HIGH COURT OF DELHI
Bench: Hon'ble Mr. Justice V. Kameswar Rao and Hon'ble Mr. Justice Saurabh Banerjee
Date of Decision: 16th April 2024

Case No.:
W.P.(C) 9427/2020

PETITIONER: R K AGARWAL .....Petitioner

VERSUS

RESPONDENT(S): UNION OF INDIA & ORS. .....Respondents

Legislation:
Articles 14, 16 of the Constitution of India
Rule 9 of the CCS (Pension) Rules, 1972
Rules 22(i), 15 (3) of CCS (CCA) Rules, 1965

Subject: Petition challenging orders regarding imposition of penalty of withholding 10% monthly pension for a year, and seeking promotion and other consequential benefits.

Headnotes:

Service Law – Withholding of Pension – Petitioner challenged orders dated August 19, 2019, and January 17, 2020, which imposed a penalty of withholding 10% monthly pension for a year and dismissed the appeal against the penalty respectively – High Court held that the penalty was justified due to petitioner's supervisory lapses and failure to report illegal sale of surplus cement – The decision was based on disciplinary proceedings that were revived post petitioner's reinstatement after initial removal from service [Paras 1-24, 32-42].

Promotion – Sealed Cover Procedure – Petitioner sought promotion in compliance with earlier court orders – High Court upheld that the review Departmental Promotion Committee (DPC) proceedings were rightly kept in a sealed cover due to pending disciplinary proceedings – DPC findings were not to be acted upon following the penalty imposition, and promotion claims were not automatic but subject to DPC review post penalty period [Paras 25-27, 44-47].

Jurisdiction – Review of Penalty – High Court emphasized its limited jurisdiction under Article 226 to interfere with departmental inquiry outcomes – It cannot reappreciate evidence but can only ensure procedural compliance and absence of arbitrariness – Petitioner's acceptance of penalty precluded further claims on promotion or benefits as per statutory and judicial principles [Paras 43, 48-49].

Decision: Writ Petition dismissed – High Court upheld the penalty of withholding 10% monthly pension for one year – Petitioner's claims for

promotion and additional benefits rejected due to procedural adherence and statutory limitations on appeals against Presidential Orders [Paras 49-50].

Referred Cases:

- State of Andhra Pradesh v. N. Radhakishan, (1998) 4 SCC 154
- GS Shergill v. Delhi State Civil Supplies Corporation Ltd., 2022/DHC/004744
- Jiwan Mal Kochar v. Union of India (UOI) and Ors., Civil Appeal No. 859/1978
- Krishan Lal Vij v. Union of India through Ministry of Home Affairs Govt. of India New Delhi, 1967 SCC OnLine Del 22

Representing Advocates:

For Petitioner: Petitioner in person
For Respondents: Ms. Nidhi Raman, CGSC with Mr. Zubin Singh, Adv. with Dy. DIR Naveen Bhardwaj (HQ DGBR)

J U D G M E N T

V. KAMESWAR RAO, J

1. This petition has been filed by the petitioner with the following prayers:-

"1. Issue a writ of Certiorari quashing the Order dated 17.01.2020 pursuant to which the respondents have dismissed the appeal dated 27.12.2019 filed by the Petitioner against the imposition of penalty of withholding of 10% monthly pension for a year, being in the teeth of the order dated 23.12.2019 passed by this Hon'ble Court and for being violative of Petitioner's fundamental rights under Articles 14 and 16 of the Constitution of India; 2. Issue a writ of Certiorari quashing the Order dated 19.08.2019 for being against the principles of natural justice and being violative of Petitioner's fundamental rights under Articles 14 and 16 of the Constitution of India;

3. Issue a writ of Mandamus directing the Respondents to consider the Petitioner for promotion in compliance of the order of this Hon'ble Court dated 10.10.2012 passed in W.P.(C) No. 4748/1999, and directions given by this Hon'ble Court vide order dated 23.12.2019 in W.P.(C) No. 102/2017, for the vacancy years 1997-98 to 2012-13 along with all consequential benefits;

4. Direct the Respondents to pay a sum of Rupees Ten Lakhs towards the mental agony and harassment suffered by the Petitioner at the hands of the Respondents; and 5. Pass any other order /s, which your lordships may deem fit and proper in the facts and circumstances of the present case as well as in the interest of justice."

2. In effect, this petition has been filed by the petitioner seeking quashing of order dated August 19, 2019, whereby the penalty of withholding of 10% monthly pension for a year was imposed upon him and order dated January 17, 2020, whereby the petitioner‟s Memorandum of Appeal dated December 27, 2019, preferred against order dated August 19, 2019, was dismissed by the respondents. Moreover, the petitioner has also sought a direction for promoting him to the post of Executive Engineer in compliance of order dated

October 10, 2012 passed in W.P.(C) No. 4748/1999 and also order dated December 23, 2019 passed in W.P.(C) No. 102/2017, for the vacancy year 1997-1998 to 2012-2013, along with consequential benefits.

3. The facts as noted from the record and so contended by the petitioner who appeared in person are that he joined Border Roads Organization („BRO", for short) as an Assistant Executive Engineer (Civ.) („AEE" for short) on May 10, 1985. While in service, he was served a Memorandum of Charge („Charge Memorandum-I", for short) dated August 26, 1991, alleging therein that, *inter alia*, the petitioner had submitted a false TA/DA claim while he was posted from Rishikesh to Manali in July, 1988. It is also his case that another Memorandum of Charge („Charge Memorandum-II", for short) dated January 09, 1992, was served on him almost four years after alleged misconduct, wherein, it was *inter alia* stated the petitioner had created surplus stocks of cements by misreporting the quantities and sold the same to private persons to make personal pecuniary gains and threatened his subordinates in the process.

