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

+ W.P.(C) 4058/2019

THE CHAIRMAN, NEW DELHI MUNICIPAL
COUNCIL & ANR

.....Petitioners

Through: Ms. Sriparna Chatterjee,
Additional Standing Counsel for NDMC
with Mr. Soumitra Chatterjee and Mr.
Manish, Advocates.

versus

DR. G.S. THIND

.....Respondent

Through: Mr. Padma Kumar Singh and
Mr. Gurpreet Singh, Advocates

+ W.P.(C) 4064/2019

THE CHAIRMAN, NEW DELHI MUNICIPAL
COUNCIL & ANR

.....Petitioners

Through: Ms. Sriparna Chatterjee,
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versus

SUBHASH CHANDRA AGGARWAL

.....Respondent

Through: Mr. Padma Kumar Singh and
Mr. Gurpreet Singh, Advocates

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

17.01.2025

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C. HARI SHANKAR, J.

1. These writ petitions involve identical issues and challenge a common judgment rendered by the Central Administrative Tribunal¹ on 25 January 2019 in OA 2110/2017² and O.A. No. 2137/2017³.

2. Subhash Chandra Aggarwal⁴ was working as Assistant Engineer (Civil) in New Delhi Municipal Council.⁵ The sanction for his prosecution under Section 19(1)(c) of the Prevention of Corruption Act, 1988⁶ was granted on 24 October 2005. Resultantly, Aggarwal was prosecuted by the CBI.

3. The charge against Aggarwal was of corruption in respect of grant of a license for running a lodging house at 13, K.G. Marg. By judgment dated 23 July 2013, Aggarwal was found guilty by the learned Trial Court of offences punishable under Sections 120-B, 418, 420 of Indian Penal Code⁷ read with Section 13(1)(d) and Section 13(2) of the PC Act. By a separate order dated 31 July 2013, he was sentenced to undergo two years rigorous imprisonment⁸ with fine of ₹ 5,000/- for the offence punishable under Section 120-B IPC, three years RI with fine of ₹ 10,000/- for the offence punishable under Section 418 IPC and three years RI with fine of ₹ 25,000/- for the

¹ “the Tribunal” hereinafter.

² **Subhash Chandra Aggarwal v Chairman, New Delhi Municipal Council & Anr**

³ **Dr. G. S. Thind v Chairman, New Delhi Municipal Council & Anr.**

⁴ “Aggarwal” hereinafter

⁵ “the NDMC” hereinafter

⁶ “the PC Act” hereinafter

⁷ “the IPC” hereinafter

⁸ “RI” hereinafter



offence punishable under Section 13(1)(d) and 13(2) of the PC Act, with the sentences being directed to run concurrently.

4. Aggarwal appealed against the said judgment and sentence to this Court which, *vide* order dated 24 September 2013 suspended the judgment and sentence awarded to Aggarwal.

5. In view of his conviction and sentence by the learned Trial Court, the Chairman, NDMC issued a show cause notice to Aggarwal on 10 February 2014 under Rule 19(1)⁹ of the CCS (CCA) Rules read with Section 39(1)¹⁰ of the New Delhi Municipal Council Act, 1994, calling upon him to explain as to why he be not dismissed from his service in view of the conviction and sentence, and the period of this suspension be not treated as 'not spent on duty'. Aggarwal responded to the show cause notice on 27 February 2014 and further approached the Tribunal by way of OA 2588/2014, seeking quashing of the show cause notice. The Tribunal disposed of the OA 2588/2014 on 5

⁹ 19. **Special procedure in certain cases** – Notwithstanding anything contained in rule 14 to rule 18 –
(i) where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or
(ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or
(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:
Provided that the Government servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under clause (i):
Provided further that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule.

