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

% **Reserved on: 09th February, 2022**
Pronounced on: 17th February, 2022

\+ **W.P.(C) 4887/2020, CM APPL.No.17646/2020**

KARAN SINGH ARYA ..... Petitioner
Through: Mr.V.K.Raina and Mr.S.S.Sastry, Advocates.

versus

UNION OF INDIA & ANR. ..... Respondents
Through: Mr.Neeraj, Mr.Sahaj Garg, Mr.Vedansh Anand, Mr.Rudra Paliwal and Mr.Sanjay Pal, Advocates for Respondent No.1.
Mr. B.K. Sood and Mr. Harish Gaur, Advocates for R-2/BIS.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This petition is filed with the following prayers:

"(i) issue a writ in the nature of mandamus and/or any other writ of appropriate nature and for direction/order, thereby quashing/setting-aside the impugned Memorandum/order dated 30.01.2020 passed by the Respondent, whereby the Competent Authority has sought to impose penalty of withholding 10% of monthly pension of the petitioner for period of one year; and"

2. The brief facts of the case are:

a) On 23.01.1989 the petitioner was appointed as a technical assistant in respondent no.2. In March, 2000 the petitioner was promoted to the post of senior technical assistant and was designated as laboratory officer (B).

b) On 20.06.2011 the petit1ioner was promoted to the post of Scientist (B) for a period of two years and was transferred to CBTO, Coimbatore, Tamil Nadu.

c) On 27.08.2013 a vigilance inquiry was initiated, followed by disciplinary proceedings under Rule 14 of the CCS Rules, 1965 against the petitioner vide Memorandum No.Vig./40/4/2013-2014/2288 dated 27.08.2013 on the alleged charge of doubtful integrity and lack of devotion to duty, unbecoming of an employee of the Bureau of Indian Standards.

d) On 30.06.2017 committees were constituted for conducting the review of employees of the department, including of the petitioner, under the Fundamental Rules, *viz* Rule 56(j)(i) and Rule 48 of CCS (Pension) Rules, 1972 and the petitioner was retired prematurely under Rule *56(j)(i)*.

e) In July, 2018 the petitioner challenged the order of premature retirement by preferring a Writ Petition (Civil) No.*7611 of 2018* and the same is pending before this Court.

f) On 30.05.2019 a copy of Inquiry Report dated 01.11.2017 was forwarded to petitioner and was received by the Petitioner on 04.06.2019, by the respondent No.2, wherein out of *4* charges only Article *II*, as regards petitioner not having submitted surveillance report as per procedure was alleged proved being in violation to Rules *3(1)(ii) & (iii)* of CCS (Conduct) Rules, 1964.

g) On 30.10.2019 this Court directed the respondents to take final decision upon the petitioner's case within *4* weeks and in the absence of any major penalty, release the retirement benefits to the petitioner, making adjustments, if any, within six weeks thereafter.

h) On 30.01.2020 The Hon'ble Minister, Consumer Affairs, Food & Public Distribution in the capacity of President of the Bureau of Indian Standards (Respondent No.2) vide his decision, imposed "a. penalty of withholding of *10%* of monthly pension of the petitioner for a period of one year, conveyed to the petitioner vide an impugned order/memorandum through the DDG (Labs) Bureau of Indian Standards; hence this petition.

3. It is the grievance of the petitioner out of four charges three charges were never proved and only one charge was proved partly *per* the enquiry report and vide a letter dated 30.01.2020 a penalty was imposed upon the petitioner of withholding 10 % of his monthly pension for a period of one year. It is alleged this order is arbitrary. The learned counsel for the petitioner referred to a memorandum dated 30.05.2019, Annexure-*P4*, which also notes an enquiry under Rule 14 of CCS (CCA), 1965 was instituted against the petitioner herein to inquire into the charges framed against him vide memorandum No. Vig/40/4/2013-14/01/2288 dated 27.08.2013 and an enquiry report dated 01.11.2013 was received wherein it was held the charge under Article II was proved against him to an extent of not submitting market surveillance report as per the procedure thus violating the rules *3(1)(ii)* and *(iii)* of the CCS (Conduct) Rule, 1964.