4. According to the petitioner, while in the proceedings arising out of Charge Memorandum-I, a penalty of dismissal from service was imposed upon the petitioner on July 07, 1998, the proceedings arising out of Charge Memorandum-II, came to be dropped on August 18, 1998, on the ground that since the petitioner has already been dismissed from service, the proceedings arising out of Charge Memorandum-II, need not be continued, however, the same may be revived if he is reinstated in service pursuant to a Court"s Order.

5. It is the case of the petitioner that when the proceedings came to be dropped, the Inquiry Officer („I.O.", for short) had filed his report dated October 15, 1993, on the allegations contained in the Charge Memorandum-II, stating therein that none of the charges against the petitioner stood proved. Nevertheless, the petitioner was dismissed from service in respect of earlier, disciplinary proceedings arising out of Charge Memorandum-I. It is his case that the period of almost five years i.e., from October 15, 1993, till the dismissal of the petitioner on July 07, 1998, the proceedings in the Charge Memorandum-II were not concluded.

6. He also submitted that the order of dismissal dated July 07, 1998 was challenged by him in W.P. (C) No. 4748/1999, before this Court. The same was decided in his favour vide judgment dated October 10, 2012, whereby

this Court ordered the reinstatement of the petitioner with all consequential benefits.

7. It is his submission that the respondents, however, failed to comply with the judgment of this Court, prompting the petitioner to initiate contempt proceedings against the respondents vide Cont. Case No. 99/2013. In the meanwhile, an SLP preferred by the respondents against the judgment dated October 10, 2012, came to be dismissed with a direction to the respondents to comply with the judgment of this Court within six weeks. Accordingly, the petitioner was reinstated into service w.e.f. August 30, 2013, albeit without the consequential benefits and promotion.

8. The petitioner submitted that during the course of hearing in the contempt proceedings on January 08, 2014, the respondents, for the first time, informed this Court that since disciplinary proceeding were pending against the petitioner, there was no question of holding a review Departmental Promotion Committee‟s („DPC‟, for short) to consider his case for promotion. However, upon the orders of this Court, a review DPC was conducted but the petitioner‟s case for promotion was kept in a sealed cover. In the meanwhile, according to him, he superannuated from service on April 30, 2016. The contempt proceedings were finally disposed of on December 02, 2016 with a direction to the petitioner to initiate appropriate legal proceedings against the respondents for withholding certain benefits pertaining to gratuity and commutation of pension.

9. Resultantly, the petitioner filed W.P.(C) No. 102/2017. According to him, it was only on September 18, 2017, that for the first time, the respondents informed the petitioner about the reopening of the disciplinary proceeding in respect of Charge Memorandum-II and the existence of a disagreement note, issued by the Disciplinary Authority, disagreeing with the findings of the IO exonerating the petitioner and accordingly, modifying its findings on two articles of charge as, “Partly Proved”.

10. He submitted that he made a detailed representation against the disagreement note and urged the respondents to drop the proceedings, which according to him, appeared to have been instituted after an unduly long delay of 28 years.

11. It is his submission that despite such a representation, the respondents proceeded to forward the case record to UPSC for recommendation of penalty. He stated that having been exhausted by the long-drawn litigation and being aware of the malicious attitude of the

respondents of harassing him after 28 years, he initially refused to make a representation against UPSC‟s advice for infliction of 10% withholding of monthly pension for a year. Accordingly, on August 19, 2019, the impugned order imposing the penalty under challenge was passed against the petitioner. He submitted that during the course of the proceedings on October 14, 2019, the respondents submitted before the Court that they will consider the case of the petitioner for notional promotion. However, on December 23, 2019, when the respondents sought to withdraw the undertaking given to this Court on October 14, 2019, this Court was pleased to release the petitioner of his statement that he would not make a representation against the advice of UPSC. As such, the petitioner was granted liberty to file a statutory appeal against the impugned order dated August 19, 2019.

12. Accordingly, the petitioner submitted a Memorandum of Appeal dated December 27, 2019, to the respondents. The same came to be rejected on January 17, 2020, on the ground that as per Rule 22(i) of CCS (CCA) Rules, 1965 („Rules of 1965‟, for short) no appeal lies against any Presidential Order.

13. It is his submission that it is a trite law that unexplained delay in initiating and concluding the inquiry proceedings vitiates the same, apart from causing severe mental agony to a Charged Officer. In the present case, the Charge Memorandum-II was issued in the year 1992 for an offence allegedly committed in the year 1988. Furthermore, the disagreement note on the Inquiry Report dated October 15, 1993, was issued only in the year 2017 i.e., after a period of around 24 years, that too without offering any explanation for the delay, which has caused severe prejudice to the petitioner inasmuch as his chances of promotion were completely taken away by the actions of the respondents.

14. He submitted that the I.O. in his Inquiry Report had categorically concluded that the petitioner had no ulterior motive of making personal pecuniary gains for himself and that the charges levelled against the petitioner were “not proved”. However, the same has been wrongly and without any reason disagreed with in the disagreement note. He has placed reliance on the judgment of the Supreme Court in the case of ***State of Andhra Pradesh v. N. Radhakishan (1998) 4 SCC 154*** and the judgment of this Court in ***GS Shergill v. Delhi State Civil Supplies Corporation Ltd., 2022/DHC/004744***, in support of his submissions.

15. On the other hand, learned counsel for respondents would not dispute the basic facts as urged by the petitioner. Her submission is that the present petition is not maintainable as the impugned order passed by way of punishment in a departmental inquiry can be interfered with in a writ jurisdiction only if there is any violation or breach or noncompliance of any statutory requirements or rule prescribing the mode of inquiry or there is no evidence at all in support of the charge(s). She submitted, if there exists any evidence on which the findings of the Disciplinary Authority rest, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before this Court in a proceeding under Article 226 of the Constitution of India.

