CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW

Original Application No. 332/00116/2019

Reserved on 04.12.2019.
Pronounced on 06/02/2020

Hon'ble Ms. Jasmine Ahmed, Member – J
Hon'ble Mr. Devendra Chaudhry, Member - A

Prabhu Jhingran, aged about 66 years, son of Late Shiv Narayan Jhingran, resident of 11/6 Dalibagh Colony, Police Station-Hazratganj, District-Lucknow.

..... Applicant

By Advocate: Sri Prashant Shukla.

VERSUS

1. Union of India, through its Secretary, Ministry of Information and Broadcasting, Shastri Bhawan, New Delhi.
2. Under Secretary, Government of India, Ministry of Information and Broadcasting, Shastri Bhawan, New Delhi.
3. Directorate General, Doordarshan (Vigilance Section)
4. Head of Office, Doordarshan Kendra, Ashok Marg, Lucknow.
5. Union Public Service Commission, Dholpur House, Shah Jahan Road, New Delhi.

..... Respondents

By Advocate: Sri Alok Trivedi.

O R D E R

Delivered by:
Hon'ble Mr. Devendra Chaudhry, Member (A).

The present Original Application (OA) has been filed for seeking release of provisional pension.

2. Objections had been invited at the admission stage from the Respondent's side and after detailed hearing, it was agreed by both sides that the matter may be disposed finally. Accordingly, we proceed to decide the OA finally.

3. As per the OA, the Applicant was appointed on 21.08.1981 to the post of Assistant Station Director in Doordarshan under the Ministry of Information and Broadcasting. Subsequently, he was promoted to the post of Director in November, 2001. While being posted as Director, Doordarshan Kendra, Lucknow, applicant was apparently trapped by the CBI on 18.06.2004 while taking bribe. He was arrested and proceedings were initiated under Section 7 and 13 (2) of Prevention of Corruption Act, 1988 (hereinafter referred to as 'PCA') with the institution of RC No.0062004-A-0010/2004. The trial Court of the Special Judge, CBI (West), Lucknow, vide order dated 17.02.2014 convicted the Applicant and awarded three years rigorous imprisonment with fine of Rs. 50,000/- alongwith additional further three years rigorous imprisonment and fine of Rs. 60,000/- with default stipulation under Section 7 and Section 13 (1)(d) read with Section 13 (2) of Prevention of Corruption Act, 1988 respectively. Both sentences were directed to be run concurrently.

3.1 The Applicant, filed a Criminal Appeal No 289/2014 (Prabhu Jhingaran vs State of UP and Ors.) against the order of Learned Special Judge, CBI (supra) before the Hon'ble High Court, Lucknow, which vide order dated 10.03.2014 released the applicant on bail. That, Respondent No. 2 (Under Secretary, Government of India, Ministry of Information and Broadcasting, New Delhi) issued Memorandum No. C-15011/1/2004-VIG dated 07.10.2014 on behalf of President of India whereby

opportunity was given to the applicant to represent in writing on the proposed suitable cut-in-pension and gratuity under provisions of Rule 9 of Central Civil Service (Pension) Rules, 1972 (hereinafter referred to as 'Pension Rules'). The Applicant submitted his reply vide date 28.10.2014 rebutting the Memorandum after consideration of which, the respondent No-2 issued Memorandum dated 07.04.2016 giving opportunity to applicant to represent / comment on the advice of the UPSC dated 09.02.2016 recommending forfeiture of 100% of pension and gratuity on a permanent basis. The Applicant replied to this 07.04.2016 Memorandum vide his letter dated 27.04.2016 after consideration of which the Respondent-2 on behalf of the President of India issued order dated 31.05.2016, directing forfeiture of full 100% of pension on permanent basis alongwith further withholding of full 100% of gratuity under Rule-9 of the Pension Rules.

3.2 The Applicant being aggrieved of the aforesaid order of 31.05.2016, filed an OA No. 365 of 2016 before CAT, Lucknow Bench which was dismissed vide Tribunal order dated 13.04.2017 against which the Applicant filed a Writ Petition (WP) No 14748 of 2017. This WP was dismissed as withdrawn by the order dated 07.07.2017 of the Hon'ble High Court, Lucknow Bench on the ground that the applicant proposed to pursue remedy of getting his criminal appeal decided at an early date. That, thereafter, the Applicant moved a Miscellaneous Application No 121388 of 2017 seeking suspension of sentence imposed by the CBI Court vide its order dated 17.02.2014 (supra). That, the Hon'ble High Court, Lucknow, vide order dated 05.09.2018 on this Miscellaneous application suspended the sentence in light of its order of 10.03.2014 enlarging the applicant on bail in the Criminal Appeal 289/2014 (supra).

3.3 As per the applicant, having retired in 2012, he is now 66 years old and alongwith his wife is not keeping well. In light of above, the applicant has sought the following relief(s):-

> *"8 (a) Issue an order or direction directing the respondents to immediately release the provisional pension to the applicant in accordance with law as well as the arrears of the pension with all consequential benefits.*
> *(b) Any other relief deem fit and proper may kindly be passed in the favour of petitioner..."*

4. *Per Contra* the respondents have filed Preliminary objections in which it has been stated that *inter alia* the applicant superannuated on 31.01.2012 and accordingly, since, under Section 7 and 13 (2) of Prevention of Corruption Act, 1988 with the institution of RC No.0062004-A-0010/2004, the trial Court of the Special Judge, CBI (West), Lucknow, vide order dated 17.02.2014 convicted the Applicant and awarded three years rigorous imprisonment with fine of Rs. 50,000/- alongwith additional further three years rigorous imprisonment and fine of Rs. 60,000/- with default stipulation under Section 7 and Section 13 (1)(d) read with Section 13 (2) of Prevention of Corruption Act, 1988 respectively with both sentences to run concurrently, therefore, proceedings were initiated under Rule 9 of Pension Rules and after giving full opportunity of submitting representation etc to the various Memorandum issued as per process under Rule-9 of Pension Rules, final orders regarding withholding of full pension as well as withholding of gratuity were issued by the Competent Authority, viz President of India vide order dated 31.05.2016.

4.1 That, the aforesaid order dated 31.05.2016 has attained finality as firstly, the OA filed by the Applicant in CAT, Lucknow has been dismissed by the Tribunal vide its order dated 13.04.2017 and then, the writ petition

challenging the Tribunal order was also dismissed as withdrawn by the Hon'ble High Court, Lucknow Bench vide its order dated 07.07.2017. That now no litigation w.r.t. the order dated 31.05.2016 (supra) withholding the pension and gratuity is pending in any Court of law. That, accordingly, the Applicant's present OA seeking grant of provisional pension under Rule 69 of the Pension Rules is not maintainable as the order dated 31.05.2016 subsumes within itself any order qua Rule-69 of the Pension Rules. Hence, the OA is not maintainable and so needs to be dismissed on this ground.

4.2 Further, the applicant has made willful and malafide obfuscation of the fact that he had been already given the benefit of provisional pension as is evident from the communications dated 13.11.2015 and 23.11.2015 filed by Ld respondent counsel vide Annexure O-1 to the written arguments. Therefore, there is no ground to sanction any fresh provisional pension under Rule 69 again. Therefore, on this ground also the OA needs to be dismissed.

5. Arguments were heard at length from both sides who have also filed written arguments. We have examined the records carefully and given anxious hearing to both sides at length. The written arguments filed have also been perused carefully.

6. The key grounds on which the applicant has claimed that the provisional pension and gratuity cannot be withheld are that:

i. As disciplinary proceedings have never been initiated against the applicant, therefore no punishment can be imposed against the applicant. But, that, the 31.05.2016 order is an order of punishment through which forfeiture of 100% pension and gratuity on a

permanent basis has been directed and that too under the garb of Rule-9 of the Pension Rules, which therefore makes the said order under Rule-9 legally unsustainable. That being so, the right of applicant to provisional pension subsists even now and so the provisional pension should be now released in favor of the applicant;

ii. That the applicant has not been given appropriate opportunity of hearing and supply of documents even in the order dated 31.05.2016 issued under Rule-9 of Pension Rules

iii. That the present OA is maintainable and no res judicata / constructive res judicata or estoppel applies;

iv. The scope of Rule-9 and Rule-69 of the Pension Rules are quite different and so even if the final order of 31.05.2016 has been passed it is w.r.t Rule 9 only and so, the claim of grant of provisional pension under Rule 69 subsists;

v. That the Hon' High Court has enlarged the applicant on bail and even suspended the sentence awarded by the trial court, hence judicial proceedings are still pending including as per law laid down by the Apex Court and so the provisional pension cannot be withheld either in Rule-9 or Rule-69 of the Pension Rules; and

vi. That pension is right of an employee and not a bounty as per rulings of the Hon Apex Court / Other High Courts, hence also the provisional pension cannot be withheld.

