CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00956/2019

DATED THIS THE 27TH DAY OF FEBRUARY 2020

HON'BLE DR. K.B. SURESH, MEMBER (J)

HON'BLE SHRI CV.SANKAR MEMBER (A)

Dr.IC.Verma
Aged about 68 years,
S/o Shri LN Verma
C/o Shri Luv Verma
H.No.1259,
AECS Layout, D-Block,
5th Cross Street,
Kundalahalli,
Bangalore- 560 037 …Applicant

(By Shri A. K. Behera ..... Advocate)
(Shri B.S. Venkatesh Kumar,..... Advocate)

Vs.

1.Union of India through
The General Manager
Northern Railway,
Baroda House, New Delhi.

2.The Secretary Railway Board,
Rail Bhawan, New Delhi. …Respondents

(By Shri N.S.Prasad, .. Counsel)

ORDER (ORAL)

HON'BLE DR K.B.SURESH, MEMBER (J)

1. Heard. The matter in nut shell is that 2 charges had been laid against the applicant. One after having lost his pass somebody

else have misused it for travel but, then during the enquiry nobody could say as to who had misused it and why it was misused and where it had been misused and the Inquiry Officer could not enter into a finding of connivance of the applicant in this matter. However, he having said that both the charges are proved, the 2nd charge being that applicant after divorcing his first wife had married again and had not informed the department of the 2nd marriage.

2. Anyway the matter was taken up to the Appellate level and the Appellate Authority having upheld it a punishment "Reduction by two stages in the same time scale of pay for a period of two years, which shall have the effect of postponing the future increments of his pay" was imposed which was challenged in OA.No.1174/2010 in CAT, Principal Bench, which we quote:-

Central AdministrativeTribunal
Principal Bench

OA No.1174/2010

New Delhi, this the 29th day of July, 2011

Hon ble Mr. Justice V. K. Bali,

Chairman Hon ble Dr. Ramesh Chandra Panda, Member (A)

: O R D E R :

Dr. Ramesh Chandra Panda, Member (A) :

Dr. I. C. Verma, Applicant herein, working as Senior DMO in the Northern Railway Hospital, Jind, has in the present OA assailed (i) order dated 31.01.2008 (Annexure-A1) of the Disciplinary Authority whereby he was imposed penalty of reduction by two stages in the same time scale of pay for a period of two years which would have effect of postponing the

future increments of his pay, and (ii) order of the Appellate Authority dated 30.12.2009 (Annexure-A2) in which his appeal was rejected. He has also challenged the charge sheet dated 5.01.2004 (Annexure-A3) and the Inquiry Officer s (IO) report (Annexrue-A7).

2. We may refer to the brief factual matrix of the case culminating with this OA. While the Applicant was posted as Senior Divisional Medical Officer in Northern Railway, he applied on 22.08.2001 for a railway pass ex-Delhi to Kanyakumari with break journey at Mumbai and back from Kanyakumari to Delhi via Trivandrum and Madras. On 23.08.2001 a pass was issued to him with the aforesaid route mentioned therein in favour of the Applicant, his wife (Neeta) and his son. It is the case of the Applicant that on 05.10.2011, he lodged a lost report of the said railway pass. It is further his case that on the basis of a complaint received by the Respondents, after more than 2 years of the lodging of the lost report , the Respondents issued a Memorandum of Charge dated 05.01.2004 (Annexure-A3) with two charges. The fact of the private complaint was disclosed from the testimony of Shri R. K. Pathak (PW-4) but the complainant was not examined during the enquiry nor the complaint made by such complainant was supplied to the Applicant at any point of time. The first allegation in the charge memo was that the Applicant misused the pass, and the second charge was that the Applicant had neither intimated about his divorce in 1997 nor about his re-marriage to the Railway Administration and yet he continued to avail passes in the name of his ex-wife. IO held both charges as proved and the Disciplinary Authority accepting the IO s findings passed the order dated 31.01.2008 imposing the penalty of reduction by two stages in the same time scale of pay for a period of two years, which shall have the effect of postponing the future increments of his pay . The Applicant appealed against the above penalty but his appeal was rejected by order dated 30.12.2009. In the meantime, the Applicant has already superannuated from service on 31.07.2010. Through the present OA, he has challenged the penalty order as stated above seeking all consequential benefits.

3. Shri A. K. Behera, learned Counsel for the Applicant, submits that in Charge No.1 the main allegation is that the Applicant has connived in misusing the pass. He referred to the following part of the Statement of

imputation which alleges that Therefore, it established that Dr. Verma has facilitated the misuse of this pass and the pass has been misused by somebody else in his name with the knowledge of Dr. Verma. . Thus, the action of Dr. Verma of allowing his privilege pass to be misused by persons close to him tantamounts to serious misconduct and in these circumstances, Dr. Verma has to bear responsibility of the privilege pass issued to him. Shri Behera emphasises that the crux of the charge is that the pass has been misused with the connivance and consent of the Applicant. In this context, he contends that the IO framed a specific issue viz. Was the journey performed with the connivance of the CO? The IO after examining the record and evidence produced by the Department came to a definite finding on the said issue, which is as It could not be proved that the journey was performed with the consent connivance of CO .. Hence, Shri Behera would submit that the basic element of misconduct i.e. consent/connivance of the Applicant in the misuse of the pass having not been proved, the Article of Charge No.1 has to be held as not-proved , and misuse of pass as simplicitor by somebody by either stealing the pass/or after the Applicant lost the pass, the same has been misused without the Applicant's knowledge. As the very basis of misuse does not stand to logic in the enquiry, the Charge No.1 cannot be held as proved. Shri Behera submits that with the aforesaid finding of the Inquiry Officer, the Disciplinary Authority has not disagreed as no disagreement note has been given to the Applicant. Further, Shri Behera would contend that it was admitted fact that the Applicant was on duty during the period when the pass was alleged to have been misused. Had the Applicant connived or given his consent for the misuse of the pass, he would not have been on duty during the said period. Besides the alleged journey was ex-Mumbai and not ex-Delhi. In this regard, Shri Behera urges that the findings of IO holding the Charge as proved must be declared as perverse and unsustainable in law.

4. With regard to the second Article of Charge, the element of non-intimation by the Applicant about his divorce in 1997 and re-marriage thereafter and yet continues to avail passes in the name of his wife , Shri Behera draws our attention to the finding of the IO in his report, which states (g), (h), (i) & (J) CO has admitted that he has taken divorce with mutual consent in April, 1997 and re-married within a period of three months as a result of this as

well as not to feel humiliated CO has not advised the Railway Administration about his divorce and re-marries. Moreover, at the time of submission of the documents in 1997 as well as in 1998, he was married as per version of IO though there is no documentary evidence regarding remarriage but the documentary evidence regarding divorce as per page No.18 of CO s Defence Statement. It is felt that no person will talk about such incidence/matters. Thus, the Charge No.2 is fully proved against CO but needs to be viewed with emotions and sympathy. Shri Behera would, therefore, contend that the reason of non-intimation of his divorce as well as his re-marriage had been accepted by the IO. He submits that the stigma attached to such personal and private matters in our society being an accepted fact has been duly accepted by the IO. There is no disagreement note to the Applicant against the said finding of the IO. From the said finding it is apparent that the existence of wife of Applicant whenever passes were drawn is not in doubt. It is only out of social stigma and blemish that the intimation of such divorce and re-marriage was not given by the Applicant to Railway administration. Thus, it may be examined as to whether in view of the aforesaid finding of the IO the action of the Applicant regarding non-intimation and drawal of passes can at all be termed as misconduct . It is submitted that established law is that an action/inaction to be held as a misconduct must arise from ill motive and innocent mistakes do not constitute misconduct as held in the case of Inspector Prem Chand versus Govt. of NCT of Delhi & Others [(2007) 4 SCC 566]. Shri Behera s contention is that IO has accepted the plea of social stigma for which the Applicant had not intimated about his divorce as well as remarriage to the Railway Administration. Further, none of the drawn passes the Applicant has ever misused. The said action/inaction on the part of the Applicant can at the most be an innocent mistake but no ill motive having been there cannot be held as misconduct.

