

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present :

**THE HON'BLE JUSTICE SUJOY PAUL
&
THE HON'BLE JUSTICE SMITA DAS DE**

FMA/1398/2019

**UNION OF INDIA & ORS.
VS
DILIP KUMAR VERMA & ANR.**

For the appellants	:	Mr. Sanajit Kumar Ghosh
For the respondent no.1	:	Mr. Achin Kr. Majumdar
Heard on	:	18.09.2025
Judgment on	:	18.09.2025

Sujoy Paul, J.

1. This matter has a chequered history. The parties have fought a long-drawn battle in the corridors of the Court. The respondent no.1/writ petitioner, while working as an Inspector, RPF, CIB, was placed under suspension and was served with a charge memorandum. The respondent no.1 herein filed W.P. No. 4633(W) of 2011, challenging the charge-sheet. The said writ petition was disposed of by the learned Single Judge by an order dated August 2, 2013, by holding that the Bench is not able to quash the disciplinary proceeding. However, it was observed and directed that the disciplinary authority was free to proceed with the adjudication but such adjudication must be done

strictly bearing in mind the ratio of the judgment of the Supreme Court in the case of ***Shri D.V. Kapoor v. Union of India & Ors.*** reported in **1990(3) SLR 5**. With this observation, the writ application was disposed of.

2. The order dated August 2, 2013, passed in WP 4633 (W) of 2011 became the subject-matter of challenge in an appeal being FMA 51 of 2014. *Vide* order dated January 31, 2017, while declining interference on the order of the learned Single Judge, it was observed that dismissal of appeal filed by the employee would not debar him to challenge the punishment order dated February 11, 2016 before the appropriate forum.
3. The charge-sheet ended with imposition of punishment by order dated 11.02.2016. The punishment was imposed after retirement of the petitioner from service on attaining the age of superannuation on February 28, 2012. The punishment of withholding of 20% of monthly pension for a period of three years was imposed on the appellant. Being aggrieved, the appellant challenged the same by filing a fresh petition i.e. WP 25931(W) of 2017, decided on May 1, 2019. The learned Single Judge set aside the punishment order and allowed the petition. The direction to release consequential benefits in favour of the petitioner was also issued.

Contention of the Department:

4. Learned Counsel for the department submits that when WP 4633(W) of 2011 was listed before the Single Bench on April 13, 2011, a conditional *interim* order was passed by suspending the order of suspension dated June 17, 2010. The respondents were given liberty to

proceed on the basis of the charge-sheet dated December 20, 2010 but were restrained from passing final order without the leave of the Court. The permission was granted to file an application for vacation, variation/modification of the said *interim* order.

5. Learned Counsel for the appellants submits that the charge-sheet was issued when the employee was in employment. After retirement, in view of Rule 9(2) of the **Railway Services (Pension) Rules, 1993** (in short 'Pension Rules'), the proceedings which were instituted automatically continued and ended with imposition of punishment by order dated February 11, 2016.
6. Learned Counsel for the appellants further submits that even after retirement of delinquent employee, under the Pension Rules, the Department had a right not only to continue with the enquiry already instituted but also to impose a suitable punishment. The charge-sheet was issued for the misconduct committed between 2004-2010 but the learned Single Judge erred in holding that the charge-sheet was issued for committing misconduct for a period between 2006-2007. Furthermore, it is submitted that question of permitting the employee to retire unconditionally does not arise when Rule 9(2) of Pension Rules takes care of a situation where an employee retires when a departmental enquiry was already instituted while he was in service.
7. It is further submitted that in **D.V. Kapoor** (supra), the only direction was not to punish an employee after retirement unless there exists an enabling provision for continuance of enquiry and imposition of punishment. In view of existence of Rule 9 (2) of Pension Rules, this judgment is not applicable.

