

(2019) 01 CAT CK 0056

In the Central Administrative Tribunal

Case No : Original Application No. 2110, 2137 Of 2017, Miscellaneous
Application No. 2545, 2855, 3000 Of 2017

Subhash Chandra Aggarwal

APPELLANT

Vs

Chairman And Ors

RESPONDENT

Date of Decision : 25-01-2019

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 13(1)(d), 13(2), 19(1)(c)
Indian Penal Code, 1860 — Section 120B, 418, 420
New Delhi Municipal Council Act, 1994 — Section 34(4), 43(1)(a), 44(1), 387(2)
Central Civil Service (Pension) Rule, 1972 — Rule 9, 9(i), 9(2)(b), 2(b)(iii)
Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 10(2)(a), 14, 15, 19, 19(i)
New Delhi Municipal Council (Conditions Of Service Of Municipal Officers) Regulations, 2016 — Regulation 5(2), 5(2)(a), 5(2)(b)

Citation : (2019) 01 CAT CK 0056

Hon'ble Judges : L. Narasimha Reddy, J;Aradhana Johri, Member (A)

Bench : Division Bench

Advocate : Nalin Kohli, Harvinder Oberoi, Nimisha Menon, Aditya Gaggar, Sriparna Chatterjee

Final Decision : Disposed Off

Judgement

L. Narasimha Reddy, J

1. In these two OAs, common questions of facts and law are involved. Arguments were also advanced in common. Hence, they are disposed of through a common judgment. For the sake of convenience, the applicant in OA No.2110/2017 is referred to as the first applicant, and the one in OA No.2137/2017 is referred to as the second applicant.

2. The first applicant worked as Assistant Engineer (Civil), and the second applicant as Medical Officer in the New Delhi Municipal Council (for short, NDMC), the second respondent herein. The first respondent herein, the Chairman of the second respondent, accorded sanction for prosecution of the applicants, vide

orders dated 24.10.2005, in exercise of powers under Section 19 (1) (c) of the Prevention of Corruption Act, 1988, enabling the CBI to prosecute them. It was alleged that the applicants herein, and another employee, had acted in tandem in enabling renewal/grant of licence in favour of one K. L. Bhatia, to run a lodging house at 13, K.G. Marg, New Delhi. The CBI registered FIR No. RC-AC2/2002/A0003. The applicants were tried by the Court of Shri N. K. Kaushik, Special Judge (PC Act) CBI, Dwarka Courts, New Delhi, in case Nos.27/2011 and 28/2011 respectively.

3. Through separate judgments dated 23.07.2013, the trial court found the applicants guilty of offences punishable under Sections 120-B, 418, 420 IPC read with Section 13 (1) (d) and Section 13 (2) of the Prevention of Corruption Act, 1988.. Through order dated 31.07.2013, the trial court sentenced the first applicant to undergo rigorous imprisonment for two years and to pay fine of Rs.5000/- for offence punishable under Section 120-B IPC, and to undergo rigorous imprisonment for three years and a fine of Rs.10,000/- for offence punishable under Section 418 IPC; and further to undergo three years rigorous imprisonment and to pay fine of Rs.25,000/- for offences punishable under Sections 13 (1) (d) and 13 (2) of the PC Act, 1988. The conviction as well as the sentence against the first applicant were suspended by the Delhi High court through order dated 24.09.2013, in an appeal filed by him.

4. Since the first applicant was in service by the time he was convicted and sentenced by the trial court, the disciplinary authority issued a show cause notice dated 10.02.2014, requiring him to explain as to why the penalty of dismissal from service be not imposed upon him, and the period of suspension be not treated as "not spent on duty". He submitted representation on 27.02.2014 requesting withdrawal of the show cause notice. At that stage, the first applicant filed OA No.2588/2014 challenging the show cause notice dated 10.02.2014. The OA was disposed of on 05.08.2014 refusing to interfere with the show cause notice, but directing the respondents therein to consider the representation submitted by the applicant, and to pass a speaking and reasoned order within four weeks from the date of receipt of copy of the order, in accordance with law. While the matter was under consideration by the disciplinary authority, the first applicant attained the age of superannuation on 31.12.2015, and retired from service.

