

(2010) 08 DEL CK 0326

In the Delhi High Court

Case No : Writ Petition (C) . 13664 of 2009

Union of India (UOI) and Others

APPELLANT

Vs

H.L. Gulati

RESPONDENT

Date of Decision : 31-08-2010

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14
Central Civil Services (Conduct) Rules, 1964 — Rule 3(1), 3(2)
Central Civil Services (Pension) Rules, 1972 — Rule 69, 9, 9(1), 9(2)
Penal Code, 1860 (IPC) — Section 120B, 420, 468, 471, 477A
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2010) 08 DEL CK 0326

Hon'ble Judges : Pradeep Nandrajog, J; Mool Chand Garg, J

Bench : Division Bench

Advocate : Jyoti Singh and Ankur Chhibber, for the Appellant; E.J. Varghese, for the Respondent

Final Decision : Allowed

Judgement

Mool Chand Garg, J.—The respondent, who was working as Senior Accounts Officer was issued a notice on 01.01.1998 calling upon him to submit his explanation to the notice. Reply furnished was found not satisfactory and hence a charge sheet was issued to him on 07.07.1998 under Rule 14 of the CCS(CCA) Rules for a major penalty whereby following articles of charges were framed against him:

Article I

That the said Shri H.L.Gulati, SAO while functioning as Sr. Accounts Officer-in-Charge "M" Section during the period 16.10.92 to 15.10.94 in the Office of CDA (HQRs), New Delhi, failed to discharge his duties effectively as provided for in Appendix I to Defence Accounts Department Office Manual Part I, which led to authorization of payment against 36 fraudulent claims as listed in Encl.I, to the tune of Rs. 42.24 lakhs approximately. Thus the said H.L.Gulati, SAO failed to

maintain devotion to duty, conducted himself in a manner unbecoming of a Govt. servant and failed to take all possible steps to ensure the integrity and devotion to duty of all Govt. servants for the time being under his control and authority, thereby violating the provisions of Rule 3(1)(ii), 3(1)(iii) and 3(2)(i) of CCS (Conduct) Rules, 1964.

Article II

That during the aforesaid period and while functioning in the aforesaid office the said H.L.Gulati, SAO failed to detect that (i) fraudulent claims had been floated against fake sanctions purported to have been issued by Ministry of Defence/ DGOS, (ii) the contingent bills had not been preferred by the officers of DGOS authorized to do so and (iii) appropriate procurement procedure relevant to the value of stores procured had not been followed. Thus the said H.L.Gulati, SAO, failed to maintain devotion to duty, conducted himself in a manner unbecoming of a Govt. servant and failed in the performance of his official duties in the exercise of powers conferred on him, thereby violating the provisions of Rule 3(1)(ii), 3(1)(iii) and 3(2)(ii) of CCS (Conduct) Rules, 1964.

Article III

That during the aforesaid period and while functioning in the aforesaid office the said H.L.Gulati, SAO authorized the payments of the 36 fraudulent claims to the tune of Rs. 42.24 lakhs approximately, as officer-in-charge "M" Section although the expenditure as per the fake sanctions was debitable to the Revenue Head "Ordnance stores" and did not fall within the purview of "M" Section as per Chapter VIII of OM Part XII and even without getting the local purchase bills noted in Accounts Section as required vide para 437 OM Part II Vol. I. Thus the said H.L. Gulati, SAO failed to maintain devotion to duty, conducted himself in a manner unbecoming of a Govt. servant and failed to take all possible steps to ensure integrity and devotion to duty of all Govt. servants for the time being under his control and authority, thereby violating the provisions of Rule 33(1)(ii), 3 (1) (iii) and 3(2)(i) of CCS (Conduct) Rules, 1964.

