IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

O.A. No. /410/89
T.A. No.

DATE OF DECISION September 1, 1993.

Shri B.B.Kansara — Petitioner

Shri K.M.Thakkar — Advocate for the Petitioner(s)

Versus

Union of India & others — Respondent

Shri Akil Kureshi — Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C.Bhatt : Judicial Member

The Hon'ble Mr. M.R.Kolhatkar : Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✗
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✗
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✗

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Shri B.B.Kansara,
23/A, Narayan Estate,
Broach-392 001 ..Applicant

Advocate Mr.K.M.Thakkar

versus

1. Union of India, notice to be served through The Under-Secretary to the Govt. of India, Ministry of Finance, Revenue Department, North Block, New Delhi.
2. The Secreta ry, Union Public Service Commission, New Delhi-110 0011.
3. The Collector of Central Excise and Customs, Central Excise Building, Race Course Circle, Baroda.
4. The Assistant Collector of Central Excise, Division-II, Jivabhai Mansion, Ashram Road, Ahmedabad. ...Respondents.

Advocate Mr.Akil Kureshi

ORAL JUDGEMENT

O.A./410/87

Date : 1/9/1993

Per : Hon'ble Shri R.C.Bhatt : Judicial Member.

None is present for the applicant.

Application is dismissed for default.

M R Kolhatkar.

(M.R.KOLHATKAR)
Admn. Member

(R.C.BHATT)
Judicial Member.

AIT/SS

15/3/94 Adjourned to 21.4.1994 at the

request of the applicant's advocate.

(K.Ramamoorthy)
Member(A)

(N.B.Patel)
Vice Chairman

a.a.b.

21/4/94

other

As the learned Member of the Bench is not available, the matter is adjourned to 15.6.94.

K. RAMAMOORTHY
MEMBER (A)

15-6-94. Adjourned to 21-7-1994.

(Dr.R.K.Saxena)
Member(J)

(K.Ramamoorthy)
Member(A)

vtc.

1.7.1994. M.A./388/94, is not pressed by the applicant's advocate. Hence M.A./388/94, stands disposed of. Heard Mr.Thakkar. Matter is part heard. Adjourned to 25.7.1994.

(Dr.R.K.Saxena)
Member (J)

(K.Ramamoorthy)
Member (A)

M.A.647/93 IN O.A.410/89

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Date	Office Report	Order
3-12-93		There is a leave note filed by learned advocate for the applicant. Hence the matter is adjourned to 23-12-93 (V.RADHAKRISHNAN) Member (A) (R.C.BHATT) Member (J) ssh
23-12-93	NO order dtd. 16.2-94, as Hon'ble Mem (A) has adj. the matter to 15.3-94, vide endorsement on the application dtd 15-2-94 of the applicant (in Part 'C'). Bhagat 15-2-94	Heard Mr.Akil.Kureshi. Applicant is present in person. M.A.is allowed. Dismissal order is set aside and O.A.410 of 1989 restored to file. Fix the matter for final hearing on 16/2/94. M.A.647/93 stands disposed of. Call on 16-2-94. (K.RAMAMOORTHY) MEMBER (A) (N.B.PATEL) VICE CHAIR *AIT

OA 410/89.

Date	Office Report	ORDER
25-7-94		Adjourned to 4-8-1994. (Dr. R.K. Saxena) Member (A) (K. Ramamoorthy) Member (A) *AS.
04-8-94		HEARD LEARNED ADVOCATE FOR THE APPLICANT & RESPONDENTS JUDGEMENT RESERVED (Dr. R.K. Saxena) Member (J) (K. Ramamoorthy) Member (A)
18-8-94		The Judgement pronounced in open court (Dr. R.K. Saxena) Member (J) (K. Ramamoorthy) Member (A)

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CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. NO. 410/89
T.A. NO.

DATE OF DECISION 18-8-94

Mr. B.B. Kansara
Petitioner

Mr. K.M. Thakkar
Advocate for the Petitioner (s)

Versus

Union of India and Others
Respondent

Mr. Akil Kureshi
Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. K. Ramamoorthy Member (A)

The Hon'ble Mr. Dr. R.K. Saxena Member (J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ? yes
2. To be referred to the Reporter or not ? yes
3. Whether their Lordships wish to see the fair copy of the Judgment ? yes
4. Whether it needs to be circulated to other Benches of the Tribunal ? yes

Shri B.B.Kansara
23/A Narayan Estate
Broach 392 001 Applicant.

Advocate Mr. K.M. Thakkar

Versus

1. Union of India (notice to be served through the Under Secretary to the Government of India, Ministry of finance, Revenue Dept. North Block, New Delhi

2. The Secretary Union Public Service Commission, New Delhi

3. The Collector of Central Excise and Customs, Central Excise Bldg, Race Course Circle Baroda.

4. The Assistant Collector of Central Excise Division II, Jivabhai Mansion, Ashram Raod, Ahmedabad.

Respondents.