4. The learned counsel for the petitioner referred to enquiry report dated 01.1.2017 which read as under:

> *"Article II : The charge against Shri K.S,Arya Scientist 'B', Eastern Regional Office (ERO), Kolkata while working as Scientist 'B', BIS*

Coimbatore Branch Office, Coimbatore had visited M/s Sri Avathar Jewellers, Erode a BIS licensee (CM/L-0578289) as per IS 1417 :1.999 on 77.09.201,7, Shri K.S.Arya, however, neither submitted the market Surveillance report of M/s. Sri Avathar Jewellels of his visit dated 22.09.2011 in the office nor the sample drawn during the visit was sent by him for independent testing.

The Presenting Officer produced listed documents and two prosecution witnesses for the charge framed against the charged officer Shri, K.S, Arya.

The Presenting Officer argued that the charged officer had visited the said licensee for market surveillance on 229.20T1 and this was vindicated by prosecution documents and prosecution witnesses. The charged officer even had also accepted that he visited the M/s Sri Avathar Jewellers, Erode sn 22,9,2011 for market surveillance. The argument of not sending the sample drawn during the visit by the charged officer for independent testing was become not relevant because the sample was returned to the M/s Sri Avathar Jewellers, Erode by the charged officer and they had also, prosecution witnesses Shri, Saravanan, and Shri Avthar Venkatesh Manager and Owner of M/s Sri Avathar Jewellers, Erode respectively had confirmed during cross examination by the charged officer that they had received back the sample drawn during the visit on 22.9,2011 from the charged officer. Due to this, the question of not sending the sample for independent testing did not arise. The reason for returning the sample to M/s Sri Avathar Jewellers, Erode drawn had not been questioned by the Presenting Officer and also it is out of context as far as charge in the Article II is concerned.

Considering the above, it is held that the charge in Article II against Shri. K.S.Arya is proved to the extent of not submitting the market surveillance report as per the procedure thus violating the rules 3 (1) (ii) & (iii) of CCS (Conduct) Rules, 1964."

5. It was argued there was no finding given by the enquiry officer that the petitioner is guilty of any *grave misconduct* or *negligence* and hence *per* settled law, the order of cut in the pension ought not to have been made. He relied upon *Union of India and Ors. vs. Dr.V.T.Prabhakaran* 171 (2010) DLT 556 (DB), wherein the Court held as under:

"17. In the decision reported as 1990 (4) SCC 314 D.V.Kapoor vs. UOI & Ors., with reference to Rule 9 of the CCS (Pension) Rules 1972 the Supreme Court held that it was apparent that the President had reserved to himself the right to withhold pension in whole or in part, permanently or for a specified period, but, upon the condition that in the departmental inquiry or the judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of a service. In para 9 of the decision it is observed:

"As seen the exercise of the power by the President is hedged with a condition precedent that a finding should be recorded either in departmental inquiry or judicial proceedings that the pensioner committed grave misconduct or negligence in the discharge of his duty while in office, subject of the charge. In the absence of such a finding the President is without authority of law to impose penalty of withholding pension as a measure of punishment."

6. Further in *P.N.Bhat (Prof.) vs. Union of India and Ors.* 194 (2012) DLT 675 (DB), the Court held *if there was no finding of grave misconduct during the period of his service there could be no question of ordering a cut in pension and hence the order of 25% cut in the pension was set aside*.

7. Thus it is argued no case was made out for violation of Rule *3(1)(ii)* and *(iii)* of CCS (CCA) Rules, 1964 and as there was no *grave misconduct* or *negligence* and neither there was any finding of such nature by the enquiry officer, the penalty needs to be set aside. Heard.

8. Heard.

9. The facts do show representation furnished by the petitioner dated 10.06.2019 was duly considered by the competent authority. In such representation the petitioner himself had admitted of the wrong committed by him and he rather submitted the following:

"That the conclusion drawn by the Inquiry Authority the under visited the shop of M/s Avathar Jewellers (Erode) but has not sent the report to the office nor the sample drawn during the visit was sent for independent testing. It is submitted that undersigned had made it clear before the Inquiry Officer that ***the sample drawn " for market surveillance does not show marking details such as BIS Standard Logo, Purity Logo(916), Identity mark of Jeweller, Year of Marking, name of Hall Marking Centre, therefore the sample does not meet the requirement marking detail and was thus returned back to the licensee*** *and on the next visit the sample was drawn for Market Surveillance and Report was accordingly submitted to the office as per Rules and sample was sent to independent testing on 30.11.2011. Therefore the conclusion arrived by the Inquiry Officer that the charge no.2 proved and undersigned has violated the Rules 3(1) (ii) and (iii)*

of CCS (Conduct) Rules, 1964 same is not correct and without any merit and same is not sustainable under law."