Article IV

That the said Shri H.L.Gulati, SAO while functioning as Sr. Accounts Officer-in-Charge "M" Section during the period 16.10.92 to 15.10.94 in the Office of CDA (HQrs), New Delhi, passed 36 fraudulent claims amounting to Rs. 42.24 lakhs approximately. Though the concerned bills related to Store Section, these were processed and passed for payment in the "M" Section and without following the prescribed procedures. The above act of Shri H.L. Gulati resulted in fraudulent payment to the tune of Rs. 42.24 lakhs approximately to the alleged suppliers and caused pecuniary loss to the Govt. The above act indicates complicity with the alleged suppliers and also exhibits failure on the part of Shri Gulati to maintain absolute integrity.

Thus the said H.L.Gulati, SAO failed to maintain absolute integrity and conducted

in a manner unbecoming of a Govt. servant thereby violating the provisions of Rule 3(1)(i) and (iii) of CCS (Conduct) Rules, 1964.

2. The respondent was also proceeded criminally vide FIR dated 20.05.1998 registered against him under Sections 120B/420/468/471/477A IPC & u/s 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. Of course, in the said case the respondent was discharged as no evidence was found against him. Yet the respondent who retired on superannuation was called upon to face an inquiry as per Rule 9 (i) of CCS (Pension) Rules, 1972. However, as per the report of the Enquiry Officer the allegations against the respondent with regard to authorization of 36 fraudulent claims, non-following of the procedure by floating against fake sanctions, non-noting of purchase bills in the accounts section and non-following of the procedure, are instances of failure in maintaining absolutely integrity and conducting in a manner unbecoming of a government servant. The Enquiry officer, on the analysis of the evidence led before him concluded as follows:

Article -I Marginally proved Article-II Partially proved. Article-III Partially proved. Article-IV Not proved.

3. However, the President of India after considering the representations by the respondent pursuant to a show cause notice given by the competent authority, imposed penalty of permanently withholding 50% monthly pension and gratuity after recording that the charges established against the respondent constituted a grave misconduct, vide its order dated 30.11.2005. The said order was assailed by the respondent before the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "the Tribunal") vide O.A. No. 1675/2008.

4. The Tribunal vide order dated 13.04.2009 relying upon a judgment of the Tribunal in O.A. No. 110/2005 in T.P. Venugopalan v. UOI and Ors. held that it is a condition precedent to exercise powers under Rule 9(1) of the Pension Rules that there must be a finding in the inquiry report that the pensioner has committed any grave misconduct or grave negligence in discharge of his duties. The Tribunal has observed that:

...on perusal of the enquiry report, we find that the charges of integrity, unbecoming of government servant and other severe charges have not been established. It is also not established that the act of the applicant is such which has led to loss to the government. However, what has been held proved against the applicant is only with regard to procedural irregularities without any culpability. Against the charge of non-following of the rules on a few instances, past practice has been followed and no finding either of grave misconduct or grave negligence has been recorded in the enquiry report.

In view of the facts and circumstances of the case and from scanning of the enquiry report, we are of the considered view that the condition precedent for recording of such a finding in the enquiry proceedings has not been fulfilled. It is only the President who has recorded such a finding on its own, but the Rule 9(1)

stipulates that such a finding is to be recorded in the disciplinary proceedings, which is conspicuously missing. As such, when a finding of grave misconduct and grave negligence, being condition precedent under the relevant rules which has not been recorded, the imposition of penalty is not only against the dicta in D.V. Kapoors case (supra) but the issue involved in the case in hand is fully covered by Venugopalans case (supra). Hence, the penalty imposed upon the applicant is without jurisdiction and nullity in law.

5. Aggrieved by the aforesaid order, the petitioner has approached this Court. It has been submitted that in this case, the charges leveled against the respondent were proved before the inquiry officer. The gravamen of the charges leveled against the respondent goes to show that the respondent who was only supposed to deal with miscellaneous and contingent bills of "M" Section, in total disregard of the provisions of Office Manuals, has processed the payments of 36 contingent bills to the tune of Rs. 42.24 lakhs viz. Ex.P/1/1 to Ex.P/1/36 all debitible to Major Head 110 - stores for which he had no authority. The bulk of the expenditure which "M" section is authorized to make payments for is to be booked to Minor Head 800-Other expenditure as per classification Handbook of Defence Services Receipt & charges. Any expenditure to be booked to Major Head 110 - Stores is a deviation from what is described in the Manual and the "M" section was not competent to do so. Thus, the charged officer failed to ensure that there was no unauthorized deviation from the procedure prescribed for Accounting & Auditing proving the charge that the charged officer failed to effectively discharge the general duties of A.O.