16. It is her case that the petitioner was granted opportunity to represent his case and defend himself in terms of standards applicable for the conduct of the departmental inquiries. According to her, two different departmental inquiries having vigilance inquiries i.e., in respect of Charge Memorandum-I and Charge Memorandum-II, were initiated against the petitioner. Both the Memorandum of Charges were the major penalty proceedings initiated under Rules of 1965. 17. She submitted that the proceedings which were initiated against Charge Memorandum-I, resulted in the imposition of penalty of removal from service upon the petitioner. Meanwhile, the second departmental inquiry initiated in terms of Charge Memorandum-II, had also been completed by the I.O. on October 15, 1993, and the Inquiry Report qua the same was submitted to the Disciplinary Authority. However, the same was kept at pending by the Disciplinary Authority as by that time, the petitioner had already been removed from service as a measure of penalty in respect of Charge Memorandum-I.

18. She submitted that W.P.(C) 4748/1999 filed by the petitioner challenging his removal from service was decided in his favour and as such, the penalty order dated July 07, 1998, against the petitioner was quashed. Resultantly, the petitioner was reinstated in service w.e.f. August 30, 2013.

19. It is her submission that post reinstatement of petitioner, the disciplinary proceedings which were kept in abeyance since the petitioner was no longer a government servant, were resumed and resubmitted to Sectt. BRDB vide HQ, DGBR dated February 05, 2014, Accordingly, the Disciplinary Authority reopened the entire proceedings arising out of Charge Memorandum-II vide note dated December 06, 2013. She submitted that before the said proceedings could be completed, the petitioner

superannuated from the service of the respondents w.e.f., April 30, 2016, on attaining the age of superannuation. However, the disciplinary proceedings deemed to have continued under Rule 9 of CCS (Pension) Rules, 1972.

20. It is her submission that though findings of the I.O. in respect of Charge Memorandum-II reveal that the charges against Articles-I and II were proved against the petitioner, as per para 10(1) of Chapter 10 of the Rules of 1965, still the findings of the Inquiry Offcier are not binding on the Disciplinary Authority, which may disagree with the same and come to its own conclusion based on its own assessment taking into consideration the facts and circumstances of the case forming part of an inquiry.

21. According to her, the Disciplinary Authority disagreed with the findings of the I.O. and referred the case to CVC along with its reasons for tentative disagreement for obtaining 2nd stage advice. The CVC vide OM dated July 05, 2017, observed that the findings of the I.O. is to the effect that the officer was aware of the act of making false entries regarding the cement and its illegal sale to private parties but did not take action required of him and the same has not been 'disagreed with' by the Disciplinary Authority. Such sale of cement illegally has obviously caused loss to the government, which is one of the criteria laid down under Rule 9 of CCS (Pension) Rules. Thus, since the Disciplinary Authority has accepted the findings of the I.O., there is no discretion left with the Disciplinary Authority not to levy penalty specified in the Rule. However, the quantum is the discretion of the Disciplinary Authority which is to be decided in consultation with the UPSC, if applicable.

22. She submitted that subsequently, a copy of the Inquiry Report along with the Disciplinary Authority's tentative reasons for disagreement and 2nd stage advice of the CVC were forwarded to the petitioner for making a representation, vide letter dated September 14, 2017. The Disciplinary Authority after considering the representation of the petitioner and all other relevant records/aspects of the case came to the conclusion that the proven charges against the petitioner were grave in nature and a suitable penalty, by way of cut in pension, needs to be imposed on the petitioner. Subsequently, the Disciplinary Authority forwarded the case of the petitioner to the UPSC seeking advice with regard to the penalty to be imposed on the petitioner. The case records of the petitioner were examined by UPSC and it was noted by the Commission that there were three Articles of Charge against the petitioner and in general findings, the I.O. has held the charges as not proved, at the same time, he also held that certain allegations against the petitioner stand

proved. So, the Commission observed that from the findings of the I.O. as well as Disciplinary Authority"s disagreement note, Element (v) of Article-I and Element (ii) of Article -III were proved. Therefore, the Commission advised withholding of 10% of the monthly pension otherwise admissible to the petitioner for a period of one year, vide letter dated March 06, 2019. Accordingly, the Disciplinary Authority provided a copy of UPSC is advice to the petitioner in accordance with Rule 15 (3) of the Rules of 1965, to allow him to submit his representation, if any.

23. She submitted that in the meanwhile, the petitioner filed a Writ Petition being W.P.(C) No. 102/2017 before this Court praying for the quashing of the order dated December 06, 2013 reinitiating the disciplinary proceedings against him.

24. In respect of the contention of the petitioner that the respondents did not take any step to expedite the disciplinary proceedings, it is her submission that vide order dated February 19, 2019, passed in the aforesaid writ petition, this Court had *prima facie* held that the contention of the petitioner that there has been substantial delay in finalizing the inquiry proceedings is unmerited by holding *prima facie* to the effect that *"this court is of the opinion that in the circumstances of this case, this argument is not merited, because the inquiry in question was instituted in the year 1992 when a charge sheet was issued. That inquiry proceeding was kept in abeyance or not proceeded with having regard to the penalty of removal imposed on the petitioner after conclusion of inquiry in relation to an earlier charge sheet (issued in the year 1991). In these circumstances, the court is of the opinion that Rule 9 has no application to the facts of this case."* 25. She further submitted that the petitioner was fully aware of his involvement in the departmental inquiry initiated against him relating to sale of cement to private persons/parties. Moreover, he had fully participated in the inquiry and defended his case. He was also aware that the proceedings qua Charge Memorandum-II were not finalized because of his removal from service as a measure of penalty in respect of Charge Memorandum-I. It is her submission that during the hearing held on August 05, 2019, in W.P.(C) 102/2017, the petitioner upon being asked as to whether he wished to make a representation against UPSC"s advice, the petitioner had unequivocally stated that he did not wish to send any representation on the advice with a further statement that the respondents may proceed to pass orders in the matter without waiting for any further representation from him. Accordingly, the petitioner forwarded his acknowledgment dated June 10,