7. Let us examine each ground for its sustainability.

8. The applicant's first ground above regarding the order under Rule-9 being an order of punishment passed under the garb of Rule-9, and hence illegal, is quite baseless, because, as per Pension Rules, an order forfeiting the pension and gratuity can indeed be legally passed under Rule-9 of the Pension Rules and there is no need of any garb to pass such a forfeiture order under CCS (CCA) Rules, 1965 (hereinafter referred to as 'CCA Rules'). This is evident from the Rule-9 itself which is extracted below for clarity:

Rule-9:

> "***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 :*
>
> *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 pensions shall not be reduced below the amount of rupees three hundred and seventy-five per mensem."*

It is clear from above that, if judicial proceedings establish that, an employee is guilty of grave misconduct during the course of service, his pension and gratuity can be forfeited under Rule-9. Therefore the contention of the applicant that the order forfeiting his pension and gratuity being a punishment cannot be passed under Rule-9 of Pension Rules but has to be passed under CCA Rules, is quite baseless. As can be seen clearly, there are express powers available to the President of India to pass orders regarding forfeiture of pension and gratuity under Rule-9 of the Pension Rules. That further since provisions allow passing of such orders (such as of forfeiture of pension and gratuity)

under Rule-9 and the said orders were passed in 2016 on the basis of conviction of the applicant in 2014 by the trial court, and the applicant had retired in 2012 and no disciplinary proceedings were initiated against the applicant while he was in service upto 31.12.2012 viz the date of his retirement, the respondents were well within their legal rights to initiate proceedings under Rule-9 of the Pension Rules on the basis of the conviction in the judicial proceedings in 2014, and there was no need to take recourse to CCA Rules to pass the order of forfeiture of pension and gratuity. Consequently, there was also, no need of any stated garb of Rule-9 of Pension Rules in place of CCA Rules to pass such an order. What is to be clearly understood is that the order of forfeiture of pension and gratuity is passed under Rule-9 and under no other Rules or Act, and that this has been done because no disciplinary proceedings were considered required by the respondents following the conviction of the applicant by the Special Judge, CBI (West), Lucknow, vide order dated 17.02.2014 in judicial proceedings. Therefore, as the 31.05.2016 order is founded on the basis of these judicial proceedings, it is very much in order, as the Rule-9 provides full powers to the President of India to issue an order concerning withholding of pension in full or in part for a specified period of time or permanently and also to forfeit gratuity on the basis of conviction in judicial proceedings of an employee as is clear from abstracts of Rule-9 reproduced earlier above.

Thus, the contention of the applicant challenging the legality of powers under Rule-9 to order forfeiture of pension and gratuity falls by the wayside and is so, liable to be held in the negative against him.

8.1 Further to above, the applicant has submitted that the punishment order dated 31.05.2016 forfeiting his pension and gratuity is actually an order under CCA Rules, and not under Pension Rules even by respondent's own evidence, and hence voidable. Inorder to support this contention, the applicant has taken support of serial-8 of the chart contained in the said order wherein it is stated that **"Disciplinary proceedings is being conducted ..."** and so by virtue of this statement of the respondent they (the respondents) have self-implicated themselves and tried to camouflage proceedings under CCA Rules as proceedings under Rule-9 of the Pension Rules. Inorder to deal with this point the concerned abstracts are reproduced herein below:

8	*He wants the copies of those relevant documents on the basis of which without conducting the departmental enquiry he is being victimized by issuing the aforesaid Memorandum for withholding his 100% gratuity as well as monthly pension which is the only means of livelihood after retirement. He most respectfully prayed that the Memorandum dated 07.04.2016 issued by the Ministry be recalled and further be please to provide him all the relevant documents to enable him to submit a fresh representation against the proposed punishment.*	*Disciplinary Proceedings is being conducted against him under Rule 9 of CCS (Pension) Rules, 1972 on the basis of his conviction. These Rules are already in public domain.*

In context of above, we are inclined to agree with the contention of the Ld respondent counsel that it is important to read the order dated 31.05.2016 in its entirety and not on piecemeal basis. For this, relevant extracts are reproduced herein below:

ORDER

Whereas Shri P.N. Jhingaran, Director (Retd,) DDK Bhopal, while serving as Director, DDK, Lucknow, was caught red-handed by CBI, Lucknow (RC 006/2004-A-0010) while demanding and accepting a bribe of Rs. 1,00,000 (Rupees on lakh) on 18.06.2004 at 16.45 hours at his residence as illegal gratification from the complainant, Shri Vishal Chaturvedi, for smooth relay of his programme from Doordarshan Kendra, Lucknow.

Whereas CBI sought sanction for prosecution of Shri P.N. Jhingran vide their letter dated 31.08.2004. the sanction for prosecution was accorded to CBI, Lucknow vide Ministry's Order No. C-15011/1/2004-Vig dated 31.12.2004.

CBI, Lucknow filed a charge sheet in the court of Special Judge, Anti-corruption (Central) UP, Lucknow against him.

Whereas Shri PN Jhingaran retired from Service on superannuation on 31.01.2012.

Whereas Shri PN Jhingaran was convicted in Criminal case No. 02/2005 (RC No. 006/2004-A 00010/2004) under Section 7 and Section 13(1)(d) read with 13(2) of Prevention of Corruption Act, 1988, and was awarded a sentence of three years of rigorous imprisonment and a fine of Rs. 1.10 Lakh by the Court of Special Judge, CBI Court, Lucknow.

Whereas following the conviction of Shri PN Jhingaran, Director (Retd.) DDK, Bhopal, the President tentatively decided in accordance with Rule 9 of CCS (Pension) Rules, 1972 to impose suitable cut in his pension and gratuity. Accordingly, Shri P.N. Jhingran was given an opportunity to submit representation in writing on the proposed cut in his pension vide this Ministry's OM No C-15011/1/2004-Vig. Dated 07.10.2014.

Whereas Shri PN Jhingaran submitted his representation vide his letter dated 28.10.2014. The representation dated 28.10.2014 of Shri P.N. Jhingran was considered by the President on merits and fount it liable to be rejected. Comments on the representation of Shri P.N. Jhingran are as under:

4	*He has already preferred criminal Appeal No. 289/2014 (P.N. Jhingran Versus State of U.P. & Others) against the punishment order dated 17.02.2014 passed by Special Judge, P.C.Act/CBI/(West), Lucknow passed in R.C. No. 0062004-A-0010/2004 and Hon'ble High Court and the said conviction order is yet to be scrutinized by the Hon'ble High Court.*	*CBI in its SPE's Report recommended only prosecution for Shri P.N. Jhingran. Hence, Sanction for Prosecution was accorded to CBI and no RDA was initiated against him. On 17.02.2014, he was convicted by CBI Court. Therefore, in terms of Government of Rule 9 of CCS (Pension) Rules, 1972, a Representation against the proposed penalty was sought on 07.10.2014. Further, GOI Decision No. 2 under Rule 19 of CCS (CCA) Rules clearly stipulates that if an application has been filed against the conviction order, a penalty order may be issued without waiting for the decision in the 1st Court of appeal.*
5	*Criminal proceeding remained pending against him since 17.06.2004 till 17.02.2014 and all these years no departmental proceedings has been initiated against him and even no show cause notice had been issued till the date of his superannuation on 31.01.2012 as such now there is no occasion to start department inquiry against him after his retirement that after conviction order dated 17.02.2014 against which the criminal appeal No. 289/2014 is already pending before the Hon'ble High Court and the controversy regarding criminal charges has not attained finality.*	

Further to above the following portions are also important and concern the dealing of the representation dated 27.04.2016 in the later part of the final order:

4	He had already submitted by representation dated 28.10.2014 against the earlier Memorandum dated 07.10.2014 placing his difficulty to submit detailed representation due to want of documents referred to in the said memorandum by Hon'ble his Excellency the President of India but the required documents have not been served to him till day and being a retired person I am otherwise also unable to collect the relevant documents as he had already attended superannuation of 31.01.2012.	The said Memorandum /Show Cause was issued in terms of Government of India's Decision No. (4) under Rule 9 of CCS (Pension) Rules, 1972 and there is no such provision of providing documents to facilitate him for preparation of his reply/representation. Moreover, Show Cause Notice was issued on the basis of Court's order which is already available with him.
5	That under the provision of The Central Civil Services (Pension) Rules, 1972 there is procedure prescribed for imposing the major punishment to withhold or withdraw pension and in the Memorandum under reply on the basis of advice obtained from UPSC the punishment has been proposed without scrutinizing the facts and circumstances of his case as the facts are quite different in the instant case and the provisions Rule 9 are not applicable because the matter regarding conviction is already subjudice before the Hon'ble High Court as the Criminal Appeal is the continuation of the trial. Thus. The proposed major punishment for withholding 100% pension as well as the gratuity payable to him is not only arbitrary, illegal but the same is against the Principal of Natural Justice and Equity because no departmental enquiry has been conducted.	As per Rule 9(1) of CCS (Pension) Rules, 1972- 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. So far as matter of Appeal is concerned, it has already been commented upon in reply to point/para no. 3 of the submission above. Shri P.N. Jhingran was given an opportunity of making represention in writing on the penalty proposed vide this Ministry's OM dated 07.10.2014. His comments has also been sought on the advice of UPSC. Therefore, there is n violation of Principal of Natural Justice.
6	The proposed punishment is without providing the opportunity of hearing to him the punishment has been proposed that too without providing him the required documents. He cannot be deprived from his Gratuity and pension which is his right to live after his superannuation and a person cannot be forced to starvation by depriving him from his lawful claim after serving the Govt. of India all these years.	There is no provision of personal hearing in Rule 9 of CCS (Pension) Rules under which Disciplinary Proceedings is being conducted against him. Shri P.N. Jhingran was given an opportunity of making representation in writing on the penalty proposed vide this Ministry's O.M. dated 07.10.2014 as well as O.M. dated 07.04.2016. As per Rule 9(1) of CCS (Pension) Rules, 1972- 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.

And WHEREAS the President, after careful consideration of the relevant records, the advice tendered by the UPSC, representation dated 28.10.2014 and 27.04.2016 of Shri P.N. Jhingran and the facts and circumstances of the case, has come to the conclusion that Shri P.N. Jhingran had committed grave misconduct by demanding and accepting bribe and advice dated 09.02.2016 tendered by the UPSC is appropriate and, therefore, the same be accepted and that the ends of justice would be met if the penalty of withholding of 100% of the monthly pension otherewise admissible to Shri P.N. Jhingran is imposed on permanent basis and further 100% of gratuity admissible to him should also be withheld.

NOW, THEREFORE, the President orders accordingly.

