CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

T.A.NO.28 OF 2015
New Delhi, this the 20th day of February, 2018

CORAM:
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

……...

Gorakh Pal,
s/o late Bhoop Singh,
r/0 10A, Ramnagar Extension,
Gali No.2,
Delhi 110092 …….. Applicant

(By Advocate: Mr.Anukul Raj, Mr.Rahul Shukla and Ms.Nikita Raj)

Vs.

1. Union of India,
Through the Ministry of Finance,
Department of Revenue,
Central Board of Excise & Customs,
6th Floor, Hudco Vishala Building,
Bhikaji Cama Place,
New Delhi

2. Commissioner,
Central Excise,
Central Revenue Building,
Indra Prastha Estate,
New Delhi 110109

3. Union Public Service Commission,
Through its Secretary,
Dholpur House,
Shahjahan Road,
New Delhi 110069 …… Respondents

(By Advocate: Mr. D.S.Mahendru)

ORDER

This TA No.28 of 2015 corresponds to W.P. (C) No.4999 of 2015 on the file of the Hon'ble High Court of Delhi. W.P. (C) No.4999 of

2015 was filed by the applicant before the Hon'ble High Court of Delhi, seeking the following reliefs:

> "a). Issue appropriate writ or writs in the nature of mandamus Petition under Article 226 of the Constitution of India praying issue of writ ofmandamus or any writ thereby quashing the Order No.73/14, dated 29.10.2014 (Annexure-1), being not maintainable; and/or
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> b) issue appropriate writ or writs in the nature of mandamus Petition under Article 226 of the Constitution of India praying issue of writ of mandamus or any writ thereby while quashing the impugned order the Respondents may be directed to restore the pension and other benefits of the Petitioner herein; and/or
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> c) any other or further order or orders may be passed as this Hon'ble Court may deem fit and proper."
> circumstances of the case."

W.P(C) No.4999 of 2015, on being transferred to the Tribunal, has been registered as TA No.28 of 2015 on the file of the Tribunal.

2. Resisting the O.A., the respondents have filed counter reply and additional counter reply. No rejoinder reply has been filed by the applicant.

3. I have carefully perused the records and have heard Mr.Anukul Raj, learned counsel appearing for the applicant, and Mr.D.S.Mahendru, learned counsel appearing for the respondents.

4. Brief facts of the applicant's case are that he joined the respondent-Department as an Inspector of Central Excise on 18.6.1979. He and six other officials of the respondent-Department were involved as accused in R.C.No.3 & 4(S)/88/CBI/SIU(IX)/ND, dated 18.4.1988, under Sections 120B r/w Sections 419, 420, 467, 468, 471 IPC and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act II of 1947

corresponding to Section 13(2) read with Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 49 of 1988, which gave rise to Corruption Case No.93/93 on the file of the learned Special Judge, Tis Hazari, Delhi. By order dated 22.3.1991 (Annexure 2), the Disciplinary Authority decided to take disciplinary action against the applicant and five others in common proceedings under the CCS (CCA) Rules, 1965. The disciplinary proceedings initiated in the year 1991 were not concluded till 2008. In Corruption Case No. 93/93 (ibid), the learned Special Judge, Tis Hazari, by its judgment dated 7.1.2009 (Annexure 3), convicted the applicant and others for the offences punishable under Section 120-B read with Sections 419, 420, 467 and 471 IPC, and Section 5(2) read with Section 5(1)(d) of P.C.Act,1947, and, by order dated 12.1.2009, awarded the following sentences to the applicant:

(1) Three years RI along with a fine of Rs.20,000/-(in default three months SI) for the substantive offence under Section 120-B read with Sections 419, 420, 467 and 471 IPC and Section 5(2) read with Section 5(1)(d) of Prevention of Corruption Act, 1947;

(2) Three years RI along with a fine of Rs.40,000/- (in default three months SI) for the substantive offence punishable under Section 420 IPC;

