

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 4449/2013

Reserved on: 06.08.2015
Pronounced on: 18.09.2015

**Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Dr. B.K. Sinha, Member (A)**

Niraj Srivastava
s/o Late Sh. M.P. Srivastava
R/o F-202, Lane W5A,
Western Avenue, Sainik Farms,
New Delhi-110 062.Applicant

(By Advocate: Ms. Jyoti Singh, Sr. Advocate with C.
Bheemanna with Sh. Aman Deep Joshi)

Versus

Union of India through
Cabinet Secretary,
Cabinet Secretariat,
Bikaner House Annex,
New Delhi.Respondent

(By Advocate: Sh. Rajeev Kumar)

O R D E R

By Dr. B.K. Sinha, Member (A):

The applicant in the instant Original Application filed under Section 19 of the Administrative Tribunals Act, 1985 is aggrieved by the imputation of misconduct issued vide Memo dated 18.10.2013 under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 [hereinafter referred to as “1965 Rules”] in respect of the alleged incident stated to have occurred during the period from April, 2004 to mid June, 2004.

2. The case of the applicant, in brief, is that he joined the respondent organization as Officer on Special Duty [OSD] w.e.f. 15.12.1977. He was subsequently promoted as Additional Secretary w.e.f. 28.07.2011. However, on 18.09.2013, the respondent promoted three of the applicant's juniors in supersession of the applicant notwithstanding the fact that there were no departmental or criminal proceedings pending against him. The applicant made a representation dated 19.09.2013 challenging the aforesaid order and also filed OA No. 3452/2013 before this Tribunal, which was disposed of vide order dated 13.09.2013 with a direction to the respondent to decide the representation of the applicant by passing a reasoned and speaking order as expeditiously as possible preferably within four weeks from the date of the order. The Tribunal further clarified that it had not made any observation regarding the merits of the case. In the meantime, the respondent served the Imputation of Misconduct on the applicant under Rule 16 of the Rules of 1965 vide Memo dated 18.10.2013 wherein he has been alleged of the following acts of omission:-

“(a) The applicant was holding the position of Joint Secretary (Pers) during December 2003 to May 2004. The applicant was associated with the project for construction of the said building and was fully aware of the fact that it was to have two towers with two level basements. He was also aware of the mandate of the Monitoring Committee viz. to “monitor” the progress of the project and not to suggest/carry out any deviations in the approved plan.

(b) The applicant 'permitted unauthorized discussion in the meeting of the Monitoring Committee held on 12.4.2003 regarding the modifications in the design of the building'. Discussion and deliberations during the meeting 'were suggestive of the intention to deviate from the approved scope of work'.

(c) On the very same day, after the meeting, the Applicant had recorded a note "SS (Pers) and Secretary briefed. Please prepare minutes of the meeting" in the body of the application for the visitor pass to the CPWD engineers. This indicates the Applicant 'took the CPWD tram to the Chamber of Secretary (R) to brief about the deliberations in the meeting of the Monitoring Committee regarding the deletion of one basement from the approved design. The applicant is alleged to have 'made efforts to facilitate the implementation of the unauthorized decision by having recorded that the superior officers were briefed of the intended decision'.

(d) Deputy Secretary (Admin) in his note dated 13.4.2004 attributed an opinion to the Additional Director General CPWD expressed in the meeting to the effect "...The layout plan of the proposed building may be retained without any cut, provided were forego construction on one basement...". This fact is not recorded in the minutes of the meeting put up by Shri K K Gupta on 20.4.2004. The applicant recorded on this Note "Secretary has approved only one basement" knowing fully well that only the CNE/CFA can make deviations from the approved plan.

(e) The minutes of the meeting dated 12.4.2004, drafted by Shri K K Gupta on 20.4.2004 contained some discussions in deviation of the CNE's approval and did not mention what CPWD opined during the meeting. Besides, formal approval of minutes was not taken from Secretary (R). 'The drawing of ambiguous and selective minutes were intended to keep the other participants uncertain about the true motives and to lead to the intended decision of making unauthorized deviations in the building plan.

