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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 2601 of 1996 decided on 16.4.1998.

Name of Applicant : Shri Mahipal Singh

By Advocate : Shri G D Bhandari

Versus


Name of respondent/s Union of India through the General
Manager & Others.

By Advocate : Shri P S Mahendru

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes/~~No~~
2. Whether to be circulated to the other Benches of the Tribunal. - ~~Yes~~/No


(N. Sahu)
Member (Admnv)

16.4.98

(20)

CENTRAL ADMINISTRATIVE TRIBUNAL; PRINCIPAL BENCH

Original Application No. 2601 of 1996

New Delhi, this the 16th day of April, 1998

Hon'ble Mr. N. Sahu, Member (Admnv)

Sh. Mahipal Singh, S/O Sh. Hira
Lal, Retd. Parcel Clerk, Railway
Station, Delhi.

---APPLICANT.

(By Advocate: Sh. G D Bhandari)

Versus

1. Union of India through
The General Manager,
Northern Railway Baroda
House, New Delhi.

2. The Divisional Rly.
Manager, Northern
Railway, New Delhi.

---RESPONDENTS.

(By Advocate -Sh. P S Mahendru)

O R D E R

By Mr. N. Sahu, Member (Admnv) :-

The applicant prays, in this OA, for release of gratuity and pension after his retirement on 30.11.1996 alongwith interest. The applicant and another Sh. Balbir Singh were removed from service vide letter dated 30.1.1984 on their conviction for corruption by the Court of Special Judge, Tis Hazari on 6.6.1983 after serving a show-cause notice, for removal from service on 4.7.1983. This removal was kept in abeyance as per orders of the High Court, New Delhi till appeal filed by him in the High Court against his conviction by the Lower Court, is decided and he was treated as an employee under suspension. The appeal of the applicant is still pending in the High Court. The suspension was eventually revoked

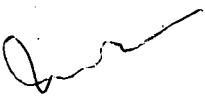
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as the respondents found that they had been paying the applicant 75% of his salary by way of suspension allowance without any certainty of a probable disposal of the appeal in the High Court. The decision on the suspension period of the applicant will depend upon the final decision of the Court case pending in the High Court.

It is urged that the respondents have no power to withhold the gratuity and pension and for this purpose the learned counsel for the applicant cited the decisions of the Hon'ble Supreme Court in Nakara's case AIR 1983 SC 130 and Sudhir Chandra Sarkar Vs. TISCO Ltd. 1984 3 SCC 369. His main ground is that as an appeal is pending against the conviction order, the original conviction order does not authorise the respondents to withhold his pension and gratuity.

After notice, it was stated that provident fund and insurance have been released to the applicant and provisional pension has also been arranged vide PPA dated 1.3.97. Since the applicant's appeal against his conviction is still pending, no other amount is payable to him till his appeal is decided. It is also submitted that regularisation of the suspension period depends upon the decision of the criminal case against the applicant.

The applicant was convicted by the Trial Court on 6.6.1983. He was removed from service w.e.f. 30.1.1984. Some time during 1988-89 they were reinstated. The effect of filing an appeal and obtaining the interim stay does not invalidate the original order of conviction of



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the Trial Court. The conviction still holds against him till it is set aside by the Appellate Court in a final order. The stay is only against the removal order which is consequential to the conviction. It does not mean, that the removal and conviction are no longer valid. Till the appeal is disposed of, the consequences of removal have to be borne by the applicant. The right of pension which includes gratuity is not an absolute right. It is a statutory right subject to all the limitations imposed by the statute. The second para of clause (i) of para 316 of the rules enacts a prohibition. Payment of DCRG shall have to await the conclusion of the Criminal case against the applicant. Secondly, it is clear from the observations of the Hon'ble Supreme Court in "The Divisional Personnel Officer Southern Railway and another Vs. T R Challapan, AIR 1975 SC 2216 that operation of the sentence is not a condition precedent for imposing a penalty on a public servant as long as the conviction on a criminal charge stands. What all the stay order of the High Court in the applicant's appeal means is that it has suspended the execution of the conviction. It cannot be presumed that the High Court had set aside or suspended the conviction. The order of conviction still holds ground for the purpose of Railway (D & A) Rules or for that purpose Article 311 of the Constitution. In Sri Om Prakash Narang Vs. Union of India and Others. Full Bench judgements CAT 1986-89 - page 21, held as under:

"(ii) Imposing penalty where conviction is appealed against-Applicant was convicted by lower court, filed appeal, High Court released him on Bail, urges he could not be dismissed

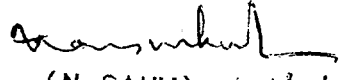
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under rule 19 (1) of CCS (CCA) rules till appeal is decided. Held neither rule 19 (1) nor Article 311 (2) speak of final order, it only talks of "convicted"-Conviction occurs with the orders of competent court and action can be taken on this even when appeal to High Court is pending (P C) (Decision of Calcutta Bench in Ajit Kumar Banerjee's case overruled). However the competent authority may consider pending of appeal as one of the factors while deciding the case."

For the above reasons, the respondents have correctly withheld the payment of gratuity and commuted value of pension.

The OA is dismissed. No costs.


(N SAHU)
MEMBER (ADMNV)

16.4.98

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