Advocate Mr. Akil Kureshi

JUDGMENT

In

O.A. 410/1989

Date: 18-8-94

Per Hon'ble Dr. R.K. Saxena Member (J)

The applicant has approached this Tribunal by way of this application challenging the order of withholding Death-cum-retirement Gratuity and entire monthly Pension of Shri B.B. Kansara,

..3..

Superintendent, Grade 'B' (retired) passed by the President on 26-12-1988,—Annexure A. Besides, the applicant has also challenged the vires of Rule 9 of Central Civil Service (Pension) Rules 1972, ~~to~~ sought to declare that the entire proceedings initiated against the applicant right from the stage of charge-sheet are bad in law and illegal, ~~and to~~ & declare that the applicant is entitled and eligible to receive the gratuity together with interest at the rate od 12% per anum, and also sought ~~to~~ & direct the respondents to pay the family Pension regularly to the applicant.

2. The factual matrix of the case is that the applicant was working as Superintendent in the Central Excise and Customs Department at Ahmedabad in the year 1977 to 1979. On 7-11-1979, the Government of India had issued order F.No. 261/19/23/78-CX-9—Annexure A-1. This order was issued ~~by~~ & the Under Secretary, Central Board of Excise and Customs in exercise of the powers conferred by the Fourth proviso of Rule 174 of the Central Excise Rules, 1944 and in super-session of the order of Central Board of Excise and Customs F.No. 261/19/17/75-CX.8 dated 19-6-1976. The Central Board of Excise and Customs permitted the proper officer to grant a licence for the manufacture of Cotton fabrics to an applicant even if such applicant does not hold the written permission of the Textile Commissioner for the installation and working of power-looms for the manufacture of such fabrics or renew such licence if already granted subject to the conditions;

..4..

1. The application for grant of renewal of linence is received by the prcper officer on or before the 31st December 1978, with documentary evidence to show that the power-loom or power-looms in respect of which the grant or renewal of licence has been desired, had been acquired and installed prior to the 7th day of August 1978.

2. The proper officer, on making such inquiry as he may consider necessary, is satisfied about the correctness of the declaration made by the applicant as regards acquisition and installation that power-loom or power-looms, as the case may be, and, that the applicant is not ineligible for the grant or renewal of the licence for any other reason;

3. The licence granted or renewed under this order, shall be laible to be revoked, unless the written permission of the Textile Commissioner is obtained by the licensee and produced before the proper officers by the 31st day of March 1979.

4. During the period the licence is in force (whether granted or renewed) the licensee shall be liable to pay duty per power-loom installed by him or on his behalf, in one or more premises, at the rate specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 233/77 Central Excise, dated the 15th July 1977, as in force for the time being, and

5. the licensee shall comply with such further conditions as may be imposed by the Collector of Central Excise.

..5..

On the issuance of this Order Annexure A-1, the applicant was appointed proper officer to grant licence known as L-4 during the period from November 1978 to February 1979. The applicant issued number of licences of power-looms and according to respondents, those licences were issued without conducting verification required under the said order and consequently misconducted himself. The applicant was put under suspension on 6-3-1979 which automatically came to an end on the date of retirement i.e. 31-7-1979 when the applicant actually retired. On his retirement, the Pension in accordance with the Rules was paid with effect from 1-8-79 vide letter dated 28-9-1979,- Annexure A-3. According to the respondents provisional pension was allowed and paid to the applicant. Besides, the applicant was also granted Cash equivalent of 146 days leave which remained unutilised. Nothing was heard thereafter but after two years and nine months of the reitrement, the applicant was served with the charge-sheet dated 24-12-1981,- Annexure A-6. It consisted of the Memo of charges, lists of documents relied upon and of witnesses, Annexure A-7. According to the respondents, the matter remained under investigation by Special Police Establishment (S.P.E.) and according to the provisions when an officer retires and any action is required to be taken, the matter is referred to the President and on his orders the charge-sheet could be served and therefore the charge-sheet dated 24-12-1981 was

served on the applicant. The contention of the applicant is that when he was given pension on his retirement, it cannot be taken back by the impunged order. Apart from it, the contention is also to the effect that the charge-sheet was served after a very long period and the procedure which was required to be followed, was not observed. Copies of the documents were not supplied and the witnesses & Panchnamas were neither produced by the department nor were summoned by the Inquiry Officer on the request of the applicant and thus he was denied an opportunity to bring the material evidence on record. It is also averred that the Inquiry Officer conducted the inquiry in an arbitrary manner. The copy of the report of the Inquiry Officer was not given. Also the copy of C.B.I. report, which & had come to the notice of the applicant through the reply of the respondents, was not given to him and thus there was total denial of justice to the applicant. The impunged order of withholding Gratuity and monthly pension is also arbitrarily passed without hearing the applicant. Central Civil Service (Pension) Rules, 1972 are also unfair in asmuchas that no remedy either of appeal or review is provided against the order passed under Rule 9. It is pointed out that though the impunged order is passed under Rule 9 but the procedure of inquiry and punishment followed by the Inquiry Officer and the President is that of Rules 14 and 15 of Central Civil Services (Classification, Control and Appeal) Rules. On this ground, the impunged order has been challenged with the relief which is already disclosed in the beginning.