(3) Three years RI along with a fine of Rs.40,000/- (in default three months SI) for the substantive offence

punishable under Section 5 (2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947;

and directed that all these sentences would concurrently. Being aggrieved, the applicant filed Criminal Appeal No.85 of 2009, and the Hon'ble High Court of Delhi, by its order dated 2.2.2009, admitted the Criminal Appeal, and ordered that subject to the petitioner furnishing a personal bond of Rs.50,000/- with one surety for the like amount to the satisfaction of the trial court, the sentence awarded against him shall stand suspended. The fine amount was paid by the applicant. On 27.1.2010, the Inquiry Officer sent a letter/notice (Annexure 6) requesting Shri R.D.Kalia, Superintendent of Police, CBI, Jaipur, to appear as a witness on 17.2.2010 in the departmental enquiry being conducted against the applicant and others. While the enquiry in the aforesaid disciplinary proceedings was going on, the applicant received a show cause notice dated 23.12.2011(Annexure 7) issued by the Under Secretary to the Government of India, Department of Revenue, in the name of the President, whereby the sanction of the President was accorded for taking appropriate action against the applicant under Rule 9 of the CCS (Pension) Rules, 1972 as per procedure under Rule 19 of the CCS (CCA) Rules, 1965, consequent to the aforesaid judgment of conviction and order of sentence passed against him by the learned Special Judge in Corruption Case No.93/93(ibid). The applicant submitted a representation dated 6.2.2012 (Annexure 8) requesting the respondent-Department to sympathetically consider the pleas taken by him therein and to take a lenient

view in the matter. After considering all the materials (including the show-cause notice and the representation of the applicant) placed before it by the respondent-Department, the Union Public Service Commission (UPSC), vide its letter dated 30.5.2014(Annexure 9), advised that the ends of justice would be met if the penalty of "withholding of 100% of the monthly pension otherwise admissible to the applicant is imposed on him on permanent basis as well as forfeiture of full gratuity". The respondent-Department, vide its letter dated 3.6.2014(Annexure 10), communicating a copy of the UPSC's advice dated 30.5.2014(Annexure 9), to the applicant, required him to submit representation against the advice of the UPSC. In reply thereto, the applicant submitted representation dated 10.7.2014. Thereafter, order dated 29.10.2014 (Annexure 1) was issued by the Under Secretary to the Government of India, Department of Revenue, in the name of the President, imposing upon applicant the penalty of "withholding of 100% monthly pension otherwise admissible on permanent basis and withholding of full gratuity", which is impugned in the present proceedings before the Tribunal.

5. In the above context, it has mainly been contended by the applicant that when the enquiry in the departmental proceedings initiated against him in the year 1991 was going on, there was no scope to resort to Rule 9(2)(b)(i) of the CCS (Pension) Rules, 1972 or Rule 19 of the CCS (CCA) Rules, 1965, and that these Rules were not applicable to his case. Therefore, the impugned order is illegal and liable to be quashed.

6. *Per contra*, it has been contended by the respondents that the impugned order has been issued by order and in the name of the President under Rule 9(1) of the CCS (Pension) Rules, 1972 as the applicant has been convicted and sentenced by the learned trial court in criminal proceedings, i.e., Corruption Case No.93/93, to undergo RI and pay fine for the offences punishable under different provisions of the Indian Penal Code and Prevention of Corruption Act. Considering the materials available on record, including the representations submitted by the applicant against reply to the show-cause notice dated 23.12.2011 and against the advice of the UPSC, the impugned order has been issued withholding the applicant's 100% monthly pension otherwise admissible on permanent basis and as well as full gratuity. The pleas taken by the applicant in his representations have been duly considered and findings thereon have been arrived at by the competent authority. The procedure established by law has been duly followed. Therefore, the impugned order remains unassailable, and the O.A. is liable to be dismissed.

7. Rule 9 of the CCS (Pension)Rules, 1972, reads thus:

> "9. Right of President to withhold or withdraw pension:
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> (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)(a) The departmental proceedings referred to in sub-rule(1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the government servant had continued in service;

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) Deleted

(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) 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."