5. On 30.05.2017, the first respondent issued a show cause notice to the first applicant directing him to explain, within 15 days from the date of receipt of the notice as to why, the penalty of withdrawal of pension in full, and gratuity in full, be not imposed under rule 9 (i) of the CCS (Pension) Rules, 1972 (for short, the Pension Rules) read with rule 19 (i) of the CCS (CCA) Rules, 1965 (for short, the CCA Rules).

6. The second applicant was also convicted by the trial court through judgment dated 23.07.2013. Through a separate order dated 31.07.2013, the trial court sentenced him to undergo rigorous imprisonment of three years and to pay fine

of Rs.10,000/- for offences punishable under Section 120-B read with Section 420/IPC. He was also sentenced to undergo rigorous imprisonment for four years and to pay fine of Rs.25,000/- for offences punishable under Section 13(2) read with Section 13 (1) (d) of the PC Act, 1988. The conviction as well as the sentence were suspended by the Delhi High Court through order dated 24.09.2013, in an appeal filed by him.

7. During the pendency of the criminal case, the second applicant retired from service on 31.12.2006. He was sanctioned provisional pension and was being paid regularly. He was issued a show cause notice dated 30.05.2017, requiring him to explain, within 15 days from the date of receipt of the notice, as to why the penalty of withdrawal of pension in full and gratuity in full be not imposed upon him under rule 9 (i) of the Pension Rules read with rule 19 (i) of the CCA Rules.

8. After the applicants retired from service, the NDMC made Regulations in the year 2016, in exercise of the powers conferred under clause (a) of sub-section (1) of Section 43, read with sub-section (2) of Section 387 of the New Delhi Municipal Council Act, 1994. Through the Regulations, the NDMC adopted almost all the Service, Leave and Pension Rules (11 in number) applicable to Central Government employees, and made them applicable to its employees. Clause (2) (a) of Regulation 5 is to the effect that the power exercisable by the President of India under various Rules that were in force, shall be exercised by the Chairperson, i.e., the 1st respondent herein. The Regulations were issued through notification dated 07.04.2016.

9. The applicants contend that the show cause notices dated 30.05.2017 are patently illegal and contrary to the relevant provisions of law. They also contend that the notification dated 07.04.2016, insofar as it confers powers exercisable by the President of India, upon the Chairperson of the 2nd respondent, is illegal, arbitrary and unconstitutional. Another contention advanced by the applicants is that once the conviction as well as the sentence ordered against them is suspended by the High court, there was no basis for issuance of the show cause notices. With these and other supplementary contentions, the applicants challenge the show cause notices dated 30.05.2017, and the notification dated 07.04.2016, by filing these OAs.

10. The respondents filed counter affidavits opposing the OAs. It is stated that the OAs filed against the show cause notices are not maintainable in law, and the applicants can put forward all their contentions in their explanations to the show cause notices, and in the resultant inquiry. It is also stated that the issuance of the show cause notices became necessary on account of the conviction and sentence ordered by the trial court against them, and mere pendency of appeals in the High Court would not come in the way. It is also stated that the power exercisable by the President under various Central Government service rules was conferred upon the highest executive authority of the NDMC, and that no exception can be taken to the Regulations published through notification dated

07.04.2016.

11. Arguments on behalf of the applicants are advanced by Shri Nalin Kohli, learned counsel, assisted by Ms. Harvinder Oberoi, Ms. Nimisha Menon and Mr. Aditya Gaggar. It is pleaded that the show cause notices, in a way, disclose non-application of mind inasmuch as the disciplinary authority invoked rule 19 of the CCA Rules, which applies to only those employees who are in service, by the time the proceedings are initiated. It is also argued that the power to initiate disciplinary proceedings after retirement of an employee is exceptional in nature, and obviously for that reason, the sanction of the President of India is stipulated as a condition precedent for it, and that in the instant case, such power was exercised by none other than the disciplinary authority himself. Learned counsel submits that a perusal of rule 9 of the Pension Rules indicates that various stages are involved, and in particular, the distinction between the authority according sanction for institution, on the one hand, and the disciplinary authority, on the other, is required to be maintained, and that the same is not followed by the respondents. According to Shri Kohli, the Municipal council is the highest authority, and the Chairperson, who is a member thereof, cannot be conferred the power, exercisable by the President of India under rule 9 of the Pension Rules.