¹⁰ 39. **Punishment for municipal officers and other employees.** –
(1) Every municipal officer or other municipal employee shall be liable to have his increments or promotion withheld or to be censured, reduced in rank, compulsorily retired, removed or dismissed for any breach of any departmental regulations or of discipline or for carelessness, unfitness, neglect of duty or other misconduct by such authority as may be prescribed by regulation:
Provided that no such officer or other employee as aforesaid shall be reduced in rank, compulsorily retired, removed or dismissed by an authority subordinate to that by which he was appointed:
Provided further that the Council may by regulations provide that municipal employees belonging to such classes or categories as may be specified in the regulations shall be liable also to be fined by such authority as may be specified therein.



August 2014 with a direction to the petitioners to take a decision on Aggarwal's representation.

6. While the representation was under consideration with the petitioners, Aggarwal superannuated on 31 December 2015.

7. Consequent on Aggarwal's superannuation, he was visited with a show causes notice dated 30 May 2017 issued by the Chairperson, NDMC, under Rule 9¹¹ of the Central Civil Services (Pension) Rules, 1972¹² read with Rule 19(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965¹³ proposing withdrawal of his pension and gratuity in full.

8. Aggarwal assailed the aforesaid show cause notice before the Tribunal by way of OA 2110/2017.

9. We now proceed to advert Respondent in WP (C) 4058/2019,

¹¹ 9. Right of President to withhold or withdraw pension –

(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:

(2)(a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment, -

(i) shall not be instituted save with the sanction of the President,

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

¹² "the CCS (Pension) Rules" hereinafter

¹³ "the CCS (CCA) Rule" hereinafter



Dr. G. S. Thind¹⁴, who was also convicted by the learned Trial Court, along with Aggarwal, by the judgment dated 23 July 2013, for having committed offences under Section 120B, 418, 420 IPC and Section 13(1)(d) and 13(2) of the PC. Act. He was also sentenced by the learned Trial Court on 31 July 2013 to undergo three years RI with fine of ₹ 10,000/- for the offences punishable under Section 120-B & 420 IPC, three years' RI with fine of ₹ 25,000/- for the offences punishable under Section 13(1)(d) and 13(2) of the PC. Act. The judgment and sentence was suspended by this Court in appeal by an order dated 24 September 2013.

10. The only difference in the case of Thind *vis a vis* Aggarwal, was that no show cause notice was issued to Thind prior to his superannuation as during the pendency of the criminal proceedings, Thind superannuated on 31 December 2006. He was sanctioned provisional pension in terms of Rule 69 of CCS (Pension) Rule.

11. As in the case of Aggarwal, Thind was also issued a show cause notice on 30 May 2017 under Rule 9(1) of the Pension Rules read with Rule 19(1) of the CCS (CCA) Rules, proposing to withdraw his pension and gratuity in full. Thind also challenged the said show cause notice before the Tribunal by OA 2137/2017.

12. Before the issuance of the aforesaid show cause notices dated 30 May 2017 to Aggarwal and Thind, forming subject matter of the challenge in the OAs instituted by them, the NDMC had promulgated

¹⁴ “Thind”, hereinafter



the New Delhi Municipal Council (Conditions of Service of Municipal Officers) Regulations, 2016¹⁵. The Notification has been extracted in full by the Tribunal in the impugned judgment. We, however, deem it necessary only to extract Regulations 4 and 5 of the 2016 Regulations as under:

“4. **Application of certain rules-** The following rules, as amended from time to time, including orders issued there under by the Central Government, in so far as the provisions of such rules or orders are not inconsistent with the provisions of the Act or rules or regulations made there under, shall apply to the municipal officers, namely:-

- (i) the Fundamental Rules and Supplementary Rules (including Travelling Allowance Rules);
- (ii) the Central Civil Services (Leave) Rules, 1972
- (iii) the Central Civil Services (Pension) Rules, 1972;
- (iv) the Central Civil Services (Commutation of Pension) Rules, 1981;
- (v) the payment of Arrears of Pension (Nomination) Rules, 1983;
- (vi) the General Provident Fund (Central Rules), 1960;
- (vii) the Central Civil Services (Conduct) Rules 1964;
- (viii) the Central Civil Services (Classification, Control and Appeal) Rules, 1965;
- (ix) the Central Civil Services (Leave Travel Concessions) Rules, 1988;
- (x) the Central Civil Services (Revised Pay) Rules, 2008, and
- (xi) the Central Civil Services (Temporary- Service) Rules, 1965.