(f) The decision to construct the building as per modified design was communicated to CPWD by KK Gupta. There is an endorsement in the file stating "Shown to JS (Pers) by OSD (Engg.) may be issued".

(g) The applicant 'did not bring out the facts of deviation to the knowledge of Secretary (R) in writing to obtain his orders, on file. The applicant, 'rather than bringing to the notice of his superior officers the need to approach

CNE/CFA, in case some modifications were contemplated, or cautioning them about the illegality in not doing so, he allowed the irregular/unauthorized decisions to be conveyed to CPWD. By recording minutes without obtaining formal approval of the then Secretary (R) Shri Niraj Srivastava, no only allowed the deviations to be made but possibly tried to shield the then Secretary (R) from the irregularities committed.”

3. The applicant has assailed the charge-sheet on the grounds that it has been issued by the junior officer; it was not supported by the documents; he had been the Chairman of the Monitoring Committee from 23.03.2004 to mid June, 2004 i.e. for a period of less than three months; only meeting of the monitoring committee was held in which CPWD conveyed that MCD had not given approval for two basements and they would be submitting the Revised Building Plans addressing MCD's concerns waiting for their response. The response of the MCD was received only in May, 2006 much after the applicant had relinquished the charge of Chairman of the Monitoring Committee in June, 2004. The applicant, thereby, submits that it was impossible to take any decision about the modification or deviation from the original plan and final decision was taken by Secretary (R) in August, 2006. There were two levels of officers above the applicant, i.e., Additional Secretary and Secretary (R). Moreover, after having relinquished the charge, the case was processed by three of the applicant's successors viz. Vijay Tiwathia, Kishore Jha and PM Heblikar.

4. However, during the course of oral submission, the learned counsel for the applicant has relied upon the following two grounds:-

(i) In the first instance, the proceeding launched against the applicant was legally impermissible. Admittedly, the charge-sheet had been submitted against the applicant vide OM dated 18.10.2013 against a minor penalty under Rule 16 of the CCS (CCA) Rules, 1965. The applicant had approached the Tribunal vide OA No. 4094/2013 with MA No. 8/2004 which was decided vide order dated 15.1.2014 holding that none of the conditions stipulated in the case of **Union of India & Ors. vs. K.V. Jankiraman** [(1991(4) SCC 109] was fulfilled in the instance of the applicant for sealed cover procedure. The Tribunal also took note of **Union of India & Ors. v. Satyendra Kumar Singh** [WP(C) No. 7030/2013 decided on 11.11.2013] and **Union of India & Ors. Vs. Anil Kumar Sarkar** (SLP No. 2537/2013 decided on 15.03.2013) and also of unsubstantiated and incorrect pleadings by the respondents directing them to open the recommendations placed in the sealed cover proceedings by the DPC held on 25.06.2013. Accordingly, the sealed cover was opened and the applicant was promoted and he has also been granted provisional pension. The contention of the applicant is

that he has been subsequently retired w.e.f. 28.02.2014. Under these circumstances, the proceeding has to be instituted under Rule 9(2)(b)(ii) of CCS (Pension) Rules, 1972. In this case, a period of 9 years had elapsed after the occurrence of the event.

- (ii) In the second place, the applicant has submitted that in the post retirement period, the President can only withhold pension or a part thereof, if the pensioner is found guilty of grave misconduct or negligence during the period of the service. Since the instant proceedings have been initiated against a minor penalty, the charge-sheet is not justified in any case, as it would be beyond the scope of the grave misconduct.

