

**Central Administrative Tribunal
Principal Bench**

**OA No.1645/2017
CP No.36/2018
CP No.765/2017**

Reserved on : 22.03.2018
Pronounced on: 05.04.2018

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)**

Dr. M. R. Diwan, IFS (Retd.)
s/o Late D. R. Diwan
R/o 7009, Orchid Tower,
Paramount Symphony,
Republic Crossing,
Ghaziabad, UP-201009.

.... Applicant.

(Applicant in person
Shri Sourabh Ahuja, Advocate appeared as amicus curie)

Vs.

1. Union of India through the
Secretary
Ministry of Environment & Forests
19, Indira Paryavaran Bhawan,
Aliganj, Jor Bagh Road, Lodi Road,
New Delhi 110 003.
2. The Joint Cadre Authority
For AGMUT Cadre from 03.04.1989
Through the Additional Secretary
Incharge (I/C) UTS Division
Ministry of Home Affairs
Central Secretariat, North Block,
New Delhi 110 001.
3. The Joint Cadre Authority
For AGMUT Cadre from 25.4.1995
Through the Director General (Forests)/Spl. Secy.
Ministry of Environment & Forests
19, Indira Paryavaran Bhawan,
Aliganj, Jor Bagh Road, Lodi Road,

New Delhi 110 003.

4. The Secretary Forests/PCCF
 Department of Environment & Forests
 Van Sadan, Haddo, Port Blair
 Andaman & Nicobar Islands 744102
 (Respondent No.4 to be served) through
 Resident Commissioner posted at
 Andaman & Nicobar Bhawan,
 12 Chanakya Puri, New Delhi. ... Respondents.

(By Advocates, Shri Hanu Bhaskar, Shri A. K. Behera and Shri Ramjan Khan for respondent Nos.1 & 2, Shri Arun Bhardwaj, Shri R. K. Sharma and Shri Piyush Gaur for respondent Nos.3 & 4.)

: O R D E R :

Justice Permod Kohli, Chairman:

This case has a chequered history. The applicant was recruited to Indian Forest Service (IFS) (AGMUT Cadre) on 01.03.1994. He earned promotions from time to time up to Senior Time Scale. While posted at Port Blair, the applicant was served with a charge sheet dated 15.11.1993 containing as many as 11 articles of charge. An enquiry was constituted comprising Commissioner of Departmental Inquiries (CDI) who submitted his report dated 14.03.1996 holding two charges as “proved”, six as “partly proved” and three as “not proved”. The Inquiry Report was served upon the applicant who submitted his representation dated 27.05.1997. It is stated by the applicant that he also appeared before the competent authority, i.e., the then Minister of Environment and Forest who specifically mentioned in his note dated 09.02.1998 that the applicant had been found guilty of certain procedural irregularities, but no *mala fide*

intention on his part could be established, and took a decision to inflict a minor penalty of withholding of two increments for a period of two years on the applicant. Order dated 09.02.2018 is reproduced hereunder:-

“A careful analysis of the findings of the Inquiry Officer reveals that in some cases the officer has been found guilty of certain procedural irregularities, but no *mala fide* intention on the part of the official has been established. But the officer has unauthorizedly absented himself from duty a number of times. In light of this, a minor penalty of withholding of two increments for a period of two years may be imposed on the officer.”

It is alleged that the respondents *suo motu* and without any authority reviewed the conscious decision taken by the then Hon'ble Minister, and instead inflicted the penalty of dismissal from service vide order dated 03.07.2001.

2. The applicant filed OA No.181/2002 before the Principal Bench of CAT against the order of dismissal dated 03.07.2001. The Principal Bench vide its judgment dated 29.05.2003 quashed the dismissal order as the inquiry was ex-parte and remanded back the case to the department for continuing the proceedings from the stage the ex-parte proceedings were initiated. Further inquiry was held. The Inquiry Officer submitted his report dated 16.11.2006 and held eight charges as “fully proved” and three as “partly proved”. The CVC advice was taken who advised withholding of pension as well as gratuity of the applicant vide its advice dated 13.04.2007. The

applicant superannuated from service on 30.04.2004 on attaining the age of 60 years.