5. **Conditions of service of municipal officers –**

- (1) The service rules applicable to the Government servants in the service of the Central Government shall, as far as may be, regulate the conditions of service of municipal officers, subject to the modifications that any reference in those service rules to a “Government servant”, “the Consolidated Fund of India”, “the Civil Surgeon” and “the Medical Committee” shall be construed as a reference respectively to a “municipal officer”, “the

¹⁵ “the 2016 Regulation” hereinafter



New Delhi Municipal Fund”, “the Medical Officer of Health” and “the Medical Board”.

(2) Any power under the service rules (other than the power to make service rules) exercisable –

- (a) by the President, shall be exercised by the Chairperson;
- (b) by the Head of Department, shall be exercised by the Secretary or such other municipal officer as the Chairperson may, by order, specify; and
- (c) by the Head of Office, shall be exercised by the Director (Personnel) or such other municipal officer as the Chairperson may, by order, specify.”

13. Regulation 4, therefore, applied to the NDMC, various statutory Rules, including the CCS (Pension) Rules.

14. In their respective Original Applications, Aggarwal and Thind sought quashing of the show cause notices dated 30 May 2017 issued to them and a declaration that the 2016 Notification was illegal, arbitrary and unconstitutional.

15. The Tribunal has, in the impugned judgment, basically addressed three issues. The first is with respect to the legality and validity of the content of the show cause notices dated 30 May 2017, in the backdrop of their content. The second is the validity of the 2016 notification. The third is with respect to Rule 9(2)(b) of the Pension Rule.

Observation/findings of the Tribunal and Analysis and Findings in respect thereof:



16. We may note the findings of the Tribunal, on each of the issues thus.

17. Apropos the show cause notices dated 30 May 2017 under challenge before the Tribunal, the Tribunal, in paragraph 20 of the impugned judgment, notes certain typographical errors in the show cause notices and proceeds to hold that, even if the typographical errors were to be ignored, the show cause notices stood vitiated for having invoked Rule 19 of the CCS (CCA) Rules, which could not be invoked against a retired employee.

18. Ms. Sriparna Chatterjee, learned Counsel for the petitioner submits that the show cause notices have been issued under Rule 9(1) of the CCS (Pension) Rules as made applicable *mutatis mutandis* to the NDMC *vide* the 2016 Notification and that the reference to Rule 19(1) of the CCA (CCS) Rules was only apropos the procedure prescribed in the said rule.

19. We need not enter into that aspect as, even if it were to be assumed that Rule 19(1) of the CCA (CCS) Rule was not applicable, it is settled law that a mere mention of an erroneous provision does not vitiate executive action, provided the action was otherwise exercised within the powers conferred on the concerned authority. We may refer in this context to the following exordium, to be found in *N. Mani v Sangeetha Theatre*¹⁶:

“9. It is well settled that if an authority has a power under the

¹⁶ (2004) 12 SCC 278

WP(C) 4058/2019 & connected matter



law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law.”

The finding, of the Tribunal, that the reference to Rule 19 of the CCS (CCA) Rules vitiated the show cause notice cannot, therefore, sustain.

20. The second ground on which the Tribunal has proceeded is reflected in paras 24, 25 and 28 to 31 of the impugned judgment, which merit reproduction *in extenso* thus:

“24. From a perusal of this, it becomes clear that – (a) the disciplinary proceedings cannot be initiated, except with the specific sanction accorded by the President; (b) the proceedings cannot be in respect of any event which took place more than four years before the initiation; and (c) the proceedings shall be conducted by an authority to be nominated and directed by the President. A clear dichotomy is maintained between the President, on the one hand, and the disciplinary authority, on the other. Hardly there exists any scope for – (a) the power to accord sanction to initiate disciplinary proceedings, on the one hand; and (b) the power to initiate disciplinary proceedings, and to act as a disciplinary authority, on the other hand, by one and the same authority.

