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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.2120/2003

This the 13th day of November, 2003

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

HON'BLE SHRI S. K. NAIK, MEMBER (A)

B.M.L.Bhardwaj.
73/2 Gobind Park.
Delhi-110051.

... Applicant

(By Shri G. K. Aggarwal, Advocate)

-versus-

Union of India through
Director General (Works) &
Ex-Officio Secretary,
Central Public Works Department,
Nirman Bhawan,
New Delhi-110011.

... Respondent

(By Shri B. S. Jain, Advocate)

O R D E R

Hon'ble Shri Shanker Raju, Member (J) :

Applicant who superannuated on 31.12.2002 has sought quashing of memorandum for a minor penalty dated 30.12.2002 and release of his terminal benefits with interest. By an interim order dated 25.9.2003, directions have been issued to the respondents to release gratuity and provisional pension of the applicant which were under process, under Rule 69 of the C.C.S. (Pension) Rules, within two months from the aforesaid date.

2. Applicant while working as Assistant Engineer (Civil) was served upon a minor penalty chargesheet under Rule 16 of the C.C.S. (C.C.A.) Rules for failing to carry out effective supervision to get the work executed

thereby contravening provisions of Rule 3(1)(ii) of the C.C.S. (Conduct) Rules, 1964. Before the aforesaid order, Central Vigilance Commission after evaluating the allegations against the applicant, recommended as a first stage advice initiation of minor penalty proceedings.

3. When the retiral benefits of the applicant had not been released, the applicant preferred a representation for the release. Finding no response, the applicant has filed the present OA.

4. The learned counsel for the applicant by referring to Rule 9 (1) of the C.C.S. (Pension) Rules, 1972 contends that the President has the right to withhold or withdraw pension in full or in part either permanently or for a specified period and ordering recovery 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. Having regard to the above, by referring to the Full Bench decision of this Tribunal in the case of Chiranjit Lal v. Union of India & Ors., A.T. Full Bench Judgments (1997-2001) p.52, it is contended that when a minor penalty chargesheet is issued to a Government servant which is pending on his retirement on superannuation, by implication, such proceedings would have to be construed as not involving any grave misconduct or negligence for which recovery in respect of a pecuniary loss is to be effected and the proceedings become meaningless only resulting in delaying the disbursal of the retiral benefits. He further relied

upon the decision of the Apex Court in D.V.Kapoor v. Union of India, (1990) 4 SCC 314 to contend that in the absence of any finding as to grave misconduct, the gratuity etc. cannot be withheld under Rule 9 of the Pension Rules.

5. On the other hand, the learned counsel for the respondents Shri B.S.Jain, vehemently opposed the OA contending that under Rule 11(iii) of the CCA Rules, recovery from pay of the whole or part of any pecuniary loss caused by the Government servant to the Government by negligence is a minor penalty. Further, referring to Rule 69 of the Pension Rules, it is stated that no gratuity is payable to the Government servant till the conclusion of the departmental proceedings and the only exception is when the disciplinary proceedings have been held to impose any of the penalties specified in clauses (i), (ii) and (iv) of Rule 11 of the CCA Rules, but from the purview of this, penalty of recovery from pay on account of a pecuniary loss caused to the Government has been exempted and it is stated that withholding of retiral benefits is in accordance with law.

6. Referring to the Full Bench decision in Chiranjit Lal (supra) it is stated that the same is not applicable and is not a judgment in rem. Lastly it is contended that unless a final decision is arrived in the disciplinary proceedings, applicant is not entitled for any relief.

7. We have carefully considered the rival contentions of the parties and perused the material on record. Rule 9 of the Pension Rules empowers the President to withhold a part of the pension or other retiral benefits or order recovery of any pecuniary loss only in cases where in a disciplinary proceeding initiated for a grave misconduct or negligence the Government servant is found guilty. Rule 69(1)(c) of the Rules exempts from its purview the penalty under Rule 11(iii) of the CCA Rules. However, a pre-condition which has to be satisfied for any pecuniary loss recoverable from the Government servant is that it is as a result of grave misconduct and negligence of the Government servant.

8. The Full Bench in Chiranjit Lal (supra) while dealing with the reference whether disciplinary authority which has decided to proceed against the Government servant during his service for imposition of a minor penalty under Rule 16 of the CCA Rules would mean that it has not viewed the misconduct as serious or grave. The following observations have been made :

"12. It is clear that a distinction has to be drawn between mis-conduct and grave mis-conduct. If it is a serious mis-conduct then it cannot be punished with a minor penalty. Therefore by implication if the disciplinary authority has decided to proceed under Rule 16 then it means that it does not view the mis-conduct as serious or grave. We do not consider that the view taken in Chiranjit Lal (supra) that Rule 9 of the CCS Pension Rules permits the continuation of disciplinary proceedings initiated irrespective of whether it is under Rule 14 or Rule 16 of CCS (CCA) is technically wrong but such proceedings under Rule 16 will be meaningless as no conclusion of grave mis-conduct can thereby be reached. In that view of the matter

continuation of grave mis-conduct can thereby be reached. In that view of the matter continuation of such disciplinary proceedings becomes meaningless and can only result in delaying the disbursal of retiral benefits to the charged officer."

9. If one has regard to the above, nothing precluded the disciplinary authority in case of a grave misconduct or grave negligence, to issue a major penalty chargesheet under Rule 14 of the CCA Rules to the applicant while he was in service. By issuing a minor penalty chargesheet and a decision which has been recommended by the Central Vigilance Commission to proceed against the applicant under Rule 16 of the Rules ibid, the proceedings would be meaningless as there cannot be a presumption as to the involvement of grave misconduct or negligence of the applicant. It is only in trivial matters which do not involve serious charges against a Government servant that normally a minor penalty chargesheet is issued.

10.. The aforesaid observation gains support from the DOP&T O.M. dated 28.2.1981 which is reproduced as under :

"(6) Minor penalty proceedings have no effect on pension. -- 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 pensioner 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 a 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."

11. The Full Bench decision of the Tribunal (*supra*) is binding on us and fully covers the issue involved herein in the present OA.

12. The Apex Court in the case of D.V.Kapoor clearly held that a condition precedent for exercising a right by the President under Rule 9 is that the pensioner is found guilty of grave misconduct or negligence during the period of service. There should be a clear-cut finding to that effect. Neither in the CVC's recommendations nor in the chargesheet issued such an allegation has been levelled against the applicant, and by issue of the chargesheet under Rule 16, it is implied that no such grave misconduct or negligence is involved and the recovery as to the pecuniary loss caused to the

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Government is dependent on a condition precedent, i.e., involvement of grave misconduct or negligence on the part of a Government servant. As such, where a minor penalty chargesheet has been issued, a presumption has to be drawn in law that no grave misconduct or negligence is involved. There is, therefore, no question of any pecuniary loss on account of that which should have been recovered under Rule 69 of the Pension Rules.

13. Hence, the contention putforth by the learned counsel of the respondents as to the provisions of Rule 11 (iii) of the CCA Rules and Rule 69(1)(c) of the Pension Rules is unfounded and is overruled.

14. In the result, for the foregoing reasons, the OA is allowed. We hold that the minor penalty proceedings have no effect over the retiral benefits of the applicant ^{which} should be released forthwith to the applicant with an interest at the rate of 9% per annum till the same are paid, within a period of two months from the date of receipt of this order. No costs.

Naik
(S. K. Naik)
Member (A)

S. Raju
(Shanker Raju)
Member (J)

/as/