3. The applicant challenged the departmental inquiry proceedings by filing OA No.418/2006 before Principal Bench of this Tribunal. This OA was, however, withdrawn vide order dated 30.04.2007 with liberty to challenge the order regarding change of Inquiry Officer. A fresh OA No.1043/2007 was filed before PB. This OA was disposed of vide order dated 13.12.2007 with a direction to the Ministry to afford an opportunity to the applicant to represent against the inquiry report. The applicant submitted his representation. After seeking UPSC's advice, penalty of withholding of pension and entire gratuity on permanent basis was imposed upon the applicant vide penalty order dated 08.04.2010. This order was challenged by filing OA No.1826/2010 before PB. Vide order dated 12.05.2011 passed in OA No.1826/2010, order dated 08.04.2010 was set aside by the Tribunal on account of non service of the CVC's advise upon the applicant before imposition of penalty. However, liberty was granted to the respondents to proceed against the applicant from the stage after the CVC advice would be given to the applicant to file his representation. A copy of the CVC advice was given to the applicant on 17.10.2011. The applicant submitted his response on 02.11.2011 whereby he also sought copies of certain documents. The Disciplinary Authority sought UPSC's advice and

vide order dated 25.09.2012 imposed penalty of forfeiture of full pension and entire gratuity on permanent basis. The applicant challenged the aforesaid order as also the charge sheet by filing OA No.925/2012 which was disposed of as withdrawn with permission to file a fresh OA challenging the penalty order dated 25.09.2012 as well as the charge sheet. The applicant accordingly filed OA No.3660/2012 before the Tribunal challenging the penalty order dated 25.09.2012 as also the charge sheet dated 15.11.1993. The Tribunal quashed the impugned penalty order dated 25.09.2012 holding that the punishment is disproportionate, and remanded the matter to the Disciplinary Authority for taking a fresh decision on the quantum of punishment within a period of two months, vide judgment dated 31.10.2013. The operative part of the judgment is reproduced hereunder:-

“34. In totality of facts and circumstances of the case and in view of our above discussion, we allow the instant Original Application with the following directives:-

1. The impugned order dated 25.09.2012 is quashed and set aside being excessive and bad under law and the case is remanded to the disciplinary authority for taking a fresh decision on the quantum of punishment in the light of our discussion within.
2. The disciplinary authority is directed to complete the directions, as ordained above, within a period of two months from the date of receipt of a certified copy of this order.

There shall be no order as to costs.”

4. The respondents in their written submissions have stated that copy of the aforesaid order was received in the Ministry on 19.11.2013. The Disciplinary Authority decided to impose 10% cut in pension of the applicant and, therefore, UPSC's advice was sought. The applicant also sought review of the order dated 31.10.2013 by filing RA No.53/2014 before this Tribunal and also filed a contempt petition for implementation of the directions. The CP No.129/2014 was dismissed on 15.05.2014. In the meantime, the respondents had filed MA Nos.752/2014 & 753/2014 with application for condonation of delay in filing the MA for extension of time. The Tribunal disposed of both these MAs having been rendered infructuous. The UPSC furnished its advice to impose the penalty of withholding of 100% of monthly pension on permanent basis and further forfeiture of 100% gratuity admissible to the applicant. The review application filed by the applicant also came to be dismissed vide order dated 30.07.2014. Copy of the advice of UPSC was served upon the applicant on 26.11.2014 for his representation. The applicant submitted his representation on 16.12.2014. The respondents vide impugned order dated 19.06.2017 imposed penalty of 50% cut in monthly pension on permanent basis and withholding of 50% of gratuity admissible to the applicant. Since this order was passed during the pendency of OA No.1645/2017, the applicant sought

amendment which was allowed vide order dated 13.11.2017. The reliefs sought in the amended OA are as under:-

- “(i) Call for the entire records of the case;
- (ii) quash and set aside the impugned penalty order dated 19.06.2017 with all its consequences in view of the laws laid down by the HSC stated in paras above.
- (iii) declare the disciplinary proceedings started vide C/S dated 15.11.1993 as closed/ended/elapsed in view of the laws laid down by the HSC stated in paras above.
- (iv) declare the action of the respondents as illegal, arbitrary, malafide, unjustified, without jurisdiction & untenable in law with all its consequences;
- (v) direct the respondents to restore all the benefits including the release of the Gratuity and Proper calculation of Pension after releasing the seniority above all those who were promoted to STS of IFS and all due promotions i.e. S.G., CF, CCF, Add PCCF & PCCF w.e.f. 1.1.1982, 04.12.1985, 16.06.1992, 06.11.2002 & 4.2.2004 respectively as if no such order/Charge Memo have ever been issued.
- (vi) allow costs of all the applications, present and all others relating to OR relying of the impugned Charge Memo dated 15.11.1993,
- (vii) direct the respondents to pay all the due amount along with interest @18%PA after releasing all due promotions within a reasonable period as fixed by the Hon’ble Tribunal.
- (viii) pass any other order or orders, which this Hon’ble Tribunal may deem just & equitable in the facts & circumstances of the case to compensate the losses suffered by me as stated in above paras.
- (ix) award a cost to enable me to get compensation of loosing my Residential PLOT, costing more than Rs. Two Crores.”