5. Shri Behera's another contention was that the Applicant was not supplied with relevant documents as he was told that three documents were not available. He submits that enquiry has been vitiated on this ground. Further, it was submitted that there was total non application of mind by the Disciplinary Authority on the grounds and contentions raised by the Applicant in his representation against the IO s report, as in the order of

Disciplinary Authority dated 31.01.2008, neither the said representation of the Applicant had been noted nor the contentions dealt with. He, therefore, pleads that the Disciplinary Authority s order is liable to be quashed and set aside.

6. Controverting the grounds taken by the Applicant, the Respondents have filed the reply affidavit on 10.09.2010. Representing them, Shri P. K. Yadav, learned Counsel would contend that the Railway pass issued to the Applicant was misused and he being the custodian of passes was responsible for the said misuse as laid down in the Railway Servants (Pass) Rules. It is submitted that he has admitted of being a divorcee, since 1997 and has not produced proof of re-marriage; yet he continues to avail passes in the name of his ex-wife. Shri Yadav submits that the Applicant acknowledged the charge memorandum on 23.02.2004 but did not submit any defence statement and the case was remitted for inquiry. As per IOs findings both the charges were held as proved against the Applicant. His contention is that the General Manager (Disciplinary Authority) after careful consideration of the case remitted the matter to the Railway Board, which after careful consideration of Inquiry proceedings, Inquiry Report, representations of Applicant on the Inquiry Report awarded a major penalty. Further, the Appellate Authority i.e. President in consultation with UPSC as per rules and after perusing the advice of the UPSC rejected the appeal. Hence, Shri Yadav submitted that the punishment imposed was proportionate with the gravity of his misconduct and the principles of natural justice have been followed by the concerned authorities. Shri Yadav also referred to the Railway Servants (Pass) Rules, 1986 to submit that for the loss and misuse of pass the concerned Railway Officer would be held responsible. Accordingly, he would contend that the Applicant was correctly found responsible for the loss and misuse of the pass.

7. Shri Yadav clarified that out of 22 documents sought for by the Applicant, 3 documents were permitted by the IO and 19 documents were disallowed but the said three permitted documents were not available with the Respondents which could not be given to the Applicant. This information was recorded by IO on 24.02.2005. It is further pointed out that it is the prerogatives of the IO to allow or disallow the documents considering its

relevancy with the case. In the instant case, he submits most of the documents asked for were reservation slip for journey, application for pass, reservation chart and counter foil which are retained for a specific period only. It is further submitted that the inquiry was conducted by the IO as per the prescribed procedure and the IO has accorded reasonable opportunities to the Applicant at every stage in the inquiry proceedings and followed the principles of natural justice.

8. Shri Yadav submits that the Applicant has been continuing to avail passes in respect of his ex-wife (Neeta) whereas he has married to Asha. The plea taken by the Applicant that he has been calling his wife Asha by the name of his first wife and accordingly he has got the pass in the name of Neeta is a lame excuse and will be said to have been coined simply to defend the charge.

9. Challenging the Applicant s ground seeking the Tribunal to appreciate the evidence on record and to come to a different conclusion, Shri Yadav submits that reassessment by Tribunal is not permissible in the law as the power of judicial review cannot be invoked to reassess the evidence by the Tribunal as laid down by the Hon ble Supreme Court in several cases including in a case of (i) Transport of Commissioner versus K. Rama Murty and (ii) Registrar, High Court of Mumbai versus S. S. Patil and Others. Further, it is contended that Tribunal cannot sit as a court of appeal so as to go into the facts of the case to arrive at different conclusion as held by the Supreme Court in several cases viz. Shri Parmananda versus State of Haryana and Others (decided in SLP Civil No.6998/88).

10. Respondents have raised the issue of limited power of the Tribunal in looking into the evidence which emerged in the enquiry. We may now refer to the well established position in law what we can do and what we should not in the matters of disciplinary proceeding cases.

11. It is trite that this Tribunal can examine the evidence to find out whether there is any relevant evidence against the Applicant in the case. We note our power is limited. We went through many judgments of Honourable Supreme Court in the matters relating to framing of charges, conducting of the Inquiry,

and orders of the Disciplinary and Appellate Authorities and identified the guiding principles in the subject. Some of the relevant decisions of the Honourable Apex Court are B.C. Chaturvedi versus Union of India [1995 (6) SCC 749]; State of Tamil Nadu versus S. Subramanyan, [1996 (7) SCC 509]; State of Tamil Nadu versus K.V. Perumal [1996 (5) SCC 474]; Kuldeep Singh Versus Commissioner of Police and others [1999(2) SCC 10]; Om Kumar versus Union of India (2001) 2 SCC 386); M.V. Bijlani versus Union of India [2006 SCC - 5-88] ; State of Rajasthan versus Mohd Ayub Naz [2006 SCC-1-589SC] ; Govt. of A.P. versus Nasrullah Khan [2006 STPL (LE) 36733 SC]; Govt. of India Versus George Philip [2007 STPL (LE) 37755 SC]; Union of India Versus S.S. Ahluwalia [2007 SCC (7) 257] ; and Moni Shankar versus Union of India [2008 SCC (3) 484]. The common threads running through these decisions of the Honourable Apex Court are that generally the Tribunal should not interfere with the decision of the executive in the matters of disciplinary proceedings unless those are found to be suffering from certain procedural, legal, statutory improprieties and infirmities. On certain grounds only the Tribunal can closely scrutinize the relevance or irrelevance of facts; available or absence of evidence; proportionality or otherwise of the punishment; compliance or otherwise of the audi alteram partem; compliance or otherwise of the Wednesbury principle, probability of preponderance doctrine and the like. Some of the guiding principles, we kept in our mind while deciding this issue in the present OA, are the following: (i) Judicial review by this Tribunal is not an appeal over a decision but a review of the manner in which the decision is taken. (ii) The Tribunal can interfere with the decision of the Disciplinary / Appellate / Reversionary Authority, if such a decision is illogical or suffers from procedural impropriety or deficiency in the decision making process or was shocking to the conscience of the Tribunal in the sense that such decision was in defiance of logic or moral standards. (iii) The Tribunal exercising the powers of Judicial review is entitled to consider whether while inferring commission of misconduct on the part of the delinquent officer, relevant piece of evidence has been considered and irrelevant facts have been excluded there from. Inference on facts must be based on evidence which meet the requirements of legal principles.

12. As discussed above, it is trite law that tribunal can verify the IO s report and the charges to find out whether IO and Disciplinary Authority have taken into consideration the relevant evidence gathered during the inquiry. Hence, we may refer to the statement of imputation of misconduct in support of two articles of charges against the Applicant and the findings returned by the IO in his report in each of the charges including his analysis on the defence statement and the brief submitted by the Applicant to the IO.