The applicant has relied upon the following cases in support of the OA:-

- (i) **Baldev Raj v. Union of India & Anr.** (OA No. 2646/2012 decided on 05.08.2014)
- (ii) **Union of India v. Hari Singh** (Writ Petition (Civil) No. 4245/2013 decided on 14.08.2013)
- (iii) **S.K. Ahuja v. Govt. of NCT of Delhi** (OA No. 3507/2010 decided on 10.01.2012)
- (iv) **M.L. Tahilani v. DDA** 98(2002) DLT 771
- (v) **Chiranji Lal v. Union of India** (OA No. 1744/1977 decided on 22.04.1999)

5. The respondents have filed a counter affidavit denying all the averments stating that the charge-sheet had been served under the provisions of Rule 16 of CCS (CCA) Rules, 1965 with the approval of the competent authority, who is the President of India in the instant case, vide order dated 18.10.2013. The counter affidavit of the respondents is merely within the factual matrix denying the claims of the applicant regarding the occurrence of the event. As regards the legal question, the respondents merely submitted that the charge-sheet had been submitted on 18.10.2013 and thus, the provisions of Rule 9 of CCS (CCA) Rules were not attracted and the OA is fit to be dismissed.

6. We have carefully examined the pleadings submitted by the respective parties as also the documents submitted therewith. We have further listened patiently to the arguments of the respective counsels.

7. To our mind, the issues that formally need to be decided in this OA are the following:-

(i) *Whether the departmental proceedings instituted by the charge-sheet dated 18.10.2013 would become untenable upon retirement of the applicant w.e.f. 28.02.2014, on account of being initiated in respect of minor penalty, the charges not being grave?*

(ii) *Whether the departmental proceedings are hit by Rule 9(2)(b)(ii) of CCS (Pension) Rules, 1972, having been instituted in respect of minor penalty proceedings?*

8. With regard to the first of the issues, we deem it necessary to reproduce the relevant provisions of Rule 9 of the CCS (Pension) Rules, 1972 as under:-

“9. Right of President to withhold or withdraw pension

¹[(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 :
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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) *omitted*

(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.

9. We have to take note of the fact that Rule 9 of the Pension Rules covers two sets of circumstances:-

- (i) Where the charged officer has retired and then the departmental proceedings need to be initiated against him;
- (ii) Where the proceedings had been initiated while the charged officer was in service, and continue even after his retirement.

10. Rule 9(1) of the CCS (Pension) Rules, 1972 speaks of the right of the President to withhold pension where the pensioner had been found guilty of grave misconduct or negligence during the service. On a simple reading, Rule 9(1) can be dissected as under:-

- (i) The President has unrestricted right to withhold a part of the pension or withdraw full pension where it has already been granted.
- (ii) The President also has the right to order recovery of any pecuniary loss caused to the government from the pension or gratuity, if in any departmental or judicial proceeding the pensioner is found to be guilty of grave misconduct or negligence during the service period.

Under the terms of Government of India's OM dated 21.05.1960, the restriction to withheld one-third of the pension

originally sanctioned is applicable only where the order is for recovery of losses from pension, and it has no bearing on the question of right to withhold or withdraw the pension.

11. Rule 9(2)(a) of the Pension Rules, 1972 makes it amply clear that the departmental proceedings referred to in rule 9(1), if instituted before the retirement of the government servant, shall be deemed to be proceedings under Rule 9(2) and shall be continued and concluded. Accordingly, the minor penalty proceedings and the major penalty proceedings, which are instituted against a Government servant served while in service and which do not get concluded before the date of retirement automatically become proceeding under Rule 9(2) and would be subject to all the conditions provided therein.

12. The Full Bench of the Tribunal in the case of **Amarjeet Singh vs. Union of India**, ATR 1988(2) CAT 637 held that institution/continuance of the proceedings is not depended upon any pecuniary loss being caused to the Government. Even in the absence of any pecuniary loss, pension can be withheld or withdrawn in whole or part after following the prescribed procedure for an act of misconduct or negligence committed while in service. The provisions of Rule 9(2)(b)(ii) provides that the departmental proceeding cannot be initiated in the post-retiral period of the employee in respect of any charge or events which had taken place more than four years before such institution. On a casual reading, it appears that

the provisions of Rule 9(2)(b)(ii) will only be applied to such cases where the departmental proceedings are commenced following the retirement of the Government employee. However, where they are commenced before retirement of the Government employee, they shall continue subject to the provisions of Rule 9(2)(a). In this regard, we have to take a look at the cases relied upon by the applicant.