8. The learned Single Judge was not justified in holding that since there was delay in imposing the punishment and no leave was obtained from this Court, imposition of punishment was faulty/impermissible. It was further submitted that the employee-employer relationship does not automatically come to an end in a case of this nature for imposition of punishment where the rule governs the field and in the teeth of Rule 9(2), the departmental enquiry so instituted, continues automatically.
9. Lastly, he submits that the charge-sheet shows that the serious/grave allegations were made against the writ petitioner. Because of his negligence and inaction, the Department suffered the loss because fake Railway tickets were sold which, ultimately, resulted as loss to the Railway Administration.
10. By placing reliance on the judgment of Supreme Court in the case of ***State of West Bengal v. Pronab Chakraborty*** reported in ***AIR 2015 SC 1278***, it was contended that the Court opined that even in cases where no pecuniary loss has been caused to the Department, a retired employee can be punished under the relevant provisions of the Pension Rules. The judgment of the Supreme Court in the case of ***Union of India v. Om Prakash Yadav*** reported in ***2013(1) Apex Court Judgments 62*** is referred to show that the conduct of disciplinary proceeding and deciding the quantum of punishment is within the domain of the disciplinary authority. High Court cannot enter into the shoes of the disciplinary authority to decide what punishment should be inflicted for a particular misconduct. Since charge-sheet was not interfered with and Division Bench gave liberty to the writ petitioner to challenge the punishment order, the only scope of judicial review is on

the disciplinary proceeding which continued beyond retirement and also on the punishment order on the doctrine of proportionality. Lastly, it is submitted that all the grounds on which interference was made are impermissible and, therefore, the impugned judgment may be interfered with.

Contention of the employee:

11. Learned Counsel for the respondent/employee submits that the learned Single Judge has rightly interfered in the matter. The charge-sheet was issued to the employee under the relevant provisions of the RPF Rules, 1987. The charge-sheet was not issued under Rule 9(1) of the Pension Rules. Thus, enquiry cannot continue under Rule 9(2) of the Pension Rules.
12. By placing reliance on the judgment of the Supreme Court in **D.V. Kapoor** (*supra*), it is urged that in the final order of punishment, there is no reference to the judgment of **D.V. Kapoor** (*supra*) and for this reason alone, the punishment order becomes vulnerable. Furthermore, it is submitted that a learned Single Judge in similar circumstance interfered with the matter and the said order was not interfered with by the Division Bench. To be specific, reliance is placed on the judgment of the learned Single Bench in WP 3064(W) of 2009, which was decided on May 13, 2015. This judgment in the case of **Sri Swapan Kumar Dasgupta vs. Union of India and Ors.** was unsuccessfully challenged before the Division Bench in MAT 1078 of 2015 which came to be dismissed on May 6, 2016. He further informed that the Special Leave Petition (SLP) filed by the Department against that order was dismissed *in limine*. It was canvassed that the reasons given by the learned Single

Judge in the case of **Sri Swapan Kumar Dasgupta** (*supra*), are almost analogous to the reasoning given by the learned Single Judge in the impugned judgment and, therefore, no interference is warranted.

13. The next reliance is placed on the judgment of this Court in **Kamal Kumar Majumdar v. Union of India (WPCT No. 4/2004)** reported in **2008(1) CHN 951** which was decided on January 11, 2008. Much emphasis is laid on paragraph 19 wherein this Court held that in absence of any allegation of causing “pecuniary loss”, the punishment cannot be upheld. Learned Counsel also placed reliance on the judgment in the case of **Chandra Singh & Ors. v. State of Rajasthan & Anr.** reported in **2003(6) SCC 545**, to bolster the submission that in absence of any specific provision in the Pension Rules, whole or part of pension cannot be withheld. The employee-employer relationship automatically comes to an end on the retirement of the employee and, therefore, the continuance of disciplinary proceedings beyond the writ petitioner’s retirement was impermissible. There was an unexplained delay also in concluding the enquiry. Thus, no fault can be found in the judgment of the learned Single Judge.
14. It is strenuously contended by learned Counsel for the respondent that a careful reading of language employed in Rule 9(1) shows that an employee can be punished only if – (i) allegations of ‘grave’ misconduct are mentioned in the charge-sheet, (ii) His conduct caused any ‘pecuniary loss’ to the Department.
15. In addition, Rule 8 (5)(b) of the Pension Rules was referred to put forth the contention that ‘grave misconduct’ has been defined in this rule and the misconduct alleged against the employee does not fall within

the definition of 'grave misconduct' mentioned in sub-rule (5)(b) of Rule 8 of Pension Rules.

- 16.** No other point is pressed by learned Counsel for the parties. We have bestowed our anxious consideration on the rival contentions of the parties and perused the records.

Analysis:

- 17.** Indisputedly, the enquiry officer in his report found the charge nos.1 and 2 fully proved whereas charge no.3 was not found proved. Charge no.4 was found to be partly proved.