6. Para 431 A of OM Part II Vol.I specifies the types & nature of bills supposed to be dealt with in "M" Section. Para 434 - 438 of OM Pt.II Vol.I deal with contingent & miscellaneous charges. Para 435(i) states that in case of contingent charges, it will be seen that the charges are of a kind normally incurred on account of office or other contingencies and that they are not of an unusual or extraordinary nature. Certain types of charges under contingent and miscellaneous charges have been mentioned such as recurring charges, charges for non-official publications (including newspaper), charges for railway time tables & Indian Postal & telegraph guides, printing, binding & stationery charges, charges for liveries & warm clothing for class IV servants, Telephone bills. Para 438 stipulates a procedure for miscellaneous non-recurring charges, without elaborating the nature and type of charges. However, taking into account para 435(i), it may be concluded that the contingent expenditure should not be unusual or extraordinary nature.

7. On examination it is found that following stores have been purchased through Ex.P/1/1 to Ex.P/1/36 & Ex.P/A/1/1 to Ex.P/A/1/19:

Document

Stores Purchased

Financial Value (Rs.)

P/A/1/1

Fire Proof Cabinet

64,900.00

P/A/1/2

Fire Proof Cabinet & S.L.Printer

56,990.00

P/A/1/3

Single Colour Offset Printing Machine

9,85,000.00

P/A/1/4

Laser Printer

65,000.00

P/A/1/5

RAM/HDD/Floppy Disk 1.2 & 1.44 MB

40,0000.00

P/A/1/6

Fire Proof Cabinet

64,800.00

P/A/1/7

Binding Machine

72,600.00

P/A/1/8

Micro Transcrtoer and PSU

73,986.00

P/A/1/9

Laminating & Shredding Machine

68,420.00

P/A/1/10

Modem Card

73,400.00

P/A/1/11

Upgradation of Notebook computer

73,400.00

P/A/1/12

Notebook computer

74,500.00

P/A/1/13

Laminating Machine & Dictaphone

73,700.00

P/A/1/14

Binding Machine

72,600.00

P/A/1/15

Paper Shredding Machine

65,520.00

P/A/1/16

Micro Transcrtoer & OHP

70,920.00

P/A/1/17

PPC MAX-102 & OHP

74,885.00

P/A/1/18

Modem Card

73,400.00

P/A/1/19

Video Projection Equipment

22,47,850.00

P/1/1

Cosmed K2, PMR Elect System & Lemcompact Laser Equipment

18,00,000.00

P/1/2
Paper Shredding Machine
65,520.00

P/1/3
Binding Machine
72,600.00

P/1/4
Micro transcrtoer & OHP
70,920.00

P/1/5
SL Printer
73,350.00

P/1/6
UPS-1KVA & VCR 5311
66,000.00

P/1/7
Super Digisync C-Monitor, Genset Portable 1500 VA, P A L Card
74,000.00

P/1/8
Micro Transcroter & OHP
70,920.00

P/1/9
Storage Cabinets
65,790.00

P/1/10
Paper Shredding Machine
65,520.00

P/1/11
PPC MAX 102
64,565.00

P/1/12

Air Conditioner, L&T Dotmatrix printer

73,000.00

P/1/13

Upgradation of Pentium Compatible Mother Board

73,000.00

P/1/14

Pentium Processor in lieu of 80486 Dx- Processor

74,000.00

P/1/15

Graphic Scanner, Toner Cartridge for Laser Printer

73,200.00

P/1/16

Video Recoding Camera, Floppy Disc Drive & Floppy Diskette 1.2 MB & 1.44 MB

73,000.00

P/1/17

Richo Fax 8010 & 7005

60,000.00

P/1/18

Richo Fax 9020

60,000.00

P/1/19

Richo Fax 9020

60,000.00

P/1/20

Richo Fax 8010

72,000.00

P/1/21

Micro Transcroter & OHP

70,920.00

P/1/22

Binding Machines

72,600.00

P/1/23

PPC MAX 102 & Paper Shredding Machine

74,965.00

P/1/24

Storage Cabinets

65,790.00

P/1/25

SL Printer

73,350.00

P/1/26

Binding Machine

72,600.00

P/1/27

Micro Transcroter & OHP

70,920.00

P/1/28

Paper Shredding Machine

65,520.00

P/1/29

Dictaphone & Laminating Machine

73,700.00

P/1/30

Intercom Set & OHP

70,404.00

P/1/31

PPC MAX 102

66,000.00

P/1/32

Power Supply Unit