25. While under the CCA Rules, the disciplinary authority, as defined under the relevant service rules, can straightway initiate disciplinary proceedings against an employee, the authority to initiate disciplinary proceedings against a retired employee is to be nominated by the President, while according sanction. It is keeping in view these aspects, that the impugned notification dated 07.04.2016 as well as the show cause notices need to be analysed.

28. It appears that the rule making authority did not bestow its attention to the type of powers that are to be exercised by the President. There does not exist any occasion for the President to act as a ‘disciplinary authority’ notwithstanding the fact that he happens to be the ‘appointing authority’ in respect of certain



services. Further, rule 9 of the Pension Rules is framed in such a way that there does not exist any scope for one and the same authority to accord sanction and then to act as the disciplinary authority. When there was a valid reason and definite purpose in keeping these powers separate, a legal regime, which has the effect of obliterating the line of distinction tends to become untenable.

29. In a typical show cause notice or a charge memorandum issued against a retired employee proposing punishment, the first sentence would denote the factum of the sanction accorded by the President. The disciplinary authority vis-a-vis an employee who is in service cannot ipso facto function as the disciplinary authority after the employee retires. It is only on being conferred the power to do so, under rule 9 (2) (b) (iii) of the Pension Rules, that either the very disciplinary authority or some other authority, can discharge such functions.

30. Keeping in view the intricacies involved in these matters, and to avoid any defects in exercise of power in this behalf, the Ministry of Home Affairs, Government of India issued office memorandum dated 04.08.1964 stipulating standard forms, one for according sanction, and the other for initiation of proceedings. According to these forms, the authority who is conferred with the power to conduct departmental proceedings is to be nominated while according sanction, and that in turn must be mentioned in the memorandum that is to be issued to the employee. The typical order, according sanction reads as under:

“STANDARD FORM OF SANCTION
UNDER Rule 9 OF THE
CENTRAL CIVIL SERVICES (PENSION)
RULES, 1972

No.
Government of India
Ministry/Department of -----

ORDER

WHEREAS it has been made to appear that Shriwhile serving as in the Ministry/Department from to was (here specify briefly the imputations of misconduct or misbehaviour in respect of which it is proposed to institute departmental proceedings):

NOW, THEREFORE, in exercise of the powers conferred on him by sub-clause (i) of Clause (b) of sub-rule (2) of Rule 9 of



the Central Civil Services (Pension) Rules, 1972, the President hereby accords sanction to the departmental proceedings against the said Shri

The President further directs that the said departmental proceedings shall be conducted in accordance with the procedure laid down in Rules 14 and 15 of the CCS (CCA) Rules, 1965, by (here specify the authority by whom the departmental proceedings should be conducted) at (here specify the place at which the departmental proceedings would be conducted).

By order and in the name of the President”

The form of memorandum is prescribed as under:

**“STANDARD FORM OF CHARGE-SHEET FOR
PROCEEDINGS UNDER RULE 9
OF THE CENTRAL CIVIL SERVICES
(PENSION) RULES, 1972**

No.

Government of India
Ministry/Department of -----

MEMORANDUM

Dated the

In pursuance of the sanction accorded by the President under Rule 9 of the Central Civil Services (Pension) Rules, 1972, for instituting departmental proceedings against Shri....., vide Ministry/Department of.....Order No....., dated,.....it is proposed to hold an inquiry against the said Shri..... in accordance with the procedure laid down in Rules 14 and 15 of the CCS (CCA) Rules, 1965. The enquiry shall be conducted by.....(here specify the authority by whom the departmental proceedings are to be conducted in accordance with the Presidential sanction) at (here specify the name of the place where proceedings are to be conducted)....” (Remaining part of the form omitted, as not necessary for the case).