12. It is also argued that the rules that were in force as on the date of the judgment of the trial court, were to be applied in the cases of the applicants, whereas the Regulations, which came into existence much later, are enforced against them. It is further submitted that clause (b) of sub-rule (2) of rule 9 of the Pension Rules circumscribes the power of initiation of disciplinary proceedings against retired employees with certain conditions, and they are completely violated in the case of the applicants. Reliance is placed upon precedents in support of their contentions.

13. Ms. Sriparna Chatterjee, learned counsel for the respondents, on the other hand, submits that the OAs filed by the applicants are not maintainable, inasmuch as they are directed against the mere show cause notices. She contends that the necessity to initiate proceedings against the applicants has arisen on account of the conviction and sentence ordered against them by the trial court, and they cannot escape from the consequences, provided for under the relevant provisions of law. She submits that mere reference to rule 19 of the CCA Rules does not vitiate the proceedings, and all objections which the applicants intend to raise, can be put forward before the disciplinary authority.

14. Learned counsel submits that the conferment of power upon the Chairperson through the impugned notification does not suffer from any legal infirmity, inasmuch as the first respondent happens to be the Chief Executive Officer of the NDMC. As regards other contentions advanced by the learned counsel for the applicants, she argues that the various tests of law can be applied only when a final order is passed by the disciplinary authority, and not at this stage. She placed reliance upon the judgments of the Hon^{ble} Supreme Court in - (1) Union of India & others v Upendra Singh [(1994) 3 SCC 357]; (2) Special Director &

another v Mohd. Ghulam Ghouse & another [(2004) 3 SCC 440]; and (3) State of Uttar Pradesh v Braham Datt Sharma & another [(1987) 4 SCC 179]; and a judgment of the Delhi High Court in Dr. Mohammad Iqbal v Union of India & others [WP(C) No.4222/2013, decided on 08.07.2013].

15. Both the applicants faced proceedings in a criminal court and were convicted through judgments of the same date. While the first applicant was in service, by the time the criminal court rendered its judgment, the second applicant had retired from service long before that. Though the first respondent initiated disciplinary proceedings against the first applicant in exercise of powers under the CCA Rules by issuing a show cause notice, they could not assume any tangible shape, before the first applicant retired from service, on attaining the age of superannuation. There existed option of continuing the disciplinary proceedings initiated against him while in service. The first respondent, however, has chosen to discontinue them and to issue the show cause notice, invoking power under rule 9 of the Pension rules. As regards the second applicant, the show cause notice under that provision was issued straightway, since he retired from service much before the pronouncement of the judgment of the criminal court.

16. Three principal contentions are urged on behalf of the applicants. The first is about the very basis and contents of the show cause notices. The second is in relation to notification dated 07.04.2016 conferring the power exercisable by the President of India under the Pension Rules and other provisions, upon the first respondent. The third contention is as regards compliance with the conditions incorporated under rule 9 (2) (b) of the Pension Rules.

17. The nature of disciplinary proceedings that are to be initiated against an employee while he is in service, on the one hand, and those to be initiated after retirement, on the other, is substantially different. The former are governed by the relevant CCA Rules, whereas the latter are governed by the Pension or other related Rules. The occasion to invoke the CCA Rules for initiation of proceedings in respect of retired employees does not arise. The reason is that various categories of punishment, such as dismissal or removal from service, reduction in rank, withholding of increments, censure etc., can be imposed only against an employee who is in service. The occasion to impose such punishment against a retired employee does not arise. For them, the punishment would be in the form of withholding of pension in its entirety or in part, and withholding of gratuity. Obviously, for these reasons, different sets of rules are invoked, depending upon whether the employee is in service or has retired.

18. It is a different matter, that even where proceedings are initiated against a retired employee, the procedure referable to the CCA Rules becomes applicable. The emphasis here is more about the source of power to invoke the jurisdiction, and the authorities competent to do so.

