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H. L. GULATI

v.

UNION OF INDIA AND OTHERS

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(Civil Appeal Nos. 8224-8225 of 2011)

FEBRUARY 26, 2015

**[JAGDISH SINGH KHEHAR AND
SHIVA KIRTI SINGH, JJ.]**

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Service law: Pension – Withholding or withdrawing of – Allegation that appellant holding charge of post of Senior Accounts Officer authorised fraudulent claims resulting in unauthorized release of Rs.42.24 lacs – Criminal

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proceedings also initiated – Enquiry officer submitted his report – Meanwhile appellant retired – Punishing authority punished the appellant u/r.9 of CCS (Pension) Rules, 1972 and withheld 50% of appellant's pension permanently and also withheld 50% of gratuity – As regards criminal

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proceedings, appellant was found not guilty – Appellant moved CAT against the order of punishing authority – CAT held that enquiry report did not record any finding of grave misconduct and therefore punishment inflicted was not sustainable – On writ petition by respondent-UOI, order of

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CAT set aside – Plea of appellant before this Court was that the enquiry officer ought to have recorded the finding of grave misconduct or grave negligence whereupon punishing authority could have invoked r.9 to inflict an appropriate punishment upon him – Held: In enquiry report, appellant-

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delinquent was discharged of charges of ill motive – Enquiry report only found him negligent – Appellant was also discharged from criminal prosecution – He may have been negligent in discharge of his duties but he cannot said to be guilty of grave misconduct – Punishing authority held

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appellant guilty of grave misconduct – However delinquency established was of negligence and not misconduct – Therefore finding that appellant was guilty of grave misconduct cannot be accepted – In the absence of conclusion of grave negligence, punishment order set aside – Jurisdiction under Article 142 of the Constitution of India, exercised to inflict an appropriate punishment upon the appellant – Punishment of withholding 50% of gratuity maintained – Withholding of 50% of pension sustained till the end of the current month, and release of 100% of the appellant's pension ordered w.e.f. 01.03.2015 – CCS (Pension) Rules, 1972 – r.9. A B C

CCS (Pension) Rules, 1972: r.9 – Invoking r.9 for withholding or withdrawing pension – Held: The enquiry officer's responsibility is limited to the determination of innocence or guilt of a delinquent employee, with reference to charges levelled against him – It is on the establishment of the charges that the punishing authority record a finding, whether the conclusions lead to the further inference, that the delinquent has committed acts of "grave misconduct" or "grave negligence" – It is on such determination by the punishing authority that r.9 of the 1972 Rules can be invoked, in case the delinquent employee in the meantime, has retired on attaining the age of superannuation – Service law. D E F

Disposing of the appeals, the Court

HELD: 1. The responsibility vested on an enquiry officer is limited to the determination of the innocence or guilt of a delinquent employee, with reference to charges levelled against him. It is on the establishment of the charges (if any), that the punishing authority will record a finding, whether the conclusions lead to the further inference, that the delinquent has committed H G

A acts of “grave misconduct” or “grave negligence”. It is
on such determination by the punishing authority that
Rule 9 of the 1972 Rules can be invoked, in case the
delinquent employee has, in the meantime, retired on
attaining the age of superannuation. It is not a matter
B of dispute that when the punishment was inflicted upon
the appellant, the appellant had already retired from
service having superannuated. Therefore, there was no
error on part of punishing authority in invoking rule 9
of the 1972 rules. [Para 14] [737-F-H; 738-A-B]