(BY ORDER AND IN THE NAME OF THE PRESIDENT)

Sd-
(Rajesh Kumar)
Under Secretary to the Govt. of India"

It can be clearly seen that the impugned order is basically made qua the Rule-9 of the Pension Rules under which the President of India being the competent authority is fully empowered to pass orders under Rule-9. Some piecemeal reference to a word as averred by the applicant is not adequate to disband the entire body of the order which is clearly drawn up w.r.t proceedings under Rule-9. Here it would be useful to consider the para-15 of the judgement and order dt 26.11.2018 in WP (C) 12470/2018 of the Hon Delhi High Court in the matter of PC Mishra, DANICS vs Union of India (hereinafter referred to as " Mishra"). Para-15 is reproduced below:

> *"15. In any event, the settled position in law is that mere reference to an incorrect provision - as being the source of power, is not fatal to the validity of the order if the statutory power, otherwise, resides in the authority passing the order [See, P.K. Palanisamy v. N. Arumugham, (2009) 9 SCC 173]. The observations made by the tribunal in para 9 of the impugned order have to be read in the aforesaid context. In any event, the mere reference to Rule 19 of the CCS (CCA) Rules by the tribunal in the impugned order is no ground to interfere with the same.."*

The above citation thus clears the air that in case of an eventuality wherein reference to an incorrect provision is made then it is not fatal, if the statutory power resides in the authority passing the concerned order. In the extant matter, it is undisputed that the final order concerns Rule-9 of the Pension Rules and it is also unassailable that the competent authority viz President of India has passed the final order. Further that sufficient evidence exists whereby Rule-9 has been referred to in various portions of the body of the order as per above abstracts and also that the said response at Serial-8 is in context of the averment of **departmental inquiry** by the applicant himself concerning

"..relevant documents on the basis of which without conducting the ***departmental inquiry*** *he is being victimized..."*. Thus, we cannot but hold the view that for all legal purposes, the final order of 31.05.2016 is passed under Rule-9 of the Pension Rules and the applicant cannot take shelter of some word on a pick-and-choose reference to support his contention to strike down the order as having been passed under wrong Rules. In any case there was no reason for the respondents to hide behind the garb of Rule-9 to issue orders regarding forfeiture of pension and gratuity and not conduct disciplinary proceedings because as discussed earlier above, the conviction under the judicial criminal proceedings was considered sufficient and is actually adequate in the eyes of law as laid down in Rule-9(1) discussed earlier wherein the applicant has been found guilty of grave misconduct vide the judicial criminal proceedings during the period of service and so liable to be imposed with a forfeiture / cut-in-pension and also gratuity under Rule 9 of Pension Rules.

Thus, the contention of the applicant that the punishment order forfeiting his pension and gratuity is actually an order under CCS (CCA) Rules, 1965 is not legally tenable and is liable to be held in the negative against him.

8.2 As regards applicant's next submission concerning lack of opportunity of hearing and supply of required documents concerning the issue of the above order of 31.05.2016, we may examine the process followed by the respondents regarding issue of the stated order. For this, we may first see that before issue of the 31.05.2016, a Memorandum dated 07.10.2014 was issued to the applicant, relevant extracts of which are reproduced below:

Memorandum dated 07.10.2014:

".....And whereas the President has tentatively decided to impose suitable cut-in-pension and gratuity on the said Shri Prabhu Nath Jhingran under Rule 9 of the Central Civil Service (Pension) Rules, 1972...

Thus, as per due process, the applicant was first put to notice under Rule-9 of the Pension Rules regarding the proposed cut-in-pension and gratuity on the basis of his conviction in the trial court and opportunity granted to represent against the said notice under Rule-9. Thereafter, once his response was received vide date 28.10.2014, the next Memorandum dated 07.04.2016 was issued for seeking the response of the applicant regarding the advice of UPSC and the said Memorandum enclosed the advice of the UPSC. Relevant extracts of 07.04.2016 Memorandum are reproduced below:

Memorandum dated 07.04.2016

"..... the President to impose cut in his pension and gratuity under Rule 9 of the CCS(Pension) Rules, 1972..."

3. In terms of DoP&T's O.M. No. 11012/8/2011-Estt.(A) dated 6.1.2014, a copy of UPSC's letter No. F.3/292/2015-S.I dated 09.02.2016, whereby they have forwarded their advice, is forwarded herewith to Shri Prabhu Nath Jhingran, giving him opportunity to furnish comments/representation thereon, if so desired, within 15 days from the date of receipt of this memorandum..."

Then once the response to the 07.04.2016 Memorandum was received vide 27.04.2016 from the applicant only then the final order dated 31.05.2016 was passed under Rule-9 of the Pension Rules. Relevant extracts of the 31.05.2016 order are reproduced below for clarity:

"....Whereas following the conviction of Sri P.N. Jhingran, Director (Retd.), DDK, Bhopal, the President tentatively decided, in accordance with Rule 9 of CCS (Pension), Rules, 1972 to impose suitable cut in his pension and gratuity Accordingly, Shri P.N. Jhingran was given an opportunity to submit

representation in writing on the proposed cut in his pension vide this Ministry's O.M. No. C-15011/1/2004-Vig. dated 07.10.2014..."

Thus, it is abundantly clear from above that adequate opportunity of hearing was granted to the applicant before the issue of order dated 31.05.2016 under Rule-9 of the Pension Rules including supply of UPSC advice, and therefore this ground of the applicant is also liable to be held in the negative against him.

9.0 On the issue of maintainability including on grounds of estoppel, res judicata / constructive res judicata, the contention of the Ld respondent counsel *per contra* through the written arguments is that the applicant has in fact, first of all, been granted provisional pension after his retirement on 31.01.2012 under Rule 69(1)(a) of the Pension Rules as per communications dated 13.11.2015 and 23.11.2015, copies of which have been enclosed as Annexure No O-1 to the written arguments. Relevant abstracts of the communications dated 13.11.2015 and 23.11.2015 as contained in the Annexure O-1 are reproduced below for clarity:

"13.11.2015

" S.III Section, DG-DDn. Is requested to furnish the details of provisional monthly pension Gratuity released and other retirement benefits paid/being paid to Shri P.N. Jhingaran, Director (Retd.), DDK, Lucknow. The details are required by the Ministry to take a final view in respect of the disciplinary proceedings against Shri Jhingaran."

23.11.2015

" Reference Executive Engineer (Vig), Vigilance Section's letter No. C-14011/3/2004-Vig/3597 dated 13.11.2015, the reply is as under:

1. *Monthly Provisional Pension is Rs. 18835/-(i.e. 50% of Basic+GP= 37670/-)*
2. *Sanction order for CGEGIS payment of Rs. 58,896/- issued by this Directorate vide order No. 48/2012/S.III dated 10.07.2012 (copy enclosed).*
3. *No other payments like Gratuity & Leave Encashment not yet paid.*

4. This issued with approval of Competent Authority..."

As per Ld respondent counsel, the applicant has concealed this material fact with willful intention of misguiding the Tribunal inasmuch that even during the pendency of proceedings in the Trial Court, since, the Applicant had attained the age of superannuation on 31.01.2012, the Applicant was, in fact, granted provisional pension under Rule 9(4) read alongwith Rule 69 (1)(a) of the Pension Rules as is clear from the aforesaid letters. That concealment of this information by the applicant is tantamount to a fraud against the Tribunal and is so liable to be punished as per a catena of judgements of the Hon Apex Court.

9.1 It is further submitted by the Learned Respondent Counsel through written arguments that, the matter for grant of provisional pension had been deliberately concealed earlier also by the applicant when he had filed the OA No. 365/2016 (hereinafter referred to as "2016 OA") and without taking to recourse to any plea on grant of provisional pension if he had not got the same then, applicant had straight away sought relief for grant of regular pension by assailing the order dated 31.05.2016 and not making even a faint footfall of reference to the existence or non-existence or enjoyment of the provisional pension as per above abstracted letters of 2015. In fact, this point is still not admitted by the applicant in any of the pleadings and neither has the same found mention in the written arguments filed by the Ld. applicant counsel. In fact, anachronistically so, the written arguments filed by Ld applicant counsel stress on the fact that the current OA is not barred on grounds of res judicata etc as the plea for grant of provisional pension was not taken in the 2016 OA and the relief was only w.r.t the grant of regular pay pension and gratuity and therefore the applicant was well

within his right to claim grant of provisional pension now. In fact, the written arguments under the sub-heading Submission-2 state as follows w.r.t. the relief (s) sought:

> *"(iii) In the earlier round of litigation in Present OA No. 365/2016, the following prayers were made (Ann. 10/page 163 of Present OA) the reliefs are quouted at page no. 178 of the present OA.*
> *Relief(s) sought:*
> *Wherefore it is most respectfully prayed that this Hon'ble Tribunal be pleased to:*
> *a) Issue a order or direction quashing the order No. C-15011/1/2004-Vig (Vol.II) dated 31-05-2016 passed by opposite party no. 2 contained in Annexure No.1.*
> *b) Issue a order or direction directing the opposite parties to pay pension and gratuity to applicant.*
> *c) Issue any other order or direction which this Hon'ble Court may deem fit, just and proper under the circumstances of the case in favour of the applicant.*
> *d) Allow the original application of the Applicant with costs.*

What immediately strikes us is that as to why hadn't the applicant raised the issue of grant of provisional pension in 2016 itself when the earlier OA was filed inspite of his rightful possible claim to provisional pension if not given qua the regular pension forfeiture order as he had retired in 2012 which was much before 31.05.2016 final order which forfeited his pension and gratuity permanently.