3. The respondents contested the case and the first

objection taken was about non-maintainability of the application because the applicant has not exhausted the remedies departmentally available to him. The jurisdiction of the Tribunal has also been challenged. Besides, it is contended on behalf of the respondents that the applicant was called upon to explain the charges under Rule 9 of Central Civil Service (Pension) Rules served on the applicant on 1-2-1982 but the applicant failed to reply. However, the inquiry officer and the presenting officer were appointed and the inquiry had started. The contention of the respondents is that the applicant had neglected the inquiry proceedings depriving himself of the opportunity of defence and cross-examination of withesses, and in these circumstances he had waived his right to present his case before the Inquiry Officer. Thus he is estopped from raising any question or objection about the proceedings.

4. The case of the respondents is that the applicant who was made proper officer to grant licences, did not followed the directions and conditions given in the order dated 7-11-1978 (Annexure A-1). During the period from November 1978 to February 1979, the applicant had issued as many as 34 licences without following the procedure prescribed therefor. Even the verifi-cations of the premises where the power-looms were installed or the electric connections were taken, were not made. False reports regarding verification were made. It was for these

reasons that the applicant was put under suspension vide order dated 6-3-1979. Since the applicant reached the age of super-annuation on 31-7-1979, he was retired and the provisional pension, in accordance with the Rules, was allowed with effect from 1-8-1979. Thus the suspension of the applicant authomatically came to an end. As regards supply of copies, the contention of the respondents is that the documents were voluminous and thus their copies could not be supplied. It was however, pointed out that the documents were open to the applicant for examination and the witnesses were open for cross-examination. It is also pointed out that the applicant had given an application dated 6-2-1982 demanding the copies of the documents to the Inquiry Officer who had allowed the same. Thus there was no ground of reasonable opportunity of defence having been denied to him. The contention of the respondents is also to the effect that what number of witnesses and which witness shall be examined to prove the charges, is a discretion of the employer and the delinquent employee cannot press for examination of a particular number or name of witnesses. It is admitted that the applicant had given a letter dated 21-6-1983 requesting that four witnesses be examined but the same was rejected because it was given at a very late stage and by that time the regular hearing of the inquiry was over. In support of the charges, nine witnesses were examined.

5. The respondents also averred that the controversy about the proceedings under Rule 9 of Central Civil Service

(Pension) Rules, has been settled by the Full Bench of the Central Administrative Tribunal in the case Amarjit Singh Vs. Union of India ATR 1988 (2) CAT 637. The explanation about the delay in framing the charge-sheet is given by saying that the case of another charge-sheeted employee Shri P.C. Sharma, Inspector, was under investigation and the detailed inquiry was necessary before decision could be taken. Moreover, the time was also taken by CBI. The matter was referred to Union Public Service Commission and the supply of the copy of the report of the Commission shall mean and include the report of the inquiry officer also and no infirmity is thereby caused in punishing the applicant.

6. It is also contended by the respondents that the inquiry report along with the report of the Union Public Service Commission, was placed before the President who passed the impunged order of withholding the Gratuity and Pension and the said order suffered from no illegality or infirmity.

7. In reply to the plea that severe punishment was given to a retired employee, it was urged that the punishment was justified because the applicant who was a Government Servant, was found guilty of grave mis-conduct by not maintaining absolute integrity and devotion to duty. The plea of the applicant that Rule 9 of Central Civil Service (Pension) Rules was ultravires, is also challenged.

8. We have heard the learned counsel Shri K.M.Thakkar for the applicant and Shri Akil Kureshi for the respondents.

9. The first point raised by the respondents is that the applicant challenges an administrative order for which juridiction does not lie with the Tribunal. The answer of this problem lies under section 14 of Administrative Tribunals Act, 1985 which lays down the jurisdiction, powers and the authority of the Administrative Tribunals. Clause 6 of Sub-section(1)of Section 14 speaks of service matters. This expression 'service matters' is synoymous to the expression " conditions of service" used in Articles 309 and 323-A of the Constitution. The expression "conditions of service" came up for interpretation before the Privy Council in the case N.F.W. Province Vs Suraj Narayan Anand AIR 1949 PC 112 and was followed by the Supreme Court in the case of Pradyat Kumar Vs. Chief Justice of Calcutta, AIR 1956 SC 285. It has been held in these cases that the expression'conditions of service" means all those conditions which regulates the holding of post by a person right from the time of his appointment till his retirement and even beyond it, in matters like pension etc. In this way, the pension which is a condition of service becomes a service matter, cognizance of which can be taken by the Tribunal. We are of the view that the objection raised by the respondents is not tenable and is rejected.