69,930.00

P/1/33

PPC MAX 102

66,000.00

P/1/34

Power Supply Unit

69,930.00

P/1/35

Intercom Set & OHP

70,404.00

P/1/36

Dictaphone & Laminating Machine

73,700.00

8. The Enquiry Officer has observed that all the aforesaid stores purchased were unusual or extraordinary in nature and cannot be covered under any of the provisions of 431 A. Hence, the bills should not have been processed in "M" Section.

9. Relying upon the aforesaid, learned Counsel for the petitioner submits that in the present case, the sanction of bills by the charged official which were debitable to Major Head 110-Stores for which the charged official had no authority and taking into consideration the amount which have been sanctioned, it is apparent that the respondent was guilty of committing grave misconduct and thereby putting the petitioner to a great loss. It is thus submitted that in the present case, the order passed by the Tribunal is contrary to law and hence unsustainable. The punishment imposed upon the respondent was fully justified but has been wrongly interfered with by the Tribunal.

10. On the other hand, the learned Counsel for the respondent has tried to justify the judgment of the Tribunal relying upon the case of T.P. Venugopalan which appears to have been given in different facts and which are not similar to the facts in hand. A scrutiny of the said judgment shows that the charged officer, who was similarly placed and working as a senior Accounts officer in the CDA, was charge-sheeted on two grounds, namely,

i) that bills were passed without verifying the signatures and that the companies

in whose favour the bills were raised were fictitious.

ii) that the bills passed were without authority inasmuch as the bills did not relate to the miscellaneous section to which the respondent belonged. Respondent had the power under office Manual Part-II, Chapter 6 to deal with the payments falling within the miscellaneous section only. Respondent acted beyond his authority and sanctioned the payment of purchases.

As regards the bills cleared by the charged officer in that case without authority were in fact cleared by the Government of India, Ministry of Defence. Therefore, the responsibility for non-process of the bills or non-grant of sanction of the bills in the said case laid with the Ministry.

Regarding the second charge that he did not verify the signatures, it was held by the Court that he was not an expert.

11. The said judgment does not come to the rescue of the respondent in the peculiar facts of the case in hand wherein the respondent himself was the sanctioning and verifying authority.

12. The inquiry officer in the instant case, with regard to Article I of the charge has observed that the charged officer while functioning as SAO in "M" Section during the period 16.10.1992 to 15.10.1994 in the office of CDA (HQrs.), New Delhi has failed to discharge his duties effectively as provided for in Appendix I to OM Pt.I which led to authorization of payment against 36 fraudulent claims to the tune of of Rs. 42.24 lakhs approximately is proved only marginally.

13. As regards Article II of the charge it has been observed that Sh. H.L. Gulati, SAO while functioning in "M" Section of CDA (HQrs.) during the period 16.10.1992 to 15.10.1994 failed to detect that:

1) Fraudulent claims have been floated against fake sanctions purported to have been issued by Min. of Defence partially proved

2) The contingent bills have not been preferred by officers of DGOS authorized to do so is not proved.