13. The first of the decisions relied upon is **Baldev Raj vs. Union of India** (OA No. 2646/2012 decided on 05.08.2014). In this case, the emphasis was more on delay of initiation of departmental proceedings. Admittedly, in the instant case also, the alleged incident is said to have taken place between the period April, 2004 and June, 2004 while the charge-sheet had been issued after an admitted delay of almost 9 years on 18.10.2013. In the said decision, the Tribunal relied upon the decision of the Hon'ble Supreme Court in the case of **State of Andhra Pradesh v. N.Radhakrishnan**, 1998(4) SCC 154 wherein it was held that that it is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground, the disciplinary proceedings are to be terminated, each case has to be examined on the facts and circumstances of that case. No doubt, every employee has a right to have the proceedings concluded against him within a reasonable time. In considering whether the delay

has vitiated the disciplinary proceeding, the court has to consider several factors, including the nature of charge, its complexity and on what account delay has occurred; whether the delay caused is attributable to the delinquent employee; and what prejudice the delay has caused to the employee.

In that case, this Tribunal came to the finding that the allegations made against the applicant were only of non-adhering to the procedure. In the instant case, we find that there is not only a delay of nine years but also that the sole charge against the applicant is that he approved a change in design unauthorizedly, which has been denied by him. Therefore, we find no similarity in the case under citation and the instant OA.

14. In **Union of India & Anr. v. Hari Singh** (W.P.(C) No. 4245/2013 decided on 23.09.2013), the Hon'ble High Court have alluded to the delay in the departmental proceedings and dismissed the claim by relying upon the decision of the Hon'ble Supreme Court in **State of Punjab v. Chaman Lal Goyal**, (1995)1 ILJ 679 wherein it was observed that when a plea of unexplained delay in initiation of disciplinary proceedings as well as prejudice to the delinquent officer is raised, the court has to weigh the facts appearing for and against the petitioner's pleas and take a decision on the totality of circumstances and the court has to indulge in a process of balancing. In the said case, the proceeding was quashed.

15. The applicant has further relied upon the case of **S.K. Ahuja v. Govt. of NCT of Delhi** (OA NO.3507/2010 decided on 10.01.2012). The applicant in that case was found guilty of grave misconduct in making purchases against the rules much above the market price. However, the proceeding was quashed on the ground of un-explained delay. For the sake of greater clarity, we extract the following para:-

“12. Considering the facts and circumstances of the case; well settled legal position, we come to the considered conclusion that this is a fit case where the respondents have not convinced us with justifiable reasons for the delays at the stage of framing charge after long lapse of over four years. We are of the opinion that the delayed disciplinary action had already caused prejudice to the applicant as the applicant is due for his pensionary benefits which he had not yet received though more than two years had passed. Normally, in the cases where the disciplinary proceedings has commenced, enquiry report is available and disagreement note has been prepared, we should not be interfering but taking into account the facts and circumstances of the instant case, it would be a futile exercise in this case to allow the respondents to continue with disciplinary proceedings, as there is no provision under Rule 9 of CCS (Pension) Rules to impose penalty for minor mis-conducts. Therefore, the Charges framed against the applicant in the Memorandum dated 30.09.2009 and the Inquiry Officers report and the disagreement note of the Disciplinary Authority prepared when the OA was under adjudication are quashed and set aside.”

16. Similarly, in the case of **Prem Matiyani v. Union of India & Ors.** (OA No. 2284/2010 decided on 18.11.2010), the applicant had been issued a charge-sheet alleging that while working as Director in Song & Drama Division (S&DD), a

Media Unit under Ministry of I&B, he was responsible for making irregular appointments in various posts of Staff Artists in the years 1998-1999, 1999-2000 and 2000-2001. The applicant had denied the charges as he was not the appointing authority and after the Director had approved the list of successful candidates, the same would be displayed on the Notice Board under intimation to each successful candidate. The Tribunal, however, took the view that under Rule 9(2)(b)(ii) action could not have been initiated against the applicant for an event more than four years old at the time of institution of the disciplinary proceeding.