5. The applicant has challenged the charge memo and the impugned penalty order on the following grounds:-

- (i) That the penalty imposed is not one of the prescribed penalties under Rule 6 of the All India Services (Discipline & Appeal) Rules, 1969 (hereinafter to be referred as the Rules of 1969).
- (ii) That the applicant is not guilty of any grave misconduct; no pecuniary loss has been caused to the State for which action under Rule 6 of All India Services (Death-cum-Retirement benefits) Rules, 1958 (hereinafter to be referred as the Rules of 1958), is warranted.
- (iii) That the disciplinary proceedings after the retirement of the applicant are illegal, and thus all proceedings including the penalty imposed upon the applicant after superannuation are liable to be quashed and set aside.
- (iv) That the continuation of disciplinary proceedings after the time granted by the Court for completion of the same is without jurisdiction, hence liable to be quashed.,

6. The respondent Nos.1 to 3 filed their counter reply. It is stated that the disciplinary proceedings under Rule 8 of Rules of 1969 were initiated against the applicant vide Memorandum dated 15.11.1993 in respect to 11 charges mentioned therein. The officer was posted at Andaman & Nicobar Islands Administration when the

alleged incident of misconduct took place. Therefore, charges were framed by the Andaman & Nicobar Administration and charge sheet was issued after approval from the Disciplinary Authority, i.e., Minister, Environment and Forest. It is stated that in the case of AGMUT Cadre officers, the Ministry of Environment, Forest and Climate Change, being the cadre controlling authority has been initiating the disciplinary proceedings with the issuance of charge sheet and conducting departmental inquiry as well as imposing the penalty in consultation with UPSC. The Disciplinary Authority on completion of the inquiry concluded that the penalty of forfeiture of full pension and the entire gratuity on permanent basis was imposed vide order dated 25.09.2012. The applicant challenged the same in OA No.3660/2012 before the Principal Bench which has been set aside vide order dated 31.10.2013. It is stated that the penalty imposed upon the applicant was in terms of Rule 6 of the Rules of 1958. Regarding the competence of the Secretary, Ministry of Environment & Forest, it is stated that the Joint Cadre Authority constituted under the All India Services (Joint Cadre) Rules, 1972 is competent to impose penalty. Composition of JCA was revised vide Notification dated 25.04.1995 read with sub rule (1) of Rule 4 of All India Service (Joint Cadre) Rules, 1972 comprising of the following:-

- “(i) Chief Secretary, Arunachal Pradesh
- (ii) Chief Secretary, Goa

(iii) Chief Secretary, Mizoram

(iv) Chief Secretary, Delhi

(v) Inspector General of Forests, Ministry of Environment and Forests (representing Union Territories in respect of Indian Forest Service)

(vi) Joint Secretary (Union Territory Division, Ministry of Home Affairs (Convener in respect of the Indian Administrative Service and Indian Police Service)/Joint Secretary (in charge of Indian Forest Service Cadre Management, Ministry of Environment and Forests (convener in respect of Indian Forest Services)."

Reliance is also placed upon Rules 4 & 5 of All India Service (Joint Cadre) Rules, 1972 and the same are also reproduced hereunder:-

"4. Committee of representatives - (1) There shall be a Committee consisting of a representative of each of the Governments of the Constituent States, to be called the Joint Cadre Authority. (2) The representatives of the Governments of the Constituent States may either be members of an All-India Service or Ministers in the Council of Ministers of the Constituent States, as may be specified by the Governments of the Constituent States.

5. Duties and functions of the Joint Cadre Authority.- (1) The Joint Cadre Authority shall determine the names of the members of the All-India Services, who may be required to serve from time to time in 722 connection with the affairs of each of the Constituent States and the period or periods for which their services shall be available to that Government. (2) Where there is a disagreement on any matter among the members of the Joint Cadre Authority, the matter shall be referred to the Central Government for decision and the

Governments of the Constituent States shall give effect to the decision of the Central Government.”