31. It may be noted that not only the factum of the President according sanction, but also his naming the authority to conduct departmental proceedings figure in both the standard forms. If we examine the impugned show cause notices in the light of these requirements, it becomes crystal clear that there is no mention to the factum or event of the President or his equivalent, according sanction for initiation of disciplinary proceedings against the



applicants. Equally, the notices are silent as to the authority who is conferred with the power to conduct the departmental proceedings. For all practical purposes, the first respondent, i.e., the Chairman of the NDMC, acted as the President, as well as the disciplinary authority. There was not even a mention of rule 9 in the impugned order.

21. Apropos these observations and findings, Mr. Padma Kumar, learned Counsel for the respondents was in agreement with the submissions of Ms. Chatterjee, learned counsel for the petitioners that the discussion on Rule 9 (2) of the CCS (Pension) Rules was actually tangential to the issue in controversy, as show cause notices dated 30 May 2017 have been issued under Rule 9 (1) and not under Rule 9 (2) of the CCS (Pension) Rules.

22. On this aspect, learned counsels are, therefore, *ad idem*.

23. The submission is correct. The show cause notices were expressly issued under Rule 9 (1) of the CCS (Pension) Rules. Rule 9 (1) reserves right with the President to withhold pension or gratuity in whole or in part, if, in any departmental or judicial proceedings, the pensioner was found guilty of grave misconduct or negligence during the period of service.

24. Invocation of the issuance of the show cause notice to a retired government servant, proposing withholding of his pension and gratuity wholly or in part, following a finding, in judicial proceedings of grave misconduct having been committed by such government servant, is an exercise which was well within the power and province under Rule 9 (1).

25. The Chairperson of the NDMC was, therefore, exercising the



powers conferred on the President under Rule 9 (1) of the CCS (Pension) Rules, and made applicable *mutatis mutandis* to the NDMC under the 2016 notification. There was, therefore, no exercise of jurisdiction by the Chairperson in terms of Rule 9 (2) of the CCS (Pension) Rules or, for that matter, Rule 5 (2) of the 2016 Regulations.

26. The Tribunal was, therefore, clearly in error in treating the show cause notice dated 30 May 2017 as being referable to Rule 9 (2) of the CCS (Pension) Rules.

27. That said, however, we cannot rest our discussion here because the Tribunal has gone to the extent of holding that the President was not a competent disciplinary authority in terms of Rule 9 (2) (b) of the CCS (Pension) Rules. This finding, in our view, is completely unsustainable in law. The Tribunal has proceeded on the premise that Rule 9 (2) (b) envisages two distinct authorities, one being a sanctioning authority and the second being the disciplinary authority. According to the findings of the Tribunal, the President is only the sanctioning authority, and he is incompetent to act as the disciplinary authority. The Tribunal has, for this purpose, sought to contradistinguish clauses (i) and (iii) of Rule 9 (2) (b) of the CCS (Pension) Rules.

28. Ms. Chatterjee submits, in this context, and we agree with her that interpretation by the Tribunal on Rule 9 (2) (b) (iii) is fundamentally flawed. The Tribunal has treated Rule 9 (2) (b) (iii) as empowering the President to appoint *another* authority to function as disciplinary authority. This finding is incorrect and reflects a fundamentally erroneous understanding of Rule 9 (2) (b) (iii). Rule 9 envisages one,



and only one, disciplinary authority, who is the President. Rule 9 (2) (b) (iii) empowers the President to appoint an authority *to conduct the disciplinary proceedings*. This would be analogous to appointing an Inquiry Officer to inquire into the charges against the official concerned. It does not mean that the President is the sanctioning authority under Rule 9 (2) (b) (i) and that there is another authority who would act as disciplinary authority under Rule 9 (2) (b) (iii).