9.2 **The situation becomes quite preposterous if one realizes that without claiming for provisional pension in his earlier OA in 2016 which was four years after his retirement, the applicant is now claiming the same taking support of the 31.05.2016 order passed under Rule-9. It is as if the applicant has suddenly struck a wonderful reason to claim provisional pension, grounds for which did not exist before that, viz after 31.01.2012 when he superannuated.** If he had not been getting provisional pension as from 31.01.2012, that is a good more than 4 years before the passing of the forfeiture order of

31.05.2016, then how was he subsisting, a claim now being made that he is in penury and alongwith his wife and is seriously ill etc. This smacks of a high caliber of subterfuge albiet played very immaturely. It is on this point that the Ld respondent counsel has argued that the applicant could have raised the issue much earlier when the earlier OA had been filed. To assume that the applicant was not **seeking provisional pension as from 31.01.2012 all the while even during the pendency of the judicial proceedings under the PCA and further five years thereafter ie from 2014 – date of order of conviction by trial court and 2019 when the current OA has been filed, is beyond all boundaries of disbelief** by any modicum of prudent human thinking and action in life. It defies explanation particularly now that, after 07 years of retirement the applicant has a **mental revelation – an almost sudden enlightenment** - so to say that he has all along in the past 07 years been living without provisional pension and so now it is ripe time in terms of justification to claim the same through an OA.

9.3 This misplaced super-afterthought is also evident from the fact that none of his representations as analyzed in the 31.05.2016 order, that is, representations dated 28.12.2014 and 27.04.2016 (applicant's own Annexure-9 in the OA) has any mention anywhere that he has not been granted provisional pension. The applicant has also not referred to any earlier representation since date of retirement wherein provisional pension was sought and refused thereupon and if so, what remedy the applicant sought thereafter. Now therefore to raise the same, being wiser with time is nothing short of willful fraud upon the Tribunal given the fact that it had been released earlier. This is just not kosher.

9.4 Towards this end, the Ld respondent counsel has cited Hon'ble Apex Court's order in the matter of **Chandra Shashi vs. Anil Kumar Verma, 1995 Vol.I SCC 421**, wherein as averred by the respondent counsel the concerned petitioner is liable to be punished for playing fraud with Court. The Ld applicant counsel has sought to give this citation a short shrift by averring that it concerns a matter of contempt and hence does not fit in the extant matter being considered in this OA. This contention of the applicant counsel is not worthy of slightest support as the Hon' Apex Court while indeed dealing with a contempt matter has given a mouthful of reprimand on the attempts of litigants to mislead the court which could be qua any matter. Following extracts would make it loud and clear to:

> ***"...The stream of administration of justice has to remain unpolluted so that purity of court's atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are, therefore, required to be well taken care of to maintain the sublimity of court's environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned.***
>
> ***2. Anyone who takes recourse to fraud, deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice.***
>
> *7. There being no decision of this Court (or for that matter of any High Court) to our knowledge on this point, the same is required to be examined as a matter of first principle. Contempt jurisdiction has been conferred on superior courts not only to preserve the majesty of law by taking appropriate action against one howsoever high he may be, if he violates court's order, but also to keep the stream of justice clear and pure (which was highlighted more than two and half centuries ago by Lord Hardwicke, L.C. in St. James's Evening Post case) so that the parties who approach the courts to receive justice do not have to wade through dirty and polluted water before entering their temples. The purpose of contempt jurisdiction was summarised as below by Lord Morris in Attorney General v. Times Newspapers Ltd.2:*
>
> *LM15 "In an ordered community courts are established for the pacific settlement of disputes and for the maintenance of law and order. In the general interests of the community it is imperative that the authority of the courts should not be imperilled and that recourse to them should not be subject to unjustifiable interference. When such unjustifiable interference is suppressed it is not because those charged with the responsibilities of administering justice are concerned for their own dignity: it is because the very structure of ordered life is at risk if the recognised courts of the land are so flouted that their authority wanes and is supplanted."*
>
> ***8. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury,***

prevarication and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. People would have faith in courts when they would find that (truth alone triumphs) is an achievable aim there; or (it is virtue which ends in victory) is not only inscribed in emblem but really happens in the portals of courts. (emphasis supplied)

9. The aforesaid thoughts receive due support from the definition of criminal contempt as given in Section 2(c) of the Act, according to which an act would amount be so if, inter alia, the same interferes or tends to interfere, or obstructs or tends to obstruct the administration of justice. The word 'interfere', means in the context of the subject, any action which checks or hampers the functioning or hinders or tends to prevent the performance of duty, as stated at p. 255 of Words and Phrases (Permanent Edn.), Vol.

22. As per what has been stated in the aforesaid work at p. 147 of Vol. 29 obstruction of justice is to interpose obstacles or impediments, or to hinder, impede or in any manner interrupt or prevent the administration of justice.

1 (1742) 2 Atk 469: 26 ER 683 2_ 1974 AC 273, 302: (1973) 3 All ER 54, 66: (1973) 3 WLR ***Now, if recourse to falsehood is taken with oblique motive, the same would definitely hinder, hamper or impede even flow of justice and would prevent the courts from performing their legal duties as they are supposed to do.*** *(emphasis supplied)*

12. In the Privy Council case titled Moses Amado Taylor, Re3 which was on appeal from the Supreme Court of Sierra Leone, what had happened was that the appellant, a barrister, who had enrolled as solicitor of the Supreme Court of the said Colony, applied to the Acting Chief Justice for a warrant for the arrest of one Wright on the ground that he was about to leave the settlement, despite his owing some money to his client. This prayer was rejected. Subsequently, an application was made to one of the police magistrates for a warrant for the arrest of the same person upon a criminal charge of assault and a warrant was issued accordingly. As the Acting Chief Justice had earlier refused the warrant, the Supreme Court felt that the entire proceeding initiated by the appellant was an abuse to the process of justice and it was held that the appellant, by initiating the criminal proceedings, was influenced by the intention of defying the Acting Chief Justice who refused the civil warrant of arrest; and being of this view the appellant was held guilty of contempt and his name was ordered to be removed from the roll of barristers and solicitors of the Supreme Court in question, apart from being fined. On appeal being preferred to the Privy Council, it was held that as the evidence did not show any intent to defraud on the part of the appellant no contempt was committed; at the most he had committed an irregularity for which some pecuniary penalty was adequate punishment. The importance of this case for our purpose is that had the Privy Council felt satisfied about intent to defraud, the appeal would have been dismissed and the view taken by the Supreme Court of Sierra Leone that the appellant was guilty of contempt would have been upheld. What emerges from this decision is that if a person does anything to defraud the court, he commits its contempt.

13. The King's Bench judgment was rendered in R. v. Weisz, ex p Hector MacDonald Ltd.4 Lord Goddard, C.J. (speaking for the Court) held the action of the type, which was one of recovery of money on the basis of 3 1912 AC 347: 81 LJPC 169 : 105 LT 973 : 28 TLR 204, PC 4 (1951) 2 KB 611 :(1951) 2 All ER 408 account stated though there was none, as an abuse of the process of the court but not per se a contempt. It was however added that if the attempt were to deceive by disguising the true nature of the claim, the same would be contempt. On the facts of the case it was found that the solicitor firm had committed contempt as it had endorsed the writ (which was for money won at betting) for a fictitious, though apparently a legal cause of action, as Parliament had ordained that courts are not to be used for realising such monies. The action was, therefore, regarded as an interference with, or distortion of, the course of justice. (A different view was, however, taken insofar as the litigant himself was concerned as he had done nothing to bring a feigned issue before the court.)

16.....This apart, the increasing tendency of taking recourse to objectionable means to get a favourable verdict in the courts has to be viewed gravely to deter the large number of persons approaching courts from doing so. Such a tendency is required to be curbed, which requires somewhat deterrent sentence.

9.5 The point to be understood here is that any attempt to mislead or misrepresent in the court so to obtain oblique justice is condemnable whether it is qua contempt or any matter of adjudication. The principle has to be understood and appreciated rather than being side stepped as not being mathematically equivalent to the facts of the case under consideration. If such were the case it will well-nigh be impossible to cite any rulings and be guided by the principles of judicial *ratio decidendi,* as courts and lawyers, would then hunt for the proverbial needle in the haystack to get an exact mathematical fitment of the famed 'Cinderella Shoes' and end up maiming the foot and the leg of justice in the process.

9.6 The Learned Respondent Counsel has further pointed out that the applicant was never interested in pursuing any matter w.r.t. provisional pension as he was enjoying the same, because even in the writ petition challenging the order dated 13.04.2017 of the Tribunal, the ground taken was that he wished to pursue remedy of getting his criminal appeal decided at an early date. This is clear from the order of the Hon High Court, Lucknow as late as 07.07.2017 (Annexure-12 of OA) reproduced herein below for clarity:

"Court No. - 3

Case :- SERVICE BENCH No. - 14748 of 2017

Petitioner :- Prabhu Jhingran

Respondent :- Central Administration Tribunal, Lucknow Bench, Lucknow & Ors

Counsel for Petitioner :- Kirti Kar Tripathi,Ajay Kumar Pandey Counsel for Respondent :- A.S.G.,Alok Kumar Tripathi, S.B. Pandey Hon'ble Sudhir Agarwal,J.

Hon'ble Ravindra Nath Mishra-II,J.

1. Sri Kirti Kar Tripathi, learned counsel for petitioner, after some argument stated that he may be permitted to withdraw this writ petition since he propose to pursue his remedy of getting his criminal appeal decided at an early date.

2. Sri S.B. Pandey, learned Assistant Solicitor General of India, appearing for respondents, has no objection to aforesaid request. 3. Dismissed accordingly.

Order Date :- 7.7.2017"

9.7 Clearly on the basis of above our view is further fortified that the Applicant was not aggrieved on account non-grant of provisional pension because he was enjoying the same.