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2. What was sought to be proved against the
appellant was negligence in the discharge of his duties
as Senior Accounts Officer, which resulted in the
unauthorised payment of 36 fraudulent claims, and
D thereby, the unauthorised dispersal of approximately
Rs.42.24 lakhs. Additionally, the charge of ill-motive was
levelled against the appellant in Article IV of the memo
of charges. But insofar as Article IV of the memo of
charges is concerned, the appellant was found
E innocent thereof by the Enquiry Officer. The
submissions sought to be put forward was, that it had
come to be established, that there was no ill- motive at
the hands of the appellant, insofar as his involvement
in the release of payments of the 36 fraudulent claims
F was concerned. Additionally, it was contended for the
appellant, that even in the course of the criminal
prosecution, initiated against the appellant, his
complicity in the fraud was not proved, nor was it found
G that there was any intentional culpability of the
appellant, insofar as the release of the fraudulent claims
are concerned. It is not possible to accept that the
appellant was blameworthy/guilty of any “grave
misconduct” because the enquiry report only found that
H the appellant was negligent in the discharge of his

duties. Insofar as Article IV of the memo of charges is concerned, he was accused of complicity with the alleged suppliers, and also, responsible for having failed to maintain absolute integrity. But then, Article IV of the charge memo was held to be not proved in the Enquiry Report. Equally important is the fact, that the appellant was discharged from the criminal prosecution initiated against him with reference to the same sequence of facts. The appellant may have been negligent in the discharge of his duties, but it is not possible to conclude, that the appellant was guilty of "grave misconduct". Having so concluded, it emerges that the findings against the appellant could certainly not have been of "grave misconduct". [Paras 16, 17 and 18] [738-F-H; 739-A-B, D-H; 740-A]

3. It was open to the punishing authority to have passed the punishment order, in terms of the mandate contained in Rule 9 of the 1972 Rules. The punishing authority could have passed such an order after arriving at the conclusion that the appellant/delinquent was either guilty of "grave negligence" or of "grave misconduct". The punishing authority recorded, while passing the punishment order, that the appellant was found to have committed acts of "grave misconduct". However, the delinquency established against appellant was of negligence, and not of misconduct. Therefore, the finding recorded in the impugned order that the appellant had committed acts of "grave misconduct" cannot be accepted. The above conclusion, in the impugned order being unacceptable, is hereby set aside. In the absence of the conclusion of "grave negligence", the punishment order is liable to be set aside, and is accordingly set aside. [para 20] [740-F-H; 741-A-B]

A 4. Since the delinquency relates to the years 1992
to 1994, it would not be in the fitness of the matter, to
require the punishing authority to reconsider a lesser
punishment. Therefore, jurisdiction under Article 142 of
B the Constitution of India, is exercised to inflict an
appropriate punishment upon the appellant. Keeping in
mind the delinquency proved and established against
the appellant in the enquiry report which was accepted
by the punishing authority, ends of justice would be
C met if the punishment of withholding 50% of his gratuity
is maintained/sustained. Insofar as the permanent
withholding of 50% of the appellant's pension is
concerned, it would be just and appropriate to sustain
the same till the end of the current month, and to order
D the release of 100% of the appellant's pension with
effect from 01.03.2015. [para 21] [741-C-F]

CIVIL APPELLATE JURISDICTION: Civil Appeal No.
8224-8225 of 2011.

E From the Judgment and Order dated 31.08.2010 and
26.11.2010 respectively of the High Court of Delhi at New
Delhi in WPC No. 13664 of 2009 and RP No. 428 of 2010.

Dr. M. P. Raju, E. J. Varghese (for M. T. George) for the
F appellant.

K. Radhakrishnan, Sadhana Sandhu, Rekha Pandey (for
Anil Katiyar) for the respondents.

G The Judgment of the Court was delivered by

JAGDISH SINGH KHEHAR, J. 1. The appellant was
holding charge of the post of Senior Accounts Officer, in the
office of the Controller of Defence Accounts, during the period
1992 to 1994, when it was discovered that 36 fraudulent
H claims came to be authorized by him, resulting in the

unauthorised release of an approximate amount of Rs.42.24 A
lakhs.

2. The investigative process, indicated the involvement
of large number of officers, including Lt. Col. Pakki Rama
Shankar Rao. This led to the registration of a first information B
report bearing No.RC AC 11998 A0002 dated 20.05.1998 at
police station CBI/SPE/ACU(I) District New Delhi. Eventually,
a charge sheet bearing No.2 dated 6.9.1999 came to be filed,
wherein the appellant was arrayed as accused no.1.