- 18.** As noticed above, in WP 4633 (W) of 2011, the department was permitted to proceed with the enquiry. But for passing final order, they were required to obtain leave from the court. Ultimately, the said writ petition was disposed of on 02.08.2013 by observing that disciplinary authority has to strictly follow the decision of the Supreme Court in **D. V. Kapoor** (*supra*). In turn, punishment order dated 11.02.2016 was passed by the competent authority withholding 20% of the monthly pension of the employee.

- 19.** Learned Single Judge interfered in the disciplinary proceeding mainly for the reasons : (i) the disciplinary proceeding was initiated under Rule 153 of R.P.F. Rules, 1987, therefore could not have culminated with punishment under Pension Rules, (ii) the department permitted the petitioner to retire unconditionally on attaining the age of superannuation on 28th February, 2012 and thereafter continuance of enquiry is impermissible, (iii) punishment order is not passed bearing in mind the ratio of judgment of Supreme Court in **D. V. Kapoor** (*supra*), (iv) the department did not obtain leave from the court to

punish the employee and sat tight over the matter for a considerable long time, (v) Rule 144.2 of R.P.F. Rules, 1987 was not invoked by the department, (vi) the employee-employer relationship ceased on the retirement of the employee and thereafter relationship exists only for the purpose of disbursal of retiral benefits, (vii) there was no 'grave' charge mentioned in the charge-sheet and no 'pecuniary loss' was caused to the employer.

20. For these cumulative reasons, learned Single Judge thought it proper to interfere in the disciplinary proceeding and set aside the punishment order.

21. Before dealing with the rival contentions advanced, it is apposite to carefully read relevant portion of Rule 9(1) and 9(2) of the Pension Rules, which has been reproduced in para 29 of this judgment.

22. Learned counsel for the employee by placing heavy reliance on the opening sentence of Sub-Rule (2) of Rule 9, urged that it deals with only such departmental proceedings initiated under Sub-Rule (1) of Rule 9 of the Pension Rules. Meaning thereby, only such department enquiry can be permitted to continue after retirement which was initiated under Rule 9(1) of the Pension Rules. The arguments so advanced at the first blush appears to be attractive but lost much of its shine when examined carefully. Sub-Rule 2(a) of Rule 9 of the Pension Rules opens with the sentence "if instituted while the railway servant was in service" This provision, in no uncertain terms, makes it clear that the institution of enquiry relates to a period when employee was in service. A minute reading of Sub-Rule (2) of Rule 9 aforesaid makes it clear that it talks about "any" departmental proceeding referred to in Sub-Rule (1)

and does not talk about initiation of enquiry under Rule 9 (1). Sub-Rule (1) of Rule 9 contains the words “***in any departmental or judicial proceedings***”. A conjoint reading of Sub-Rule (1) and (2) of Rule 9 makes it crystal clear that **if any departmental proceeding** was initiated before employee retired from service, it shall continue under the deeming provision. The language of the statute, in our opinion, is clear and unambiguous. Thus, it has to be given effect to, irrespective of the consequences. (***See Nelson Motis vs. Union of India (1992) 4 SCC 711***)

Apart from this, ***Lord Asquith in East End Dwellings Co. Ltd. v. Finsbury Borough Council, 1952 AC 109, 132: (1951) 2 ALL ER 587: 115 JP 477: (1951) 2 TLR 486 (HL)*** opined:

“If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs. It does not say that, having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.”

(Emphasis Supplied)

This principle is followed in **(1984) 4 SCC 410: 1984 SCC (Cri) 635: 1984 SCC OnLine SC 188: AIR 1985 SC 870 (State of A.P. v. Vallabhapuram Ravi)**.

In **State of Karnataka v. State of T.N. , (2017) 3 SCC 362**, Supreme Court held that Court should give full effect to a deeming Clause so that it is taken to its logical conclusion.