2019, of having received UPSC"s advice and also submitted an application dated August 05, 2019, accepting the advice of UPSC dated March 06, 2019, by stating that he did not wish to make any representation with respect to the same except a request to open the sealed cover and to declare his promotion status. It is thereafter, the Disciplinary Authority passed the final order and imposed the penalty of withholding of 10% of the monthly pension otherwise admissible to him for a period of one year. 26. It is her submission that as per paragraphs 3 and 3.1 of the DoP&T OM dated September 14, 1992, the penalty having been imposed on a government employee, the sealed cover of the DPC proceedings in respect of a government employee, cannot be opened. In such a case, the promotion may be considered by the next DPC having regard to the penalty imposed on a government employee. However, the petitioner having accepted the penalty imposed upon him by impugned order dated August 19, 2019, the sealed cover was not opened by the review DPC. Further, as the petitioner had already superannuated, no fresh DPC could be held.

27. She submitted that even the stand of the respondents in the order dated January 17, 2020, to the effect that the appeal against a Presidential Order is not maintainable is justified, in view of Rule 22(i) of the Rules of 1965, wherein it is mentioned that no appeal lies against any Presidential Order.

28. It is her submission that, even otherwise, the petitioner has no vested right for promotion in terms of the judgment dated October 10, 2012, of this Court passed in W.P.(C) 4748/1999. She submitted that this Court vide the aforesaid judgment while reinstating the petitioner with all consequential benefits had specifically observed with regard to the aspect of promotion of the petitioner as under:-

"……if for the purposes of promotion, the petitioner stakes a claim as a part of consequential relief, the same would not flow automatically but would require petitioner's case to be considered as per applicable Recruitment Rules before a specially constituted Departmental Promotion Committee. However, the consequential relief would include salary and increments and benefit of service rendered for purpose of pension."

29. In support of her submissions, she has relied upon the judgment of the Supreme Court in the case of ***Jiwan Mal Kochar v. Union of India (UOI) and Ors., Civil Appeal No. 859/1978*** decided ***on August 09, 1983***. The relevant paragraphs of the said judgment are reproduced as under for ready reference:-

"6. Before the learned Judges who heard the Letters Patent Appeal, Mr. G.D. Gupta who advanced arguments on legal aspects on behalf of the appellant,

submitted that the evidence relied upon against the appellant was purely circumstantial and it should be such as to exclude the possibility of the appellant's innocence, that the findings of the Enquiry Officer were vitiated as based on mere suspicion and no evidence and on inadmissible material and that the guilt of the appellant has not been established such as to stand scrutiny and reasonableness consistent with human conduct and probabilities. On the other hand, Mr. LN. Shroff appearing .for respondents 1 and 2, Union of India and the State of Madhya Pradesh, argued before the learned Judges that the order of compulsory retirement made by way of punishment in a departmental enquiry can be interfered with in writ jurisdiction only if there is any violation or breach of or non-compliance with any statutory requirement or rule or if there is no evidence at all in support of the charge and that the findings of the Enquiry Officer cannot be interfered with if there is some evidence which may reasonably support the conclusion; of guilt of the delinquent officer and the Enquiry Officer has accepted the same. In this connection, the learned Counsel relied upon some decisions, of which only two may be mentioned, namely, State of Andhra Pradesh v. Shree Rama Rao MANU/SC/0222/1963 : (1964)IILLJ150SC and Syed Yakub v. K.S. Radha Krishnan MANU/SC/0184/1963 : [1964]5SCR64. In the first of those decisions it has been observed (at p. 1727):

...The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by Irrelevant considerations or where the conclusion on the very face of it is so Wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based" the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution.

In the second case it has been observed (at pp. 479-80) There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal a writ of certiorari can be issued if it is shown that in recording the said finding the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn

from the said findings are within the exclusive jurisdiction of the Tribunal, and, the said points cannot be agitated before a Writ Court.

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11. "Before us the appellant appearing in persons submitted that the departmental enquiry is vitiated by mala fides of the Minister and officers concerned and misuse of State power, that the letter Ex. G-121 has been misread by the Enquiry Officer hi such a manner as no reasonable man would do, that the outcome of the departmental enquiry is based on fraud and mala fides of the disciplinary authority and that the finding of guilt should not, therefore, be accepted. We may state that there was no reference to any mala fides on the part of any Minister or other officer in the course of the appellant's arguments before the High Court. There is no substance in this contention. The High Court has considered three sets of documents and several circumstances for agreeing with the Enquiry Officer's finding that Ex. G-121 is an antedated and fabricated document. We decline to go into the correctness of this finding of fact arrived at by the Enquiry Officer which is based on circumstantial evidence in view of the principles of law mentioned in the aforesaid two decisions of this Court. We would, however, add that we do not find any reason whatsoever to disagree with the learned Judges of the High Court in regard to the conclusion reached by them about the letter Ex. G-121 being ante-dated and fabricated. So far as the Enquiry Officer is concerned the appellant has admitted before us that he had, no bias against him and that he was given all opportunities to defend himself. He has also admitted before us that there is nothing in the finding of the Enquiry Officer to show that he was influenced by any judgment against Banthia. As a matter of fact, on the date the Enquiry Officer's findings there was only an order dated 15-2-1962 of the Magistrate committing Banthia and others to take to their trial in the Sessions Court. The departmental enquiry was over soon thereafter on 23-31962, The appellant's submission that the Enquiry Officer was informed by the Inspector of Police that in view of that committal order he would be guilty of contempt of Court if he did, not find the appellant guilty, has to be rejected, for it is improbable that such a highly placed officer as the President of the Board of Revenue who held the departmental enquiry against the appellant would have been so informed by an Inspector of Police and that even if he had, been so informed he would have found the appellant guilty of Charge No.7 and part of Charge No.9 on account of any such intimidation.