3. Simultaneously, with the initiation of criminal C
proceedings, the authorities issued a charge memo dated
7.7.1998 to the appellant, wherein he was accused of four
articles of charge. The articles of charge levelled against the
appellant are being extracted hereunder: D

"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 E
(HQRS.), New Delhi, failed to discharge his duties
effectively as provided for in Appendix 1 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 F
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 G
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

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- A 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.
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Article III

- E 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.
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Article IV

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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 CDS (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.

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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."

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4. The appellant preferred a reply to the aforesaid charge memo on 4.9.1998. Finding the reply filed by the appellant as unsatisfactory, the punishing authority decided to hold a regular departmental enquiry, which came to be ordered against the appellant on 9.10.1998.

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5. Having allowed an opportunity to the Presenting Officer, as also, to the appellant-delinquent to lead evidence, the Enquiry Officer submitted his report on 18.7.2002. The aforesaid report came to be served upon the appellant through a communication dated 5.2.2004. The appellant preferred a representation contesting the findings recorded by the Enquiry Officer on 7.3.2004. Finding the reply submitted by the appellant unacceptable, the punishing

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A authority by an order dated 30.11.2005, punished the appellant under Rule 9 of the CCS(Pension) Rules, 1972 (hereinafter referred to as the '1972 Rules'). Rule 9 aforementioned is being extracted hereunder:

B "9.Right of President to withhold or withdraw pension

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement :

Provided that the Union Public Service Commission shall be consulted before any final orders are passed :

Provided further that where a part of pension is withheld or withdrawn the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy-five per mensem.

2(a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President. A

(B) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment, - B

(i) shall not be instituted save with the sanction of the President, C

(ii) shall not be in respect of any event which took place more than four years before such institution, and

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

(3) Deleted E

(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 shall be sanctioned. F

(5) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant. G

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A (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

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(b) judicial proceedings shall be deemed to be instituted

C (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."

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The aforesaid Rule came to be invoked on account of the fact that the appellant had attained the age of retirement, and had superannuated from service with effect from 30.06.2002. While invoking Rule 9 of the 1972 Rules, the punishing authority ordered the withholding of 50% of the appellant's pension permanently, and also, the withholding of 50% of the appellant's gratuity.

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6. Dissatisfied with the punishment order dated 30.11.2005, the appellant preferred a review petition on 4.7.2006. Submissions advanced by the appellant in the review petition were considered by the punishing authority, whereupon, by an order dated 1.8.2007 the review petition came to be rejected.

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7. Whilst the criminal proceedings were pending consideration, the aforesaid departmental proceedings attained finality. Insofar as the criminal proceedings are concerned, it is sufficient to notice, that the Special Judge, Delhi, while adjudicating upon the controversy vide his order dated 8.7.2005, found the appellant not guilty of any criminal

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accountability. The trial Court, in the criminal case, arrived at the conclusion, that the complicity of the appellant in the fraud, was not substantiated, nor was there any intentional culpability proved. Accordingly, the appellant came to be discharged from the criminal case. A

8. Aggrieved by the punishment order dated 30.11.2005, and the rejection of the review petition vide order dated 1.8.2007, the appellant approached the Central Administrative Tribunal, Principal Bench, Delhi (hereinafter referred to as the 'Administrative Tribunal') by filing Original Application No. 1675 of 2008. The Administrative Tribunal vide its order dated 13.4.2009 arrived at the conclusion, that the enquiry report submitted by the Enquiry Officer on 18.7.2002, did not record any finding of grave misconduct. In the above view of the matter, the Administrative Tribunal, while interpreting Rule 9 of the 1972 Rules, held that the punishment inflicted upon the appellant on 30.11.2005 (as also the review order passed against the appellant on 1.8.2007) were not sustainable. B C D

9. The order passed by the Administrative Tribunal on 13.4.2009, came to be assailed by the Union of India, before the High Court of Delhi (hereinafter referred to as the 'High Court') through Writ Petition(C) No.13664 of 2009. The High Court accepted the writ petition, and set aside the order passed by the Administrative Tribunal on 31.8.2010. The appellant before this Court, also preferred review petition No.428 of 2010 before the High Court. The said review petition was, however, rejected by an order dated 26.11.2010. E F