10. The next technical question raised by the respondents is that the applicant has not exhausted all remedies available to him and, therefore, the application is not maintainable. We will have to find out as to what remedies were available to the applicant after the order under Rule 9 of Central Civil Service (Pension)Rules was passed. This Rule 9 does not say anything about the remedy

available to the employee against whom the order of withholding the gratuity or pension has been passed. Rule 8, however, deals with the definition of serious crimes and mis-conduct. Sub-Rule (5) of Rule 8 lays down that an appeal against the order under sub-rule (1) passed by any authority other than the President shall lie to the President, and the President shall in consul--tation with ~ the Union Public Service Commission, pass such orders on appeal as he deems fit. Here in the present case before us, the impunged order of withholding of pension and gratuity was passed by the President himself. Thus no other Depratmental remedy was available to the applicant and, therefore, this objection that the applicant has not exhausted remedies available to him, is not tenable and is therefore rejected.

11. The contention of the applicant is ~~xxxx~~ firstly that initiation of the proceedings and action after the retirement, was bad in law; and secondly, the charge sheet is itself submitted after great delay. By giving them dates & in chronological order of the events, it is pointed out that the act of issuance of licences is related to the period November 1978 to February 1979 and the applicant had retired on 31-7-1979. The charge-sheet dated 24-12-1981 was served on the applicant on 1-2-1982. Thus there was delay of about three years from the date of the alleged mis-conduct and less by few months in three years from the date of retirement. The delay did not come to an end here alone, but according to the applicant's counsel regular hearing of the inquiry

could be started only on 18-2-1983 and the Inquiry Officer appears to have submitted report on 4-10-1983 — after about four years from the date of retirement. The order of withholding of Gratuity and Pension was passed on 26-12-1988 after a lapse of five years of period from the date of submi-ssion of the report by the Inquiry Officer, seven years from the date of issuance of charge-sheet and about ten years from the date of the retirement of the applicant. According to the submission of the learned counsel for the applicant, this inordi-nate & inexcusable, arbitrary and unjustified delay renders the entire proceedings and resultantly the impunged order as illegal, arbitrary, bad in law and ab-initio-void.

12. We shall take up these points one by one. The learned counsel for the applicant argued that the proceedings of withholding the Gratuity and Pension should not be started after the retirement. In this connection, the argument is also to the effect that Rule 9 of Central Civil Service (Pension) Rules, 1972, is ultra vires. The reply to this submission from the side of the respondents is that the Pension Rules deal with a class which is separate and distinct from those government servants who are in active service. According to the contention of the learned counsel for the respondents, an act of grave mis-conduct done at or near the fag end of service of the Government Servant, cannot be ignored and for that reason reasonable classification of Retired Government Employees is made out, and to deal with them are framed these Pension Rules.

According to him, these Rules in noway violate Article 14. or 21 of the Constitution. Article 14 is interpreted by the Courts, and it would run in the words:

> " The state shall not deny to any person equality before the law or equal protection of the laws provided that nothing herein contained shall prevent the State from making the law based on or involving a classification found on intelligible differentia having a rational relation to the object sought to be achieved by the Law."

Article 14 came to be identified with the doctrine of classification because the view taken was that that Article forbids discrimination and there would be no discrimination where classification making a differentia fulfills two conditions, namely that ;

1. Classification is founded on a intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and ,

2. that, that differentia — has a rational relation to the object sought to be achieved by the impunged legislation or Executive Action.

In the case E.P. Royappa Vs. State of Tamil Nadu, AIR 1974 SC 555, the Supreme Court gave new dimension to Article 14 and pointed out that, that Article had highly activist magnitude and embodied a gaurantee against arbitrariness. Thus Article 14 did encompass within itself a rational classification which is free from arbitrariness.

13. When we examine the Central Civil Service (Pension) Rules, 1972, from this angle of the interpretation of Articel 14, we find that these Rules are based on reasonable classification because they make distinction between a group of those Government employees who are in active service and another of that group which consists of retirees pensioners. The learned counsel for the respondents has very rightly pointed out that if an employee who is going to retire within a short period, starts gravely mis-conducting himself, he cannot be let off simply because the Central Civil Service (Classification, Control and Appeals) Rules, 1965, are applicable to the employees who are in active service, and may not be applicable to him as by the time of detection, he would retire. In this view, it was necessary to group the retirees pensioners in a separate and distinct class. Since after retirement, the only punishment which could be awarded is withholding of Gratuity or pension and therefore these Rules were framed. We do not find them ultra-vires to the Constitution.

14. Once it is established that the Government Servants who retire and grave mis-conduct is reported against them after their retirement, the action can be taken in a prescribed manner. According to the learned counsel for the respondents, sufficient measures have been taken to protect the hasty or un-necessary action against them. These measures have been incorporated in sub-rule(2) of Rule 9. It reads :

9. Right of President to withhold or withdraw pension.

(1) The President reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement:

Provided that the Union Public Service Commission shall be consulted before any final orders are passed;

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees sixty per mensem.

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

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

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

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

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

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

(3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of an event which took place, more than four years before such institution.