- 23.** This analysis takes care of two reasons given by the learned Single Judge in impugned judgment that disciplinary proceeding initiated under Rule 153 of RPF Rule could not have culminated with punishment under the Pension Rules and upon retirement, employee-employer relation comes to an end automatically.
- 24.** The learned Single Judge was of the opinion that after retirement, the employee-employer relationship comes to an end automatically and in absence of reserving the right to conduct enquiry and permitting an employee to retire unconditionally, the department cannot continue with the departmental enquiry. A microscopic reading of Rule 9(2)(a) shows that it is pregnant with a deeming provision. If enquiry is 'instituted' while the employee was in service, even upon his retirement and re-employment, the enquiry shall be deemed to be continued as if railway servant had continued in service. Thus, the law makers were clear in their mind that if 'any departmental enquiry' is initiated during the service of an employee, it shall continue and will be taken to a logical end unhindered. Interestingly, the learned Single Judge has not taken note of Rule 9(2) in the impugned judgment. Curiously, the impact of Rule 9(2) has not been considered in specific even in the judgment of learned Single Judge in the case of **Swapan Kumar Dasgupta** (*supra*). In absence of considering the relevant rule, the said judgment cannot be pressed into service. Thus, even though the said judgment, in **Swapan Kumar Dasgupta** (*supra*) was not interfered by Division Bench, it cannot be said that in the said judgment, law is laid down upon considering Rule 9(2) of the Pension Rules. **(See 1989 (1)**

SCC 101(municipal Corporation of Delhi v. Gurnam Kaur); 2004 (13) SCC 217 (N. Bhargavan Pillai v. State of Kerala); 2006 (5) SCC 752(Mayuram Subramanian Srinivasan v. CBI))

25. This is trite that a judgment is precedent for what has been actually decided in it and not what is logically flowing from it. **(See AIR 1968 SC 647 (State of Orissa v. Sudhansu Sekhar Mistra & Ors.) and 2003 (3) SCC 485 (Chanchal Goyal (Dr) V. State of Rajasthan))**

26. It is equally settled that a singular different statute or factual background can change the precedential value of a judgment. **(See Bhavnagar University vs. Palitana Sugar Mill Pvt. Ltd. & Ors. 2003 (2) SCC 111)**

27. The Supreme Court in ***Kunhayammed v. State of Kerala (2000 (6) SCC 359)*** opined that if against the judgment of the High Court, the SLP is dismissed *in limine*, it cannot be said that the impugned judgment of the High Court got a stamp of approval from the Supreme Court. In other words, the ‘doctrine of merger’ is not applicable when SLP is dismissed *in limine*. Thus, we are unable to hold the judgment of ***Swapan Kumar Dasgupta*** (supra) got the seal of approval from the Supreme Court.

28. In the light of the foregoing analysis, we have no cavil of doubt that the departmental enquiry initiated under any provision during service can continue after retirement of the employee under the Pension Rules. Hence, the question of unconditional retirement of employee and cessation of employee-employer relation does not arise.

29. The other reason for interference was that in absence of allegation of “grave misconduct” and causing a ‘pecuniary loss’, punishment cannot

be imposed. Interestingly, this point is also no more *res integra*. The curtains are finally drawn on this aspect in the case of **Pronab Chakraborty** (*supra*). In the said case, Rule 10 of the West Bengal Services (Death cum Retirement Benefit) Rules, 1971 was considered by the Supreme Court. For ready reference, we deem it proper to reproduce said Rule 10 along with relevant portion of Rule 9 of Pension Rules in a tabular form in juxtaposition so that it can be gathered that both the rules are *pari materia*. The rules read thus:

W.B Services (Death-Cum -Retirement Benefit) Rules 1971	Railway Services (Pension) Rules -1993
Rule 10. Right of the Governor to withhold pension in certain cases. (1) The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in a departmental or judicial proceeding to have been guilty of grave misconduct or negligence, during the period of his service, including service rendered on re-employment after retirement: Provided that- (a) Such departmental proceeding if instituted while the officer was in service, whether before his retirement or during his re-employment, shall after the final retirement of the office, be deemed to be a proceeding under this article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service; (b) Such departmental proceedings, if not instituted while the office was in service, whether before his retirement or during his re-employment— (i) shall not be instituted save with the sanction of the Governor; (ii) shall not be in respect of any event	Rule 9. Right of the President to withhold or withdraw pension. (1) The President reserves to himself the right of withholding or withdrawing a pension or gratuity, or both, either 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 Railway, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment 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 pension shall not be reduced below the amount of rupees three hundred seventy five per mensem. (2) The departmental proceedings referred to in sub-rue (1) – (a) if instituted while the railway servant was in service whether before his retirement or during his reemployment, shall after the final retirement of the railway servant, be deemed to be proceeding under this rule and shall be continued and concluded by the authority by which

which took place more than [four years] before such institution.	they commenced in the same manner as if the railway servant had continued in service.
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30. In **Pronab Chakraborty** (*supra*), it was candidly held that whether or not department suffered a pecuniary loss, the departmental proceeding can be continued and punishment order can be passed. It is apt to refer para 5:

“5. It is therefore apparent, that it is not only for pecuniary loss caused to the Government that proceedings can continue after the date of superannuation. An employee can be proceeded against, after the date of his retirement, on account “...grave misconduct or negligence...”. Therefore, even in the absence of any pecuniary loss caused to the Government, it is open to the employer to continue the departmental proceedings after the employee has retired from service. Obviously, if such grave misconduct or negligence, entails pecuniary loss to the Government, the loss can also be ordered to be recovered from the concerned employee. It was therefore not right for the High Court, while interpreting Rule 10 (1) of the 1971 Rules to conclude, that proceedings after the date of superannuation could continue, only when the charges entitled pecuniary loss to the Government.”

(Emphasis Supplied)

31. The relevant portion of the charges reads thus:

“CHARGE AGAINST IPF/DILIP KUMAR VERMA OF CIB/JAMALPUR OF MALDA DIVISION UNDER RULE 153 OF RPF RULES, 1987.

ARTICLE OF CHARGE:-

(1) Sri Dilip Kumar Verma, IPF/RPF while he was posted and worked as Inspector/ CIB/ JMP, he **failed to detect the fake ticket business racket** going on in his jurisdiction, which was subsequently detected by a joint team of RPF and Local police. Being a CIB officer it was his prime duty to collect intelligence related to Rly. Crime and nab the gangs involve in organized crime

(2) In course of interrogation by ASC/RPF/JMP, the accused namely **Kamal Singh S/O Pratap Singh disclosed in his statement that he used to give Rs.15,000/(Fifteen Thousand) to Const/Arun Kumar Singh every month who received money for D.K. Verma, IPF/JMP which shows your connivance in the said business of fake ticket which was running since last 8 years.**

(3) Sri DK Verma IPF/CIB/JMP has worked at JMP(Yd) Post wef. 18.02.2000 to 09.03.2004 as Inspector In Charge, from 10.03.2004 to 13.04.2005 as DIPF/JMP and 14.04.2005 to 17.06.2010 as In charge of CIB/ JMP **but failed to arrest the involved criminals which was running with his knowledge.**

(4) Sri D.K Verma, IPF/CIB/JMP is **charged for neglect of duty, discreditable conduct and improperly use of his position for personal gain.**

Hence charge.

Imputation of charge:-

ASC/RPF/JMP's Report No. ASC/E-35/DAR/2010/829 dated: 12.07.2010 as well as other documentary evidences reveals that on 29.05.2010 during raid by RPF officers & Police with staff in the house of One outsider namely Kamal Singh, S/O- Sri Pratap Singh of village-Kalyanpur, PS-Bariurpur, Dist-Munger(Bihar), Arms & Ammunitions and huge quantity of Fake Railway Tickets of various stations have been recovered. In this connection a case no. 47/10 dated 29.05.2010 U/S-409,420,467,468,471 and 120B IPC and 25-1B +35 Arms Act was registered against Kamal Singh, but he could not be arrested. On 16.06.2010, the RPF Personnel of HQs & Division conducted raid with the assistance of Bariurpur PS & arrested Kamal Singh from his native home. On 16.06.2010, the RPF Personnel of HQs & Division conducted raid with the assistance of Bariurpur PS and arrested said person from his native home. On 16.06.2010 in course of interrogation by ASC/Jamalpur in presence of IPF/Jamalpur-Sri Arbind Kumar, IPF/CIB/Jamalpur-Sri A. Sharma & Booking Supervisor/Bariarpur-Sri Amar Kant Jha; the **arrested person namely Kamal Singh disclosed in his statement that, IPF/D.K. Verma along with other 03 RPF officer and staff got financial benefit from the illegal fake ticket racket.**

For this act, Sri Dilip Kumar Verma IPF/CIB/JMP is charged for, **gross negligence**, violation of duty, **discreditable conduct** and failed to detect as well as misused his official position for his personal gain which tantamount the violation of the provision as laid down in Rule 146(1), 146.2(i) 146.4, 146.7(iii) and 147(i) & (xxii) of RPF Rules 1987 to be read with Section 9 of RPF Act, 1957.