9.8 Thus it is quite clear that as things stand, provisional pension has indeed been released to the applicant already once but the same has not been continued after the order dated 31.05.2106 arresting the flow of pension and gratuity having got stopped under powers exercised vide Rule-9 of the Pension Rules by the President of India. In the event therefore nothing can save the applicant from the finality that the matter of grant of provisional pension was indeed hidden with stealth and subterfuge so as to mislead this Tribunal. The consequence of it becoming a ground for estoppel or res judicata *etcetera* fades in front of the larger malfeasance of hiding of the grounds on which relief is now being sought. The OA therefore becomes liable to be adjudged adversely. The fact that the applicant out of own admission never raised it in the earlier OA speaks volumes of the miserable attempt to hide facts and ".. ***those who indulge in immoral acts like perjury, prevarication and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. People would have faith in courts when they would find that (truth alone triumphs) is an achievable aim there; or (it is virtue which ends in victory) is not only inscribed in emblem but really happens in the portals of courts.....but also to keep the stream of justice clear and pure (which was highlighted more***

than two and half centuries ago by Lord Hardwicke, L.C. in St. James's Evening Post case) so that the parties who approach the courts to receive justice do not have to wade through dirty and polluted water before entering their temples.... *(Shashi)*

This act of hiding the most relevant fact in context of the claimed relief is nothing short of maligning the sacred temples of justice – to borrow from the judgment of Shashi (supra).

9.9. From the above, it is clear that provisional pension was indeed released on superannuation of the applicant as is clear from the letters dated 13.11.2015 and 23.11.2015 above. Further, we are inclined to agree with the Ld respondent counsel that the order of 31.05.2016 itself cannot be assailed now in the current OA in respect of any of its legal or procedural aspect, as (i) the order has already been assailed in the OA 365/2016 earlier and that (ii) the order has attained finality because the applicant has himself withdrawn his writ petition in the Hon High Court, Lucknow and there is no other order from any competent court existing today qua the Tribunal's order of 13.04.2017. Therefore, on this ground also any challenge to the order of 31.05.2016 is now fated to fall. On this issue, it is clear that (a) the Tribunal had in fact dismissed the OA filed by the applicant challenging the order dated 31.05.2016 concerning withholding of pension and gratuity in full and that this order of the Tribunal has indeed achieved finality as the same is yet unchallenged in any court of law and even moreso by the applicant himself, therefore, (b) the Applicant cannot approach this Tribunal again for the cause of provisional pension by pointing out deficiencies or illegality of the 31.05.2016 order by any kind of misplaced logic and finally (c) the applicant is patently guilty of not disclosing the fact of an earlier release of provisional

pension anywhere in the OA. Therefore, there are enough reasons to conclude that the applicant has not only not approached the Court with clean hands but has on the contrary instead, tried to confuse the matter by raising the bogey of estoppel, res judicata etc. Therefore, apart from weak grounds regarding the pointless contention, that the current OA cannot be debarred on grounds of estoppel etc, there is distinct proof to hold the applicant also liable to be punished in the spirit of the law laid down by the Hon Apex Court in the matter of Shashi (supra).

10.0 As regards the plea of the applicant for justifiable release of provisional pension on the grounds of difference in scope of Rule-9 and Rule-69 of the Pension Rules, the Ld respondent counsel has argued that the applicant's contention is not worth considering because (i) the final order of 31.05.2016 has been passed with respect to Rule-9 for which the President of India has full powers (ii) that as regards Rule-69, since the provisional pension has already been granted to the applicant as pointed out earlier, therefore, there is no occasion to consider this plea **now afresh** on any ground whatsoever, (iii) the final order forfeiting the pension and the gratuity has been passed under Rule-9 in which the earlier possible order under Rule-69 granting provisional pension now merges because as per Rule 69(1)(b) provisional pension is payable only upto such time as from the date of retirement upto and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the Competent Authority and since in this case, the judicial proceedings were concluded vide order of trial court dated 17.02.2014, it was only logical and lawful to thereupon follow it up with the order dated 31.05.2016 under Rule-9 by the Competent Authority. Therefore, there

is nothing left to decide upon the issue of orders qua Rule-9 vs Rule-69 or w.r.t powers of the President of India regarding them and so there is no justifiable ground with the applicant to further seek release of provisional pension on the above specious plea.

10.1 We are inclined to agree with the respondent counsel. But before doing so it is important that we examine the Rule-9 and Rule-69 very carefully. Relevant abstracts of the rules are reproduced herein below:

Rule-9 of CCS (Pension) Rules, 1972

"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 :

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 pensions shall not be reduced below the amount of rupees three hundred and seventy-five per mensem.

(2)....

(3)....

(4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 69 shall be sanctioned.

(5)....

(6) For the purpose of this rule, -

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date ; and

(b) judicial proceedings shall be deemed to be instituted -

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made, and

(ii) in the case of civil proceedings, on the date the plaint is presented in the court.

Rule-69 of CCS (Pension) Rules, 1972

69. Provisional pension where departmental or judicial proceedings may be pending

(1) (a) In respect of a Government servant referred to in sub-rule (4) of Rule 9, the Accounts Officer shall authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant, or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorized by the Accounts Officer during the period commencing from the date of retirement up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon :

Provided that where departmental proceedings have been instituted under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, for imposing any of the penalties specified in Clauses (i), (ii) and (iv) of Rule 11 of the said rules, the payment of gratuity shall be authorized to be paid to the Government servant.

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period."

From the above, following conclusions fall into place very clearly: (i) that vide Rule-9(4), on retirement, a government servant is entitled to provisional pension if there are any pending judicial proceedings, (ii) that this entitlement is enabled under Rule-69 by the process of authorization by the Accounts Officer, (iii) the provisional pension when released shall subsist under Rule 69(1) **only upto and**

including the date on which after the conclusion of departmental proceedings or judicial proceedings, final orders are passed by the Competent Authority. Thus, there is no legal space left after order under Rule 9(4) is passed w.r.t any order for release of provisional pension under Rule-69 at all even if by the authorisation of the Accounts Officer. Therefore, applicant has no issue left to lay claim to provisional pension any more and the applicant is trying to create, nay, obfuscate an issue where none exists.

10.2 The contention of the applicant that Rule-9 and Rule 69 are totally independent of each other is quite misplaced because as is clearly seen above, Rule 9(4) clearly leads to the path of Rule 69(1)(a) and 69(1)(b) implying thereby that the concerned rules / sub-rules are quite inter-related and liable to be read in harmony. Rather they are not in vacuous exclusion as the applicant counsel wishes to stress but that, they are in complete peace with each other as to their connected roles. This can be even more clearly understood if one deliberates as to why should the power of highest level viz, the President of India be invoked at all in a routine task of release of provisional pension under Rule 69(1). The idea of the law makers under Article 309 which is the fountainhead of any rule concerning government employees, whether Pension Rules 1972 or CCS (CCA) Rules, 1965 is to devolve authority where required and not spray the same all over the Rule canvas irrationally. Quite logically Rule 9 (1) of Pension Rules requires a major decision of forfeiture in part or in full, of pension of any employee after long years of service, so; rightly the President of India is ordained to take this onerous decision. However, mere **authorization** of release of provisional pension is relegated to the level of just an Accounts Officer under Rule

69 because it is a reasonably routine decision comparatively. It is for this reason that (i) the time period till which the writ of the order of authorization by the Accounts Officer will last, is that it will last, so long as the final orders are not passed by the Competent Authority after the conclusion of the departmental or judicial proceedings and once the final orders are passed by the competent authority, viz the President of India, then the onerous decision viz, **reserving the right to** forfeiture/recovery of permanent pension in any manner is left to the President of India, as, it then, becomes a more grave matter which is when the Rule 9 starts operating. The point is that the choice of words – **authorization vs reserving the right**, is a deliberate will of the law maker to prescribe an appropriate authority level for an appropriate decision: authorization as in the case of the Accounts Officer and reserving the right – as in the case for the President – for a more complex decision involving issue of seizure of pension etc.

10.3 There is thus, no confusion or clash whatsoever qua the exercise of authorities between both the Rules and each decision is ordained to be taken at due time and circumstance by the appropriate level of authority. Moreso neither the President of India nor the Accounts Officer have erred in exercise of their powers under the said rules in the present matter, **as is the earnest desire of the applicant to believe for himself**. The order of 31.05.2016 stands unassailed till date. It is issued under the seal of authority of the President of India. The specious plea of the applicant that the 31.05.2016 order does not and cannot deal with release of provisional pension which is possible only vide Rule 69, cannot also be sustained because, the fact of the matter is that the provisional pension benefit has been

given to the applicant earlier itself, as per documents produced before the Tribunal by the respondents and argued as much by the respondent counsel and not only not controverted but also **hidden by the applicant**. The applicant has also to understand that once the permanent pension is forfeited or impacted vide order Rule-9 then any provisional pension authorized earlier by an appropriate authority (Accounts Officer) gets stopped as per Rule 69(1)(b).

10.4 This becomes very clear if we appreciate the wordings of the Rule 69 (1)(b), which allow the authorization of provisional pension only and only "**from the date of retirement and *up to and including the date on which, after conclusion of departmental or judicial proceedings final orders are passed by the Competent Authority*".** The point to be understood is that the provisional pension is a help to the employee to subsist till permanent pension is delayed for any reason whatsoever, which is why the provisional pension is to be released as from the date of retirement itself. But then it is also laid down that such a facility lasts its unhindered run only till the Competent Authority has issued final orders whatsoever they maybe which then hold forth thereafter, over and above the provisional pension relief / help granted earlier. Meaning thereby that the provisional pension gets automatically and logically stopped if the regular pension itself gets forfeited for a defined period of time or permanently as ordained by the Competent Authority. One **cannot have anachronistic situation of legally sustainable stoppage of regular pension on one hand and equally legally sustainable release of provisional pension on the other hand at the same time in parallel.** In the present case with the passage of order of 31.05.2016,

the Competent Authority viz the President of India has directed permanent forfeiture of 100% of the pension and so the era of provisional pension facility ends from 31.05.2016 and as rightly argued by the respondent counsel, no further prayer for grant of provisional pension under Rule 69 of the Pension Rules can lie as the order passed under **Rule-9 has to, by its very nature subsume within itself any order under Rule-69**. So, there is no tangle here between Rule-9 and Rule-69 of the Pension Rules. In fact, if anything, there is clear harmony which the applicant would very much wish to deny but quite unsuccessfully so.