7. It is further stated that the meeting of Joint Cadre Authority (AGMUT) held in October 1989, whereby the authority and jurisdiction was conferred upon MHA (UT Division). It is accordingly stated that the competent disciplinary authority is not the JCA or any other authority but the State Government or the Ministry of Environment, Forest and Climate change. The Central Government has overriding powers over the State Government or the JCA.

8. It is further case of respondent Nos.1 to 3 that the order passed in OA No.3660/2012 was examined in detail in the Ministry in light of the observations of the Tribunal. The Ministry tentatively decided to impose a penalty of suitable cut, i.e., 10% of cut in pension of the applicant. The case was referred to UPSC on 13.02.2014 for seeking advice on the proposed penalty of 10% cut in pension of the applicant. The UPSC vide its letter dated 16.05.2014 advised that after taking all other relevant aspects of the case into consideration, the Commission noted that the charges established against the charged officer would constitute grave misconduct on his part, and considered that the ends of justice would be met if the penalty of withholding of 100% of monthly pension otherwise admissible to the applicant is imposed on permanent basis, and further 100% of gratuity admissible to him be also withheld. A copy of the UPSC's

advice was furnished to the applicant vide letter dated 26.11.2014. The representation made by the applicant was considered by the Ministry, and in view of the disagreement of the Disciplinary Authority, i.e, Ministry of Environment, Forest and Climate Change and the advice of UPSC on the quantum of penalty, the matter was referred to Department of Personnel and Training (DoP&T) seeking advice. The DoP&T advised to reconsider the matter. Accordingly, the matter was visited afresh by the Disciplinary Authority keeping in view the directions of the Tribunal, gravity of charges and that the charges relating to integrity were found proved/partially proved by the IO/DA, UPSC, the Ministry decided to impose penalty of 50% cut in pension and withholding of 50% gratuity on permanent basis upon the applicant. The Department of Personnel & Training advised vide its letter dated 15.05.2016 that the competent authority had decided to resolve the disagreement between the UPSC and the disciplinary authority by agreeing with the view of disciplinary authority for imposing 50% cut in monthly pension on permanent basis and withholding of 50% gratuity admissible to the applicant permanently.

9. The respondent No.4 reiterating the averments made in counter affidavit of respondent Nos.1 to 3 filed a separate affidavit. It is stated that the disciplinary authority in respect of All India Services Cadre to which the applicant belongs is the Ministry of Environment, Forests & Climate change. It is additionally stated that in view of

directions of the Tribunal provisional pension has been paid to the applicant. Most of the averments relate to the payments made to the applicant and the compliance of interim order etc.

10. Grounds No.(i) and (ii)- It is admitted position that the applicant is a member of an All India Service and for purposes of disciplinary action his services are governed and regulated by the Rules of 1969. Part III of the said Rules deal with Penalties and Disciplinary Authorities. Under Rule 6 of Part III, the following penalties are prescribed:-

“6. Penalties. — (1) The following penalties may, for good and sufficient reasons and as hereinafter provided be imposed on a member of the Service, namely: —

Minor Penalties:-

- (i) censure;
- (ii) withholding of promotion;
- (iii) recovery from pay of the whole, or part of any pecuniary loss caused to Government, or to a company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by Government, or to a local authority set up by an Act of 25 Modified vide DP&AR Notification No.28013/2/78-AIS(III) dated 12.01.1982 (GSR No.92 dt.30.10.1982) 26 Substituted vide DP&AR Notification No. 6/5/74-AIS-III dt. 28.7.1975(GSR No. 988 dt. 9.9.1975) 273 Parliament or of the Legislature of a State, by negligence or breach of orders;
- (iv) withholding of increments of pay;
- [(iv)-a]Reduction to a lower stage in the time scale of pay for a period not exceeding three years, without cumulative effect and not adversely affecting his pension.