Sri D.K. Verma IPF/CIB/JMP (under suspension) is directed to submit his representation if any with in 15 days from the date of receipt of above charge.

Divl. Security Commissioner,
R.P.F., Eastern Railway, Malda
(Emphasis supplied)

32. Rule 9(1) of the Pension Rules makes it clear that the provision can be invoked for committing “grave misconduct” or “negligence”. A plain reading of charge-sheet shows that the allegations are very grave. Merely because the word “grave” has not been used, it will not reduce

the gravity of charges. Charges, on its plain reading, shows that they are very grave in nature and allegation of negligence is also made against the employee. Thus, the learned Single Judge was not justified in interfering with the punishment order on the ground that the charge-sheet was not for 'grave' misconduct and punishment can be interfered with if no 'pecuniary loss' is caused to the department. In the light of the judgment of **Pronab Chakraborty** (*supra*), the said finding cannot sustain judicial scrutiny. It is note worthy that allegation of connivance with accused person are leveled and proved against the delinquent employee. The expression 'gross negligence' and 'discreditable conduct' are also used in the charge sheet. The sale of fake tickets certainly caused pecuniary loss to the department.

33. It is important to mention here that the learned Single Judge in the case of **Swapan Kumar Dasgupta** (*supra*) referred the judgment of **Pronab Chakraborty** (*supra*), only because it was relied upon by the department before it. However, in the analysis portion, the learned Single Judge has not dealt with the *ratio decidendi* of the said judgment. Therefore, reliance on the judgment of Single Judge will not improve the case of the employee herein.

34. Lastly, so far the question of non-mentioning of judgment of Supreme Court in **D. V. Kapoor** (*supra*) in punishment order is concerned, it is clear that an employee cannot be punished after retirement unless there exists an enabling provision to continue with the enquiry and impose the punishment under the relevant Pension Rules. Same is the *ratio* of judgment in the case of **State of Jharkhand vs. Jitendra Kumar Srivastava & anr.** reported in **AIR 2013 SC 3383** relied upon

by the employee. At the cost of repetition, in our opinion, a conjoined reading of Rule 9(1) and Rule 9(2) of Pension Rules permits the employer to continue with the enquiry even after retirement of the employee when charge-sheet was issued during his service and also impose the punishment. Hence, these judgments are of no assistance to the employee. In the last para of judgment of ***D.V. Kapoor (supra)***, Court opined that no enabling provision to continue the enquiry after retirement was brought to its notice whereas in the present case Rule 9 (2) is brought to our notice which is pregnant with a deeming provision which must be given effect to.

35. Another point which *prima facie* appears to be attractive, deserves to be mentioned. The definition of “grave misconduct”, in Rule 8(5)(b) was heavily relied upon by the learned counsel for the employee to bolster his submission that the misconduct alleged herein does not fall within the definition of “grave misconduct” mentioned in Clause (b). The attractive argument lost significance when we carefully examined the ‘explanation’ given under Sub-Rule 5 of Rule 8 of the Pension Rules. The expression clearly mentioned therein is “*in this Rule*”. This expression would mean and relates to Rule 8 and hence this definition cannot be injected by any stretch of imagination in Rule 9 of Pension Rules. Thus, this argument pales into insignificance.

36. The interference on the punishment order was made by the learned Single Judge on yet another ground. It was held that it was open to the Department to seek leave from the Single Bench to impose punishment but no such leave was taken and because of this, delay caused, for which interference was warranted. We are unable to persuade

ourselves with this line of reasoning. The learned Single Judge only gave liberty to the department to seek such leave for imposition of punishment. If no leave was sought for and department waited for the final outcome of writ petition, it cannot be said the department had lost its right to punish an erring official. The delay caused is also not unreasonable which will cause dent to the disciplinary proceeding and the punishment order.

37. In view of aforesaid analysis, the judgment of the learned Single Judge cannot be countenanced. The impugned judgment of learned Single Judge dated 01.05.2019 passed in WP 25931(W) of 2017 is accordingly **set aside**.

38. The *intra*-court appeal is **allowed**.

(Sujoy Paul, J.)

(Smita Das De, J.)