13. The Statement of imputation in support of Article I Charge reads thus:

ARTICLE-I

The said Dr. I. C. Verma, while working as Sr. DMO/Northern Railway Delhi Kishan Ganj, applied for issue of First Class A privilege pass vide application dated 22.08.2001 [RUD-Item No.1 of Annexure III] and on the basis of that application First Class A privilege pass No.122137 was issued to Dr. I. C. Verma from the office of medical Superintendent, Delhi Kishanganj on 23.08.2001 in favour of self, wife and son for journey Ex. New Delhi to Kanya Kumari via Mumbai Central, Panvel and back from Kanya Kumari to New Delhi via Trivandrum, Madras Central. This fact has been verified from the office copy of the privilege pass No.122137 and statement of Shri Hans Raj Dubey, Sr. Pharmacist/DKZ, who prepared this pass in favour of Dr. Verma [RUD-Item No.2&3 of Annexure III]. The authority of this privilege pass No.122137 was used for reservations and traveling as detailed below:

(i) Ticket No.18028827 was generated in the Reservation Office at Mumbai Central, Western Railway in Class 2 AC Ex Mumbai CSTM to CAPE in Train No.1081 of 28/8/2001 in favour of Dr. I. C. Verma, Mrs. Neeta Verma and Master Lov Verma against PNR No.832-3442239 [RUD-Item No.4(i) of Annexure III]. As per the duplicate reservation chart [RUD-Item No.5 of Annexure III] the reservation was confirmed from the HQ quota and accommodation in Coach A-I was provided against berth Nos.25, 26 and 27. Remarks on the computerised ticket bearing the endorsement of the concerned TTE show that the journey was actually performed against this reservation.

(ii) Ticket No.85234395 was generated in the Reservation Office, CaPE in Class 2 AC ex CAPE to Egmore in Train No.6122 of 02.09.2001 in favour of Dr. I. C. Verma, Mrs. Neeta Verma and Master Lov Verma against PNR No.421-2710582 [RUD-Item No.4(ii) of Annexure III]. As per the original chart this reservation was also confirmed from the HQ quota and accommodation was provided in Coach A-I against berth Nos. 20, 21 and 22. All passengers had turned up and the Conductor s remarks in this connection are available in the computer ticket and original reservation chart [RUD-Item No.6 of Annexure III].In this statement dated 10.07.2002 [RUD-Item NO.7 of Annexure III] the coach conductor of Train NO.6122 Sh. Madhava Das, CTTI/NCJ has stated that the journey was performed against the said PNR and has confirmed that the party has produced the ticket in question and he had given remarks as obtained on the said ticket.

Dr. I. C. Verma was on duty at the Health Unit, Delhi Kishanganj on 25.08.2001, 28.08.2001, 31.08.2001 and from 01.09.2001 to 05.09.2001. This was confirmed from the OPD register of the Health Unit as also from the relevant sick/fit certificate book of that period [RUD-Item No.8&9 of Annexure III]. Perusal of Dr. Verma s leave records also brings out that he had not availed any leave during the period 25.08.2001 to 05.09.2001. This fact was verified from Shri Prem Nath Dua, OS-I (now retired) CMS Office/DLI was dealing with the leave account of Dr. Verma [RUD-Item NO.10 of Annexure III].

Dr. Verma in his statement dated 17.05.2002 [RUD-Item No.18 (i) of Annexure III], has stated that he had received the privilege pass No.122137 on 23.08.2001 for journey from New Delhi to Kanyakumari and back for himself, wife and son valid from 23.08.2001 to 22.12.2001 (his answer to Question No.5 in his statement). He has further stated that he did not apply for leave due to pressure of work and thus did not perform any journey on the authority of the privilege pass in question (his answer to question no.8 of his statement) Dr. Verma, in his statement has stated that he had lost his privilege pass on 05.10.2001 during his journey between New Delhi and Delhi Kishanganj for which he had complained to the Station House Officer, Delhi Kishanganj on the same date (his answer o Question No.11 of his statement). Dr. Verma has thus admitted that the pass in question was

available with him upto 05.10.2001. Dr. Verma also submitted photocopy of letter addressed to SHO/GRP/DKZ regading so called intimation of his so called lost pass. [RUD Item No.12 of Annexure III]. The above reservation were made on the said privilege pass No.12137 during the period between the date of issue of pass i.e. 23.08.2001 and prior to the last date when it was in the custody of Dr. Verma i.e. 05.10.2001. Therefore, it established that Dr. Verma has facilitated the misuse of this pass and the pass has been misused by somebody else in his name with the knowledge of Dr. Verma.

Further support for the above conclusion is also available from the fact that the Officers Rest House at Mumbai Central was booked in the name of Dr. I. C. Vema, Sr. DMO, Delhi Kishanganj and someone stayed there from 26.08.2001 (6.50 A.M.) to 28.08.2001 (2.30 p.m.) [RUD-Item No.13 of Annexure III]. The Rest House register contains signatures in the check-in & check out columns, which bear testimony to this fact [RUD-Item No.14 of Annexure III]. Similarly, suit D of the Officers Holiday Home at Kanyakumari was booked and occupied in the name of Dr. I. C. verma from 30.08.2001 to 02.09.2001. A payment of Rs.75/- was deposited in Dr. I. C. Verma s name vide Receipt number 0387884 dated 02.09.2001 [RUD-Item No.15 of Annexure III]. Here also signatures are available in the booking register bearing testimony to the fact of occupation. The above facts coupled with the fact that the reservations were confirmed through the HQ quota points to the fact that the pass was misused by somebody who had full personal knowledge of Dr. Verma and his family details as well as procedure relating to reservations, booking of Rest Houses etc. This implies that the person (s) misusing the pass were very close to Dr. Verma.

Dr. Verma, being a very Senior Railway Officer having a service of more than 20 years, is much responsible for having knowledge of Railway Servant Pass Rules. As per item (1) of Annexure B to the Railway Servants (Pass) Rules, 1986 [RUD-Item No.11 of Annexure III], passes and PTOs are not transferable and should be used only by the person in whose favour they have been issued. It is also provided, inter alia that the pass holder may have to share responsibility and be also liable for action under the rules for fraudulent use of passes and PTOs. Thus, the action of Dr. Verma of allowing his privilege pass to be misused by persons close to him

tantamounts to serious misconduct and in these circumstances, Dr. Verma has to bear responsibility for misuse of the privilege pass issued to him.

14. IO's analysis of defence taken by the Applicant on the Article-I Charge and the analysis made by the I.O. on each of the component of defence are extracted below:

"In view of the Defence Statement as well as the brief submitted by CO, the following points has been thrown up.

(a)Was the journey performed by CO?

(b)If not who performed the journey?

(c)Was the journey performed with conveyance of CO?

(d)Was the Officer Rest House at Mumbai booked by CO?

(e)Was the Officer Rest House at Cape booked by CO?

(f)Did CO occupied ORH at Cape which was booked in his name?

From the analysis of evidence, the IO has brought out the conclusion on each of these 5 points/questions, which read as follows:-

(a) The pass under reference was issued to CO as per Exhibit S-1. The journey was not performed by CO as he was on duty during the period of journeys on the pass under reference as per Exhibit S-8 which is Sick & Fit Certificates issued by CO at DKZ during the period when the journeys were performed on the pass.

