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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1675/89
T.A. No.

198

DATE OF DECISION 08-12-1989.

Shri R.D. Kathuria Applicant (s)

Shri Inderjit Sharma Advocate for the Applicant (s)

Union of India & Others Respondent (s)
Versus

Shri R.S. Aggarwal Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. To be circulated to all Benches of the Tribunal ? *No*

JUDGEMENT

(The judgment of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice Chairman(J))

This is the second application filed by the applicant in this Tribunal praying for quashing the impugned order of suspension dated 10.4.1987 and for his reinstatement with all consequential benefits. He is due to retire on attaining the age of superannuation on 31st January, 1990.

2. The first application filed in the Tribunal (OA 877/88) was disposed of by the Tribunal on 11.11.1988 with the direction that the respondents should reconsider the question of revocation of suspension of the applicant, keeping in view all the relevant factors including the period of suspension already undergone, his impending retirement, the time that is likely to take for the criminal court to conclude the trial, treatment of similar cases in the past and, last but not least, the relevant administrative instructions in existence on the subject. In such a review, the

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respondents were directed to take into account the fact that he has already been allowed to draw three-fourths of his pay and allowances by way of subsistence allowance as a result of periodic ^{review of the} suspension. The respondents were directed to re-consider and review the matter and pass an order on the question of revocation of suspension within a period of one month from the date of communication of the Tribunal's judgment dated 11.11.1988. It was also added that in case the applicant was aggrieved by the order passed by the competent authority, he would be at liberty to file a fresh application in accordance with law, if so advised.

3. The present application has been filed seeking the same reliefs as in the earlier application but after the President passed order dated 30th December, 1988 whereby it was stated that there was no justification for revocation of the impugned order of suspension.

4. We have heard the learned counsel of both parties and have gone through the records of the case carefully. There is no dispute as regards the facts of the case which are as follows. The applicant was suspended on 10.4.1987 under Rule 10(2) of the CCS(CCA) Rules, 1965 with effect from 6.4.87 till further orders. It was stated in the order that a case involving a criminal offence was under investigation and that the applicant was detained in custody on 6.4.87 for a period exceeding 48 hours. The Delhi High Court released him on bail on 13.7.87. His repeated requests and representations for revocation of the order of suspension were of no avail.

5. The alleged criminal offence was that on the night intervening 5/6.4.87, Smt. Meenu, w/o Anil Kathuria died in the house of Anil Kathuria and on the statement of the mother of the deceased, a case under Section 498 A/304 B IPC was registered because the deceased had died within two years of the marriage. The applicant is ^{the} father-in-law of the deceased.

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6. The investigation in the criminal case is already complete. The learned counsel of the applicant stated that the charge-sheet has been filed in the criminal court and the case has been committed to Sessions Court in September 1987. The Trial has commenced but only one witness has been examined so far. It is not known as to when the trial will conclude and the Sessions Court will deliver its judgment. There is also no certainty that the decision of the Sessions Court will be accepted by both parties. In all likelihood, there will be further rounds of litigation in the High Court and Supreme Court by the party who is aggrieved by the decision.

7. Several contentions have been advanced on behalf of the applicant in support of his plea that the impugned order of suspension should be revoked and that he should be reinstated with full pay and allowances. In this context, reference has been made to some precedents in which the respondents did not either place the officer concerned under suspension or revoked his suspension, pending the outcome of the criminal trial into the alleged offence of dowry death. Administrative instructions issued by the respondents from time to time have also been relied upon. It was also contended that there is no sufficient evidence to sustain the charge brought against the applicant.

8. In a case of this kind where the matter is pending decision of the criminal court, and where the applicant will have ample opportunity to defend himself and prove his innocence, it will not be appropriate on our part to express any opinion about the strength of the case of the prosecution, one way or the other. The precedents relied upon by the applicant will also not be relevant as each case will have to be decided on its own merits. The administrative instructions issued by the respondents are in the nature of guidance and non-compliance with these instructions will not give rise to any cause of action.