12. Admittedly, the Enquiry Officer had no bias against the appellant and had given him all opportunities to defend himself in a fair and reasonable manner. There is no noncompliance with any statutory rule or requirement or any principle of natural justice. The conclusion of the Enquiry Officer regarding the appellant's guilt in respect of the entire Charge No.7 and part of Charge No.9 is based on circumstantial evidence which has been accepted by the Enquiry Officer and found to be acceptable even by the learned Judges of the High Court in the light of three sets of documents and other circumstances considered by them. In these circumstances there is no reason for us to come to a different conclusion regarding the appellant's guilt in respect of Charge No.7 and part of Charge No.9. No interference with the judgment of the learned judges of the High Court is called in this appeal. The appeal accordingly fails and is dismissed with costs."

30. She has also relied upon the judgment of this Court in the case of ***Krishan Lal Vij v. Union of India through Ministry of Home Affairs Govt.***

of India New Delhi, 1967 SCC OnLine Del 22, more particularly, on paragraph 22, which is reproduced as under:-

"22. The appellant seems to us to have been afforded adequate and reasonable opportunity to represent his case and defend himself according to the recognised standards applicable to departmental enquiries. Such enquiries cannot be equated with criminal trials under the Code of Criminal Procedure. It is, therefore, not easy to sustain the contention advanced on behalf of the appellant that the enquiry against him is tainted with any legal infirmity violative of the recognised rule of reasonable opportunity of showing cause against the guilt and the punishment proposed."

31. So, in view of the aforesaid, it is her submission that adequate opportunity having been given to the petitioner, the conclusion drawn by the Disciplinary Authority cannot be interfered with. Therefore, the action of the respondents in withholding the quantum of pensionary benefits and denial of promotion to the petitioner as a result of imposition of the penalty due to misconduct on part of the petitioner while he was in service is within the ambit of Government
Orders/Rules.

ANALYSIS

32. Having heard the learned counsel for the parties, before we deal with the submissions made by the petitioner, it is necessary to mention the following dates to completely appreciate the issues which have arisen for consideration in this writ petition:-

S. No.	Events	Dates
1.	Charged Memorandum-I	August 26, 1991
2.	Dismissal from service against Charge Memorandum-I	July 07, 1998
3.	Charged Memorandum-II	January 09, 1992
4.	I.O. Report	October 15, 1993
5.	Order of the respondents putting the I.O. proceedings regarding Charge Memorandum-II in abeyance	August 18, 1998
6.	W.P.(C) 4748/1999 filed against the removal of the petitioner from service	1999

7.	Judgment passed in favour of the petitioner in W.P.(C) 4748/1999	October 10, 2012
8.	Reinstatement of the petitioner	August 20, 2013
9.	Resuming disciplinary proceedings against the petitioner in respect of Charge Memorandum-II	December 06, 2013

33. Having noted the dates, the issues which fall for consideration are:-

A. Whether the respondents could not have reinitiated/resumed the disciplinary proceedings which were put at rest because of the penalty of removal imposed on the petitioner in respect of Charge Memorandum-I dated August 26, 1991?

B. Whether the Disciplinary Authority was justified in giving a note of disagreement to the effect that it negates the general findings of the I.O. that the charges are „not proved" in respect of Charge Memorandum-II? If the answer is in the affirmative, whether the Disciplinary Authority was justified in imposing the penalty of withholding of 10% of the monthly pension, otherwise payable, for a period of one year?

C. Whether the respondents were justified not to act on the recommendation of the DPC"s proceedings which were to be kept in sealed cover and not opened because of the pendency of the disciplinary proceedings in respect of Charge Memorandum-
II?

34. Insofar as issue „A" is concerned, we agree with the reliance placed by the learned counsel for the respondents on the order dated February 19, 2019, passed by this Court in W.P.(C) 102/2017 , wherein this Court *prima facie* disagreed with the contention of the petitioner on the delay in finalizing the inquiry proceedings in respect of Charge Memorandum-II in the facts of this case. In fact, the said *prima facie* conclusion has to be held as a final conclusion of this Court for the simple reason that two Memorandums were issued to the petitioner, first one being on August 26, 1991, and the second one being on January 09, 1992. The subject matter of the challenge is with regard to the penalty imposed in respect of Charge Memorandum-II. The Charge Memorandum-I, resulted in the removal of the petitioner from the service of the respondents. Though, the I.O. had submitted the Inquiry Report in respect of Charge Memorandum-II, in the year 1993 itself to the Disciplinary

Authority but because of the imposition of the penalty of removal in respect of Charge Memorandum-I, the proceedings in respect of Charge Memorandum-II, could not be completed as the petitioner was not in service of the respondents during that time. 35. It is only that the setting aside of the penalty of removal by this Court on October 10, 2012, which was also upheld by the Supreme Court in the SLP filed by the respondents, resulted in the reinstatement of the petitioner w.e.f. August 30, 2013. Suffice to state, it is only after the reinstatement of the petitioner that the decision was taken by the respondents to revive the Charge Memorandum-II from the stage it was put in abeyance. Pursuant thereto, the proceedings having been held in respect of Charge Memorandum-II, the same resulted in the imposition of penalty under challenge. Therefore, the reviving/resumption of the proceedings in respect of Charge Memorandum-II by the respondents vide order dated December 06, 2013, cannot be said to be bad in law. In fact, it is an admitted position that the petitioner had participated in the proceedings by submitting a detailed representation against the disagreement note issued by the Disciplinary Authority and so also by preferring the appeal dated December 27, 2019, against the impugned order dated August 19, 2019, passed by the respondents acting upon the advise rendered by the CVC/UPSC. As such, the petitioner having acquiesced in the proceedings held under the provisions of the Rules of 1965, it is too late in the day for the petitioner to contend that revival/resumption of disciplinary proceedings in respect of Charge Memorandum-II, dated January 09, 1992, is arbitrary and illegal.