(b) The journey was performed Ex CSIM to CAPE as per Ex S-4 because reservation against this ticket seems to be released against Emergency Quota as the Coach No has been indicated by the Conductor along with the seat Nos. on the ticket but it could not be proved who performed the journey as no evidence on this effect was produced or adduced during the inquiry. The fact remains that the CO was the custodian of the pass during this period it was issued to him and pass lost report was made with GRP post/DKZ on 05.10.2001.

(c) It could not be proved that the journey was performed with the consent/convenience of CO but it can be inferred that CO was aware as ORH at CAPE could not have booked by anybody except CO as mentioned in (d) & (e) below

(d) & (e) There is every possibility that these Officer Rest Houses were booked by CO as the ORH at CAPE was booked as per letter No. V/W/349/RH/CAPE dated 23.08.2001 as indicated in Ex. S-14 (page NO.53) and Ex. S-15 (Page No.56) because there was hardly anytime between the issue of pass and reservation of ORH at Cape. More over the question arises if use of pass was not with the specific knowledge then why CO has not cancelled all the reservations of ORHs at Mumbai and CAPE.

(f) The ORH at Mumbai and Cape were booked in the name of CO as per Ex. S-13, S-14 & S-15 (Page No.50, 53 and 56) but CO has not occupied these ORH as he (CO) was on duty at DKZ/Delhi.

In view of the above the Charge NO.1 against CO stands proved.

The conclusion arrived by the IO abruptly stating that the Charge No.1 is held as proved does not logically flow from his analysis on (a), (b), (c), (d) and (f). The question (a) has been answered that the Applicant did not perform journey as he was on duty at Delhi. In respect of (b) the question- who performed the journey- still remains mystery as the evidence has not brought out the names of persons who misused the pass. In respect of connivance/consent angle of the charge the IO has analysed the evidence to reach negative conclusion. Even analysis of evidence on (d) and (f) questions does not show the needle of suspicion against the Applicant.

15. We now refer to the second Charge. The statement of imputation in support of Article II.

" Article-II

As per Dr. Vermas clarification dated 23.09.2002 [RUD-Item No.18 (ii) of Annexure III], he was divorced from his wife in 1997. As such, from the date of divorce, his wife Smt. Neeta was not a family member for the purpose of drawl of privilege passes. However, Dr. Verma has continued to include his

wife in the list of family members, and avail passes by submitting wrong declaration regarding family members submitted in year 1999, 2000, 2001 [RUD-Item No.19 of Annexure III]. Dr. Verma has claimed that he had re-married in 1997 itself at a private ceremony in a temple and does not remember the exact date and place of the marriage and that he cannot give any proof of his second marriage. Dr. Verma has not informed the administration of the fact of his divorce and re-marriage and has continued to include his wife Neeta Verma showing her date of birth as 01/11/1959. Dr. Verma has tried to misguide the administration by stating that after his divorce he got remarried and that his second wife s name is also Neeta. He has further stated that at present he is living separately from her and even though the separation at present is not legal, it will become legal. His answers to questions 1 to 4 and question 6 of his statement dated 23/09/2002 [RUD-Item No.18 (ii) of Annexure III] are relevant in this connection. From the above divorcee, he has not submitted any proof of the fact of his re-marriage and has simply tried to create circumstances to justify the continuance of a wife for whom he has irregularly continued to draw passes.

16. IO has raised four questions on this Article of Charge, which read thus:

(g)Has CO taken divorce in 1997?

(h)Has CO advised to the Administration about the divorce?

(i)Has CO married Second time in 1997 itself?

(j)Has CO advised to the Administration about the Second marriage.?

The IO has analysed the above four questions taking into account the defence taken by the Applicant. IO s conclusion is as follows:-

(g). h), i) & j) CO has himself admitted that he has taken divorce with mutual consent in April 1997 and remarried within a period of three months as a result of this as well not to feel humiliated CO has not advised the Railway Administration about his divorce and remarriage. Moreover at the time of submission of the declarations in 1997 as well as in 1998 he was married as per version of CO though there is no documentary evidence

regarding remarriage but the documentary evidence regarding divorce is available as per Page No.18 of CO s Defence Statement. It is felt that no person will like to talk about such incidence/matters.

Thus, the Charge No.2 is fully proved against CO but needs to be viewed with emotions and sympathy.

This Charge-II has been found to be partly proved to the extent that the Applicant did not inform about his remarriage though he has reported about his divorce of the first wife.

17. Our above analysis has brought out very clearly that the Applicant has taken the pass undoubtedly for himself, his son and wife, but as the Applicant has reported the loss of the Pass though belatedly, the nexus of misuse has not been established in the enquiry. Even the said fact has been clearly indicated by the Enquiry Officer stating that there is no consent/connivance between the Applicant and the persons who misused the Pass. The enquiry could not establish who misused the Pass and how the Applicant had helped such misuse. Applicant was on duty during the period when the pass had been utilized. Further, the pass was utilized not from Delhi but from Mumbai. Though the report of the loss lodged by the Applicant is after the misuse of the pass, the enquiry has not brought out the link between the Applicant and the persons who have misused the same. It has also not established as to whether the Applicant has connived with such persons to misuse the pass. It is not evident from the enquiry that the Applicant was aware of the misuse though the Applicant has lodged a complaint of the loss of the Pass on 5.10.2001. It is difficult to construe that the pass was in his custody till the date (5.10.2001) when the loss of the Pass was reported to Police. It has been assumed by the IO that the Pass has been in his custody till 05.10.2001. Such presumptive conclusion arrived by the Enquiry Officer is not admissible since it is based on presumptions and surmises. It is, therefore, to say that the Applicant has admitted that the Pass in question was available with him up to 5.10.2001 is not correct.

18. Further, the misuse of the Applicant s name in getting the Rest Houses reserved, used and even payments made may not stand against him. The

impersonator s signature has not been properly brought in to the evidence as the Respondents have not matched the signature of the Applicant with those signatures available in the records of the Rest House Registers and associated records. On this score also, the link between the Applicant and the persons who misused the Pass has not been established. It has been presumed that the misuse of the Pass has been done by some closely known to the Applicant. This aspect is based on presumption rather than any available evidence in the enquiry. Though the Railway Servants (Pass) Rules, 1986 provides that the Pass holder has to share the responsibility, when the Applicant s contention is that the Pass has been lost before 5.10.2001 which he has reported to the Police Station appropriately, how the responsibility of misuse can be fixed on him.

19. Therefore, we are of the considered opinion that the presumptive conclusions arrived at by the Enquiry Officer to say that the Article-1 of the charge has been held as proved is not legally sustainable. However, in the said charge only one thing that would be established is that the Applicant has misused the name of his previous wife (Neetu) whereas he has already married to a lady by name Asha. Except this part of the charge, nothing else in the charge-1 could be held as proved. This part of the charge has direct relevance to the Article-2 of the charge which indicates that the Applicant has not informed his remarriage in 1997 after getting the consensual divorce with his previous wife. The Applicant has taken the plea that he used to call his second wife (Asha) by the name of the first wife (Neetu). Therefore, he got the Pass in the name of Neetu which should not go against him. We note that it is inappropriate for the Applicant to have taken the pass in the name of his first wife (Neetu) instead of second wife (Asha). In the Article of Charge-2, it must be noted that except the allegation that Applicant has not informed of remarriage, rest of the part of the charge cannot be held as proved.