Therefore, the plea of the applicant for justifiable release of provisional pension on the grounds of difference in scope of Rule-9 and Rule-69 of the Pension Rules is not sustainable and liable to be held in the negative against him.

11. As regards gratuity, the legal position is quite clear – viz – under Rule 69(1)(c) no right accrues to the government servant as to the gratuity until the pending judicial proceeding gets concluded and that, this right (that is right to gratuity) in the present case, was lost to the applicant as from the date of passing of the order dt 31.05.2016 under Rule-9 after the conviction by the trial court in 2014.

12. Given the above set of factual matrix, the citation by the Ld applicant counsel viz, Union of India vs Inspector Rishi Prakash Tyagi (decision date 17.02.2010;WP 13413/2009) {hereinafter referred to as "Tyagi"} as decided upon by the Hon Delhi High Court is misplaced because the Tyagi matter concerned release of provisional pension which was not being released without a valid stoppage order. The

following abstract from the Tyagi judgement would make it clear:

> *"The departmental proceedings which were initiated against the respondent under Rule 9(1) has been forwarded to the President for decision on withholding of pension/gratuity in accordance with rules,* ***however, no decision has yet been taken by the President.***
>
> ***Though no decision on withholding the pension/gratuity in compliance with the CCS Pension Rule has been taken, however, after 31st January, 2007 no provisional pension has been paid to the respondent".....*** *(emphasis supplied)*

Therefore, as compared to the present matter wherein, provisional pension has already been sanctioned once earlier there is no order or decision left to be taken which could be called as 'pending', therefore, there is no case for the applicant to cite the above ruling. Therefore, the plea for release of provisional pension on grounds of non-operation of Rule-69 independent of a final order under Rule-9 and even while it is alive (that is order under Rule-9), is liable to be held in the negative against the applicant. **The applicant is well poised ironically for *Qui totum vult totum perdit" – He who wants everything loses everything.***

13. Now let us advert to the next ground, wherein it is claimed that since the Hon' High Court has enlarged the applicant on bail and even suspended the sentence awarded by the trial court, hence this implies that judicial proceedings are still pending and so the provisional pension has to be now released under Rule-69 of the Pension Rules **over and above the existing order of 31.05.2016 passed under Rule-9 of the Pension Rules**. Moreso, since pension is right of an employee and not a bounty as per rulings of the Hon Apex Court / Other High Courts, hence also the provisional pension cannot be withheld.

13.1. The Ld. Respondent counsel has repelled this plea by submitting that the Hon Delhi High Court in the matter of PC Misra vs Union of India has clearly held that once conviction has been pronounced by the trial court the judicial proceedings cannot be construed to be continuing notwithstanding any appeal in higher court, thereafter, subsequently. Relevant portions of this order are reproduced below for clarity:

> *"18. The thrust of the petitioners submission is that since his criminal appeal is pending before the High Court against his conviction and sentence, and as the sentence has been suspended by the appellate court, his conviction has not attained finality since appeal is a continuation of the original proceedings. He also relies upon Rule 69(1)(b), which provides that the provisional pension shall be authorized during the period commencing from the date of retirement upto and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority. The submission is that the judicial proceedings cannot be said to have attained conclusion in view of the pendency of the criminal appeal.*
>
> *19. The aforesaid submission of the petitioner has not merit.*
>
> *20. In K.C. Sareen v. CBI, Chandigarh, (2001) 6 SCC 584, the .... submission of the appellant before the Supreme Court was: "7. ... ... as a trial can logically reach its final end only when the appellate court decides the matter the conviction passed by the trial court cannot be treated as having become absolute... ...".*
>
> *23. The Supreme Court observed that:*
>
> ***"11. ... ... when the appellate court admits the appeal filed in challenge of the conviction and sentence for the offence under the PC Act, the superior court should normally suspend the sentence of imprisonment until disposal of the appeal, because refusal thereof would render the very appeal otiose unless such appeal could be heard soon after the filing of the appeal. But suspension of conviction of the offence under the PC Act, dehors the sentence of imprisonment as a sequel thereto, is a different matter".*** *(emphasis supplied)*
>
> *24. The observations made by the Supreme Court in the following paragraph of K.C. Sareen (supra) are most pertinent in the present context. The said paragraph reads as follows:*
>
> *12. Corruption by public servants has now reached a monstrous dimension in India. Its tentacles have started grappling even the institutions created for the protection of the republic. Unless those tentacles are intercepted and impeded from gripping the normal and orderly functioning of the public offices, through strong legislative, executive as well as judicial exercises the corrupt public servants could even paralyse the functioning of such institutions and thereby hinder the democratic polity. Proliferation of corrupt public servants could garner momentum to cripple the social order if such men are allowed to continue to manage and operate public institutions. When a public servant is found guilty of corruption after a judicial adjudicatory process conducted by a court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior court. The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction, it is public interest which suffers and sometimes, even*

irreparably. When a public servant who is convicted of corruption is allowed to continue to hold public office, it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction, the fallout would be one of shaking the system itself. Hence it is necessary that the court should not aid the public servant who stands convicted for corruption charges to hold only (sic) public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level. It is a different matter if a corrupt public officer could continue to hold such public office even without the help of a court order suspending the conviction." (emphasis supplied)

25. The position is no different in the present case. The ratio of the aforesaid judgment is clearly applicable in the facts of the present case. ***The petitioner is liable to be treated as corrupt until he is exonerated by a superior court on merits and not on mere technical grounds - such as lack of, or irregular sanction to prosecute. Mere pendency of his appeal does not even temporarily absolve him from the findings of guilt.*** *(emphasis supplied) Though the petitioner stands convicted and sentenced by the Trial Court, he is nevertheless seeking to assert his claim for provisional pension which, in the fact and circumstances, is equivalent to his regular pension, during pendency of his criminal appeal. Thus, the petitioner is asserting his claim, as if he is a government servant who has retired without any blemish, even though he stands convicted and sentenced by the trial court for conduct which also tantamounts to grave misconduct.* ***He is seeking to draw, on a monthly basis, provisional pension equivalent to his regular and full pension, which would not be recoverable even if his criminal appeal were to be dismissed.****(emphasis supplied)*

26. In our view, the State is not obliged to financially support a government servant who has been found guilty in a case of corruption by the criminal court- either provisionally (during pendency of this criminal appeal), or otherwise. Such a government servant, who stands convicted in a corruption case, ought to be considered as a parasite and a burden, not only on the government, but on the society at large. There is no reason why public money should be doled out to him, only to await the decision of the appellate court, which is pending at his behest against his conviction and sentence. Of course, the situation could change if, and when, the criminal appeal of the convicted Government Servant is allowed. If the exoneration is on merits, he may be entitled to claim revocation of the Order Under Rule 19(i) of the CCS (CCA) Rules or Rule 9 of the Pension Rules- as the case may be. However, if the exoneration is on purely technical grounds, whereas the findings of fact which constitute grave misconduct remain undisturbed, he may not even be entitled to derive benefit of his exoneration. That would have to be examined by the Government in each case, on the facts of that case.

The key point is that while it is observed that when the appellate court admits the appeal filed to challenge the conviction and sentence for an offence under the PCA, the superior court should normally suspend the sentence of imprisonment until disposal of the appeal, because refusal thereof would render the very appeal otiose unless such appeal could be heard soon after the filing of the appeal, but, that suspension of conviction of the offence under the PCA, dehors the sentence of imprisonment as a sequel thereto, is a different matter. Paras 24 to 26 of the citation

above make it abundantly clear that the applicant cannot lay claim to the fact that just because his sentence is suspended and he is on bail therefore the conviction itself stands suspended and so the order of 31.05.2016 cannot stand, as the very basis of the order viz the conviction by the trial CBI court is knocked off due to the suspension of the sentence and enlargement of the applicant on bail. If so construed, there is no need for the criminal courts to distinguish the conviction factum from the sentence pronouncement. Such an understanding is quite illogical and we cannot uphold such a contention on legally sustainable legs.