(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) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule, ——

(a) depatmental 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 compliant or report of a police officer of which the Magistrate takes cognisance, is made, and

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

The perusal of this rule makes it quite clear that any action under this rule can be taken only when the sanction of the President is obtained and the proceedings shall not be taken in respect of any event which took place more than four years and the inquiry shall be conducted according to the procedure applicable to departmental proceedings in which order of dismissal from service, could be made. Not only this, the report of the Inquiry officer shall be subject to the scrutiny by the Union Public Service Commission and on receipt of such advice of the Commission, the President shall pass such orders as may be deemed fit. These measures do justify the absence of arbitrariness.

15. In this connection it has been averred by the applicant and this point was also stressed during arguments that the action is going to be taken under Pension Rules while the procedure is going to be adopted under Central Civil service (Classification, Control and Appeal) Rules, 1965. We do not see any illegality therein. In certain enactments, it is seen that the Legislature instead of prescribing a particular procedure under the said Act itself, adopted the procedure prescribed under another Act. This adoption of procedure of another Act does not mean that the former Act was without procedure and suffered from illegality. Similarly if procedure prescribing major penalties under Central Civil Service (Classification, Control and Appeals) Rules has been adopted for being followed under Pension Rules, it cannot be argued to be illegal.

16. The learned counsel for the applicant also challenged the legality of Rule 9 on the ground that it gave power to withhold the Pension in whole or in part. The submission made by him is that Pension is not only paid for loyal service rendered in the past but also by the broader significance ~~in that~~ it is a social welfare measure rendering socio-economic justice by providing economic security in the fall of life when physical and mental prowess is ebbing corresponding to ageing process and therefore one is required to fall back on savings. According to him, the Pension can be withheld when there is mis-conduct or negligence and pecuniary loss is suffered by the Government. In the present case, accodding to the applicant, no pecuniary loss has been asserted or shown and therefore the action under Rule 9 was not legal. Before coming to any decision

on this point we would be required to go through the words used under Rule 9 (1). It reads :

> " The President reserves to himself the right of withholding or withdrawing a pension or part thereof whether permanently or for a specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government....."

It would be seen from the reading of this sub-rule (1) of Rule 9 that it is into two parts. First part relates to the authority of withholding or withdrawing the Pension permanently or for a specified period. The other part gives authority of ordering recovery from the pension of the whole or part of any pecuniary loss. These two parts are joined with the conjunction "and". The reading further makes it clear that these two parts are not dependant on one another but are indicating powers of two actions separately and distinctly. It would, therefore, means that exercising the power of part one is not dependant on the pecuniary loss being caused to the Government. Therefore, the argument advanced by the learned counsel for the applicant is not tenable. This matter was considered by the Full Bench of the Tribunal in the case Amarjit Singh Vs. Union of India and Others 1988 (2) CAT 637 and it was, besides, other points, held that pecuniary loss is not necessary. The learned counsel for the applicant placed reliance on the case D.V. Kappor Vs. Union of India and Others, AIR 1990 SC 1923. This case also does not lay down that pecuniary loss is necessary.

17. The learned counsel for the applicant also pointed out that there is no provisions of appeal or revision or review

in the Pension Rules so far as the order of withholding is passed by the President himself. Elaborate arguments on this point have not been made.. However, the point taken by the learned counsel for the applicant appears to indicate that if the penalty is remediless, the rule under which the penalty is imposed suffers from the vires. In this connection, we will have to look into Rule 8 which is reproduced as below:

"8. Pension Suject to future good conduct.

(1) (a) Future good conduct shall be an implied condition of every grant of pension and its continuance under these rules.

(b) The appointing authority may, by order in writing, withhold or withdraw a pension or a part there of, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave mis-conduct.

Provided that where a part of pension is withheld or withdrawn the amount of such pension shall not be reduced below the amount of rupees sixty per mensem.

(2) Where a pensioner is convicted or a serious crime by a court of law, action under sub-rule (1) shall be taken in the light of the judgement of the court relating to such conviction.

(3) In a case not falling under sub-rule (2), if the authority referred to in sub-rule (1) considers that the pensioner is prima facie guilty of grave misconduct, it shall before passing an order under sub-rule (1),

(a) serve upon the pensioner a notice specifying the action proposed to be taken against him and the ground on which it is proposed to be taken and calling upon him to submit, within fifteen days of the receipt of the notice or such further time not exceeding fifteen days as may be allowed by the appointing authority such representation as he may wish to make against the proposal; and

(b) take into consideration the representation, if any, submitted by the pensioner under clause (a).

(4) Where the authority competent to pass an order sub-rule (1) is the President, the Union Public Service Commission shall be consulted before the order is passed.

(5) An appeal against an order under sub-rule(1) passed by any authority other than the President shall lie to the President and the President shall in consultation with the Union Public Service Commission pass such orders on the appeals as he deems fit.