19. Having considered the totality of facts of the case and the contentions raised by the Applicant and the Respondents, we find that the evidence available in the enquiry indicate that not reporting his remarriage and taking the Pass in the name of his first wife are the proved misconduct. Thus, part of two charges have been found to be proved whereas the Disciplinary

Authority holding both charges fully proved imposed penalty of reduction by two stages in the time pay scale for a period of two years with postponement of his future increments. The said punishment imposed on the Applicant is considered to be disproportionate to the proved misconduct. We, therefore, conclude that the orders of the Disciplinary Authority would not be sustainable in the eyes of law and needs to be quashed. Accordingly, we quash and set aside the order dated 31.01.2008 (Annexure-A1) passed by the Disciplinary Authority and order dated 30.12.2009 (Annexure-A2) passed by the Appellate Authority.

20. For the above reasons and in terms of our above conclusions and directions, the Original Application is allowed and the disciplinary case is remanded back to the Disciplinary Authority to take into account our observations within and consider the Applicant having retired from service on 31.07.2010 and pass appropriate order in the disciplinary case as per law. Surely, the Applicant would be entitled to appeal against the order of the Disciplinary Authority, if he feels aggrieved. There is no order as to costs.

(Dr. Ramesh Chandra Panda) (V. K. Bali)
Member (A) *Chairman"*

3. In this the Hon'ble Bench had held that the 1st charge cannot be proved at all, but, remitted the matter to the respondents in regard to one of components of the 2nd charge relating to non-intimation of 2nd marriage.

4. At this point of time Shri N.S.Prasad points out that in paragraph 19, the Tribunal had not exonerated him also. Therefore, we had examined paragraph 19 which we quote once again:-

"19. Therefore, we are of the considered opinion that the presumptive conclusions arrived at by the Enquiry Officer to say that the Article-1 of the charge has been held as proved is not legally sustainable. However, in the said charge only one thing that would be established is that the Applicant has misused the name of his previous wife (Neetu) whereas he has already

married to a lady by name Asha. Except this part of the charge, nothing else in the charge-1 could be held as proved. This part of the charge has direct relevance to the Article-2 of the charge which indicates that the Applicant has not informed his remarriage in 1997 after getting the consensual divorce with his previous wife. The Applicant has taken the plea that he used to call his second wife (Asha) by the name of the first wife (Neetu). Therefore, he got the Pass in the name of Neetu which should not go against him. We note that it is inappropriate for the Applicant to have taken the pass in the name of his first wife (Neetu) instead of second wife (Asha). In the Article of Charge-2, it must be noted that except the allegation that Applicant has not informed of remarriage, rest of the part of the charge cannot be held as proved.

19. Having considered the totality of facts of the case and the contentions raised by the Applicant and the Respondents, we find that the evidence available in the enquiry indicate that not reporting his remarriage and taking the Pass in the name of his first wife are the proved misconduct. Thus, part of two charges have been found to be proved whereas the Disciplinary Authority holding both charges fully proved imposed penalty of reduction by two stages in the time pay scale for a period of two years with postponement of his future increments. The said punishment imposed on the Applicant is considered to be disproportionate to the proved misconduct. We, therefore, conclude that the orders of the Disciplinary Authority would not be sustainable in the eyes of law and needs to be quashed. Accordingly, we quash and set aside the order dated 31.01.2008 (Annexure-A1) passed by the Disciplinary Authority and order dated 30.12.2009 (Annexure-A2) passed by the Appellate Authority. "

in which the Tribunal says that **therefore, he got the Pass in the name of Neetu which should not go against him. We note that it is inappropriate for the Applicant to have taken the pass in the**

name of his first wife (Neetu) instead of second wife (Asha). In the Article of Charge-2, it must be noted that except the allegation that Applicant has not informed of remarriage, rest of the part of the charge cannot be held as proved. Therefore it appears that only a limited issue was remitted back to the concerned authority. This was on 29.7.2011. But, after almost 8 years on 17.1.2019 an order was issued in page No. 22 which we quote:-

"NORTHERN RAILWAY

Headquaters Office
Baroda House
New Delhi

CONFIDENTAL Dt: 17.01.2019
No: E-141/1836/Vig/E(D&A)

Dr. I. C. Verma
Retd. Sr. DMO/NR
House No. 115, Block- F- 24
Sector-07, Rohini, New Delhi.

Sub: Diciplinary Action Against Dr. I . C Verma, Retd. Sr. DMO/NR

In the subject case in exercise of liberty granted by Hon'ble Central Administrative Tribunal, New Delhi and in consultation with UPSC, the Hon'ble Minister of Railways, on behalf of the President, has decided to modify the penalty of "reduction by two stages in the same time scale of pay for a period of two years which shall have the effect of postponing the future increment of pay imposed vide order dated 31.01.2008 on you that of "withholding of 10%(ten percent) of monthly pension, otherwise admissible to you for a period of one year".

In this regard Railway Boards confdl. Order No. E (O)-2007/PU-2/NR/40 dated 14.01.2019 along with U.P.S.C advice contained vide letter No.3/31/2016-S.I dated 06.11.2018 are enclosed herewith which may kindly be acknowledged and acknowledgement sent to this office.

DA/As above

for General Manager(P)

Copy along with a copy of Railway Board above-mentioned order to the following for information & necessary action to:-

1. APO/G-1, Baroda House, New Delhi, It may please be ensured that this order is implemented.

2. Dy. Secy/ Confdl. Baroda House, New Delhi

3. DRM/ New Delhi.

4. GM/ Vig. Baroda House, New Delhi in reference to case No.VIG/CT/87/2001/MD/GO"

modifying the punishment, in the mean while the applicant had already retired.

5. Therefore, the applicant now laments that under Rule 9 unless grave misconduct is postulated against an employee, it cannot be taken up at all. He relies on the judgement of Hon'ble High Court of Delhi in WP(C)8245/2008 dated 20.9.2010 which we quote:-

THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 20.09.2012

W.P.(C) 8245/2008

PROF. P.N. BHAT ... Petitioner

versus

UNION OF INDIA & ORS. ... Respondents

Advocates who appeared in this case:
For the Petitioner : Mr A.K. Behera, Mr Sanjeev
For the Respondent : Mr S.S. Lingwal

CORAM:- HON'BLE MR JUSTICE BADAR DURREZ AHMED HON'BLE MR JUSTICE SIDDHARTH MRIDUL

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. The petitioner is aggrieved by the order dated 07.07.2008 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A No. 3155/2002. The petitioner joined as Director and Vice Chancellor of IVRI, Izatnagar, UP on 01.05.1984 initially for a five-year term. This was extended by another five years by an order dated 08.11.1988. The petitioner was placed under suspension on 17.05.1990 and a show cause notice was issued to him on 27.06.1990 comprising of 97 allegations relating to the period 1984-1989. The petitioner submitted a reply. However, a charge memo was issued to the petitioner on 22.12.1993 containing 13 articles of charge. Thereafter, the Inquiry Officer was appointed and the inquiry proceedings were conducted. This culminated in the Inquiry Officer's report of 31.07.1997 wherein the Inquiry Officer held that none of the 13 articles of charge were proved. On 31.10.1997 the petitioner retired on attaining the age of superannuation. The disciplinary proceedings continued under Rule 9 of the CCS (Pension) Rules, 1972.