3) The appropriate procurement procedure relevant to the value of stores procured has not been followed is proved.

14. As regards Article III, Inquiry officer has observed that the said Shri H.L. Gulati, SAO failed to maintain devotion to duty, conducted himself in a manner unbecoming of a Govt. Servant & failed to take all possible steps to ensure the integrity and devotion to duty of all Govt. Servants for the time being under his control & authority, thereby violating the provisions of Rules 3(1)(ii), 3(1)(iii) & 3(2)(i) of CCS (Conduct) Rules, 1964.

15. As regards Article IV the inquiry officer observed that first part of the charge is not proved. The second part of the charge that the act of Shri. H.L. Gulati, SAO indicates complicity with the alleged suppliers and also exhibits failure on

the part of Shri H.L. Gulati, SAO to maintain absolute integrity is not proved. Hence the Article IV of charge is not proved.

16. Based upon the representation made by the respondent to a show cause notice, the disciplinary authority vide its order dated 30.11.2005 observed that the finding given by the Enquiry Officer proves that the respondent was guilty of grave misconduct. On that basis, it was decided to impose a penalty of permanently withholding of 50% monthly pension and gratuity. Some of the observation made in the order dated 30.11.2005, which are relevant and explain the process of reasoning reached by the competent authority in passing the impugned order is as hereunder:

7. WHEREAS, after careful consideration of the pleas advanced by Shri H.L.Gulati, SAO (Retd.) in his representation dated 07.03.2004 in the light of the record of disciplinary proceedings and evidence on record, the findings of the President are as under in seriatim.

(i) The Inquiry Officer while analyzing the evidence under Article of Charge-I has recorded that "not only the CO had failed to put his own endorsement, he has also failed in ensuring endorsement by auditors/ AAO about verification of specimen signatures on the bills, leaving a doubt whether the auditors/ AAO/SAO had verified the specimen signatures". As rightly observed by the Inquiry Officer, the verification of specimen signatures is an important check. The Charged Official being Officer in charge of section, while processing the bills he was responsible for ensuring that (a) the specimen signatures of the sanctioning authorities was verified by his subordinates and (b) on endorsement in token of having done so was made on the bills by his subordinates as required under Appendix 1 (B) of Office Manual Part-I. By stating that there was no practice of endorsing "SS Verified", he cannot absolve himself of the charge. As regards his request for verification of paid vouchers in respect of payments made to the Director of Accounts, Cabinet Secretariat, the same cannot be acceded to at this juncture, since the said vouchers did not form part of the exhibits in the Departmental inquiry. As such the same would amount to placing reliance on new evidence without affording opportunity to the prosecution. In view of the foregoing, the contentions of the Charged Official at para 6 (i) to (v) are not tenable.

(ii) The Charged official is expected to carry out proper scrutiny of sanctions as distinct from detailed audit. A proper scrutiny of sanctions would have revealed that out of four sanctions issued in April 94, for the financial year 1993-94 two were issued on 05.04.1994 one sanction was issued on 21.04.1994 and the third sanction was issued on 22.04.1994. The above sanctions did not mention that they were ex-post facto sanctions;. Thus the sanctions were defective. Besides this, it is well known that I&B Cell is not responsible for any procurement on behalf of the DGOS. Had a proper scrutiny of the sanctions done the defect in the sanctions could have been easily detected which could have averted the fraudulent payment. Therefore, his contention at 6 (vi) is not acceptable.

(iii) Notwithstanding the fact that the sanctions issued by the Ministry are not required to be audited, before passing the bills for payment, it is to be checked that the conditions and procedure stipulated in sanctions has been followed scrupulously before passing the relevant bills for payment which is distinct from the audit of sanctions. The sanctions stipulated that the prescribed procedure for procurement of stores would be followed. However, the supply orders did not contain any of the standard clauses like payment terms, Liquidated Damages, Inspection etc. All these deficiencies should have led the Charged Official to raise queries, which could have facilitated in detection of the fraud. However, the Charged Official as the Officer in- Charge of "M" section failed to detect that proper procurement procedure was not followed. Therefore, his request as contained in para 6 (vii) and (viii) above for dropping the Article-II cannot be acceded to.