10. The orders passed by the Delhi High Court on 31.08.2010 and 26.11.2010, were assailed by the appellant by preferring Special Leave Petition(C) Nos.3365-3366 of 2011. Leave in the matters came to be granted on 23.09.2011. It is therefore, that the instant appeals have matured for consideration, at our hands. G H

A 11. Before venturing to determine the culpability of the
appellant insofar as the articles of charge, that came to be
levelled against him, it would be imperative for us to examine
the determination of the Enquiry Officer, in his report dated
18.7.2002, on each of the articles of charge. We shall
B accordingly, summarily deal with the findings recorded by the
Enquiry Officer hereunder:

i) Insofar as Article I of the charge memo dated 7.7.1998
is concerned, the Enquiry Officer arrived at the conclusion, that
C the responsibility of the Senior Accounts Officer in respect of
the verification of the specimen signature was not only to be
his own verification, but he was also to ensure that where
verification was done, it would be so indicated, in the voucher.
As per the determination of the Enquiry Officer, the aforesaid
D obligation would imply that the Senior Accounts Officer, was
not only to record an endorsement on the voucher, he would
also have to ensure that the auditors and the Assistant
Accounts Officer also record such endorsements on vouchers,
when they dealt with the issue of specimen verification. A
E categoric finding was recorded by the Enquiry Officer to the
effect, that the bills which authorized the payment of the 36
fraudulent claims, did not show any such endorsements, and
therefore concluded, that the appellant had failed to put his
own endorsement, and had also failed to ensure
F endorsements by the auditors/Assistant Accounts Officer,
about verification of the specimen signature on the bills,
leaving a doubt whether the auditors/AOs had verified the
specimen signature. Having so recorded, the Enquiry Officer
G accepted that Article I of the charge with reference to the
appellant (who was working in the 'M' section during the
period 16.10.1992 to 15.10.1994 in the office of CDA(HQ),
New Delhi) to the extent, that had failed to discharge his duties
effectively as provided for in Appendix 1 to OM Pt.1. The
H Enquiry Officer accordingly inferred, that authorization of the

payment of the 36 fraudulent claims, to the tune of Rs.42.24 lakhs, stood marginally proved. A

ii) Insofar as Article II of the memo of charge dated 7.7.1998 is concerned, the Enquiry Officer arrived at the conclusion, that the appellant had failed to detect, that the fraudulent claims had been floated against fake sanctions purported to have been issued by the Ministry of Defence, was correct. As such the Enquiry Officer accepted, that the charge stood proved. On Article II, the Enquiry Officer recorded the following conclusion: B C

“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. D

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

iii) Insofar as Article III of the charge memo dated 7.7.1998 is concerned, it was alleged against the appellant, that the bills which were routed through the accounts section for noting, bore the endorsement of the accounts section, to the effect that the bills had been noted in the accounts section. However, on the basis of exhibits P/1/1 to P/1/36, the Enquiry Officer arrived at the conclusion, that no such endorsements were there on these bills. According to the finding recorded by the Enquiry Officer, although these bills were required to be routed through the accounts section for noting, they had not been so routed. Based on paragraph 154 of Chapter 13 of Defence Account Code, which lists items which are under locally controlled heads, according to which, payment of stores F G H