10. The petitioner in fact in his so called representation against enquiry report rather admitted that on dated 22.09.2011 he had visited M/s.Avathar Jewellers and despite the sample did not meet the requirement of marketing detail such as BIS standard logo, purity logo (916), identity mark of the jewellers, year of marking, name of hallmarking centre, he rather returned such sample to the Jeweller instead of seizing it for ulterior motive. Though such ulterior motive, was never proved but nevertheless, where an employee is to check such infirmities but he helps the offender by returning such impure or incorrect samples rather commits *gross-negligence* under the law and it cannot be said his case is not of *negligence,* though the order does not say so in specific words.

11. Admittedly the prime function of respondent no.2 is to employ officers to visit the market and to submit a market surveillance report along with samples drawn for independent testing. If such employees return such samples after seizing it would not only be violating the law but also would be acting under *grave negligence,* considering the nature of duties they are expected to perform. The facts do show the *negligence* committed by the petitioner.

12. Even otherwise, this Court is not supposed to substitute its decision over the decision of administrative authority. The Supreme Court has reiterated this principle of judicial review in *State of M.P. v. M.V. Vyavsaya & Co*., (1997) 1 SCC 156 as follows:

> *"15. It has been repeatedly held by this Court that the power of the High Court under Article 226 of the Constitution is not akin to appellate power. It is a supervisory power. While exercising this power, the court does not*

go into the merits of the decision taken by the authorities concerned but only ensures that the decision is arrived at in accordance with the procedure prescribed by law and in accordance with the principles of natural justice wherever applicable. Further, where there are disputed questions of fact, the High Court does not normally go into or adjudicate upon the disputed questions of fact…."

13. Under Rule 9 of CCS (Pension) Rules, 1972, penalty of withholding the pension or retiral benefits, full or in part, can be imposed even on ground of *negligence*. Negligence has been defined in Cambridge Dictionary Online to mean *'failure to give enough care or attention to someone or something that you are responsible for'*. Misconduct has been defined in Cambridge Dictionary Online to mean *'unacceptable or bad behavior by someone in a position of authority or responsibility'*. Admittedly charge no. 2 was proved against the petitioner to an extent the undersigned had not submitted Market Surveillance Report as per the procedure, thus violating rules *3(1) (ii) & (iii)* of CCS Conduct Rules, 1964. The memorandum dated 30.05.2019 and inquiry report dated 01.11.2017 is already annexed as Annexure: *P/4* at Pg 31 to 44 of the paper book.

14. The petitioner in his representation against the inquiry report did not give any explanation about not submitting the market surveillance report of the visit carried out in the premises of M/s Sri Avathar Jewellers (Erode) dated 22.09.2011. It has rather been accepted by him during the inquiry report and in his representation he had visited M/s Avathar Jewellers (Erode) on 22.09.2011.

15. The representation furnished by the petitioner dated 10-06-2019 has been duly considered by the competent authority. The penalty on the petitioner has been imposed by the Hon'ble Minister of Consumer

Affairs, Food & PD in his capacity as the President of BIS after considering the findings of the inquiry report in which it has been concluded:

> *"Considering the above, it is held that the charge in Article II against Shri. K.S. Arya is proved to the extent of not submitting the market surveillance report as per the procedure thus violating the rules 3 (1) (ii) & (iii) of CCS (Conduct) Rules, 1964."*

16. Accordingly the penalty has been imposed as per the applicable provisions of CCS Conduct Rules 1972 and after following the due procedure.

17. The petition is accordingly dismissed. Pending application(s), if any, also stands disposed of. No order as to costs.

YOGESH KHANNA, J.

FEBRUARY 17, 2022
DV