2. After four years, that is, on 24.08.2001 the disciplinary authority issued a disagreement note with respect to Articles 4, 5 (partly) and 7 of the charges. The disagreement note as well as a copy of the Inquiry Officer's Report were supplied to the petitioner for his reply. After all that was over, the disciplinary authority, by virtue of the order dated 19.09.2002, imposed a penalty of 25% cut in pension. The petitioner was aggrieved by that order passed by the disciplinary authority and therefore he filed an application under section 19 of the Administrative Tribunals Act, 1985 being O.A. No. 3155/2002 which was dismissed by virtue of the impugned order dated 07.07.2008. The petitioner is before us being aggrieved by that order.

3. The learned counsel for the petitioner raised two contentions before us. His first and primary contention was that the disciplinary proceedings were continued under Rule 9 of the CCS (Pension) Rules 1972 and that a cut in pension could only be imposed on the petitioner if there was a finding of grave misconduct or negligence by the disciplinary authority. Since there was no such finding of grave misconduct or negligence in the disciplinary authority's order, there could not have been any penalty imposing a cut in pension. For this proposition, the learned counsel for the petitioner has placed reliance on the Supreme Court decision in the case of D.V. Kapoor v. Union of India & Ors: (1990) 4 SCC 314. He also placed reliance on a decision of the Division Bench of this court in the case of Union of India & Ors. v T.P. Venugopal: 148 (2008) Delhi Law Times 433 (DB).

4. The second point urged by Mr Behera, who appeared on behalf of the petitioner, was that even a case of misconduct, what to speak of grave misconduct, has not been made out against the petitioner.

5. However, as mentioned above, the main point urged by the learned counsel for the petitioner was that since a finding of grave misconduct has not been returned by the disciplinary authority, there could not have been any order imposing a cut in pension as that would be contrary to the specific provisions of Rule 9 of the CCS (Pension) Rules, 1972.

6. The learned counsel for the respondent submitted that the finding of the disciplinary authority clearly indicates that Articles 4, 5 (partly) and 7 of the charges have been established and that they amount to misconduct. According to him, since there has been procedural irregularity in the purchase of the Fermenter and the Image Analysis System it would amount to grave misconduct. Consequently, he submitted that the decision of the Tribunal ought not to be interfered with. He also sought to place reliance on the decision of a Division Bench in the case of UOI & Ors v. Dr V.T. Prabhakaran: W.P. (C) 2292/2010 decided on 26.07.2010. He submitted that the expression 'grave misconduct' has been explained in detail in that decision. He also submitted that the disciplinary authority has, in any event, returned a clear finding of misconduct and therefore the second point urged on the part of the petitioner is clearly untenable.

7. At the outset, we may point out that the decision relied upon by the learned counsel for the respondent in the case of UOI & Ors. v. Dr. V.T. Prabhakaran, is actually a decision in two separate cases. One case was of Dr. V.T. Prabhakaran and the other was of The Secretary, Ministry of Urban Development v. Shri Tej Ram: (W.P. (C) No. 559/2010). Both these decisions were disposed of by a common judgment. Insofar as the case of Dr. V.T. Prabhakaran is concerned, the stage at which the respondent therein (Dr V.T. Prabhakaran) approached the Tribunal was when, after the indictment in the Inquiry Officer's report, the Disciplinary Authority served the report upon the said Dr. V.T. Prabhakaran. Instead of submitting his representation, the said Dr. V.T. Prabhakaran rushed to the Tribunal alleging that, since the Inquiry Officer had not held that the misdemeanour amounted to 'grave misconduct', the proceedings ought to be terminated. The Tribunal, in that case, agreed with the view espoused on behalf of Dr. Prabhakaran "ignoring the plea of the petitioner that the disciplinary authority had yet to take a

decision". The arguments before the Division Bench, as would be apparent from paragraph 12 of the said decision, centered on the issue as to :-

> *".... whether to attract Rule 9, the report of the inquiry officer must hold that it is a case of grave misconduct or negligence or the memorandum issued by the disciplinary authority seeking the response to the report of the inquiry officer or the note of disagreement must allege that it was a case of grave misconduct or negligence or that it was sufficient that the order levying penalty so records."*
>
> *(underlining added)*

The argument on behalf of Dr. Prabhakaran was that unless the inquiry officer held it to be a case of grave misconduct, no further proceedings under Rule 9 of the CCS (Pension) Rules, 1972 could be continued. On the other hand, the argument on behalf of the Union of India was that "the stage" of recording the finding that the misconduct was grave was when the disciplinary authority imposed the penalty and it was urged that, therefore, Dr. Prabhakaran's application before the Tribunal was premature. The Division Bench agreed with the latter view. The ratio of the decision is encapsulated in paragraph 26 thereof which reads as under:-

> *"26. Thus, we hold that the correct principle of law is that the stage for the disciplinary authority to hold that it is a case of a grave misconduct is when the penalty, by way of cut in pension or gratuity is inflicted under Rule 9 of the Pension Rules, and at no prior stage...."*

Therefore, no help can be taken by the respondent herein inasmuch as in the present case the disciplinary authority has already passed the order. The observation of the Division Bench, in the case of Dr. Prabhkaran, with regard to the meaning and scope of 'grave misconduct' are not part of the ratio as the court had already held that the stage for consideration as to whether the misdemeanour amounted to 'grave misconduct' or not had not been reached. That, however, does not concern us as in the present there is no finding of 'grave misconduct' in the Disciplinary Authority's order. In any event, the present case is distinct and different from Dr. Prabhakaran's case.

8. Insofar as the other case, that is, the case of Shri Tej Ram (W.P.(C) No. 559/2010) is concerned, the facts were that the Inquiry Officer had exonerated the charged officer but, the disciplinary authority dis-agreed with the findings of the inquiry officer. The note of disagreement was forwarded to the charged officer and after receiving his response, the disciplinary authority held him guilty of misconduct and imposed the penalty of 10% cut in pension for five years. There was, however, no finding at that the charged officer was guilty of "grave misconduct". In this back drop, the Division Bench, by virtue of the said decision, held as under:-

> *" 37. As regards WP(C)No. 559/2010 we note that while passing the order imposing the cut in pension the disciplinary authority has not returned a finding that the misconduct proved is grave misconduct and neither has the appellate authorities so found, no case is made out to interfere with the findings returned by the Tribunal....."*

From the above extract it is obvious that the Division Bench did not wish to interfere with the findings returned by the Tribunal particularly in view of the fact that the disciplinary authority had not returned a finding that the misconduct proved amounted to 'grave misconduct'. The appellate authority had also not returned any such finding. We fail to see as to how the said decision of the Division Bench dated 26.07.2010 is of any help to the respondent. On the contrary, it supports the petitioner. As no finding of 'grave misconduct' was returned either by the Disciplinary Authority or the Appellate Authority, the Division Bench agreed with the Tribunal which held that in the absence of any such finding the penalty of cut in pension could not be justified.

9. The Supreme Court in D.V. Kapoor (supra) has clearly brought out a distinction between misconduct on the one hand and grave misconduct on the other in the following manner:-

> *"4. At page 190-D (SCC p. 327, para 36)1 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 D.S. Nakara v. Union of India: (1983) 1 SCC 305 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:*
>
> *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.