The reading of Rule 8 (5) points out that there is provision of an appeal only on the eventuality that the order is passed by any authority other than the President and in that case the President shall pass orders on the appeal in consultation with the Union Public Service Commission. So far as the order is passed by the President himself, there is indeed no provision for any other remedy. The remedies of appeal and revision are available only when some higher authority than the authority passing the order, is available. When the order is passed by the President himself who is the head of the State, there could be no other body or authority above him and therefore the question of appeal or revision does not arise. The provisions of review could have been there but the question also arises if any order of punishment (here order of withholding of pension is being taken as punishment) is non-appealable or without any further remedy, it should be declared illegal and unconstitutional. In order to have answer to this problem, we will have to look into the provisions of the

Code of the Criminal Procedure, 1973. The Chapter XXIX dealing with Appeals has some provisions according to which no appeal lies. Section 376 of the said Code declares that if a person is convicted and sentenced by a High Court to undergo imprisionment for a term not exceeding six months, no appeal shall lie. Similarly if the sentence of imprisonment for a period of three months or fine not exceeding Rs. 200/- or both is passed by the Sessions Court or a Metropolitan Magistrate, there is no appeal. Some orders passed by Magistrate imposing fine are also made non-appealable. These provisions of Code of Criminal Procedure have not been found un-constitutional. On this anology, even if the remedy of review is not there in the Pension Rules, Rule 8 or 9 cannot be declared unconstitutional. In this way, we come to the conclusion that the first part of the argument about initiation of proceedings after the retirement of a Government servant, particularly of the applicant, was illegal, does not hold good.

18. The pragmatic view of delay is also corroborated by the fact of several stages from which the decision is processed and final shape is given. In this case, the inquiry was made by the Departmental Inspectors and then by the C.B.I. The matter was also delayed because one Inspector Shri Sharma was also involved along with the applicant and Shri Sharma was under suspension. The department, it appears, did not think it proper to separate and divide the cases into two parts one relating to the applicant and the other to the

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Inspector Shri Sharma. The delay was occasioned for that reason also. The case was investigated by C.B.I. also and naturally this agency takes sufficient time which results into delay. The Hon'ble Supreme Court in the case State of Madhya Pradesh Vs. Bani Singh, AIR 1989 SC 1308 held that if the delay was un-explained then it was unfair to permit the departmental inquiry to proceed with. Here in this case the explanation is there.

19. The learned counsel for the applicant also relied on the case Mohanbhai D. Parmar Vs. Y.B. Jhala and Others, 1979 Gujarat Law Reporter (20) Pg 497 in which delay of 1½ years was found fatal. We are not able to agree with the view taken by Gujarat High Court because the Supreme Court held the delay, if explained, is not non-fatal in Bani Singh's case (Supra), and in another case Registrar Co-operative Socities Vs. F.X. Fernando, 1994 SCC (L&S) 756 also held that if the charge-sheet was delayed because of investigation being done by Directorate of Vigilance and Anti-Corruption and it was not prompt, the department could not be faulted on that count. For these reasons also, the point of delay taken up by the applicant carries no weight.

20. The last but not the least is the contention made by the learned counsel for the applicant about the violation of principles of natural justice by pointing out that the respondents have failed to supply the copies of the documents and the statements of the witnesses which were mentioned in the charge-sheet. It is also pointed out that the applicant had made written request by giving an application dated 6-2-1982, Annexure A-9 with the request that the copies of the documents may be made available. The request

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made is in the words " I respectfully submit that I have not been supplied with copies of the records and documents listed in Annexure A-3 on the basis of which imputations and article of charge have been framed. I, therefore, am unable to appreciate and understand fully and correctly the charge levelled against me. I therefore request that before I submit my contention in defence against imputations and Article of charge, I request that I may be supplied with true and authenticated photostat copies of the documents and records enlisted in A-3 to the Memorandum so as to enable me to appreciate and understand the charge against me." In this very application, it was mentioned that the imputation as well as the charge levelled against the applicant were emphatically denied. The learned counsel for the applicant also stressed that the application dated 15-6-1983, Annexure A-10, moved by the applicant for examination of four witnesses namely Shri Arvindbhai Jethabhai Patel, Shri Mukundbhai Harilal Shah, Shri Kantilal Madhavdas Patel and Shri Mistry Karsandas Devjibhai, was rejected and thus the applicant was deprieved of putting up his defence. Besides, it is also argued that the applicant has neither been given the copy of the report of the C.B.I. nor of the preliminary reports based on the inquiry made by the Departmental officers. Not only this, the report of the inquiry officer was also not given and it resulted in violation of the principles of natural justice. The learned counsel for the respondents argued that the applicant did not co-operate with the Inquiry Officer and he had not given any explanation of the charges as was required and thus he had waived his right. These submissions

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of the learned counsel for the ~~defence~~ respondents does not find corroboration from any documents on record. On the other hand, it is contrary to the application A-9 which was moved by the applicant. The respondents in no way denied moving of this application. It was rather contended in the reply that the copies which were required by the applicant were made available.