(iv) The points raised by the CO have already been considered by the Inquiry Officer while analyzing the evidence under Article of Charge-III. The Code head 415/01 being locally controlled head, the bills under the above head are required to be admitted for payment after getting the same noted in Account section irrespective of the fact that prior sanction has been obtained from DGOS/GOI in terms of para 155 A (X) of Office Manual Part- II, Volume I, to ensure availability of funds before releasing payments. In view of the above, the charge that the Charged Official failed to get the bills noted in the Accounts Section stands proved. Therefore, his contention at para 6 (ix) to (xi) are not tenable.

(v) His submissions regarding non-production of documents are ill conceived. He was shown all the available documents. In fact the Charged Official submitted three list of documents over a period of ten months from 4/99 1/2000. Due to the absence of the Charged Official for the inquiry on number of occasions, the inquiry was prolonged. He was only trying to shift the blame for the delay. Regarding submission of report to the CVC by the Disciplinary Authority being internal matter, is not relevant to the issue. Therefore, his objections at para 6 (xii) are rejected.

(vi) As regards his prayer at para 6(xiii) for exonerating him from the charges the same cannot be acceded to, for the reasons recorded at pre-paras.

8. WHEREAS, the President in exercise of powers conferred on him under Rule 9 of the Central Civil Service (Pensions) Rules, 1972, in consultation with the Union Public Service Commission, has perused records of the disciplinary case. A copy of the UPSC's letter bearing confidential No. F.3/381/04-SI dated 02.09.2005 is enclosed. The President accepts advice of the commission contained in para 12 of the UPSC's letter dated 02.09.2005 for the reasons recorded in Paras 4 to 11 therein.

9. AND WHEREAS, the President in the light of the above observation and findings and after taking into account all relevant aspects as contained in record of the case, is satisfied that the charges which were established against Shri

H.L.Gulati, SAO (REtd.) constitutes a grave misconduct. Therefore, the President considers that ends of justice would be met if 50% (Fifty percent) of the pension admissible to Shri H.L.Gulati, SAO (Retd.) is withheld on permanent basis and 50% of gratuity is withheld.

10. NOW, THEREFORE, the President hereby imposes the penalty of withholding of 50% (Fifty percent) of amount of monthly pension on permanent basis and 50% of gratuity on Shri H.L.Gulati, SAO (Retd.) with immediate effect. The President further orders that the balance 50% of gratuity may be released to H.L. Gulati, SAO (Retd.), if not required otherwise.

BY ORDER AND IN THE NAME OF THE PRESIDENT.

(Rozy Agarwal)

Deputy Controller General of Defence Accounts (Admin.)

17. The Tribunal while setting aside the aforesaid order has primarily proceeded on the assumption that to attract Rule 9, the report of the inquiry officer must hold that it is a case of a grave misconduct or negligence or the memorandum issued by the disciplinary authority seeking the response to the report of the inquiry officer or the note of disagreement must allege that it was a case of grave misconduct or negligence or that it was sufficient that the order levying penalty so records. Rule 9 of the CCS (Pension) Rules 1972 (here-in-after referred to as the Rules) 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 period, and of ordering recovery from a pension or a 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 are 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 in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) Deleted.

(4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under Sub-rule (2), a provisional pension as provided in Rule 69 shall be sanctioned.

(5) Where the President decided 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.

18. A bare reading of the Rule shows that the order which can be passed under the Rule is to recover the pecuniary loss caused to the government or impose a cut in the pension payable or gratuity or both, in full or in part, upon proof of guilt but pertaining to a grave misconduct or negligence.