13.2 On the issue of pension not being a bounty and being equivalent to a right to property and so purportedly inalienable even under powers of Rule-9 of the Pension rules, the Ld applicant counsel has cited a number of rulings namely, DS Nakra & Ors vs Union of India, 1983 AIR 130, judgment of this Tribunal in the OA 4/2015 in the matter of Lachhman Singh vs Union of India. However, his reliance on these judgements is once again misplaced. First of all, these citations relate to matters where ab-inito provisional pension has not been sanctioned and also, that, there are no orders w.r.t Rule-9 of the Pension Rules. Therefore, the factual matrix of the citations differ and we cannot be supported by differently placed facts and their related judgments and apply *ratio decidendi blindly.*

13.3 The Ld. applicant counsel has also assailed the citation of the respondent concerning Deputy Director of Collegiate education vs S. Nagoor Meera (1995 AIR 1364) (hereinafter referred to as 'Nagoor') inasmuch that it relates to Article 311 (2) and not Rule-69 of Pension Rules. The applicant has also taken cover under Section 374 and 393 of the CrPC regarding appeal from convictions and the

finality of judgements and orders on appeal. To deal firstly with the issue of challenging the Nagoor citation, we would like to quote few portions of an analysis of the matter of ratio decidendi from an excellent essay viz " Ratio Decidendi and Common Cause v Union of India by Dr AR Biswas, MA, LLM, PhD (www.ebc-india.com/lawyer/articles/87v4a5.htm) wherein it has been assayed as below -

> *".....There is perpetual flux in the total push and pull of the universe and a judge faces a twofold task: (1) he must first extract from the precedents the underlying principle, the ratio decidendi; (2) he must then determine the path or direction along which the principle is to move and develop....*
>
> *A decision is binding not because of its conclusion but in regard to its ratio* ***and the principle laid down therein****." (emphasis supplied)*
>
> *In a famous dictum Lord Halsbury said: "A case is only authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas (it) is not always logical at all."*
>
> *Literally interpreted it would be fatal to any system of precedents. But what Halsbury meant is that there is more to the law than a mechanical process of logical deduction. It is obvious that the Judge has in every case to decide for himself which of the circumstances of the alleged precedent were relevant to the decision and whether the circumstances of his own case are in their essentials similar.*
>
> *Once he has decided which principle to apply, a bit of logic may enter into his application of principles. But there cannot always be a principle which imposes itself or an absolutely inescapable logical deduction. Generally there is a choice. And this has been explained by Chandrachud, C.J. in Deena v. Union of India thus: "Any case, even a locus classicus, is an authority for what it decides. It is permissible to extend the ratio of a decision to cases involving identical situations, factual and legal, but care must be taken to see that this is not done mechanically, that is, without a close examination of the rationale of the decision cited as a precedent."*

The key point to be understood is that the expression **ratio decidendi** refers to a binding principle and it is this laid down 'principle' which is the key to unlock the points of law ingrained in the web of facts, rules, acts, etc while dealing a lis.

13.4 Having cleared the air around interpretation of judicial citations, let us now address the issues raised by the applicant regarding provisions of CrPC and CPC and

then take up Nagoor citation relevance. For this we reproduce the CrPC/CPC sections:

Section 374 CrPC

"374. Appeals from convictions.

(1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial, may appeal to the High Court.

(3) Save as otherwise provided in sub- section (2), any person,-

(a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class, or of the second class, or

(b) sentenced under section 325, or

(c) in respect of whom an order has been made or a sentence has been passed under section 360 by any Magistrate, may appeal to the Court of Session."

Section 393 CrPC

"393. Finality of judgments and orders on appeal. Judgments and orders passed by an Appellate Court upon an appeal shall be final, except in the cases provided for in section 377, section 378, sub- section (4) of section 384 or Chapter XXX: Provided, that notwithstanding the final disposal of an appeal against conviction in any case, the Appellate Court may hear and dispose of, on the merits,-

(a) an appeal against acquittal under section 378, arising out of the same case, or

(b) an appeal for the enhancement of sentence under section 377, arising out of the same case."

Section 11 CPC

"11. Res judicata— No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."

We may also quote another relevant section viz Section 389 of the CrPC also here:

> *"389. Suspension of sentence pending the appeal; release of appellant on bail.*
>
> *(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.*
>
> *(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court subordinate thereto.*
>
> *(3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,-*
>
> *(i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or*
>
> *(ii) where the offence of which such person has been convicted is a bailable one, and he is on bail, order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub- section (1); and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.*
>
> *(4) When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced."*

We may now deal with the above Sections and Nagoor for which we may advert to the case citation of Nagoor (supra) for which it will be useful to first reproduce relevant abstracts as is done herein under below:

> *"3. On October 27, 1993 the Deputy Director of collegiate Education issued a notice to the respondent calling upon him to show cause why he should not be dismissed from service in view of his conviction by the criminal court. The show cause notice expressly recites that inasmuch as the High Court has only suspended the sentence, his conviction is still in force. The notice also recites the nature of the offence for which the respondent was convicted.*
>
> *7. This clause, it is relevant to notice, speaks of "conduct which has led his conviction on a criminal charge". It does not speak of sentence or punishment awarded.* ***Merely because the sentence is suspended and/or the accused is released on bail, the conviction does not cease to be operative. (emphasis supplied)***
>
> *Section 389 of the Code of Criminal Procedure, 1973 empowers the appellate court to order that pending the appeal "the execution of the sentence or order appealed against be suspended and also if he is in confinement that he be*

released on bail or on his own bond." Section 389(1), it may be noted, speaks of suspending "the execution of the sentence or order", it does not expressly speak of suspension of conviction. ..."

8. ..... We are, therefore, of the opinion that taking proceedings for and passing orders of dismissal, removal or reduction in rank of a government servant who has been convicted by a criminal court is not barred merely because the sentence or order is suspended by the appellate court or on the ground that the said government servant-accused has been released on bail pending the appeal.

9. The Tribunal seems to be of the opinion that until the appeal against the conviction is disposed of, action under clause (a) of the second proviso to Article 311(2) is not permissible. We see no basis or justification for the said view. The more appropriate course in all such cases is to take action under clause (a) of the second proviso to Article 311(2) once a government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be. If, however, the government servant- accused is acquitted on appeal or other proceeding, the order can always be revised and if the government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service. The, other course suggested, viz., to wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a criminal court. .....

10. What is really relevant thus is the conduct of the government servant which has led to his conviction on a criminal charge. Now, in this case, the respondent has been found guilty of corruption by a criminal court. Until the said conviction is set aside by the appellate or other higher court, it may not be advisable to retain such person in service. As stated, above, if he succeeds in appeal or other proceedings, the matter can always be reviewed in such a manner that he suffers no prejudice .....

12. The appeal is accordingly allowed and the order of the Tribunal is set aside".

The key relevant point is the observation of the Hon Apex Court that the issue of importance is the conduct of the government servant which has led to his conviction on a criminal charge. This is why, referring to the facts of the case, the it has observed that as the respondent has been found guilty of corruption by a criminal court, therefore, **until the said conviction is set aside by the appellate or other higher court, it may not be advisable to retain such person in service.** That is to say that till the trial court order of conviction is not overturned or quashed finally by the appellate court, it may not be advisable to retain such person in service, who has no right to continue in service till the conviction is actually set aside. The Court has in fact later clarified its mind when it has stated that, if

petitioner succeeds in appeal, the matter can always be reviewed in such a manner that he suffers no prejudice. When this principle of distinction between conviction vs mere suspension of sentence is applied to the current case, retiral rights or employment rights withheld under Rule 9 could be restored, but only when the appeal succeeds finally and **not in the interim by way of suspension of sentence or enlargement of the applicant on bail etcetra.**

13.5 **It is this which is the crux of the matter and inorder to probe this further let us advert to the Misra judgement.** A plain reading would reveal that the Misra judgement deals at length with situations concerning appeal in a criminal matter and its impact on actions under Rule-9 of Pension Rules. Following abstract makes this clear:

> *31. Under clause (b) of Rule 69(1), the relevant expression used is "from the date of retirement upto and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority". Pertinently, while making the said rule by resort to proviso to Article 309 of the Constitution of India, the President uses the expression "final" only once i.e. in relation to orders which are passed by the competent authority. However, no such word or expression is used before the word "conclusion of departmental or judicial proceedings".* ***If the intendment of the President - while framing the said rule was to release provisional pension to the government servant upto the date of "final" conclusion of departmental or judicial proceedings, the President would have used the said expression "final" before the words "conclusion of departmental or judicial proceedings", just as he used the expression "final" in respect of the orders to be passed by the competent authority. Thus, the plain grammatical and literal interpretation of clause (b) of Rule 69(1) does not support the interpretation that the conclusion of departmental or judicial proceedings means the "final" conclusion of departmental or judicial proceedings. (emphasis supplied)***
>
> *32. Rule 69(2), inter alia, provides that no recovery shall be made from the provisional pension after the conclusion of the proceedings if the pension finally sanctioned is less than the provisional pension, or the pension is reduced or withheld either permanently, or for a specified period. Thus, whatever is released by way of provisional pension to the government is not secured or recoverable from him. Rule 69(1)(a) provides that the provisional pension shall be equal to the maximum pension which would have been admissible on the basis of the qualifying service of the government servant. Thus, if the interpretation sought to be advanced by the petitioner were to be accepted, it would mean that the government would have to pay - month after month, the provisional pension, which - in most cases would be equal to the full pension, even though the government servant stands convicted by the Trial*

Court of conduct which tantamount to a serious and grave misconduct, merely because his criminal appeal is pending before the higher Court. This could not have been the intendment of the President while framing either Rule 69(1)(b), or Rule 9(1) of the Pension Rules.

33. The decision in the appeal may not come for years for myriad reasons. Firstly, the heavy pendency of criminal appeals would come in the way of disposal of the appeal on an early date. Secondly, even the Government servant/ appellant may seek adjournments to delay the disposal of the appeal.

Is it to be accepted that a government servant - who stands convicted of a corruption charge before a criminal Court, should continue to receive provisional pension, just as good as the full pension, only on account of pendency of his criminal appeal? In our view, the answer to this question has to be an emphatic "No". (emphasis supplied)

34. If the interpretation of the petitioner were to be accepted, the conviction would not attain finality even for purposes of Rule 19 of the CCS (CCA) Rules, or Rule 9 of the Pension Rules even after dismissal of the Criminal Appeal, because the petitioner would still have a right to prefer a Special Leave Petition under Article 136 of the Constitution of India before the Supreme Court. There would be no end to this process as the petitioner could file one petition after another and seek review, recall, or even file a curative petition. Pertinently, the conviction of the petitioner has not been stayed by the appellate court and only his sentence has been suspended. Therefore, for all purposes, he is a convict. To permit such a convict to draw provisional pension - which in most cases would be equal to the full pension, would be to make a mockery of the law. The same would mean that despite his conviction by the criminal court involving a serious and grave case of misconduct, he would get away without any adversity, and would continue to remain a burden on the State. Thus, in our view, for purposes of Rules 9(1) and 69(1)(b) of the Pension Rules, the judicial proceedings have attained conclusion upon the conviction of the petitioner by the trial Court, and the competent authority is entitled to pass final orders for withdrawing the whole or part of the pension permanently or for a specified period; for forfeiture of the Gratuity, and; for ordering recovery of the pecuniary loss caused to the government due to the grave misconduct established in the judicial proceedings.

