appellant.

26. The question involved in the present case is also covered by the decision of this court in *District and Sessions Judge Delhi v. Sanjeev Verma: 2013 SCC OnLine 1662*. In that case, the question arose that in the event a government servant is compulsorily retired by way of penalty after a spell of suspension, would he be entitled to pensionary benefits. The order awarding punishment of compulsory retirement, specifically mentioned that the Government servant will not receive any benefits more than what he had received during suspension. A coordinate Bench of this Court while construing Rule 23 of the Pension Rules in the above backdrop, observed as under :

“8. *This takes us to the applicability of Rule 23 of the CCS Pension Rules. As we have noted that the said rule applies only on three occasions:*

- (i) *The Government servant who has been fully exonerated;*
- (ii) *The suspension of that Government servant is held to be wholly unjustified; and*
- (iii) *The Authority Competent to pass order under the Rules governing such cases expressly declares at the time that it shall count to such extent as the Competent Authority may determine.*

9. *At the cost of repetition, we may again point out that the Government servant in question has not been fully exonerated and therefore, his claim should not fall under the first category. Equally, suspension cannot be wholly unjustified as the appellant was justified in suspending*

the Government servant for the reasons that an FIR was registered against the erring Government servant who handed over the Court records to some unauthorized person, who could not have access to the same in the Office of the Registry. To this extent, second limb of the Rule is not applicable to the Government servant in question. As far as the third limb is concerned, the submission of the learned counsel for the respondent was that the Authority Competent should have passed an order under the Rules deciding specifically the issue of benefits, etc. for the suspension period. Having regard to our finding, FR 54B(1) (a) & (b) is not applicable to the facts of this case, the Government servant does not satisfy the third limb.

10. *In these circumstances, the question of counting the period of suspension for the purpose of making the Government servant's entitlement for payment of pension does not arise. That apart, at the time when the compulsory retirement order was passed though the Competent Authority did not elaborately declare his disentitlement of pension, it could be seen that in the said order it was mentioned that the Government servant will not receive any benefits more than what he had received during the period of suspension. Therefore, it cannot be said that the question of payment of pension was not at all considered by the Competent Authority."*

27. It is not in dispute that if the period for which the appellant remained under suspension is excluded, then the appellant will not have requisite qualifying service which would make him eligible for pension under the Rules. According to the respondents, after excluding the period of suspension, the qualifying service of the appellant comes only to 9 years 2 months and 13 days.

28. In the circumstances, we do not find any reason to interfere with the

decision of the learned Single Judge. Accordingly, and in view of the above, this appeal fails and is, therefore, dismissed.

VIKAS MAHAJAN, J.

NAJMI WAZIRI, J.

NOVEMBER 21, 2022
dss/MK