19. The learned Counsel for the respondents urged that unless the inquiry officer

held it to be a case of grave misconduct, no further proceedings under Rule 9 of the CCS (Pension) Rules 1972 could be continued. Alternatively, counsel alleged that where it could be demonstrably shown that the misdemeanor was ex-facie not a grave misconduct, the Tribunal could quash the further proceedings. Counsel alleged that only where the misdemeanor attracted a moral turpitude or dishonesty or corruption could it be classified as a grave misconduct and that a misconduct of failure to maintain devotion to duty could never be a case of grave misconduct. The learned Counsel for the respondent has emphatically relied upon the judgment delivered by the Apex Court in the case of D.V. Kapoor Vs. Union of India and others, . In the said decision with reference to Rule 9 of the CCS (Pension) Rules 1972 the Supreme Court held that it was apparent that the President had reserved to himself the right to withhold pension in whole or in part, permanently or for a specified period, but, upon the condition that in the departmental inquiry or the judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of a service. In para 9 of the decision it is observed: "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 inquiry 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."

20. However, learned Counsel for the petitioner urged that as long as it could be inferred that the misconduct proved was a grave misconduct, it was sufficient for the penalty of cut in pension to be imposed.

21. We have discussed the issue as to what would be a case of grave misconduct in a judgment delivered by us in W.P.(C) Nos. 2292/2010 & 559/2010. In the said judgment we have discussed the judgment of D.V. Kapoor Vs. Union of India and others, , Yoginath D. Bagde Vs. State of Maharashtra and Another, and Inspector Prem Chand Vs. Govt. of N.C.T. of Delhi and Others, . It has been observed by us:

1. Now, can it be said that an offence of failure to maintain devotion to duty and/or unbecoming of a government servant can never be a grave misconduct?

2. "Misconduct" has been defined in Black's Law Dictionary, Sixth Edition at page 999, thus:

A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, willful in character, improper or wrong behaviour, its synonyms are misdemeanour, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness.

3. "Misconduct in office" has been defined as:

Any unlawful behaviour by a public officer in relation to the duties of his office, willful in character. Term embraces acts which the office holder had no right to

perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.

4. In P.Ramanatha Aiyar's Law Lexicon, 3rd Edition, at page 3027, the term "misconduct" has been defined as under:

The term "misconduct" implies, a wrongful intention, and not involving error of judgment.

Misconduct is not necessarily the same thing as conduct involving moral turpitude.

The word "misconduct" is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. "Misconduct" literally means wrong conduct or improper conduct."

5. The Supreme Court in the case reported as State of Punjab and Others Vs. Ram Singh Ex. Constable, discussed and decided what misconduct is. The relevant paras of the judgment are reproduced below:

In usual parlance, misconduct means transgression of some established and defined rule of action, where no discretion is left, except that necessity may demand and carelessness, negligence and unskilfulness are transgressions of some established, but indefinite, rule of action, where, some direction is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected.

Thus it could be seen that the word "misconduct" though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, willful in character, forbidden act, a transgression of established and definite rule of action or code of conduct but not mere of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order.

6. Having understood what misconduct is, it becomes easy to understand what a grave misconduct would be. It has to be the aggravated form of misconduct.

7. Acts of moral turpitude, acts of dishonesty, bribery and corruption would

obviously be an aggravated form of misconduct because of not only the morally depraving nature of the act but even the reason that they would be attracting the penal laws. There would be no problem in understanding the gravity of such kind of offences. But that would not mean that only such kind of indictments would be a grave misconduct. A ready example to which everybody would agree with as a case of grave misconduct, but within the realm of failure to maintain devotion to duty, would be where a fireman sleeps in the fire office and does not respond to an emergency call of fire in a building which ultimately results in the death of 10 persons. There is no dishonesty. There is no acceptance of bribe. There is no corruption. There is no moral turpitude. But none would say that the act of failure to maintain devotion to duty is not of a grave kind.