6. Rule 8(5), explanation (b) defines 'grave misconduct' thus:

> *"The expression 'grave misconduct' includes the communication or disclosure of any secret official code or password or any sketch, plan, model, article, note, document or information, such as is mentioned in Section 5 of the*

> *Official Secrets Act, 1923 (19 of 1923) (which was obtained while holding office under the government) so as to prejudicially affect the interests of the general public of the security of the State."*

7. In one of the decisions of the government as compiled by Swamy's Pension Compilation, (1987 edn.) it is stated that:

> *"Pensions are not in the nature of reward but there is a binding obligation on government which can be claimed as a right. Their forfeiture is only on resignation, removal or dismissal from service. After a pension is sanctioned its continuance depends on future good conduct, but it cannot be stopped or reduced for other reasons."*

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 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 aspecified 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. x x x x x

11. In view of the above facts and law that there is no finding that appellant did not commit grave misconduct as charged for, the exercise of the power is clearly illegal and in excess of jurisdiction as the condition precedent, grave misconduct was not proved. Accordingly the appeal is allowed and the impugned order dated November 24, 1981 is quashed, but in the circumstances parties are directed to bear their own costs."

(underlining added)

Upon a reading of the above extracts from the Supreme Court decision in D.V. Kapoor (supra) it is apparent that in the absence of a finding of grave misconduct, the President does not have any 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. It is, therefore, clear that the condition precedent for an order of cut in pension is that the pensioner must be found guilty of grave misconduct or negligence during the period of his service in a departmental inquiry or in a judicial proceeding.

10. We may also point out that a Division Bench of this court in the case of T.P. Venugopal (supra), following the decision of the Supreme Court in the case of D.V. Kapoor (supra), observed as under:-

> *"15. The findings which have come in the inquiry report against the respondent only indicate that the level of negligence of the respondent may not be as high or might not have been expected of him. None of the findings in the report anywhere indicate that respondent misconducted himself gravely or committed grave negligence in permitting his subordinates to introduce fraudulent documents, incomplete processing and passing the bills without proper verification. Simply because the respondent passed impugned bills on the same date does not constitute any grave misconduct on the part of respondent in handling the bills. May be that respondent passed those 10 alleged fraudulent claims in undue haste, but then this conduct of the respondent by itself does not prove charges of grave misconduct against him.*
>
> *16. x x x x x*
>
> *17. The Tribunal, therefore, rightly held that Inquiry Officer except recording the findings of conduct "unbecoming of a Government Servant" has not recorded reasons as well as the findings as to commission of grave misconduct or grave negligence by the respondent. We also find that in the Memorandum issued to the respondent under Rule 14 of the CCS (CCA) Rules, 1965, petitioner has not leveled any such allegations against the respondent of having committed himself in such a manner so as to constitute grave misconduct or grave negligence and to invite penalty under Rule 3 of the CCS (CCA) Rules."*

Consequently, we are of the view that as there was no finding of grave misconduct there could be no question of ordering a cut in pension because the finding of grave misconduct was a condition precedent to the passing of such an order.

11. In these circumstances, we need not examine the other question raised by the learned counsel for the petitioner as to whether there was any

misconduct at all or not? As there was no grave misconduct, there could be no order of cut in pension. The impugned order is set aside and so also the order dated 19.09.2002 of the disciplinary authority imposing a 25% cut in pension. The consequential benefits, in accordance with law, be granted to the petitioner within eight weeks.

12. The writ petition is allowed as above. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

SEPTEMBER 20, 2012 "

6. The Hon'ble High Court had held that in a similar matter as there was no grave misconduct, there could be no order of cut in pension as has been imposed on the applicant.

7. The matter had also engaged the attention of the Hon'ble Apex Court in DV.Kapoor vs UOI and others reported in (1990) 4 SCC 314 which we quote:-

(1990) 4 Supreme Court Cases 314

(BEFORE L.M. SHARMA AND K. RAMASWAMY. JJ)

D.V. Kapoor ..... Appellant

vs

Union Of India And Ors .....Respondents

on 7 August, 1990

The appellant an assistant of Indian Foreign Service, was charged of being guilty of wilful misconduct is not reporting to duty after his transfer from Indian High Commission at London to the office of External Affairs Ministry, appellant derelicted his duty to report ti duty, it was not wilful for the reason that he could not move due to his wife's illness and he recommended

sympathetic consideration. The president accepted his finding, but decided to withhold gratuity and payment of pension in consultation with the Union public service Commission and ordered accordingly.

Held: The employee's right to pension is a statutory right. Therefore, deprivation of such rights must be in accordance with the law. The measure of deprivation must be correlative to or commensurate with the gravity of the grave misconduct of irregularity as it offends the right to assistance at the evening of his life as assured under Article 41 of the Constitution.

T he impugned order discloses that the president withheld on a 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. Therefore, the order to withhold the gratuity as measure of penality is obviously illegal and devoid of jurisdiction. (Para 10)

Advocates who appered in this case:

Arun K Sinha, Advocate for the appellent;

N. S Hegde, Additional Solicitor General, T. C. Sharma and Ms Sushma Suri, Advocates with him for the respondents

The Judgment of the Court was delivered by

K. RAMASWAMY, J. 1. This appeal by special leave under Art. 136 of the Constitution arises against the decision of the Delhi High Court in C.W.P. No. 686 of 1985 dated March 25, 1985. The appellant was working as an Assistant Grade IV of the Indian Foreign Service, Branch 'B' in Indian High Commission at London. On November 8, 1978 he was transferred to the Ministry of External Affairs, New Delhi, but he did not join duty as commanded, resulting in initiation of disciplinary proceedings against him on August 23, 1979. Pending the proceedings, on February 26, 1980 the appellant sought voluntary retirement from service and by proceedings dated October 24, 1980 he was allowed to retire but was put on notice that the disciplinary proceedings initiated against him would be continued under rule 9 of Civil Serv- ices Pension Rules, 1972 for short 'Rules'. His main defence in the explanation was that his wife was ailing at London and, therefore, he sought for leave for six days in the first instance and 30 days

later, which was granted, but as she did not recover from the ailment, he could not undertake travel. So he sought for more leave, but when it was reject- ed, he was constrained to opt for voluntary retirement. After conducting the enquiry the Inquiry Officer submitted his report dated May 19, 1981. The gravemen of charges as stated earlier are that the appellant absented himself from duty from December 15, 1978 without any authorisation and despite his being asked to join duty he remained absent from duty which is wilful contravention of Rule 3(i)(ii) and 3(i)(iii) of the Civil Services Conduct Rule 1964. The Inquiry Officer found that "it is however difficult to say whether his absenting himself from duty was entirely wilful". In the concluding portion he says that both the articles of charges have been established, the circumstances in which the appellant violated the rules require a sympa- thetic consideration while deciding the case under Rule 9 of the Rules. The President, on consideration of the report, agreed with the findings of the Inquiry Officer and in consultation with the Union Public Service Commission decid- ed that the entire gratuity and pension otherwise admissible to the appellant was withheld on permanent basis as a meas- ure of punishment through the proceedings dated November 24,. 1981. When the appellant challenged the legality there- of, the High Court dismissed the writ petition in limine on the ground that it would not interfere in its discretionary jurisdiction under Art. 226 of the Constitution.

2. The contention of Mr. Kapoor, learned counsel for the appellant is that the appellant having been allowed to retire voluntarily the authorities are devoid of jurisdic- tion to impose the penalty of withholding gratuity and pension as a measure of punishment and the proceedings stand abated. We find no substance in the con- tention. Rule 9(2) of the Rules provided that the departmen- tal proceedings 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. Therefore, merely because the appellant was allowed to retire, the Government is not lacking jurisdiction or power to continue the proceedings already initiated to the logical conclusion thereto.