17. The applicant has also relied upon the case of **M.L. Tahiliani v. Delhi Development Authority**, 98(2002) DLT 771.

18. In the present case, we find that the delay is admitted and no explanation for the delay is forthcoming except that the matter was enmeshed in procedural wranglings. This, too, in our mind, is not sufficient explanation so that delay could be condoned. However, what weigh with us is that the provisions of Rule 9(2)(b)(ii) would not be applicable to the facts of the instant case, as the proceedings had commenced before the retirement of the applicant and had been continued under Rule 9(2)(a). In that case, it would be deemed that the proceedings had been initiated under the provisions of Rule 9(2)(a) and would be subject to all its procedures. This issue is accordingly

decided against the applicant. However, it is subject to a decision in the context of the next issue.

19. Insofar as the issue no.2 is concerned, we find that it is a continuation of the discussion in respect of respect of the issue no.1. Once we hold that if the proceeding is continued under Rule 9(2)(a), it shall be deemed that it is the proceeding under Rule 9(1) and would be subject to all its procedures. We have already referred to the twin classification under Rule 9 of the CCS (Pension) Rules between those against whom the proceedings had been commenced earlier before their retirement and those against whom the proceedings were initiated during the post-retiral period. We have also analyzed the provisions of Rule 9(1). It is subject to one major limitation i.e. that the pensioner in order to attract the punishment of forfeiture of part of the pension or withdrawal of the entire pension must be found guilty of grave misconduct and negligence during the period of service. We have also seen that the charges against the applicant are not serious and, therefore, the charge-sheet submitted on 18.10.2013 is only against a minor penalty. In this regard, we have also noted that the pension of the applicant has been released. The DoPT OM dated 28.02.1981 has dealt with an identical situation and clearly provides that the minor penalty proceedings have no effect on the pension. The above OM provides as under:-

“Sub-rule (1) of Rule 9 of the CCS (Pension) Rules, 1972, confers on the President the right to withhold or withdraw the pension or a part thereof, either permanently or for specified period, and to order recovery from the pension, of the whole or a part of any pecuniary loss caused to the Government if, in any departmental or judicial proceedings, the pension is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment on retirement. Sub-rule (2) of this Rule provides that the departmental proceedings, referred to in sub-rule (1), if instituted before the retirement of a Government servant or during his re-employment shall after his final retirement, be deemed to be proceedings under this Rule and shall be continued and concluded. Accordingly, the minor penalty proceedings and the major penalty proceedings, which are instituted against the Government servant while in service and which do not get concluded before the date of retirement, automatically become proceedings under Rule 9 *ibid*. However, since grave misconduct or negligence cannot be established as a result of minor penalty proceedings, action under Rule 9 *ibid* for withholding or withdrawing pension, etc., cannot be taken against a pensioner in respect of whom minor penalty proceedings had been instituted and have been continued after retirement. Such minor penalty proceedings continued after retirement, therefore, do not literally have any effect on the pension in the matter of reducing or withholding of his pension. The disciplinary authorities are requested to take note of this position and take steps to see that minor penalty proceedings instituted against Government servants, who are due to retire, are finalized quickly and in time before the date of retirement, so that the need for continuing such minor penalty proceedings beyond the date of retirement does not arise.”