19. In the instant case, the show cause notices issued to both the applicants are

identical, except that an additional paragraph narrating the issuance of show cause notice dated 10.02.2014 is contained in the one issued to the first applicant. The show cause notice issued to the second applicant reads as under:

"Whereas, sanction for prosecution under rule 10(2)(a) of C.C.S. (CCA) Rules, in respect of Dr. G. S. Thind Retired Medical Officer of Health (MOH) under section 19(1)(c) of P.C. Act 1988 (Act 49 of 1988) in CBI case no. RC AC-2/2003/A-0003 registered on 19.07.2013, New Delhi, was granted by Disciplinary Authority i.e. Chairperson, NDMC vide No. 2169-70/Vig./Imp./TOC-II/05 dated 24.10.2005 (Annexure-I);

Whereas, the matter was investigated by CBI and it was disclosed that said Dr. G. S. Thind intentionally mentioned various false facts to project a favourable case for renewal/grant of license to Shri K. K. Bhatia for running a Lodging House at 13 K. G. Marg, New Delhi.

Whereas the Disciplinary Authority grant sanction under section- 19 (i) (c) of P.C. Act, 1988 (Act 49 of 1988) and under section -197 Cr PC for prosecution of the said Dr. G. S. Thind for the said offences to CBI.

Whereas, the said Dr. G. S. Thind was convicted in a case No. 28/11 arising out of FIR no. RC AC-2/2003/A-0003 by the Special Judge, CBI at Dwarka Court, New Delhi on 23.07.2013;

Whereas, Sh. N. K. Kaushik, Special Judge, Dwarka Court, New Delhi finally delivered the judgment on 23.07.2013 while deciding the CBI case No. 28/11 arising out of FIR No. RCAC2/2003/A0003. In the aforesaid judgment the Hon'ble Court has declared that the proved acts of commission and omission of the accused namely Dr. G. S. Thind along with the co-accused officials constitute offences punishable under section 120-B read with 420 IPC and under section 13(2) read with 13(i) (d) of prevention of Corruption Act, 1988 and under section -13 (i) (d) Prevention of Corruption Act, 1988 and under section - 13 (i) (d) Publishable under section 13(2) of the prevention of Corruption Act, 1988.

Whereas, the Hon'ble Court vide aforesaid judgment pronounced the following sentence to the accused official to meet the ends of justice:-

(i) The convict namely Dr. G. S. Thind is awarded the sentence of three years rigorous imprisonment and a fine of Rs. 10,000/-(Rupees ten thousands only) in default, two months simple imprisonment each, for the offence punishable under section 120-B IPC read with section 420 IPC and section 13(2) read with section 13(1) (d) of the Prevention of Corruption Act, 1988.

(ii) The convicts namely Dr. G. S. Thind is awarded a sentence of four years rigorous imprisonment and a fine of Rs. 10,000/-(Rupees ten thousands only) in default, six months simple imprisonment, for the offence punishable under section 13(2) read with section 13(1) (d) of the prevention of corruption Act, 1988.

Whereas, the said Dr. G. S. Thind the then MOH retired on 31.12.2007 before announcement of judgment dated 23.07.2013 (emphasis supplied);

Whereas, considering the above mentioned judgment and conviction of said Dr. G. S. Thind the then MOH now retired is hereby directed to show cause why the penalty of withdrawal of pension in full and gratuity in full be imposed upon him under rule 9 (i) of the Central Civil Services (Pension) Rules, 1972 read with Rule 19 (i) of CCS (CCA) Rules, 1965 within 15 days from the date of receipt of this Show Cause

Notice, failing which, it shall be presumed that Dr. G. S. Thind, Retired MOH (Health) has nothing to explain and matter shall be decided Ex-parte without any further notice to him."

In the show cause notice issued to the first applicant, in the place of the underlined sentence, the following paragraph is included:

"Whereas, a Show Cause Notice dated 10.02.2014 was served to Sh. Subhash Chandra Aggarwal to explain why the penalty of dismissal from Municipal Service be not imposed upon him including treatment of his suspension period as "Not Spent On Duty". Shri Subhash Chandra Aggarwal submitted a written representation on 27.02.2014 wherein he is requested for Departmental Inquiry withdrawal of show cause notice considering his past record. An opportunity of personal hearing was also given to Sh. Subhash Chandra Aggarwal by the then chairman, NDMC on 13.06.2014. Sh. Subhash Chandra Aggarwal filed an appeal vide OA No.2588/2014 in Central Administrative Tribunal and the Hon'ble CAT vide judgment/order dated 05.08.2014 stated that "In the circumstances, we do not propose to interfere at this stage. However, the ends of justice would be met, if the OA is disposed of, without going into the merits of the case and with a direction to the respondents to consider the representation of the applicant made in response to the impugned Show Cause Notice dated 10.02.2014 and to pass appropriate speaking and reasoned order, within a period of four weeks, from the date of receipt of a copy of this order, in accordance with law and also keeping in view the various Government of India's instructions issued under Rule 19 of the CCS (CCA) Rules, 1965. But, before a final view could have been taken Shri Subhash Chandra Aggarwal, the then AE (Civil) retired under deemed suspension on 31.12.2015;"

In all other respects, except for the name and the number of criminal cases, the contents of the show cause notices are common.

20. For one reason or the other, the first respondent does not seem to have paid attention to the relevant facts. For example, in the first paragraph of the show cause notice, it was mentioned that the CBI registered cases on "19.07.2013". As the number of the FIR and the criminal case suggests, the proceedings were initiated in the year 2003, the criminal cases were registered in 2011, and the judgment was rendered in the year 2013. This may be treated as a typographical error. However, in the last paragraph of the show cause notice, mention is made

not only to rule 9 of the Pension Rules, but also to Rule 19 (i) of the CCA Rules. Once, the proceedings are initiated against retired employees, it was totally impermissible to invoke rule 19 of the CCA Rules.

21. We are aware of the limitations of the Courts and Tribunals to interfere with the show cause notices, or, for that matter, the charge sheets. In *Union of India v Upendra Singh* (supra), the Hon^{ble} Supreme Court referred to various judgments rendered on the subject, and held that the Tribunal cannot interfere with the charge memorandum, and a mere technical violation in the charge memorandum or show cause notice cannot constitute a ground for interference. The following passage from the judgment in *Union of India v A. N Saxena* [(1992) 3 SCC 124], was quoted with approval:

"In the first place, we cannot, but confess our astonishment at the impugned order passed by the tribunal. In a case like this the tribunal, we feel, should have been very careful before granting stay in a disciplinary proceeding at an interlocutory stage. The imputations made against the respondent were extremely serious and the facts alleged, if proved, would have established misconduct and misbehaviour. It is surprising that without even a counter being filed, at an interim stage, the tribunal without giving any reasons and without apparently considering whether the memorandum of charges deserved to be enquired into or not, granted a stay of disciplinary proceedings as it has done. If the disciplinary proceedings in such serious matters are stayed so lightly as the tribunal appears to have done, it would be extremely difficult to bring any wrongdoer to book. We have, therefore, no hesitation in setting aside the impugned order of the tribunal and we direct that the disciplinary proceedings against the respondent in terms of the charge-sheet dated March 13, 1989 shall be proceeded with according to law. In fact, we would suggest that disciplinary proceedings should be proceeded with as early as possible and with utmost zeal."

To the same effect, is the judgment in *Special Director & another v Mohd. Ghulam Ghouse* (supra), wherein it was held that a show cause notice cannot be interfered with unless it is established that the one who issued the show cause notice is not conferred with the power. The permissibility for the Government to impose the punishment of reduction in pension of a retired employee as a disciplinary measure was dealt with by the Supreme Court in *State of Uttar Pradesh v Braham Datt Sharma* (supra). The Delhi High Court followed these very principles in its judgment in *Dr. Mohammad Iqbal v Union of India*.

22. If it were to be a case of mere mentioning a wrong provision or not so relevant a fact, in the show cause notices, things would have been different altogether. Several grounds touching on the very jurisdiction of the first respondent, and the validity of the Regulations framed through the impugned notification dated 07.04.2016 are raised. That persuaded us to discuss the matter at some length.

23. As observed earlier, the procedure to be adopted in the disciplinary

proceedings initiated against retired employees is substantially different from that to be adopted in case of employees in service. Rule 9 of the CCS (Pension) Rules comes into play. It reads as under:

"9. Right of President to withhold or withdraw pension

(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.