8. Rule 19 of the CCS (CCA) Rules, 1965, reads thus:

"19. Special procedure in certain cases
Notwithstanding anything contained in rule 14 to rule 18-
(i) where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or
(ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or
(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules,
the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:

Provided that the Government servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under clause (i):

Provided further that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule."

9. In the instant case, admittedly, while the applicant was in service, the criminal case was registered against him by the Central Bureau of Investigation, vide RC No.3 & 4 (S)/88/CBI/SIU(IX)/ND, dated 19.12.1989, and, on account of the same, the departmental proceedings were initiated against him in the year 1991. It appears from the impugned order that the Principal Bench of this Tribunal, vide order dated 28.4.1992 passed in the O.A. filed by the applicant, ordered to keep the disciplinary proceedings initiated against the applicant in abeyance till the conclusion of the criminal case. In Corruption Case No.93/93(corresponding to RC No.3 & 4 (S)/88/CBI/SIU(IX)/ND, dated 19.12.1989), the learned Special Judge, Tis Hazari Court, Delhi, passed the judgment on 7.1.2009 finding the applicant and others guilty, and convicting them for the offences punishable under Section 120-B read with Sections 419, 420, 467 and 471 IPC, and Section 5(2) read with Section 5(1)(d) of P.C.Act,1947. By order dated 12.1.2009, the learned Special Judge sentenced the applicant to (1) three years RI along with a fine of Rs.20,000/-(in default three months SI) for the substantive offence under Section 120-B read with Sections 419, 420, 467 and 471 IPC and Section 5(2) read with Section 5(1)(d) of Prevention of Corruption Act, 1947; (2) three years RI along with a fine of Rs.40,000/- (in default three months SI) for the substantive offence punishable under Section 420 IPC; and (3) three years RI along with a fine of Rs.40,000/- (in default three months SI) for the substantive offence punishable under Section 5 (2) read with Section 5(1)(d) of the Prevention of Corruption Act,

1947, with direction for all the sentences to run concurrently. By the date of judgment of conviction, i.e., 7.1.2009, passed in Corruption Case No.93/93, the applicant had retired from service on attaining the age of superannuation. In view of the Tribunal's order dated 28.4.1992 (ibid), the departmental proceedings initiated against the applicant in the year 1991 had been kept in abeyance, and, after passing of the judgment of conviction against the applicant, the enquiry therein was resumed by the IO with the issuance of notice/letter to some witnesses only in 2010, by which more than 18 years had elapsed from the date of initiation of the said departmental proceedings. Thus, it is clear that instead of continuing with the said departmental proceedings, the respondent-Department thought it prudent to obtain sanction from the President to take action against the applicant under Rule 9 of the CCS (Pension) Rules, 1972. On the basis of the above sanction order, the show-cause notice dated 23.12.2011 was issued by order and in the name of the President calling upon the applicant to submit his representation. The applicant accordingly submitted his representation. All the materials available on record, including the show-cause notice dated 23.12.2011 and the applicant's representation against the same were forwarded to the UPSC for advice, as mandated in the first Proviso to Rule 9(1) of the CCS (Pension) Rules, 1972. The copy of the UPSC's advice was forwarded to the applicant to submit representation against the same. The applicant also submitted his representations against the UPSC's advice. After considering all the materials available on record, the impugned order dated 29.10.2014

(Annexure 1) was issued by order and in the name of the President, the relevant part of which is reproduced below:

> "Whereas, Shri Gorakh Pal, Inspector (Retd.) was issued a Show Cause Notice dated 23.12.2011 proposing action under Rule 9 of CCS (Pension) Rules, 1972, consequent upon his conviction by the Special Judge, CBI awarding a sentence of three years RI along with a fine of Rs.20,000/- ID three months simple imprisonment u/s 120B r/w Section 419, 420, 467 & 471 IPC and Section 5(2) r/w Section 5(1)(d) of Prevention of Corruption Act, 1947.
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> And whereas, Shri Gorakh Pal, Inspector (Retd.) submitted his representation on Show Cause Notice which was duly considered by the President and not found acceptable and, therefore, matter was referred to UPSC for seeking its advice.
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> And whereas, the Commission tendered its advice dated 30.5.2014 in respect of Shri Gorakh Pal, Inspector (Retd.) have discussed the gist of SCN, the facts of the case, the various grounds of defence submitted by Shri Gorakh Pal in his reply dated 06.02.2012 to the Show Cause Notice as regards merits of the case and also the mitigating factors relating to his old age, meeting of medial facility from provisional pension etc. and noted that the DA in his comments dated 30.04.2012 on the representation of CO against the Show Cause Notice dated that all the submissions of CO regarding his innocence were also made by him before the Court as defence arguments but not found valid and such submissions cannot be adjudicated or discussed by the departmental authorities now when no further inquiry is proposed to be held and the same grounds are apparently part of the Appeal of CO against the conviction. As regards the plea of leniency on humanitarian grounds by the CO, it noted that DA stated that these submissions were also made before the Special Judge and still he proceeded to awe the punishment of three years RI etc. upon the CO given the gravity of the proven charge against him. The Commission further observed that the contention of DA on the plea of the CO in his representation against the Show Cause Notice are correct and tenable as the Court of Special Judge has delivered the judgment and sentence order after considering all the aspects and circumstances of the case.
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> And Whereas, taking into consideration all relevant aspects and evidence on record, the Commission noted that the charges against the Charged Officer constitute grave misconduct on his part and considered that ends of justice would be met if the penalty of "withholding of 100% monthly pension otherwise admissible to Shri Gorakh Pal, Inspector (Retd.) is imposed on him on permanent basis as well as forfeiture of full gratuity."
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And whereas, the representation of the Charged Officer on UPSC advice has been duly considered by President and the following observations are made:

(i) The proposal to take action against the convicted officer under Rule 9 of CCS (Pension) Rules, 1972 for withholding of pension and/or gratuity on the basis of judicial finding leading to his conviction in a criminal proceeding even during the pendency of appeal against conviction is as per the DoP&T instructions on the subject. Therefore, Rule 69 for allowing provisional pension during 'pending' disciplinary or judicial proceeding is applicable where the criminal proceedings are still pending trail and where no judgment is available and cannot be invoked in cases where a judicial verdict has become available, though an appeal may have been filed against the same.

(ii) Once the judicial verdict is available holding the charges proved, it is not necessary to continue/complete the departmental inquiry where the charges in the departmental inquiry are also similar based on some investigation. There is no requirement of continuing with the departmental inquiry to prove the same charges departmentally that have already been established after much thorough examination in a criminal proceeding. Further, it would be anomalous if the departmental authorities were to reach a different finding. Rule 9 can always be invoked directly on the strength of judicial finding without need for completion of the departmental inquiry on the same set of charges if such simultaneous proceedings had been initiated separately but could not be completed by the time of availability of judicial verdict for whatever reason. In the instant case, Hon'ble CAT, PB vide order dated 28.04.1992 had ordered to keep the disciplinary proceedings initiated earlier under Rule 14 of CCS (CCA) Rules, 1965 in abeyance till the conclusion of criminal proceedings. The claim of the officer that he was not aware why these proceedings had not been pursued is thus without any basis.

(iii) It is incorrect that the departmental proceeding is meant only for deciding procedural issues which are not subject matter of judicial proceeding.

(iv) It is not possible to comment on the cases of two IPS Officers cited by him in absence of full facts. Also IPS Officers are also governed by different set of Rules. The action proposed against CO is fully covered by CCS (Pension) Rules, 1972.

(v) As regards his old age and his health requirements etc. as grounds for not taking action against him under Pension Rules, CO had also raised similar plea for leniency by citing his and his wife's old age, their suffering from various ailments, his

undergoing bye-pass surgery in 2001 and surgery for hernia, loss of hearing, that there is no one to look after, lack of proof of taking bribe, huge implications in service matters in case of conviction etc. before the Hon'ble Court at the time of hearing for award of sentence. The observations of the Hon'ble Court in this regard are pertinent.