29. The Supreme Court has, in several decisions, including *D.V. Kapoor v Union of India*¹⁷ held that the President who is the competent disciplinary authority to take a decision to withhold or withdraw the pension in under Rule 9 of the CCS (Pension) Rules. For ready reference, paras 4, 5, 8, 9 and 10 of the decision in *D.V. Kapoor* may be reproduced thus:

“4. At page 190-D (SCC p. 327, para 36) it is stated that pension as a retirement benefit is in consonance with and furtherance of the goals of the Constitution. The goals for which pension is paid themselves give a fillip and push to the policy of setting up a welfare State because by pension the socialist goal of security from cradle to grave is assured at least when it is most needed and least available, namely in the fall of life. Therefore, when a government employee is sought to be deprived of his pensionary right which he had earned while rendering services under the State, such a deprivation must be in accordance with law. Rule 9(1) of the Rules provides thus:

“9.(1) The President reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pension 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 his service including service rendered upon re-employment after retirement:

¹⁷ (1990) 4 SCC 314



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 pension shall not be reduced below the amount of rupees sixty per mensem.”

5. Therefore, it is clear that the President reserves to himself the right to withhold or withdraw the whole pension or a part thereof whether permanently or for specified period. The President also is empowered to order recovery from a pensioner of the whole or part of any pecuniary loss caused to the government, if in any proceeding in the departmental enquiry or judicial proceedings the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement.

8. It is seen that the President has reserved to himself the right to withhold pension in whole or in part thereof whether permanently or for a specified period or he can recover from pension of the whole or part of any pecuniary loss caused by the government employee to the government subject to the minimum. The condition precedent is that in any departmental enquiry or the judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service of the original or on re-employment. The condition precedent thereto is that there should be a finding that the delinquent is guilty of grave misconduct or negligence in the discharge of public duty in office, as defined in Rule 8(5), Explanation (b) which is an inclusive definition, i.e. the scope is wide of the mark dependent on the facts and circumstances in a given case. Myriad situations may arise depending on the ingenuity with which misconduct or irregularity is committed. It is not necessary to further probe into the scope and meaning of the words ‘grave misconduct or negligence’ and under what circumstances the findings in this regard are held proved. It is suffice that charges in this case are that the appellant was guilty of wilful misconduct in not reporting to duty after his transfer from Indian High Commission at London to the office of External Affairs Ministry, Government of India, New Delhi. The Inquiry Officer found that though the appellant derelicted his duty to report to duty, it was not wilful for the reasons that he could not move due to his wife's illness and he recommended to sympathetically consider the case of the appellant and the President accepted this finding, but decided to withhold gratuity and payment of pension in consultation with the Union Public Service Commission.



9. 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 enquiry 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 either in whole or in part permanently or for a specified period, or to order recovery of the pecuniary loss in whole or in part from the pension of the employee, subject to minimum of Rs 60.

10. Rule 9 of the Rules empowers the President only to withhold or withdraw pension permanently or for a specified period in whole or in part or to order recovery of pecuniary loss caused to the State in whole or in part subject to minimum. The employee's right to pension is a statutory right. The measure of deprivation therefore, must be correlative to or commensurate with the gravity of the grave misconduct or irregularity as it offends the right to assistance at the evening of his life as assured under Article 41 of the Constitution. The impugned order discloses that the President withheld on permanent basis the payment of gratuity in addition to pension. The right to gratuity is also a statutory right. The appellant was not charged with nor was given an opportunity that his gratuity would be withheld as a measure of punishment. No provision of law has been brought to our notice under which, the President is empowered to withhold gratuity as well, after his retirement as a measure of punishment. Therefore, the order to withhold the gratuity as a measure of penalty is obviously illegal and is devoid of jurisdiction.”

30. *D.V. Kapoor*, we may note, was subsequently followed by the Supreme Court in *Nisha Priya Bhatia v UOI*¹⁸.

31. We, therefore, are unable to sustain the findings of the Tribunal that the President was not competent to act as a disciplinary authority in Rule 9 (2) of the CCS (Pension) Rules.