21. The files related to this inquiry have been produced before us for perusal to judge if the procedure adopted for the inquiry was correct and legal, or if it suffered from some illegality. The perusal of the file speaks that Shri Kansara (the applicant) had written a note on 11-3-1983 without signature that the inspection of original documents was done by him and he was allowed to take out copies of the documents. There is unsigned ~~circular~~ letter of 26-3-1983 about inspection of record on 25-3-1983 and 26-3-1983. According to this file, the applicant had written a letter on 22-3-1983 demanding the copies of Panchnamas brought on record along with L-4. It appears that on moving this application, the inspection was allowed on 25-3-1983 and 26-3-1983. There is application dated 11-3-1983 to the Inquiry Officer by the applicant for supply of copies. This application was forwarded by the office to the Inquiry officer on 28-3-1983 with a note that inspection was allowed. We could not find as to how the respondents have come with the contention that the copies of the documents which were required by the applicant, were supplied to him. when this application A-9 is not on the record and also there is no order with respect to supply of copies.

22. The perusal of the files mentioned above discloses the fact that copies of the documents and of the statements of the witnesses were actually not given to the applicant. Only inspection of ~~the~~ same documents was allowed on the dates given above. The question, therefore, arises whether ~~this~~ it is obligatory on the department to furnish the copies of the documents or the statements of the witnesses on which reliance has been placed. We leave aside the stage at which these copies must be made available but the quetsion for consideration at the same time remains whether at any point of time during the inquiry, it must be made available or the department should feel satisfied because the inspection was made by the delinquent officer. We have given careful~~l~~y thought to this problem and we come to the conclusion that the furnishing of the copies of the documents or of the statements of the witnesses is obligatory on the department so that the delinquent officer may prepare his defence. This obligation cannot be discharged simply because the inspection of certain documents has been made. This point came for consideration before the Supreme Court in Triloknath Vs. Union of India, 1969 SLR 759, State Of Punjab Vs. Bhagat Ram, AIR 1974 SC 2335 and Union of India and Others Vs. Mohammed Ramzan Khan, 1991 SCC (L&S) 612. The Supreme Court in the case State Of Punjab Vs. Bhagat Ram (supra) clearly laid down that the Government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses

produced against him. The object of supplying the statements is that the Government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the Government servant. Unless the statements are given to the Government servant , he will not be able to have the effective and useful cross-examination. In this case, the copies were not made available is admitted by the respondents themselves at the time of serving the charge-sheet upon him, and they were also not made available, according to the applicant, even after the application dated 6-2-1982 A-9 was moved. The learned counsel for the respondents came with the case that the applicant had not co-operated and therefore he should be deemed to have waived the rights of getting copies. In our opinion, this argument is neither factually correct nor based on the law laid down on the point. We had given an extract of the application A-9 showing what copies of the documents were demanded by the applicant and what explanation he had offered to the charge-sheet. He had emphatically denied the charges levelled against him. This was the explanation which was required of the applicant within ten days from the service of the charge-sheet. In view of this assertion by the applicant, there is no justification to hold that the applicant did not co-operated with the inquiry itself. Assuming for the sake of argument that a delinquent officer fails to participate in the proceedings or co-operate with the inquiry officer,

it will not mean that the copies of the documents and the statements of the witnesses relied upon, shall be denied. Non-supply of the copies of the documents and statements of the witnesses may, however, lead to ~~extraneous~~ certain steps by the delinquent employee not to participate in the proceedings. Any way, on facts it is revealed that the applicant had submitted an explanation despite the fact that the demand of copies of the documents was raised by him in the application 6-2-1982 A-2 and these copies were never made available to him.

23. ~~From~~ There are two main principles of natural justice, namely one that the person who decides the question must be impartial and dis-interested, and the second that the persons whose interests are going to be affected, ought to be given an opportunity of having his say before the order is passed. The first mentioned principle is known as "fair play" whereas the second is known as "audi alteram partem". These guiding principles will have to be kept in mind while analysing the facts of this case. When the applicant repeatedly made request of supply of copies of the documents, it cannot go un-heard. The respondents cannot be allowed to take the plea that the right was waived by the applicant. Also by inspection of the documents by the applicant, he will also not be deprived ~~him~~ of obtaining the copies from the respondents. In this case reliance has not been placed on one or two or dozen of papers but several files and several registers.