A and miscellaneous claims would come under the purview of
locally controlled heads, i.e., heads susceptible to control
against against budget provision by the various
administrative and executive authorities subordinate to the
Government of India, and para 437 OM Pt. II Vol. I
B (Miscellaneous Section) which provided that bills in respect
of charges which were debitable to locally controlled heads,
would have to be sent to the accounts section before payment,
for obtaining a certificate regarding the availability of funds,
and further para 514 of Chapter VII Stores Contract Section
C of OM Pt.II Vol.I which provides that bills relating to locally
controlled heads or centrally controlled heads for which
specific allotment existed, the bills had to be forwarded to the
accounts section, for noting and furnishing a certificate of
availability of funds. Hence, whether or not the bills were
D processed in 'M' section or Stores Contract Section,
according to the Enquiry Officer, the bills were required to be
sent to the accounts section, for obtaining a certificate
regarding the availability of funds as according to Para 47(a)
E of Defence Audit Code. One of the main objectives of audit
of expenditure was to ensure, that there is a provision of funds
for the expenditure duly authorized by the competent authority.
On perusal of the bills, the Enquiry Officer found, that there
were no endorsements thereon, of the accounts section.
F Therefore, the Enquiry Officer arrived at the conclusion, that
the second part of Article III of the charge memo, that the bills
were passed without even getting the bills noted in accounts
section, stood substantiated against the appellant. Having so
concluded, the Enquiry Officer held that Article III of the memo
G of charge dated 7.7.1998 to be partially proved.

iv) Insofar as Article IV of the charge memo dated
7.7.1998 is concerned, the Enquiry Officer arrived at the
conclusion, that the same was not proved against the
H appellant.

12. The punishing authority accepted the findings recorded by the Enquiry Officer. Thereupon, a copy of the enquiry report was served upon the appellant. The appellant submitted a representation in response thereto, on 7.3.2004. The punishment order dated 30.11.2005 was passed after the Punishing Authority considered the reply filed by the appellant. The said punishment order was reiterated, upon the disposal of the review petition filed by the appellant, vide order dated 1.8.2007.

13. The first contention advanced by the learned counsel for the appellant was premised on the interpretation of Rule 9 of the 1972 Rules in the same fashion as the same had been interpreted by the Administrative Tribunal. In sum and substance, the contention of the learned counsel for the appellant was, that it was the Enquiry Officer who ought to have recorded a finding of "grave misconduct" or "grave negligence", whereupon the punishing authority could have invoked Rule 9 of the 1972 Rules, to inflict an appropriate punishment upon the appellant.

14. Having perused Rule 9 of the 1972 Rules, it is not possible for us to accept the first contention advanced by the learned counsel for the appellant. The responsibility vested on an enquiry officer is limited to the determination of the innocence or guilt of a delinquent employee, with reference to charges levelled against him. It is on the establishment of the charges (if any), that the punishing authority will record a finding, whether the conclusions lead to the further inference, that the delinquent has committed acts of "grave misconduct" or "grave negligence". It is on such determination by the punishing authority that Rule 9 of the 1972 Rules can be invoked, in case the delinquent employee has, in the meantime, retired on attaining the age of superannuation. It is not a matter of dispute that when the punishment was

A inflicted upon the appellant by an order dated 30.11.2005, the appellant had already retired from service having superannuated on 30.06.2002. We therefore find no merit in the first contention advanced at the hands of the learned counsel for the appellant.

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15. The only other contention advanced at the hands of the appellant was, that the Enquiry Officer had recorded findings on the first three articles, that the charges against the appellant were partly/marginally proved. Having invited our
C attention to the conclusion drawn by the Enquiry Officer, learned counsel for the appellant, also drew, our attention to the impugned punishment order dated 30.11.2005/1.8.2007, and contended, that the findings recorded by the Enquiry Officer were fully endorsed by the punishing authority. Based
D on the aforesaid, it was the vehement submission of the learned counsel for the appellant, that the Enquiry Officer cannot be stated to have recorded any conclusion, which would lead to the inference that the appellant was guilty of "grave misconduct".

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16. The details of the findings recorded by the Enquiry Officer have been noticed by us hereinabove. We find merit in the instant contention of the learned counsel for the appellant. What was sought to be proved against the
F appellant was negligence in the discharge of his duties as Senior Accounts Officer, which resulted in the unauthorised payment of 36 fraudulent claims, and thereby, the unauthorised dispersal of approximately Rs.42.24 lakhs. Additionally, it was sought to be emphasised by the learned
G counsel for the appellant, that the charge of ill-motive was levelled against the appellant in Article IV of the memo of charges dated 7.7.1998. But insofar as Article IV of the memo of charges is concerned, the appellant was found innocent thereof by the Enquiry Officer. The submissions sought to
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be put forward was, that it had come to be established, that A
there was no ill-motive at the hands of the appellant, insofar
as his involvement in the release of payments of the 36
fraudulent claims is concerned. Additionally, it was the
contention of the learned counsel for the appellant, that even B
in the course of the criminal prosecution, initiated against the
appellant, his complicity in the fraud was not proved, nor was
it found that there was any intentional culpability of the
appellant, insofar as the release of the fraudulent claims are
concerned. In the above view of the matter, it was the assertion C
of the learned counsel for the appellant, that there was no
express ill-intention at the hands of the appellant. In other
words, the issue substantiated against the appellant was of
mere negligence.