32. Rule 9(2), however, as we have noted, never came for

¹⁸ (2020) 13 SCC 56



consideration in the present case and, therefore, the entire discussion on Rule 9(2) and the power of the President thereunder by the Tribunal in the impugned order was, as learned counsel mutually agree, tangential to the issues in hand and, in a sense, *obiter*. We, however, are constrained to hold that the findings of the Tribunal to the effect that the President was not competent to act as a disciplinary authority in a case which fell under Rule 9(2)(iii) of the CCS (Pension) Rules is unsustainable in law.

33. The Tribunal has further faulted the show cause notices issued to the Aggarwal and Thind on the ground that the cause of action for issuing the show cause notices arose at the time when they were convicted and that, therefore, the law which would apply in the matter of institution of disciplinary proceedings against them would be the law which applied at the time of their conviction. This somewhat surprising finding is reflected in para 33 of the impugned judgment, which reads thus:

“33. Another serious infirmity that we notice in the proceedings is that the cause of action or the entitlement for according sanction and the consequential initiation of disciplinary proceedings, has arisen the day on which the criminal court convicted the applicants; if one goes by the text of the impugned show cause notices. It is axiomatic that the law which was in force as on that date governed the situation. In other words, the sanction for initiating disciplinary proceedings against the applicants could have been accorded by the authority, as was prescribed under the relevant rules at that point of time. The first respondent derived the power, exercisable by the President under rule 9 of the Pension Rules only under the notification dated 07.04.2016. This is long after the occurrence of the event, for invoking the power under rule 9. The first respondent exercised such power with retrospective effect. This is totally impermissible in law.”



34. If the above finding of the Tribunals were to be accepted, it would become impossible to proceed against any government servant after he has retired, in respect of misconduct committed prior to retirement. This would render Rule 9(2) of the CCS (Pension) Rules completely redundant and otiose.

35. There is no question of invoking the cause of action principle when it comes to issuance of a show cause notice under Rule 9(2). The competence of the authority to issue the show cause notice has to be determined on the date when the show cause notice is issued, and not on the date when the officer was convicted. The only condition that applies under Rule 9(2)(b) is to be found in clause (ii) thereof which proscribes the issuance of such a show cause notice with respect to an incident which took place more than four years prior thereof. If the Tribunal's reasoning in para 33 is accepted, this provision would also be rendered otiose.

36. We, therefore, set aside the observation of the Tribunal in para 33 of the impugned judgment that the competence and authority to institute the disciplinary proceedings would be reckoned on the date of the conviction of the officer concerned. We clarify that the competence and the authority would have to be reckoned as on the date the show cause notice is issued, or the disciplinary proceedings are instituted, and not with respect to the date of conviction.

37. The Tribunal has also proceeded to set aside the 2016 notification. The impugned judgment, however, does not contain any



independent reasoning as to why the 2016 notification was *ultra vires* or was otherwise unconstitutional. The only reasoning in the impugned judgment with respect to the power of the Chairperson of the NDMC to exercise jurisdiction in terms of Rule 9(2) of the CCS (Pension) Rules, as made applicable to the NDMC by the 2016 notification.

38. To our mind, there is absolutely no infirmity in the 2016 notification. It was always open to the NDMC to adopt the various rules applicable to government servants. This adoption has been made in legitimate exercise of the power conferred on the Chairperson of the NDMC. We cannot, therefore, approve the decision of the Tribunal to set aside the 2016 notification.

39. Resultantly, the impugned judgment of the Tribunal, being unsustainable on law, is quashed and set aside. This shall, however, not operate as a fetter any other ground being urged by the respondents with respect to the legality of the disciplinary proceedings which, we are informed, have culminated in the passing of the punishment order, to challenge which they have already been granted liberty by the Tribunal. The respondents shall be entitled to urge all other grounds save and except those which stand concluded by this judgment, in their challenge to the punishment awarded to them.

40. Subject to the aforesaid limited caveat, these writ petitions are allowed and the impugned judgment passed by the learned Tribunal is quashed and set aside.



41. There shall be no orders as to costs.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

JANUARY 17, 2025/mk/ssc

[Click here to check corrigendum, if any](#)