The list which is attached with the charge-sheet indicates that there were as many as 78 files or documents which were relied upon by the Department. Similarly 25 witnesses were mentioned for being examined in support of the charges, but actually 9 of them were examined. The copies of the statements of none of the witnesses was made avilable. It appears tht the applicant could go trhough the statements of the witnesses through inspection of files and cross-examination, based on that information, was made. It is interesting to note that in this case several inquiries which were preliminary in nature were made. The Inquiry Officer in her report dated 4-10-1983 noted this fact by saying that there were series of inquiries. The copy of none of these inquiries was made available. We have seen the files as mentioned above and came across the report dated 14-5-1979 prepared by Shri M.K. Zutshi, Deputy Collector of Central Excise, Ahmedabad addressed to the Collector of Central Excise in which discussion of all the cases before us, was made in detail on the basis of the preliminary inquiry. These facts are known only to the officers of the Department or to the Inspectors of C.B.I. but no information of it was given to the applicant. The matter does not end here. The inquiry officer has taken into consideration the material which was available in File No. V (19) 15 marked S-61 and File No. V (19) 15 marked S-56, ~~into consideration~~. It contained the statments of several

persons recorded by the Inquiry Officer, of the Department or Inspector of C.B.I. but the copy of none of them was made available to the applicant. Do the respondents want to rely on this evidence which was recorded on the back of the applicant ? If it is so and it actually happened, it is neither an observance of the principle of fair play nor of giving an opportunity for the preparation of defence by the applicant. We are, therefore, of the view that non-supply of the material which was relevant and was relied upon by the respondents, has caused grave prejudice to the applicant and therefore, the proceedings are vitiated.

24. The witnesses who were examined are only nine in number. Of them Shri R.M. Darji, Shri V.E. Katipitie, Shri C.J. Sheth, Shri K.R. Singhal are Inspectors of Central Excise Department whereas Shri S.S. Sekhon had been supervising ~~Inspector~~ over these Inspectors. Shri J.M. Mehta is a C.B.I. Inspector. Shri H.V. Panchal, Shri R.M. Jani and Shri P.C. Barot are the three witnesses who were examined before the Inquiry officer. Of them Shri R.M. Jani and P.C. Barot retracted their previous statemtns which were recorded either by the Inspectors of the Department or by the Inspector of C.B.I. When the applicant gave an application A-40 on 15-6-1983 for summoning four witnesses whose names are already given, it was rejected by the Inquiry officer on 21-6-1983 on the ground that it was given late when part of the regular hearing was already over. It may be mentioned here that the Inquiry Officer had submitted report on 4-10-1983. It was

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therefore, not correct that the hearing of inquiry was over. Even if it was partly over, the stage of defence comes only after the evidence in support of the charges is closed. By not summoning the witnesses for defence and by giving not cogent xx reasons, is also the ground of denial of opportunity of hearing to the applicant. The learned counsel for the respondents argued that what witnesses and what number are to be examined is prerogative of the Department and the applicant could not ask for those prosecution withess to be summoned. It is true that the applicant had written in the application to summon those four withesses for examination, cross-examination and defence but it does not mean that the applicant was denying or depriving the department from any evidence being adduced. What he wanted was to examine those witnesses in order to elicit the truth about the charges. The procedure adopted by the inquiry officer about examining the witnesses is also unique. The witnesses were not put to examination-in-chief but the statements which were recorded by the Inspectors, either of the Department or of the C.B.I., were deemed the statements-in examination-in-chief and were exhibited. Thereafter the opportunity of cross-examination was given to the applicant. Firstly, we do not approve this procedure to be legal and proper, and secondly, if this was the procedure adopted by the Inquiry officer and the applicant mentioned in the application A-10 to examine, cross-examine the witnesses in defence, it did not mean that the applicant was imposing any compulsion for examining a particular witness or he was depriving the department from any assumed prerogative.

25. The applicant made request for the copies of the Panchnamas which were prepared by the Inspectors with respect to the conditions of the power-looms or other parts along with the statements of the witnesses. None of these witnesses were examined and the inquiry officer took into consideration the statements which were recorded by the Inquiry Officers at the back of the applicant. In our opinion, it is very strange and un-common procedure which has been adopted.

26. The inquiry officer while discussing the statements of the witnesses and the points raised by the applicant, admitted that the case of the department was weakened but at the same time it was tried to be strengthened from that part of the statement of the witnesses which was not recorded in the presence of the applicant. Not only this, the inquiry officer relied upon such facts about which there was no charge or no evidence. For instance, the fact that some money was as bribe was collected and was found in paper of note-book, has been taken into consideration . Thereafter the inquiry officer wrote that there was neither charge nor was specific evidence recorded. What appears from this fact that the Inquiry officer took extraneous facts into consideration whereby the applicant was gravely prejudiced.

27. On the consideration of these facts that the copies of the documents and the statements of the witnesses were not furnished to the applicant before the Inquiry and even after repeated requests being made by the applicant,

great prejudice is caused to him. The prejudice is also caused by the fact that the witnesses who were named by him were refused to be summoned for no valid and cogent reasons. The procedure which was adopted for the examination of the witnesses was unique and unknown to legal world. Not only this, the inquiry officer took extraneous facts into consider-ation and the copy of the report was not made available so that the illegality could have been pointed out by him before the impunged order of punishment was passed. For these reasons, we hold that the impunged order of withholding Gratuity and Pension is not sustainable under law and, therefore the same is quashed. No order as to costs.

(Dr. R.K. Saxena)
Member (J)

(K. Ramamoorthy)
Member (A)

*AS.