(Remaining part of the Rule is not reproduced, since it is not felt necessary for the purpose).

24. From a perusal of this, it becomes clear that - (a) the disciplinary proceedings cannot be initiated, except with the specific sanction accorded by the President; (b) the proceedings cannot be in respect of any event which took

place more than four years before the initiation; and (c) the proceedings shall be conducted by an authority to be nominated and directed by the President. A clear dichotomy is maintained between the President, on the one hand, and the disciplinary authority, on the other. Hardly there exists any scope for - (a) the power to accord sanction to initiate disciplinary proceedings, on the one hand; and (b) the power to initiate disciplinary proceedings, and to act as a disciplinary authority, on the other hand, by one and the same authority.

25. While under the CCA Rules, the disciplinary authority, as defined under the relevant service rules, can straightway initiate disciplinary proceedings against an employee, the authority to initiate disciplinary proceedings against a retired employee is to be nominated by the President, while according sanction. It is keeping in view these aspects, that the impugned notification dated 07.04.2016 as well as the show cause notices need to be analysed.

26. The second respondent has framed Regulations, adopting various service rules that are applicable to the Central Government employees. The notification is brief in its content, and it is reproduced in its entirety, for the sake of convenience:

"URBAN DEVELOPEMTN DEPARTMENT NOTIFICATIONS

New Delhi, the 7th April, 2016

No. F. 13 (126)UD/MB/2014/420.- In exercise of the powers conferred by clause (a) of sub-section (I) of section 43, read with sub-section (2) of section 387, of the New Delhi Municipal Council Act, 1994 (44 of 1994), the New Delhi Municipal Council, with the approval of the Central Government, hereby makes the following regulations regulating the conditions of service of municipal officers, namely:-

1. Short title and commencement.- (1) These regulations may be called the New Delhi Municipal Council (Conditions of Service of Municipal Officers) Regulations, 2016.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.- (1) In these regulations, unless the context otherwise requires.-

(a) "Act" means the New Delhi Municipal Council Act, 1994 (44 of 1994);

(b) "Category-A", "Category-B", "Category-C" and "Category-D" posts means the post as specified in sub section (4) of section 34 of the Act;

(c) "municipal officer" includes a municipal officer or other municipal employee appointed to the New Delhi Municipal Council under Chapter VI of the Act;

(d) ?section? means a section of the Act;

(e) ?service rule? means the rules referred to in regulation 4.

(2) Words and expressions used in the Act and also in these regulations shall, unless the context otherwise requires, have the meanings assigned to them in the Act.

3. To whom applicable.- Unless otherwise provided in the Act or these regulations, these regulations shall apply to all municipal officers whose pay and allowances are chargeable to the 'General Account' of the New Delhi Municipal Fund, referred to in sub-section (1) of section 44:

Provided that in regard to any person for whom in respect of matters covered by these regulations, special provision is made by or under any law for the time being in force, that special provision will apply and in respect of matters not covered by the said provision, these regulations shall apply.

4. Application of certain rules.- The following rules, as amended from time to time, including orders issued there under by the Central Government, in so far as the provisions of such rules or orders are not inconsistent with the provisions of the Act or rules or regulations made there under, shall apply to the municipal officers, namely:-

(i) the Fundamental Rules and Supplementary Rules (including Travelling Allowance Rules);

(ii) the Central Civil Services (Leave) Rules, 1972;

(iii) the Central Civil Services (Pension) Rules, 1972;

(iv) the Central Civil Services (Commutation of Pension) Rules, 1981;

(v) the payment of Arrears of Pension (Nomination) Rules, 1983;

(vi) the General Provident Fund (Central Rules), 1960;

(vii) the Central Civil Services (Conduct) Rules, 1964;

(viii) the Central Civil Services (Classification, Control and Appeal) Rules, 1965;

(ix) the Central Civil Services (Leave Travel Concessions) Rules, 1988;

(x) the Central Civil Services (Revised Pay) Rules, 2008, and

(xi) the Central Civil Services (Temporary Service) Rules, 1965.