Major Penalties:

- (v) reduction to a lower stage in the time scale of pay for a specified period with further directions as to whether or not the member of the Service will earn increments during the period of reduction and whether, on the expiry of such period, the reduction will or will not have the effect of postponing future increments of his pay;
- (vi) reduction to a lower time scale of pay, grade or post which shall ordinarily be a bar to promotion of the member of the Service to the time scale of pay, grade or post from which he was reduced, with or without further direction regarding conditions of restoration to the grade or post from which the member of the Service was reduced and his seniority and pay on such restoration to that grade or post; and
- (vii) compulsory retirement:

Provided that, if the circumstances of the case so warrant, the authority imposing the penalty may direct that the retirement benefits admissible to the member of the Service under the All India Services (Death-cum-Retirement Benefits) Rules, 1958, shall be paid at such reduced scale as may not be less than two-thirds of the appropriate scales indicated in Schedules 'A' and 'B' of the said rules;

- (viii) removal from Service which shall not be a disqualification for future employment under the Government;
- (ix) dismissal from Service which shall ordinarily be a disqualification for future employment under the Government.

Provided that every case in which [the charge of possession of the assets disproportionate to known sources of income or the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or for bearing to do any official act is established, the penalty mentioned in clause (viii) or clause (ix) shall be imposed].

Provided further that in any exceptional case, and for special reasons recorded in writing any other penalty may be imposed].

Vide impugned order dated 19.06.2017, the following penalty has been imposed upon the applicant:-

“23. NOW THEREFORE, after considering all the facts, circumstances of the case, records of the inquiry and the advice of the UPSC, advice of the Department of Personnel & Training, the President has come to the conclusion that Shri M. R. Dewan, IFS (AGMUT: 1974) (retired on 30th April, 2004) is guilty of the charges leveled against him which constitutes a grave misconduct on his part and that the ends of justice would be met if a penalty of 50% cut in monthly pension on a permanent basis otherwise admissible to him and withholding 50% of gratuity otherwise admissible to him is imposed upon the MOS, Shri M. R. Dewan, IFS (Retd.,) .”

The penalty imposed is admittedly not one of the prescribed penalties under Rule 6 of Rules of 1969. The respondents have, however, proceeded under Rule 6 of All India Service (Death-cum-Retirement Benefit) Rules, 1958. Relevant extract of the said rule reads as under:-

“6. Recovery from pension:-

(1) [The Central Government reserves to itself the right of withholding a pension or gratuity, or both, either in full or in part, whether permanently or for a specified period, and of ordering recovery from pension or gratuity] of the whole or part of any pecuniary loss caused to the Central or a State Government, if the pensioner is found in a departmental or judicial proceedings to have been guilty of grave misconduct or to have caused pecuniary loss to the Central or a State Government by misconduct or negligence, during his service, including service rendered on re-employment after retirement:

Provided that no such order shall be passed without consulting the Union Public Service Commission:

Provided further that

(a) such departmental proceeding, if instituted while the pensioner was in service, whether before his retirement or

during his re-employment, shall, after the final retirement of the pensioner, be deemed to be a proceeding under this sub-rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the pensioner had continued in service;"

Under Rule 6 (1) for initiating action under this rule, two things are mandatory; (i) that the pensioner must be found guilty of grave misconduct or (ii) to have caused pecuniary loss to the Central or State Government by misconduct or negligence during his service in departmental or judicial proceedings. This power is further regulated by two provisions; (1) that the central government is not to pass order under this rule without consulting the UPSC, and (2) if such departmental proceedings were instituted while the pensioner was in service, in such a situation, it shall be deemed to be the proceedings as if the pensioner had continued in service.

11. As many as eleven charges were served upon the applicant. The Commissioner of Departmental Inquiries in its inquiry report dated 14.03.1996 held first to fifth and Seventh articles of charge as "Partly Proved", sixth and eleventh as "Proved" and eight to tenth as "Not Proved". It may be relevant to notice the following Articles of Charge:-

Article-I- Un-authorized absence from duty- This Charge neither constitutes grave misconduct, nor results in pecuniary loss to the government.

Article-II- Irregular drawal of pay, advances and other financial irregularities- Charge under this category is withdrawal of Rs.7325/- as pay advance by using his official position.

Article-III- Irregular drawal of House Rent Allowance. Under this charge also, the allegation is that he sanctioned to himself HRA @ of Rs.800 and Rs.553 for the months of April and June, 1992, without sanction of the competent authority.

Article-IV- Irregular sanction of advance of transfer T.A.- Under this charge, the allegation is irregular sanction of advance of Rs.9883/- on account of tours to attend the training courses at New Delhi without proper sanction from the competent authority.