"Punishment is designed to protect society and deterring potential offender and also preventing the convicts from repeating the offence. It is also designed to reform the offender and to release him as a law abiding citizen for the good of society as a whole. A reasonable proportion has to be maintained between the seriousness of the crime and the punishment imposed. Court should not award sentence which on account of his manifest inadequacy would fail to produce a deterring effect on the offender and not serve as an eye opener to the rest. Court should respond to the society's cry for justice against the criminal by imposing appropriate punishment. Justice demands that court should impose punishment befitting to the crime.

It is correct that all the convicts are involved in a serious economic offence. The community acting through the State and the Public Prosecutor is also entitled for justice. The cause of community deserves equal treatment at the hands of the Court in discharge of its judicial functions. The community is not a personal non grata whose cause may be treated with disdain. The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of the moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequences to the community. A disregard for the interest of the community in the system to administer justice in an even handed manner without fear of criticism from quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest (State of Gujarat Vs. Mohanlal AIR 1987 Supreme Court 1321)."

And Whereas, in view of the foregoing, UPSC's advice and recommendation that the maximum punishment u/r 9 of CCS (Pension)Rules, 1972 disregarding the grounds for leniency cited by the Charged Officer cannot be faulted. Sh. Gorakh Pal, Inspector (Retd.) should have known the implication of his actions at the time when he aided and abetted the said crime. It cannot be said that what has been proposed by UPSC is devoid of merit. In the circumstances, the recommendation of UPSC is accepted.

> Now, therefore, the President imposes a penalty of "withholding of 100% monthly pension otherwise admissible on permanent basis and withholding of full gratuity" on Sh.Gorakh Pal, Inspector (Retd.) and he orders accordingly."

From the above order, it is clear that the President has withheld 100% monthly pension otherwise admissible on permanent basis, as well as full gratuity of the applicant, in exercise of the power vested in it under Rule 9(1) of the CCS (Pension) Rules, 1972. It is a well settled principle of law that mentioning of a wrong provision or non-mentioning of a provision does not invalidate an order if the statutory authority had the requisite jurisdiction therefor.

10. In **Ram Sunder Ram vs. Union of India and others, 2007(9) SCALE197,** it was held thus:

> "It appears that the competent authority has wrongly quoted Section 20 in the order of discharge whereas, in fact, the order of discharge has to be read having been passed under Section 22 of the Army Act. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law (see **N.Mani Vs. Sageetha Theatre and Ors.** (2004) 12 SCC 2781. Thus, quoting of wrong provision of section 20 in the order of discharge of the appellant by the competent authority does not take away the jurisdiction of the authority under Section 22 of the Army At. Therefore, the order of discharge of the appellant from the army service cannot be vitiated on this sole ground as contended by the learned counsel for the appellant.

11. The applicant has not challenged the vires of Rule 9(1) of the CCS (Pension) Rules, 1972, which stipulates that 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. The applicant has not drawn to the notice of the Tribunal any rule stipulating that in a case where the departmental proceeding was already initiated and pending against a delinquent on account of his involvement in a criminal case, the power under Rule 9(1) of the CCS (Pension) Rules, 1972, is not available to be exercised by the President after the judgment of conviction is passed against him/her in the said criminal case. Mentioning of Rule 9(2)(b)(i) of the CCS (Pension) Rules, 1972 or Rule 19 of the CCS (CCA) Rules, 1965, in the show-cause notice dated 23.12.2011 issued by order and in the name of the President can by no stretch of imagination be said to have invalidated the impugned order dated 29.10.2014 (Annexure 1) issued under Rule 9(1) of the CCS (Pension)Rules, 1972, by order and in the name of the President. Therefore, I have found no substance in the contention of the applicant.

12. No other point worth consideration has been urged or pressed by the learned counsel appearing for the parties.

13. In the light of what has been discussed above, the O.A., being devoid of any merit, is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

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