20. We further take note of Rule 69 relating to provisional pension where departmental or judicial proceedings may not be pending, which is self-explanatory. As per OM dated 22.07.1974, grant of provisional pension equal to the maximum pension under Rule 69 has been made mandatory even if departmental or judicial proceedings are continuing. As seen above, it further provides that even the release of gratuity is

permissible in such cases where departmental proceedings were initiated under Rule 16 of CCS (CCA) Rules, 1965. In this regard, we also take note of the decision of the Full Bench in the case of **Chiranjit Lal vs. Union of India & Ors.** (supra). The Full Bench had gone into the issue as to what constitutes 'grave misconduct'. For the sake of greater clarity, we reproduce Para Nos. 9,10 and 11 as under:-

“9. It will be seen that under Rule 9(1) the punishment which can be given to the charged officer when the inquiry is deemed to be inquiry under Rule 9(2) is that of withholding the pension or gratuity or both either in full or in part, whether permanently or for a specific period or recovery of any pecuniary loss caused to the government if the pensioner is found “guilty of grave mis-conduct or negligence during the period of service.” In other words, there is no classification of major or minor penalties after retirement but only withholding of part or full pension or recovery from pension or gratuity, if the employee is found to be guilty of grave misconduct or negligence during the period of service.

10. It is clear that there would be no purpose in continuing any disciplinary proceedings if there is no possibility of the same resulting in a finding of grave misconduct as provided in Rule 9(1) of the CCS pension Rules. This leads us to the question as to what will constitute grave misconduct and whether any misconduct which warrants any of the minor penalties enumerated in Rule 11 of CCS (CCA) Rule can be termed as grave. The Concise Oxford Dictionary defines ‘grave’ as serious, weighty, important. The Aiyar’s Judicial Dictionary states that the word “grave” is used in many senses but in the context of mis-conduct “grave” makes the character of the conduct, serious or very serious and misconduct in order to earn the gravity has to be gross or flagrant.

11. The Punjab and Haryana High Court in Bhagwat Parshad Vs. I.G. of Police, AIR 1970 (Vole.51) page 81 examined the meaning of misconduct and observed as follows:-

“Misconduct” is a generic term and means “to conduct amiss; to mismanage; wrong or improper

conduct; bad behavior; unlawful behavior or conduct". It includes malfeasance, misdeameanours, delinquency and offence. The term "misconduct" does not necessarily imply corruption or criminal intent". "The word "grave" is used in many senses and implies seriousness, importance, weight etc. There is however, a distinction between misconduct and grave misconduct. The adjective "grave" in this context makes the character of the conduct serious or very serious. The words "gravest acts of misconduct" are incapable of definition. Once has to apply one's mind to the words and given a meaning to each of them in the light of the actual deed, situation and circumstances. "Misconduct" in order to earn the epithet of gravity has to be gross or flagrant. Consequently, the degree of misconduct to justify dismissal has to be higher or more serious."

This Bench of the Tribunal had also gone into what is 'misconduct' and what is 'grave misconduct' and what is not in such cases. The Tribunal also defined that the term 'grave misconduct' is distinct from 'misconduct' only by the degree of punishment that is attracted by the act. We further take note of the decision in OA No. 4094/2013. In this case, the applicant had approached the Tribunal and this Tribunal had directed the respondents to open the sealed cover proceedings after taking note of the fact that the charges related to violation of procedures and not of financial irregularity by own admission of the respondents. The Tribunal had also taken note of the fact that it had nowhere been examined as to what prejudice had been caused to the respondents. For the sake of greater clarity, we extract the following

"9. The imputation of charges have also been enclosed which indicate that the applicant had served as Joint Secretary (Personnel) during the

relevant period (December 2003 May 2004) when the decision of making deviations in the approved building plan of the Project at Envelop 5-A, CGO Complex, New Delhi were made. The applicant was in-charge of the Sections processing all the approvals on the files and dealing with communication thereof to the approving and implementing authorities. The applicant had also served as Chairman of the Monitoring Committee. Though the applicant in his official capacity was fully aware of the background of the Project, yet he had consented to the change in the building plan whereby three blocks were constructed in place of two but there were alterations in the basement. It is relevant to extract the concerned paragraph from this chargesheet, which reads as under:-