36. Therefore, the issue „A" needs to be decided against the petitioner and in favour of the respondents.

37. Insofar as issue „B" is concerned, it is necessary to reproduce the disagreement note of the Disciplinary Authority in the following manner:-

"REASONS OF TENTATIVE DISAGREEMENT OF DISCIPLINARY AUTHORITY WITH THE FINDING OF THE INQUIRY OFFICER IN DISCIPLINARY PROCEEDINGS WITH SHRI RK AGARWAL, AEE (CIV) RETD (GO-1770y

It is observed that while arriving at his findings that the charges are not 'Proved', the IO made certain categorical comments about the lapses on the part of the Charged Officer which had a direct bearing on the charges levelled against the CO. His following Notes in this regard are extremely relevant which highly contradicts the finding of the 10 against the Article I and III.

1. *Article-1*

(a) Officer had totally failed to exercise control over Shri V Ravindran and Shri K Vijayan, Overseer for accurate booking of cement in relevant works

diaries by them. (b) Officer had displayed lack of discipline for not implementing BRO instructions printed on cover of works diaries. Article-III

(a) Shri RK Agarwal came to know about one incident (of sale of 30 bags cement) in the evening at GONDLA (Km 96). He had failed to inform/ report to his Superior (ie OC 110 RCC) same day (either in the evening or Night) at HQ 110 RCC (Km 119)

(b) Officer had displayed lack of discipline due to his failure to inform OC 110 RCC at once.

2. *It may be seen from the above that the Notes as mentioned above negate the general findings of the IO that the charges are 'Not Proved' and indicate inherent contradictions in the finding of the IO. The above notes by the IO establishes that charges under Article I and III are 'Partly Proved'"*

38. In this regard, it may be stated here that it has been noted by UPSC that in the general findings of the I.O., the charges were held as not proved. However, at the same time, certain allegations against the petitioner were held as proved. In other words, the I.O. had agreed with the fact that the petitioner was aware of the existence of surplus cement as well as its illegal sale to private persons/parties but he did not inform this matter to his superior. Such a position having been agreed to by the I.O. in his findings, the UPSC was of the view that from the findings of the I.O. as well as Disciplinary Authority"s disagreement note, Element

(v) of Article-I and Element (ii) of Article-III are observed as proved. Therefore, the Commission came to the following conclusion:-

"In the light of the observations and findings as discussed above and after taking into account all the aspects relevant to the case, the Commission observe that the charges established against the CO constitute grave misconduct on his part and consider that the ends of justice would be met in this case if the penalty of withholding of 10% (ten percent) of the monthly pension otherwise admissible to him for a period of one year, is imposed on the CO, Shri R.K. Agarwal. His gratuity may, however, be released unless required to be withheld in any other case. They advise accordingly."

39. Having said that, we find that UPSC in its advice, with regard to Article 1 of the Charge Memorandum-II, has stated as under:-

"Article-I

4.2 The Commission note that the charge leveled against the CO has five elements, i.e., the CO (i) threatened his subordinates, (ii) used coercive methods and clever manipulation, (iii) created surplus stocks of cement (iv) malafide intention to derive personal pecuniary gain through illegal sale of surplus cement to private persons/parties and (v) gross misconduct by not ensuring deliberately that the cement for works was booked in the relevant work diaries correctly. Element (v)

4.3 The Commission observe that instructions printed on the Cover Page of works diaries, inter-alia stipulate that the works diary should be filled daily by Supervisor-in-charge Works, checked by Officer-in-charge Works daily, weekly by OC Unit and monthly by Commander, Task Force. The

dimensional analysis is to be done at the middle and end of each month and computation to be made and compared with each other.

4.4 The Commission, on perusal of works diary for the period June 88 - July 88, observe that the CO did not check the same from 3.6.88 to 6.6.88 and from 10.6.88 to 20.6.88 as these dates do not contain the signatures of the CO at the appropriate place in token of having checked them. Similarly, on a number of days also, the CO has also not checked other work diaries as these days also do not contain the signatures of the CO, whereas Supervisors in-charge (his subordinates) have signed and filled all these work diaries. Thus, it is clear that the CO failed to follow the instructions printed on the cover page of works diaries, which inter-alia stipulates that the works diary should be filled daily by Supervisor-incharge Works and checked by Officer-in-charge daily. Perusal of the work diaries also reveal that the dimensional analysis of the work was not carried out in accordance with the instructions printed on the cover page of each of the works diaries. This is a mandatory requirement to maintain accuracy in booking of cement and other stores. 4.5 The Commission observe that as per the deposition of SW-1, BR I, V. Raveendran who had admitted the fact of his involvement in illegal sale of cement and sharing proceeds with the CO and also as per the depositions of the SW-3, MT Driver, Shri Suseelan and SW-4, MT driver, Shri Karam Singh the SW-1 (V. Raveendran) paid money to them as their share of sale of cement. Further, some cement was being sold/disposed off after unloading by them on the road site where generally no work was being done under the instruction of detachment in-charge, SW-1. They were paid money for this work by him and the main share of sale of cement had gone to the In charge and Officer-in charge (the CO in this case). SW-2 (Overseer K Vijayan) also admitted his guilt of disposing of cement for consideration and sharing with the CO.

4.6 The Commission observe that the CO has contended that the cement was correctly booked in the work diaries and sent for thorough check with program report every month to HQ110 RCC and also at site inspection by OC. He also stated that Work Diaries were neither sent back for rectification nor any queries raised from the Officer-InCharge for any missing details. Therefore, it is incorrect to say that he lost control over his subordinates for accurate booking of cement in relevant work diaries. The CO also stated that as per the IO, the dimensional analysis was not prepared even under different Supervisor/Officers of these detachments, thus, there was no necessity to prepare dimensional analysis. The CO further stated that the correct procedure was not being implemented in the Sector prior to his taking over road sector.