5. Conditions of service of municipal officers. (1) The service rules applicable to the Government servants in the service of the Central Government shall, as far as may be, regulate the conditions of service of municipal officers, subject to the modifications that any reference in those service rules to a "Government servant", "the Consolidated Fund of India", "the Civil Surgeon" and "the Medical Committee" shall be construed as a reference respectively to a "municipal officer", "the New Delhi Municipal Fund", "the Medical Officer of Health" and "the Medical Board".

(2) Any power under the service rules (other than the power to make service rules) exercisable-

(a) by the president, shall be exercised by the Chairperson;

(b) by the Head of Department, shall be exercised by the Secretary or such other municipal officer as the Chairperson may, by order, specify; and

(c) by the Head of Office, shall be exercised by the Director (Personnel) or such other municipal officer as the Chairperson may, by order, specify."

27. Being aware of the fact that the permission or sanction of the President is essential under various Central Government rules, the rule making authority added clause (2) to Regulation 5. A perusal thereof discloses that the power exercisable by the President is conferred upon the first respondent, i.e., Chairperson of the NDMC. The plea of the applicants is that the first respondent is functioning in dual capacity, i.e., the authority to accord permission to initiate disciplinary proceedings, and the disciplinary authority.

28. It appears that the rule making authority did not bestow its attention to the type of powers that are to be exercised by the President. There does not exist any occasion for the President to act as a ?disciplinary authority? notwithstanding the fact that he happens to be the ?appointing authority? in respect of certain services. Further, rule 9 of the Pension Rules is framed in such a way that there does not exist any scope for one and the same authority to accord sanction and then to act as the disciplinary authority. When there was a valid reason and definite purpose in keeping these powers separate, a legal regime, which has the effect of obliterating the line of distinction tends to become untenable.

29. In a typical show cause notice or a charge memorandum issued against a retired employee proposing punishment, the first sentence would denote the factum of the sanction accorded by the President. The disciplinary authority vis-a-vis an employee who is in service cannot ipso facto function as the disciplinary authority after the employee retires. It is only on being conferred the power to do so, under rule 9 (2) (b) (iii) of the Pension Rules, that either the very disciplinary authority or some other authority, can discharge such functions.

30. Keeping in view the intricacies involved in these matters, and to avoid any defects in exercise of power in this behalf, the Ministry of Home Affairs, Government of India issued office memorandum dated 04.08.1964 stipulating standard forms, one for according sanction, and the other for initiation of proceedings. According to these forms, the authority who is conferred with the power to conduct departmental proceedings is to be nominated while according sanction, and that in turn must be mentioned in the memorandum that is to be issued to the employee. The typical order, according sanction reads as under:

"STANDARD FORM OF SANCTION UNDER Rule 9 OF THE CENTRAL CIVIL SERVICES (PENSION) RULES, 1972

No.....

Government of India

Ministry/Department of.....

ORDER

Dated the.....

WHEREAS it has been made to appear that Shri.....while serving as.....in the Ministry/ Department.....from.....to.....
.....was (here specify briefly the imputations of misconduct or misbehaviour in respect of which it is proposed to institute departmental proceedings):

NOW, THEREFORE, in exercise of the powers conferred on him by sub-clause (i) of Clause (b) of sub-rule (2) of Rule 9 of the Central Civil Services (Pension) Rules, 1972, the President hereby accords sanction to the departmental proceedings against the said Shri.....

The President further directs that the said departmental proceedings shall be conducted in accordance with the procedure laid down in Rules 14 and 15 of the CCS (CCA) Rules, 1965, by(here specify the authority by whom the departmental proceedings should be conducted) at
(here specify the place at which the departmental proceedings would be conducted).

By order and in the name of the President"

The form of memorandum is prescribed as under:

"STANDARD FORM OF CHARGE-SHEET FOR PROCEEDINGS UNDER RULE 9 OF THE CENTRAL CIVIL SERVICES (PENSION) RULES, 1972

No.....

Government of India

Ministry/Department of.....

MEMORANDUM

Dated the.....

In pursuance of the sanction accorded by the President under Rule 9 of the Central Civil Services (Pension) Rules, 1972, for instituting departmental proceedings against Shri....., vide Ministry/Department of.....Order No....., dated,.....it is proposed to hold an inquiry against the said Shri..... in accordance with the procedure laid down in Rules 14 and 15 of the CCS (CCA) Rules, 1965.