“That Shri Niraj Srivastava did not bring out the facts of deviation to the knowledge of Secretary . in writing to obtain his orders, on file, though various notes recorded do indicate that the deviations were possible made at his directions. JS (Pers.) Shri Niraj Srivastava was fully aware that Secretary (R) was not the Competent Authority to make any change in the building plan approved by CNE/CFA. Still, rather than bringing to the notice of his superior officers the need to approach CNE/CFA, in case some modifications were contemplated, or cautioning them about the illegality in not doing so, he allowed the irregular/unauthorized decision to be conveyed to CPWD. By recording minutes without obtaining formal approval of the then Secretary (R), Shri Niraj Srivastava, not only allowed the deviations to be made by possibly tried to shield the then Secretary (R) from the irregularities committee.”

It also appears from the order dated 08.05.2013 that it was the then Secretary (R) who was guilty of grave misconduct being a party to the deviations made in the design and scope of the building as approved by the CNE/CFA without obtaining approval of the competent authority to do so. However, as the then Secretary (R) retired on superannuation on 31.01.2005, no enquiry could have been initiated against him under the provisions of CCS (CCA) Rules, 1965 and further Rule 9(2)(b) of CCS (Pension) Rules, 1972 as the event had taken place more than four years ago. Therefore, it was decided not to initiate a departmental enquiry against the then

Secretary (R) instead, as it appears, proceedings had been initiated against the applicant. It also transpired during the oral submissions that the then Secretary (R) was separated from the Joint Secretary by a Special Secretary against whom no action is under evidence.

10. We also take note of the statement of the learned counsel for the respondents that the charges related to financial irregularity. However, that is not justified by the above facts. Moreover, had it been so, the respondents would have proceeded against the applicant under Rule 14 of the CCS (CCA) Rules, 1965 for a major penalty and not for a minor penalty as the case is.”

Accordingly, the second issue is decided against the respondents and it also annuls the finding adverse to the applicant in respect of issue no.1. In other words, it overcomes the finding on the issue no.1.

21. In conclusion, we take note of the fact that the disciplinary proceedings had been initiated against the applicant just prior to his retirement. It was some kind of proxy proceeding as no proceeding could have been undertaken under the provisions of Rule 9(2)(b)(ii) against the then Secretary (R), who was deemed primarily responsible, on account of his retirement more than four years earlier. We also take note of the fact that nowhere has it been stated as to what financial loss or prejudice has been caused to the Department. In absence of such assertions, the proceeding would only rely upon a technical deviation. There are no charges relating to financial irregularities. Rule 9(2)(b) is not attracted to the facts

of this case, as the proceedings had been initiated prior to his retirement. However, the limitations of Rule 9(1) shall be clearly applicable to the facts of the case and as per OM dated 28.02.1981; minor penalty proceeding shall not be covered under Rule 9(1). The dividing line between 'misconduct' and a 'grave misconduct' is that one attracts minor penalties, the other attracts major penalties. We also take note of the fact that the respondents have not been able to put up a credible case against the applicant. We are of the opinion that there are other factors also which render the proceeding unsustainable. Nowhere has it been stated that the applicant had been a decision maker in his own capacity; per contra, he was insulated from the decision making body by at least two layers. There were others in the shape of Additional Secretary and Secretary to supervise and oversee the actions of the applicant. As such, it does not stand to reason that the applicant should be singled out for proceeding and punishment.

22. Under the above circumstances, we are of the opinion that continuation of the proceedings against the applicant would serve no purpose and would have no impact in view of the clear legal position as enunciated in Rule 9(1), 9(2)(a) and 9(2)(b) of the CCS (Pension) Rules,1972. Therefore, the only effect that being is one of the harassment, and would serve no other legal or administrative purpose. Hence, we hold the impugned

charge memo dated 18.10.2013 as bad in law and set aside the same.

23. With these orders, the OA is allowed without costs.

(Dr. B.K. Sinha)
Member (A)

(Syed Rafat Alam)
Chairman

/1g/