4.7 The Commission observe that instructions for maintenance of work diary (printed on cover of work diaries) stipulate that the works diary should be filled daily by Supervisor-in-charge works and checked by Officer-incharge [Works] and also the dimensional analysis is to be done at the middle and end of each month. This is a mandatory requirement to maintain accuracy in booking of cement and other stores. The CO's plea that before his arrival also the correct procedure was not being followed established that the CO failed to implement the BRO instructions printed on the work diaries strictly. In spite of denial of the CO, his involvement in the sale of cement cannot be ruled out in view of the statements of his subordinates. It can, thus, be concluded that the CO failed to ensure accurate booking of cement in relevant works diaries filled by his subordinates SW-1, BRI, Shri V. Ravindran and Shri K. Vijayan, Overseer who were responsible for filling the work diaries. In this way, the CO displayed indiscipline by not implementing the

requisite instructions printed on cover of works diaries. Thus, charges under Article-I stand partly proved to that extent against the CO."

40. Similarly, qua Article-III thereof, it is stated as under:-

"Article-III

4.8 The Commission note that there are three elements of charge against the CO, i.e., (i) though in full knowledge of the existence of surplus cement as well as is illegal sale to private persons/parties, (ii) concealed the actual fact from his superiors and (iii) ulterior motive of making personal pecuniary gain.
Element (ii)
4.9 The Commission observe that as per the depositions/statements of SW- 3, MT driver, Shri Suseelan and SW-4, MT driver, Shri Karam Singh, some cement was being disposed off after unloading by them on the road site where generally no work was being done under the instruction of detachment in- charge, Brig. Raveendran and with the help of drivers as well as persons: looking after the stores. They were paid money for this work by Brig. Raveendran. The main share of sale of cement had gone to the in charge and officer in-charge. Thus, it is concluded that all this was being done with the understandings between drivers, detachment in charge and that too with Officer- incharge (the CO in this case).
4.10 The Commission observe that as per the deposition of SW-5, Overseer, Shri Gurbachan Chand dated 12.8.1993 that he checked the consignment of cement brought by SW-3, Shri, Suseelan, MT driver from HQ.110 RCC. There were 70 bags cement in the vehicle and 30 bags cements was as surplus in the store which made 100 bags as per convey note signed by him. SW-3 told him that he had disposed off the 30 bags surplus in the store and wanted to handover some money to the officer in charge, i.e. the CO. He met the CO and narrated the story to him but the CO annoyed and told the driver that such things must be told to him beforehand and the CO asked to leave the place. SW6, DES P Rajappan of 234 PMP (GREF), in his deposition confirmed the version of SW5 and he also reported the matter to SW5, his immediate superior. Thus, it is clear that the existence of surplus cement as well as its illegal sale to private persons/parties was in the knowledge of the CO.
4.11 The Commission observe that the CO has contended that as he was not aware of the selling of 30 bags cement in the evening at detachment Gondia (KM.96), hence, the reporting of the same to OC 110 RCC does not arise. The CO also stated that the statement of SW-5, Overseer, Shri Gurbachan Chand, that he informed the CO about the incident is totally false and baseless.
4.12 The Commission, in this regard, observe that as per IO's conclusion, the CO came to know an incident of sale of 30 bags cement in the evening at Gondla (km.96) but he did not inform this matter to his superior, i.e., OC 110 RCC on the same day, i.e, evening or night. As per SW-5, Overseer, Shri Gurbachan Chand's deposition, OC Provost Unit and OC 70 RCC investigated the matter at Gondla and he told them that he did not sale the cement. But the SW-5 (Gurbachan Chand) later changed his earlier statement and hence cannot be relied upon. Subsequent to the incident, OC Provost Unit and
OC 70 RCC came to Gondla and carried out the investigation which established that the incident of illegal sale of cement was happening at

Gondla. Thus, charges under Article-III stand "partly proved" against CO to that extent.

4.13 The Commission conclude that there were lapses committed by the CO which had a direct bearing on the charges levelled against him. There were supervisory lapses committed by him as he failed to exercise control over his subordinates for accurate booking of cement as per procedure. Also when he came to know about the incident of illegal sale of cement at Gondla, he failed to inform this matter to his superiors at once. He suppressed the facts of illegal sale of cement with the ill motive of making personal pecuniary gain. The CO's plea is that before his arrival also the correct procedure was not being followed established that he failed to implement the BRO instructions strictly. It is, therefore, clearly established that the CO is guilty of both supervisory and procedural lapses.

5. In the light of the observations and findings as discussed above and after taking into account all the aspects relevant to the case, the Commission observe that the charges established against the CO constitute grave misconduct on his part and consider that the ends of justice would be met in this case if the penalty of withholding of 10% (ten percent) of the monthly pension otherwise admissible to him for a period of one year, is imposed on the CO, Shri R.K. Agarwal. His gratuity may, however, be released unless required to be withheld in any other case. They advise accordingly."

41. It is on consideration of the complete record and the advice of the CVC/UPSC, that the Disciplinary Authority passed the final order on August 19, 2019 by holding in paragraph 17 as under:-

"17. NOW, THEREFORE, in exercise of the powers conferred by Rule 9 of Central Civil Service (Pension) Rules, 1972, and in consultation and agreement with the Union Public Service Commission, the President is inclined to take a view that justice would be met by imposing the penalty of "withholding of 10% (ten percent) of his monthly pension otherwise admissible to him for a period of 01 (one) year" with immediate effect on Shri R.K. Agarwal, AEE (Civ) Retd
(GO No.1770Y) and orders accordingly."