The disciplinary proceedings initiated under the Conduct Rules must be deemed to be proceedings under the rules and shall be continued and concluded by the authori- ties by which the proceedings have been commenced in the same manner as if the Government servant had continued in service. The only inhibition thereafter is as provided in the proviso namely "provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report record- ing its findings to the President". That has been done in this case and the President passed the impugned order. Accordingly we hold that the proceedings are valid in law and they are not abated consequent to voluntary retirement of the appellant and the order was passed by the competent authority, i.e.the President of India.

3. His further contention that the appellant must be found to have committed "grave misconduct" or "negligence" within the meaning of Rule 8(5)(2) of the Rules which alone gives power and jurisdiction to the authority to withhold by way of disciplinary measure the gratuity and payment of pension: Public employee holding a civil post or office under the State has a legitimate right to earn his pension at the evening of his life after retirement, be it on super- annuation or voluntary retirement. It is not a bounty of the State. Equally too of gratuity, a statutory right. earned by him. Article 141 of the Constitution accords right to as- sistance at the old aged or sickness or disablement. In D.S. Nakara & Ors. v. Union of India, [1983] 2 SCR 165 the Con- stitution Bench of this Court held that pension is not only compensation for loyal service rendered in the past, but also by the broader significance in that it is a social welfare measure rendering socioeconomic justice by providing economic security in the fall of life when physical and mental prowess is ebbing corresponding to ageing process and, therefore, one is required to fall back on savings. One such saving in kind is when one had given his best in the hey-day of life to his employer, in days of invalidity, economic security by way of periodical payment is assured. Therefore, it is a sort of stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus pension is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation for service rendered. In one sentence one can say that the most practical raison d'etre for pension is the inability to provide for one self due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.

4. At page 190-D it is stated that pension as a retire- ment 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 gradle to grave is assured at least when it is mostly needed and least available, namely in the fall of life. Therefore, when a Government employee is sought to be deprived of his pensionary right when the 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:

"The President reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanent- ly 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 of judicial proceedings, the pensioner is found guilty or grave miscon- duct or negligence during the period of his service includ- ing 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 pension shall not be reduced below the amount of rupees sixty per mensum."

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.

Rule 8(5), explanation (b) defines 'grave misconduct' thus' "The expression 'grave misconduct' includes the communica- tion or disclosure of any secret official code or password or any sketch, plan, model, article, note, document or information, such as is mentioned in Section 5 of the Offi- cial Secrets, Act, 1923 (19 of 1923) (which was obtained while holding office under the

Government) so as to prejudi- cially affect the interest of the general public of the security of the State."

7. In one of the decisions of the Government as compiled by Swamy's Pension Compilation, 1987 Edition, it is stated that:

"Pensions are not in the nature of reward but there is a 2binding obligation on Government which can be claimed as a fight. Their forfeiture is only on resignation, removal or dismissal from service. After a pension is sanctioned its continuance depends on future good conduct, but it cannot be stopped or reduced for other reasons."

8.. It is seen that the President has reserved to himself the right withhold pension in whole or in part therefore 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 find- ing that the deliquent 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 mark dependent on the facts or circumstances in a given case. Myriad situation may arise depending on the ingenuinity with which misconduct or irregularity was committed. It is not necessary to further probe into the scope and meaning of the words 'grave miscon- duct or negligence' and under what circumstances the find- ings 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 trans- fer 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 appellants dere- licted his duty to report to duty, it is not wilful for the reason that he could not move due to his wife's illness and he recommended to sympathetically consid- er 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 Com- mission.

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 proceed- ings that the pensioner committed grave misconduct or negli- gence in the discharge of his duty while in office, subject of the charge. In the absence of such a finding the Presi- dent is without authority of law to impose penalty of with- holding 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 with- hold 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 fight. The measure of deprivation therefore, must be correl- ative to or commensurate with the gravity of the grave misconduct or irregularity as it offends the right to as- sistance at the evening of his life as assured under Art. 41 of the Constitution. The impugned 'order discloses that the President withheld on permanent basis the payment of gratui- ty in addition to pension. The fight 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 empow- ered 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.

In view of the above facts and law that there is no finding that appellant did commit grave misconduct as charged for, the exercise of the power is clearly illegal and in excess of jurisdiction as the condition precedent, grave misconduct was not proved. Accordingly the appeal is allowed and the impugned order dated November 24, 1981 is quashed but in the circumstances parties are directed to bear their own costs “

8. In this matter also the Hon'ble Apex Court held that deprivation of should be in accordance with procedure prescribed by law, whether it was a grave misconduct or not, if the applicant had not informed of the remarriage, in the present context it has nothing to do with administration or administration of justice. It is merely his personal matter. This has been affirmed by the Hon'ble Apex Court in hundreds of cases now. It is to be noted in these connection that these rules are precolonial days' rules. So the relationship in human parlance has undergone great changes in out look and perception and this changes, as held by the Hon'ble Apex Court in several cases must be taken note of. Due to embarrassment or not the applicant may not have informed of the 2nd marriage. In what way will it affect the administration of the department is not explained in any way. Therefore, we hold that

i)There is no question of any grave misconduct

ii)There cannot be, in the changed perceptions of today any question of any misconduct at all.

Therefore, impugned order is hereby quashed. Whatever had been recovered from the applicant, if any, will immediately be returned to him. The respondents will also give a Due and Drawn statement to the applicant relating to the reduction imposed on him and the payment already made him within one month as he is a senior citizen. If amounts are to be paid to him that also shall be paid to him within the same time frame without interest if paid within one month, thereafter,

at the rate fixed by the Hon'ble High Court in other cases of 15%. OA is allowed as above. No order as to costs.

9. At this point of time Shri A. K. Behera makes a submission that the question of last promotions also must be taken up now. Since Administrative Tribunal Act clearly stipulates that only one cause can be agitated in one OA. We decline to do so, but we grant him liberty to do so at a later stage.

10. At this point of time Shri NS.Prasad raises one more objection that a question of maintainability also may arise as the applicant now about 70 years has one more house in Delhi and a Bank account also in Delhi and some amount from the respondents had been deposited in that account also. But the applicant submits that he is living with his son at H.No.1259, AECS Layout, D-Block, 5th Cross Street, Kundalahalli, Bangalore. At this stage of his life, he without any doubt requires a protection of his son and he stays with his son. Therefore, the jurisdiction will be at Bangalore Bench. Thus the contention raised by the respondents is rejected. OA is allowed as above. No order as to costs.

(CV.SANKAR)
MEMBER (A)

(DR. K.B. SURESH)
MEMBER (J)

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Annexures referred to by the applicant in OA.No.956/2019

Annexure A1: Copy of order dt. 17.1.2019

Annexure A2: Copy of charge sheet dtd. 5.1.2004

Annexure A3: Copy of promotion order of juniors

Annexure A4: Copy of Inquiry Report

Annexure A5: Copy of DAs order dtd. 31.1.2008

Annexure A6: Copy of AAs order dtd. 30.12.2009

Annexure A7: Copy of order of CAT, PB Dtd. 29.7.2011 in OA.1174/2010

Annexure A8: Copy of order of CAT, PB Dtd. 29.7.2011 in OA.1174/2010 and RA

Annexure A9: Copy of representation Dtd. 3.9.2012

Annexure A10: Copy of extract of Rule 21

Annexures referred in reply

Annexure R1: Copy of letter dtd. 30.12.2019

Annexure R2: Copy of letter dtd. 10.12.2019

Annexure R3: Copy of acknowledgement dtd. 18.1.2019

Annexures referred in rejoinder

Annexure REJ1: Copy of letter dtd. 7.1.2009

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