35. The decision in K.C. Sareen (supra) was not brought to the notice of the Karnataka High Court when it decided N.K. Suparna (supra). The Punjab & Haryana High Court in Central Administrative Tribunal, Chandigarh Bench (supra), primarily, relies upon N.K. Suparna (supra) and Akhtari Bi (supra). Unfortunately, the decision of the Supreme Court in K.C. Sareen (supra) was not noticed even by the Punjab and Haryana High Court Bench while rendering its decision.

36. In V.K. Bhasker (supra), the respondent employee had been dismissed from service by resort to Rule 19(i) of the CCS (CCA) Rules consequent upon his conviction in the corruption case. He assailed his dismissal from service on the ground that his criminal appeal was pending. The tribunal allowed the O.A. of the respondent on the premise that his appeal against his conviction and sentence was pending. The Supreme Court set aside the said order by, inter alia, observing:

"5. The Tribunal was, therefore, not right in holding that the respondent could not be dismissed by invoking the provision of Rule 19(i) of the Rules because the appeal filed by him against the conviction and sentence is pending in the High Court".

37. The petitioner has also placed reliance on the judgment of Allahabad High Court in Uma Shanker Bharti (supra). In this case, while in service, the petitioner was charged under section 302 IPC. He was convicted on 22.09.1988 by the learned Additional Sessions Judge. He preferred an appeal, which was admitted. Thereafter, he retired on superannuation on 30.09.1989. He demanded his retiral benefits. The same were denied on the ground that he stood convicted and sentenced to life imprisonment. The submission advanced by the petitioner before the High Court was that when he was convicted, he was not a pensioner but in active service and, therefore, Regulation 4 of the Pension Regulations for the Army, 1961 („Army Regulation", for short) was not attracted.

38. Firstly, we may observe that a perusal of the judgment shows that not only the conviction, but also the sentence under section 302 IPC had been stayed during pendency of the appeal by the High Court vide order dated 16.03.1990. Consequently, despite the petitioner"s conviction under section 302 IPC, on 22.09.1988 he was granted bail on the very next date i.e. 23.09.1988. On this short ground, Uma Shanker Bharti (supra) is distinguishable. Though we have reservations with the interpretation given by the Allahabad High Court that the petitioner was not a "pensioner", but in active service while he was convicted and, therefore, Army Regulation 4 was not attracted since the same provides that the competent authority may withhold or withdraw pension if a "pensioner" is convicted of a serious crime, we need not delve into the said issue since the facts, as noticed above, were materially different in Uma Shanker Bharti (supra) from the facts in the present case. We may only observe that the expression used is "a pensioner" in Army Regulation 4, since the pension can be withheld or withdrawn only from a "pensioner", and not from a serving officer in active service. If the departmental or judicial proceedings was pending when the government servant was in active service, it matters not whether the finding of guilt is returned in the said proceedings before or after the retirement of the government servant. In either case, the government is entitled to take disciplinary action against the government servant. Only the nature of the action/ penalty that may be imposed would vary. Obviously, in respect of a retired government servant, the option to dismiss or remove him from service, or subject him to any other major or minor penalty in terms of Rule 11 of the CCS (CCA) Rules is not available. The government can only withhold or withdraw the pension and/ or gratuity, and make recovery of pecuniary loss suffered by the government.

39. The submission of Mr. Mishra that the withholding of 100% monthly pension and forfeiture of gratuity is unconstitutional has no merit. There is no absolute right in a government servant to receive either pension or gratuity. Under a duly framed law, the same can be withheld and withdrawn. Rule 9 of the Pension Rules, having been framed by the President in exercise of his constitutional power contained in proviso to Article 309 of the Constitution, the same has statutory force in terms of the said Article of the Constitution.

40. For the aforesaid reasons, we find no merit in this petition and dismiss the same leaving the parties to bear their respective costs.

13.6 Thus it is clear from above that no further clarification need be given in addition to the citation's verbatim text above with regards to treatment of action against a government employee convicted by a trial court and his / her appeal against the same and the impact of the

same on the finality of an order passed under Pension Rules or CCS (CCA) Rules. To elaborate further, reference to the law explicitly laid down by the Hon'ble Apex Court in the matter of Union of India (UoI) vs V.K. Bhaskar on 30 January, 1996, equivalent citations: JT 1998 (9) SC 301, (1997) 11 SCC 383 also quoted in Misra becomes pertinent. Herein it has been held emphatically that –

> ***".....If. however, the government servant-accused is acquitted on appeal or other proceeding, the order can always be revised and if the government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service. The other course suggested, viz., to wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a criminal court..... (emphasis supplied)***

In the present case, the applicant has already been found guilty of corruption by a criminal court. Until the said conviction is set aside by the appellate or other higher court finally, it is not lawfully justifiable to release any benefit of any pension on the ground that he has superannuated from service without any blemish/suspended blemish or a criminal misconduct whose finality is yet to be arrived at for the purposes of dealing with service matters – in the present case, qua release of provisional pension. As stated, above, if he succeeds in appeal(s) finally, etc the matter can always be reviewed in such a manner that he suffers no prejudice. The Misra judgement thus settles the issue of **finality of a judgment in a criminal proceeding at complete rest** as it is emphasized that merely because the sentence is suspended and/or the accused is released on bail, the conviction does not cease to be operative. Thus, while Section 389 of the CrPC, 1973 empowers the appellate court to order that pending the appeal 'the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his

own bond, it does not expressly speak of suspension of conviction itself. Therefore, Misra holds that proceedings and passing orders w.r.t. dismissal, removal of reduction in rank of a government servant who has been convicted by a criminal court is not barred merely because the sentence or order is suspended by the appellate court or on the ground that the said government servant-accused has been released on bail pending the appeal. The averment of the Ld applicant counsel that interalia above citations do not fit the matrix of the case is not acceptable as the matrix of facts and the principle laid down in the above citations are quite relatable. Therefore, the cover sought by the Ld Applicant counsel qua the sections of CrPC and CPC gets blown over by the winds of law laid down by the aforesaid rulings and even otherwise on the basis of above reasoning.

14. In fact, reliance by the Ld applicant counsel on the judgment of the Hon'ble Madhya Pradesh High Court (Criminal Appeal No 1248/2005 in Dashrath vs State of MP) **is overpowered by the Mishra Judgment of November, 2018**. Similarly, as regards the citation concerning the Hon'ble Gauhati High Court in WP 7083/2018 Birendra Kumar Das vs The Assam Power Corporation, it is seen that the citation concerns entitlement to provisional pension during pendency of judicial proceedings and not a situation where Rule-9 orders have been passed finally. Thus, there is no case of the applicant even on the strength of any citations to enable justifiable release of provisional pension as repeated *carpe diem* by the applicant.

15. As regards the issue of pension being a right of an employee and not a bounty, the issue has also been dealt with in the Misra judgement which observes in para-27 as under:

> *"...27.....The Supreme Court - in the course of its judgment, observed that the right to receive pension had been recognized as a right to property by the Constitution Bench in its decision in Deokinandan Prasad v. State of Bihar, (1971) 2 SCC 330. The Supreme Court also observed that there was no provision or rule for withholding provisional pension, or for withholding pension/ gratuity when the departmental proceedings or judicial proceedings are still pending.*

While discussing the above judgment, the Hon'ble Delhi High Court observed in the later part of the judgement on the above judgement of the Hon'ble Apex Court itself as below:

> *"38.....Obviously, in respect of a retired government servant, the option to dismiss or remove him from service, or subject him to any other major or minor penalty in terms of Rule 11 of the CCS (CCA) Rules is not available. The government can only withhold or withdraw the pension and/ or gratuity, and make recovery of pecuniary loss suffered by the government.*
>
> *39. The submission of Mr. Mishra that the withholding of 100% monthly pension and forfeiture of gratuity is unconstitutional has no merit. There is no absolute right in a government servant to receive either pension or gratuity. Under a duly framed law, the same can be withheld and withdrawn. Rule 9 of the Pension Rules, having been framed by the President in exercise of his constitutional power contained in proviso to Article 309 of the Constitution, the same has statutory force in terms of the said Article of the Constitution.*

Thus, the 'Misra' judgment has addressed even the judgment of **Hon'ble Apex court ruling of Deokinandan (supra)** and concluded that there is no absolute unassailable right in a government servant to receive either pension or gratuity and that the same can be indeed withheld under a duly framed law. Such a principle would as much apply to a provisional pension matter as much to a regular pension matter, because both are rights accruing under the same set of rules – the CCS Pension Rules, 1972 and the operation of the principles for devolution of these rights - viz the regular or provisional pension cannot be different in terms of their related principles.

This settles unequivocally, the applicant's unfettered claim on pension, more contextually – provisional pension - being a right in any circumstance concerning a government employee and so his contention is set aside on the basis of the above reasoning.

16. In conclusion therefore, we have no difficulty in holding that the OA has no grounds of merit to justifiably support any of the prayed relief. The OA is therefore liable to be dismissed and is dismissed. No costs.

Member (A) **Member (J)**

JNS