Article-V- Misuse and exceeding the limits of financial powers and the terms of contract- under this charge, the allegation is that he made payment to the extent of Rs.48,752/- in a contract with a transport carrier and failed to deduct the income tax from the amount of contract, and acted beyond the limits of his official authority.

Article-VI- Misuse of financial powers for the purchase of stores for building material- The allegation is procurement of

the stores of the value of Rs.34,579/- by passing the indent on split-up basis keeping the value of each splitted up unit within his financial limits without the sanction of the competent authority.

Article-VII- Misappropriation in the purchase of sawn timber from a private saw mill for construction of a building- The allegations are that only 6 to 8 cum of timber have been actually used against the purchases of sawn timber shown as 26.366 cum.

Article-VIII- Unauthorized demolition of residential government building- The allegations are that he demolished the government residential building on verbal orders.

Article IX- Disposal of the seized red corals- The allegations are that corals of 103 gunny bags out of the total 118 were found missing and this was on account of close nexus between the applicant and the Deputy Range Officer. He is alleged to have displayed lack of devotion to duty and lack of integrity.

Article X- Illegal felling of trees and misappropriation of timber out of it- The allegations are that while working in Andaman & Nicobar Islands, in connivance with Range Officer 60 cum. of Timber was supplied to a private firm for conversion into sawn

timber, and there was no need/justification for marking/felling of so many trees for producing sawn timber in a private saw mill without observing the codal formalities.

Article XI- Leaving the Headquarter, Port Blair during suspension without permission- The allegations are that he left the headquarter during the period of suspension without permission.

Article I relates to unauthorized absence from duty, whereas Articles II & III relate to irregular drawal of pay and house rent without the sanction of the competent authority. The amounts involved in these articles of charge are Rs.7325 (Article II) and Rs.800 & Rs.553 (Article III). These articles of charge are partly proved and there is no allegation that the applicant had no entitlement. Similarly, Article IV relates to irregular sanction of advance, i.e., without proper sanction and Articles V & VI relate to exceeding financial limits. Again, there is no allegation of misappropriation of government money. The articles of charge No. VIII to X where he is accused of misappropriation and abuse of his official position are not proved. There is no specific allegation of misappropriation, nor there is any loss to the government. The Inquiry Report does not reveal that the applicant is guilty of grave misconduct. There is also no finding that he has misappropriated government money. In any case, the alleged misappropriation has not been shown either in the inquiry or in the

impugned order. In respect to Article XI, the charge pertains to the allegation of leaving station without permission which by no stretch of imagination can be termed to be an act of grave misconduct.

13. The applicant was earlier dismissed from service, which order came to be set aside by this Tribunal vide its judgment dated 31.10.2013 passed in OA No.3660/2012. Vide the impugned order dated 19.07.2017, the applicant has been awarded punishment of 50% cut in pension on permanent basis and withholding of 50% gratuity. This is too harsh a penalty and is also not one of the prescribed penalties under Rule 6 of Rules of 1969. Vide impugned order, the Disciplinary Authority has not given any findings as to how the charges constitute a grave misconduct. In any case, there is no finding that there has been pecuniary loss to the government. Imposition of charges is on account of alleged irregularities. The grave misconduct though has not been defined under the disciplinary rules, however, in *D.V. Kapoor vs. Union of India & Others* [(1990) 4 SCC 314], the Hon'ble Supreme Court has held as under:

“6. Rule 8(5), explanation (b) defines ‘grave misconduct’ thus:

“The expression ‘grave misconduct’ includes the communication or disclosure of any secret official code or password or any sketch, plan, model, article, note, document or information, such as is mentioned in Section 5 of the Official Secrets Act, 1923 (19 of 1923) (which was obtained while holding office under the government) so as to prejudicially affect the interests of the general public or the security of the State.”

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

9. As seen the exercise of the power by the President is hedged with a condition precedent that a finding should be recorded either in departmental enquiry or judicial proceedings that the pensioner committed grave misconduct or negligence in the discharge of his duty while in office, subject of the charge. In the absence of such a finding the President is without authority of law to impose penalty of withholding pension as a measure of punishment either in whole or in part permanently or for a specified period, or to order recovery of the pecuniary loss in whole or in part from the pension of the employee, subject to minimum of Rs 60.