17. We affirm the aforesaid submission advanced at the D
hands of the appellant, inasmuch as, it is not possible for us
to accept, that the appellant was blameworthy/guilty of any
"grave misconduct" because the enquiry report dated
18.7.2002 only found that the appellant was negligent in the E
discharge of his duties. Insofar as Article IV of the memo of
charges dated 7.7.1998 is concerned, he was accused of
complicity with the alleged suppliers, and also, responsible
for having failed to maintain absolute integrity. But then, Article
IV of the charge memo was held to be not proved in the F
Enquiry Report dated 18.7.2002. Equally important is the
fact, that the appellant was discharged from the criminal
prosecution initiated against him with reference to the same
sequence of facts. We are accordingly satisfied to conclude,
that the appellant may have been negligent in the discharge G
of his duties, but it is not possible to conclude, that the
appellant was guilty of "grave misconduct".

18. Having so concluded, it emerges that the findings
against the appellant could certainly not have been of "grave H

A misconduct". Be that as it may, the punishing authority, while passing the impugned punishment order dated 30.11.2005 recorded the following conclusion:

B "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
C considers that ends of justice would be met if 50% of the pension admissible to Shri H.L. Gulati, SAO (Retd.) is withheld on permanent basis and 50% of gratuity is withheld."

(emphasis is ours)

D 19. Based on the conclusion, which had been recorded by the punishing authority in the order dated 30.11.2005(extracted above), namely, that the delinquency levelled against the appellant in the charge memo dated
E 7.7.1998 which stood established constituted "grave misconduct". A review petition filed by the appellant to assail the order of punishment was rejected on 1.8.2007.

F 20. We are satisfied, that it was open to the punishing authority to have passed the punishment order, in terms of the mandate contained in Rule 9 of the 1972 Rules. We are further satisfied, that the punishing authority could have passed such an order after arriving at the conclusion that the appellant/delinquent was either guilty of "grave negligence" or
G of "grave misconduct". The punishing authority recorded, while passing the punishment order, that the appellant was found to have committed acts of "grave misconduct". Having perused the charges proved against the appellant, we have already concluded above, that the delinquency established
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against appellant was of negligence, and not of misconduct. A
Therefore, the finding recorded in the impugned order that the
appellant had committed acts of "grave misconduct" cannot
be accepted. The above conclusion, in the impugned order
being unacceptable, is hereby set aside. In the absence of
the conclusion of "grave negligence", the punishment order is B
liable to be set aside, and is accordingly set aside.

21. Since the delinquency relates to the years 1992 to
1994, it would not be in the fitness of the matter, to require
the punishing authority to reconsider a lesser punishment, in C
view of the conclusion recorded by us hereinabove. We
would therefore exercise our jurisdiction under Article 142 of
the Constitution of India, to inflict an appropriate punishment
upon the appellant. Keeping in mind the delinquency proved
and established against the appellant in the enquiry report D
dated 18.7.2002, which was accepted by the punishing
authority, we are satisfied that ends of justice would be met if
the punishment of withholding 50% of his gratuity is
maintained/sustained. Insofar as the permanent withholding
of 50% of the appellant's pension is concerned, we are of the E
view that it would be just and appropriate to sustain the same
till the end of the current month, and to order the release of
100% of the appellant's pension with effect from 01.03.2015.
Ordered accordingly. F

The instant appeals stand disposed of in the aforesaid
terms.

Devika Gujral

Appeals disposed of.

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