9. As the applicant is due to retire from Government service on attaining the age of superannuation on 31.1.1990, the impugned order of suspension will automatically come to an end with effect

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from the said date. What the applicant really seeks in the present application is for the full monetary benefits claimed by him by way of pay and allowances for the entire period of suspension from 6.4.87 till 31.1.1990. In case the said relief is granted to the applicant at this stage, it may amount to prejudging the issue which is already subjudice before the criminal court. In our opinion, it will not, therefore, be appropriate to grant the relief sought by the applicant at this juncture. We are also not impressed by the contention of the applicant that the impugned order of suspension should be revoked on the ground of inordinate delay.

10. There is, however, another aspect of the matter. As already stated, there is no indication as to when the Sessions Court will deliver its judgment. It is also not certain as to whether the decision of the Sessions Court will become final and binding on both parties. In case the decision goes against the applicant, in all probability he may challenge the same in appeal. In case the decision of the Sessions Court goes against the respondents, they may also prefer appeal. Thus we cannot rule out the possibility of rounds of litigation in the High Court and the Supreme Court. Such litigation may be spread over several years. In view of these considerations, it will not be fair and just to postpone the release of the entire retirement benefits to the applicant till the final outcome of the case pending against him. Rule 69 of the CCS(Pension) Rules, 1972 provides that though provisional pension should be paid to a Government servant in such cases, the Government need not pay the gratuity until the conclusion of the criminal case and the issue of final orders thereon. Similarly Rule 4 of the CCS(Commutation of Pension) Rules, 1981 empowers the Government not to allow the officer concerned to commute a fraction of his provisional pension during the pendency of the criminal proceedings. There is a presupposition in the above mentioned

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rules that the proceedings pending against the officer concerned will conclude within a reasonable period. The rules do not envisage a case where there may be prolonged litigation for years before reaching the final outcome of the criminal case. We have no doubt in our minds that in a case like that of the applicant, these rules should not be made applicable in full force.

11. In the interest of justice, equity and fair play we, therefore, order and direct as follows:-

(i) We do not wish to express any opinion on the question whether the suspension of the applicant by the impugned order dated 10.4.1987 is justified or not. It is for the respondents to review their decision in the matter under the relevant rules now or after the conclusion of the criminal trial. In case it is decided ^{not to} review their decision now, the competent authority shall determine the quantum of pay and allowances admissible to him during the period of suspension and to consider whether the said period should be treated as one spent on duty in accordance with the relevant rules, after taking into account the final verdict on the pending criminal case.

(ii) The respondents are directed to pay to the applicant provisional pension with effect from 1.2.1990, i.e., on his retirement after attaining the age of superannuation, promptly and on a regular basis till the conclusion of the criminal case pending against him. The respondents shall ^{provisionally} also reckon the period of suspension as qualifying service for the purpose of payment of provisional pension to the applicant, in case the period of service put in by him will not otherwise entitle him to full provisional pension on the basis of 33 years of qualifying service, required under CCS(Pension) Rules, 1972.

(iii) The respondents shall pay to the applicant at least one-half of the gratuity normally payable to the applicant within a period of 2 months from the date of his retirement subject to his executing a bond of indemnity with two sureties to the effect that he will refund the amount to the Government in case the final verdict of court goes against him.

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(iv) The respondents are directed to allow the applicant to commute ^{at least} ~~one-half~~ of one third of the pension which a Government servant is entitled to commute under the CCS (Commutation of Pension) Rules, 1981, subject to the condition that the applicant will execute a bond of indemnity together with two sureties as in (iii) above. The amount of commuted pension should be released to the applicant within a period of two months from the date of retirement of the applicant.

(v) The amount of gratuity, pension and commutation of pension to be released to the applicant will be liable to adjustment, depending on the final verdict of the court.

The parties will bear their own costs.

Duck 8/12/1987
(D.K. CHAKRAVORTY)
ADMINISTRATIVE MEMBER

Binnu 8/12/89
(P.K. KARTHA)
VICE CHAIRMAN (J)