10. Rule 9 of the Rules empowers the President only to withhold or withdraw pension permanently or for a specified period in whole or in part or to order recovery of pecuniary loss caused to the State in whole or in part subject to minimum. The employee's

right to pension is a statutory right. The measure of deprivation therefore, must be correlative to or commensurate with the gravity of the grave misconduct or irregularity as it offends the right to assistance at the evening of his life as assured under Article 41 of the Constitution. The impugned order discloses that the President withheld on permanent basis the payment of gratuity in addition to pension. The right to gratuity is also a statutory right. The appellant was not charged with nor was given an opportunity that his gratuity would be withheld as a measure of punishment. No provision of law has been brought to our notice under which, the President is empowered to withhold gratuity as well, after his retirement as a measure of punishment. Therefore, the order to withhold the gratuity as a measure of penalty is obviously illegal and is devoid of jurisdiction."

14. We are of the considered view that the charges purported to be proved against the applicant do not constitute a grave misconduct. There is also no pecuniary loss to the government.

15. Ground (iii)- It is admitted case of the parties that though the disciplinary proceedings were initiated vide charge memo dated 15.11.1993, however, the applicant retired from service on 30.04.2004. There is no rule under the Rules of 1969 which prompt the continuance of disciplinary proceedings after retirement. The only rule which allows the continuance of disciplinary proceedings is Rule 6 of Rules of 1958. The said rule can be invoked under the circumstances mentioned therein. We have already held non application of said rule in the case of applicant.

16. In *Dev Prakash Tewari vs. Uttar Pradesh Cooperative Institutional Service Board, Lucknow and Others* (2014) 7 SCC 260,

the Hon'ble Supreme Court considering a similar issue held as under:-

“5. We have carefully considered the rival submissions. The facts are not in dispute. The High Court while quashing the earlier disciplinary proceedings on the ground of violation of principles of natural justice in its order dated 10-1-2006 [*D.P. Tewari v. U.P. Coop. Institutional Service Board*, Writ Petition (S/B) No. 4328 of 1988, order dated 10-1-2006 (All)] granted liberty to initiate the fresh inquiry in accordance with the Regulations. The appellant who was reinstated in service on 26-4-2006 and fresh disciplinary proceeding was initiated on 7-7-2006 and while that was pending, the appellant attained the age of superannuation and retired on 31-3-2009. There is no provision in the Uttar Pradesh Cooperative Societies Employees' Service Regulations, 1975, for initiation or continuation of disciplinary proceeding after retirement of the appellant nor is there any provision stating that in case misconduct is established a deduction could be made from his retiral benefits.

8. Once the appellant had retired from service on 31-3-2009, there was no authority vested with the respondents for continuing the disciplinary proceeding even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority it must be held that the enquiry had lapsed and the appellant was entitled to get full retiral benefits.”

The scope and purport of Rule 6 of Rules of 1958 is altogether different than the rule of penalty, i.e., Rule 6 of Rules of 1969. Rule 6 of 1958 Rules cannot be pressed into service except under the conditions prescribed therein. Since those conditions are not satisfied, the action under Rule 6 of Rules of 1958 is not called for.

17. Ground (iv)- It is again admitted position that vide order dated 31.10.2013 passed in OA No.3660/2012 reproduced in para 3 above, while setting aside the order of dismissal of the applicant from

service, the case was remanded to the disciplinary authority for taking a fresh decision within a period of two months from the date of receipt of certified copy of the order. No proceedings were initiated within the period of two months. The impugned order has been passed after a period of three years and four months. It is pertinent to note that the respondents even did approach the Tribunal for seeking extension of time to comply the directions of this Tribunal by filing MA Nos.752/2014 and 753/2014. These MAs were dismissed vide order dated 15.05.2014 but no remedy was sought against this order. Thus, the time granted to the respondents to complete the disciplinary proceedings attained finality and became mandatory in nature.

18. This Tribunal in *U. Das vs. Union of India & ors.* in OA No.288/2015 and others decided on 08.05.2017 considering the instructions dated 03.03.1999 read with instructions dated 18.01.2016 and the judgment in *Prem Nath Bali v. Registrar, High Court of Delhi & Another* [(2015) 16 SCC 415], wherein, the Hon'ble Supreme Court has fixed the time limit of one year for completion of the entire disciplinary proceedings, has held as under:-

“24....The respondents have failed to complete the disciplinary proceedings within the time limit prescribed by the Tribunal, or even by the Hon'ble Supreme Court, if we were to allow the period to be extended in terms of the judgment of the Apex Court in case of *Prem Nath Bali* (supra). Any action or proceedings beyond the time fixed by the court are impermissible and thus must be deemed to have abated.