8. It would be difficult to put in a strait jacket formula as to what kinds of acts sans moral turpitude, dishonesty, bribery and corruption would constitute grave misconduct, but a ready touchstone would be where the "integrity to the devotion to duty" is missing and the "lack of devotion" is gross and culpable it would be a case of grave misconduct. The issue needs a little clarification here as to what would be meant by the expression "integrity to the devotion to duty". Every concept has a core value and a fringe value. Similarly, every duty has a core and a fringe. Whatever is at the core of a duty would be the integrity of the duty and whatever is at the fringe would not be the integrity of the duty but may be integral to the duty. It is in reference to this metaphysical concept that mottos are chosen by organizations. For example in the fire department the appropriate motto would be: "Be always alert". It would be so for the reason the integrity of the duty of a fire officer i.e. the core value of his work would be to be "always alert". Similarly, for a doctor the core value of his work would be "duty to the extra vigilant". Thus, where a doctor conducts four operations one after the other and in between does not wash his hands and change the gloves resulting in the three subsequent patients contracting the disease of the first, notwithstanding there being no moral turpitude involved or corruption or bribery, the doctor would be guilty of a grave misconduct as his act has breached the core value of his duty. The example of the fireman given by us is self explanatory with reference to the core value of the duty of a fireman to be "always alert".

22. In the aforesaid judgment, taking note of the argument that until and unless the enquiry report indicts the charged officer by expressly holding that he is guilty of grave misconduct, a penalty under Rule 9(i) of CCS (Pension) Rules, 1972 cannot be imposed. We have already observed as follows:

23. With the two viewpoints noted above, it assumes importance to note that evidenced by the decision of the Supreme Court reported as *Yoginath D. Bagde Vs. State of Maharashtra and Another*, , the jurisprudence in service law is that the disciplinary authority should not prejudge the gravamen of the allegations or for that matter even the charge, and should not use language which shows that the disciplinary authority has already made up its mind. It is only after the inquiry is over and the delinquent is heard with respect to the report of the

inquiry officer; and when exonerated at the inquiry but the disciplinary authority not agreeing with the report, upon hearing him qua the note of disagreement, the final opinion has to be rendered. It is important to highlight that in Yoginath D. Bagde's case (supra) conclusive determination of the guilt by the disciplinary authority before giving an opportunity to the delinquent to respond to the note of disagreement was held to be a case of a closed mind qua the response of the delinquent, resulting in the disciplinary authority denuding himself the jurisdiction to decide with reference to the response of the delinquent to the note of disagreement.

24. Thus, requiring the law to be interpreted that either the charge sheet must allege the misconduct to be grave or the inquiry officer must hold so or the disciplinary authority should hold so while calling upon the delinquent to respond to the indictment, would mean that the disciplinary authority would be compelled to form an opinion without hearing the delinquent and if he would do so, would attract the charge that the disciplinary authority has already foreclosed its mind.

25. Rules, whether of procedure or of substance, have to be evolved harmoniously and not in a contradictory manner. Law cannot evolve in a manner where two legal principles clash head on with each other.

26. Thus, we hold that the correct principle of law is that the stage for the disciplinary authority to hold that it is a case of a grave misconduct is when the penalty, by way of cut in pension or gratuity is inflicted under Rule 9 of the Pension Rules, and at no prior stage. This interpretation would be in harmony with the legal principle in Yoginath D. Bagde's case (supra) and would also be in conformity with the well known recognized judicial principle that the decision maker must take/make the decision after hearing the party likely to be affected by the decision and should not pollute his mind by prejudging the issue.

23. Taking into consideration the facts of this case and the charges which has been proved against respondent goes to show that the conduct of the respondent tantamount to unlawful behavior by a public servant in relation to his duties willfully. Thus, he is certainly guilty of committing misconduct in office. Looking into the amount involved in the matter, it can certainly be said to be a case of grave misconduct. We are, therefore, of the considered opinion that the order passed by the Tribunal is not sustainable in law.

24. The writ is accordingly allowed. Impugned order passed by the Tribunal is set aside and the Original Application filed by the respondent before the Tribunal is dismissed. The penalty imposed vide order dated 30.11.2005 is restored.

25. Noting that the respondent is a retired employee we refrain from imposing costs.