42. So, from the discussion above, it may be stated here that the petitioner did not seriously contest the findings of the I.O. qua the fact that the petitioner did have the knowledge about the existence of the surplus cement as well as its illegal sale to private persons/parties and still he decided not to inform about this to his superior. If that be so, the disagreement note may though contain certain different reasons, is an enough finding for the Disciplinary Authority to partially hold/prove the charges to the extent of Article I and Article III, in respect of Charge Memorandum-II. Having said that, the fact that the findings of I.O. to the effect that the petitioner had full knowledge of the existence of surplus cement as well as its illegal sale to private persons/parties, yet, he concealed the same from his superior, have been agreed to by the Disciplinary Authority as well as CVC/UPSC, it cannot be disputed that the same must have resulted in substantial loss to the exchequer. In fact, the

petitioner did not contest the same. Therefore, it can be concluded that the penalty being of cut in 10% of the pension which was otherwise payable for a period of one year, is a justifiable penalty.

43. It is also a settled position of law that this Court in exercise of its jurisdiction under Article 226 of the Constitution cannot set aside or modify the penalty imposed by reappreciating the evidence which has already been appreciated by the I.O., the Disciplinary Authority and also the CVC/UPSC. As such, issues „B" and „C" have to be decided in favour of the respondents and against the petitioner.

44. It is also stated that the proceedings of the review DPC were rightly kept in the sealed cover and not opened in view of pendency of disciplinary proceedings in respect of Charge Memorandum-II dated January 09, 1992. Moreover, the said charges having culminated into imposition of penalty though after the retirement of the petitioner and the same having been accepted by the petitioner, the DPC as contained in the sealed cover, could also not have been acted upon in view of the OM dated September 14, 1992 as relied upon by the counsel for the respondents. In this regard, the relevant portion of the aforementioned OM is reproduced as under:-

"……..if any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the findings of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him……."

45. It is also stated here that the petitioner has relied upon the order of this Court dated October 14, 2019, passed in W.P.(C) 102/2017, wherein the submission was made by the then counsel for the respondents that the case of the petitioner for notional promotion has to considered only in the next DPC. Thereafter, the matter was adjourned to November 26, 2019 to enable the respondents to inform the Court the outcome of the DPC proceedings on November 26, 2019. The order dated November 26, 2019, is reproduced as under for ready reference:-

"1. Learned counsel appearing for the Union of India states that the proposal sent to the Ministry of Defence for holding the DPC for promotion of the Petitioner has been returned with certain observations and has now been resubmitted on 13th November, 2019. Some more time is prayed for the completion of the DPC proceedings.

2. Considering that the Petitioner has waited for a considerably long period, the Court directs that the DPC now be held and the proceedings completed positively on or before 9th December, 2019.

3. *The Court should positively be informed on the next date of the outcome of the DPC proceedings.*
4. *The Court has also been shown a letter written to the Chief Manager, Centralized Pension Processing Centre, State Bank of India, Chandni Chowk, asking him to credit the dues owed to the Petitioner to his bank account before 26th November, 2019. A compliance report be filed before this Court by the next date in this regard as well.*
5. *List on 13th December, 2019."*

46. Thereafter, on December 23, 2019, when the matter was again listed, this Court in paragraphs 6 to 9 stated as under:-

"6. The LA (Defence) is present in Court. Meanwhile, the Respondents have filed a fresh application being CM APPL. 55235/2019 for recalling the aforementioned orders dated 14th October 2019 and 26th November, 2019. The short ground on which recall is sought is that with the Petitioner having accepted the penalty imposed by the order dated 19th August, 2019, the consequence is that there will be no question of hold.ing a Review DPC, since the sealed cover does not require to be opened. It is further submitted in the application that since the Petitioner has already superannuated, no fresh DPC can be held. Mr. Bharadwaj sates a the statement made by him as recorded in par 7 of the order dated 14th October 2019 was erroneously made and he wishes to withdraw it.

7. The Court is informed both by the counsel for Respondents as well as the Petitioner himself that all the monetary dues owed to the Petitioner have been released to him.

8. In view of the fact that the Petitioner now wishes to file an appeal against the penalty order dated 19th August, 2019, the Court, in modification of the earlier orders dated 5th August, 2019, 14th October, 2019 and 26th November, 2019, directs as under:

(i) The Petitioner is relieved of the statement made on 5th August, 2019. He is now permitted to file a statutory appeal against the order dated 19th August, 2019 and thereafter avail appropriate remedies as may be available to him in accordance with law.

(ii) If the Petitioner's appeal is filed not later than 31st December, 2019, the appeal should be positively disposed of by 28th February, 2020, and the decision on the said appeal should be communicated to the Petitioner within 15 days thereafter.

(iii) In modification of the earlier orders it is now directed that depending on the outcome of the Petitioner's appeal, irrespective of earlier orders, further steps ,will I be taken in accordance with law by either party.

9. The petition and all the pending applications are disposed of in the above terms."

47. Hence, from the above, it is clear that as the penalty had been imposed, the proceedings of the DPC which were kept in sealed cover were not opened. It was in this background that in paragraph 8(iii), the Court had stated in modification of the earlier orders that *"it is now directed that depending on the outcome of the Petitioner's appeal, irrespective of earlier orders, further steps will be taken in accordance with law by either party".* So, it must necessarily

follow that because of the imposition of penalty, the sealed cover could not be opened and the DPC proceedings were not acted upon.

48. Insofar as the judgment of the Supreme Court in the case of ***State of Andhra Pradesh v. N. Radhakishan (1998) 4 SCC 154*** and of this Court in the case of ***GS Shergill v. Delhi State Civil Supplies Corporation Ltd., 2022/DHC/004744***, relied upon by the petitioner, in support of the contention that the Disciplinary Authority has wrongly and without any reason disagreed in the disagreement note and the I.O. was right in not proving the charges are concerned, the same have no applicability in the facts of this case, more so, in light of our findings above.

49. In view of our discussion above, we do not find any merit in the writ petition. The same is dismissed. No Costs.