25. On account of these reasons, both these OAs are allowed. The disciplinary proceedings pending against the applicants are deemed to have been abated. It is thus declared that the disciplinary proceedings against the applicants in all these cases are *non est* in the eyes of law."

19. Shri Hanu Bhaskar, learned counsel appearing for the respondents has, however, brought to our notice judgment of Hon'ble Delhi High Court in W.P. (C) No.5658/2017 in the matter of ***Rajendra Singh vs. Union of India & Ors.*** In the said case while disposing of OA No.675/2013, a direction was issued to conclude the disciplinary proceedings within six months from the date of receipt of copy of the order. There was delay of about 11 days in passing the impugned order. The Hon'ble High Court has observed as under:-

"The spirit and purport of the order passed by the tribunal in O.A. No.675/2013 is only that the respondents should act expeditiously and, so far as possible, conclude the disciplinary proceedings within six weeks from the date of receipt of the order. There is substantial compliance of the said direction inasmuch, as, the order imposing penalty was issued on 07.07.2014. The intent of the Disciplinary Authority to conclude the proceedings urgently cannot be doubted, since the order of penalty was passed on 07.07.2014. In our view, that was sufficient compliance and on account of the so-called delay of 11 days in passing the said order, the proceedings against the petitioner could not have been abated. Since the penalty imposed upon the petitioner vide order dated 07.07.2014 is premised on a wrong assumption with regard to his induction in the present posting, the same can obviously be corrected."

The above observation clearly speaks for itself. Keeping in view the delay of 11 days, the Hon'ble High Court found that there has been substantial compliance. The facts in the present case are, however,

different. There has been delay of more than three years and that too for simply passing the orders for imposition of penalty.

20. In a similar matter, the Hon'ble Madras High Court in the matter of *S. Jayarani vs. The Secretary to Government* in W.P. No.21363/2009 & MP No.2/2009 decided on 26.03.2010, while considering the similar question where the disciplinary authority failed to pass the order within the time prescribed by the Tribunal observed as under:-

"....the 1st respondent went before the Tribunal for quashing the charge memo by filing OA.No.1550/1999; the Tribunal passed an order on that O.A. on 02.11.2001 directing the disciplinary authority to complete the enquiry and pass final orders within a period of three months from that date; the said order had been communicated to the disciplinary authority; the 1st respondent has submitted his representation on 01.02.2002 following the order dated 02.11.2001 and even thereafter, the disciplinary authority had not completed the proceedings.

The above noted facts state the disciplinary authority in respect of the misconduct that is stated to have taken place in the year 1990. Charges were framed only on 04.08.1997. We find no explanation whatsoever as to why almost 7 years have been taken for framing charges. In addition to that, even after the direction given by the Tribunal by order dated 02.11.2001, no steps were taken to complete the disciplinary enquiry."

These observations were based upon the judgment of Hon'ble Supreme Court dated 01.09.1989 passed in SLP (Civil) No.2103/1987, wherein, the following observations have been made:-

"The Central Administrative Tribunal by order dated 01.08.1986 directed the disciplinary authority to finalise the departmental proceedings within a period of six months; despite the mandatory direction of the Tribunal that the disciplinary

proceedings which were then pending shall be completed within six months and though more than three years and one month had elapsed since then, the proceedings had not been completed."

Therefore, in that case finding that there was inordinate delay in completing the disciplinary proceedings as directed by the tribunal, the Hon'ble Supreme Court of India was inclined to quash the entire proceedings. The Supreme court went on to say that an employer after retirement cannot be harassed by continuing the disciplinary action of that nature."

21. In view of the above circumstances, the action of the respondents is not justifiable. The disciplinary proceedings against the applicant have not been completed within the time granted by this Tribunal vide order dated 31.10.2013 in OA No.3360/2012 and are deemed to have abated.

22. The OA is accordingly allowed. The impugned penalty order dated 19.06.2017 is hereby quashed. The respondents are directed to pay all the consequential benefits to the applicant within a period of two months from the date of receipt of copy of this order. No order as to costs.

23. In view of the above directions, CP Nos.36/2018 & 765/2017 and all other ancillary applications stand disposed of.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/pj/