The enquiry shall be conducted by..... (here specify the authority by whom the departmental proceedings are to be conducted in accordance with the Presidential sanction) at (here specify the name of the place where proceedings are to be conducted)...."

(Remaining part of the form omitted, as not necessary for the case).

31. It may be noted that not only the factum of the President according sanction, but also his naming the authority to conduct departmental proceedings figure in both the standard forms. If we examine the impugned show cause notices in the light of these requirements, it becomes crystal clear that there is no mention to the factum or event of the President or his equivalent, according sanction for initiation of disciplinary proceedings against the applicants. Equally, the notices are silent as to the authority who is conferred with the power to conduct the departmental proceedings. For all practical purposes, the first respondent, i.e., the Chairman of the NDMC, acted as the President, as well as the disciplinary authority. There was not even a mention of rule 9 in the impugned order.

32. According of sanction under rule 9, is not a matter of course. The rule protects the retired employees from being subjected to disciplinary proceedings in stale matters. The event should not have taken place more than four years before the institution. Whether the acts and omissions on the part of the applicants that led to their prosecution in the criminal case need to be taken as the ?events?, or the date of their conviction in the criminal cases is an ?event? itself, was required to be examined.

33. Another serious infirmity that we notice in the proceedings is that the cause of action or the entitlement for according sanction and the consequential initiation of disciplinary proceedings, has arisen the day on which the criminal court convicted the applicants; if one goes by the text of the impugned show cause notices. It is axiomatic that the law which was in force as on that date governed the situation. In other words, the sanction for initiating disciplinary proceedings against the applicants could have been accorded by the authority, as was prescribed under the relevant rules at that point of time. The first respondent derived the power, exercisable by the President under rule 9 of the Pension Rules only under the notification dated 07.04.2016. This is long after the occurrence of the event, for invoking the power under rule

9. The first respondent exercised such power with retrospective effect. This is totally impermissible in law.

34. Though it was pleaded on behalf of the applicants that the impugned show cause notices could not have been issued in view of the interim order passed by the Delhi High court in the appeals preferred by them, suspending the sentence and conviction, we are not inclined to accept the same. We express our inability to accept the judgment of the Karnataka High court in *N. K. Suparna v Union of India* [ILR 2004 KAR 4628, 2004 (7) KarLJ 599, 2005 (3) SLJ 507], as laying an absolute proposition. It was observed therein that an appeal in a criminal case is

a continuation of the proceedings, and the disciplinary authority must wait till the appeal preferred against the conviction is disposed of.

35. In view of the discussion undertaken by us, the following aspects emerge -

(a) New Delhi Municipal Council (Conditions of Service of Municipal Officers) Regulations, 2016, contained in notification dated 07.04.2016, insofar as they confer upon the Chairman of the second respondent the powers exercisable by the President under rule 9 of the Pension rules, in relation to cases in which he acts as the Disciplinary Authority, cannot be sustained in law;

(b) The same authority cannot exercise the power to sanction initiation of disciplinary proceedings under rule 9 of the Pension Rules, and that of a Disciplinary Authority against a retired employee;

(c) The provisions of law that are in force as on the date on which the occasion to accord sanction under rule 9 of the Pension rules arose would become applicable, and not the law that is made subsequent to such event.

36. For the foregoing reasons we -

(i) set aside clause (2) (b) of Regulation 5 of the New Delhi Municipal Council (Conditions of Service of Municipal Officers) Regulations, 2016, contained in the notification dated 07.04.2016, insofar as it confers the powers upon the Chairperson of the second respondent, the power exercisable by the President under rule 9 of the CCS (Pension) Rules, 1972;

(ii) set aside the show cause notices dated 30.05.2017 issued to the applicants as being without jurisdiction and contrary to the provisions of the CCS (Pension) Rules, 1972;

(iii) leave it open to the competent authority to accord sanction under rule 9 of the CCS (Pension) rules, as adopted by the second respondent, for initiation of disciplinary proceedings against the applicants, in accordance with law; and

(iv) direct that it is only the authority who may be nominated by the one who accords sanction under rule 9 of the Pension Rules, that can conduct disciplinary proceedings against the applicants.

There shall be no order as to costs.