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CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH

OA No.2310/89

New Delhi this the 29th day of September, 1995.

Hon'ble Sh. N.V. Krishnan, Acting Chairman
Hon'ble Dr. A. Vedavalli, Member (J)

Harnam Singh
S/o Late Sardar Indar Singh,
R/o M-31, Saket,
New Delhi-110017.Applicant

(By Advocate Sh. A.K. Behera, though none appeared)

Versus

1. Union of India, through
Secretary, Ministry of
Information & Broadcasting,
Shastri Bhawan,
New Delhi-110 001.
2. Secretary, Union of India,
Ministry of Public Grievances
and Pensions,
North Block,
New Delhi-110 001.
3. Director, Advertising
and Visual Publicity,
PTI Building,
Parliament Street,
New Delhi-110 001.
4. Controller of Accounts (I&B),
Shastri Bhawan,
New Delhi-110 001.Respondents

(By Advocate Mrs. Raj Kumari Chopra, though none
appeared)

ORDER (Oral)
(Hon'ble Mr. N.V. Krishnan, Acting Chairman)

This matter has been last left part-heard on 1.8.95 when Mrs. Raj Kumari Chopra, the learned counsel for the respondents was to address us on two legal issues. Though the case has been listed on subsequent two occasions, it could not be taken up, as it was not reached. Today none is present for either party. In the circumstances, we proceed to dispose of the OA on the basis of the available records and the submissions made earlier.

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2. Briefly the applicant who was a Media Executive in the Directorate of Advertising and Visual Publicity (DAVP) is alleged to have been caught red handed while demanding a bribe of Rs.1500/- from Sh. Munishwar Singh, Editor, Pratah Vayu, a Hindi Daily and Samahak Weekly. Thereupon, he was suspended by the order dated 16.10.85 (Annexure A-1). The criminal case which was instituted by the Central Bureau of Investigation ended with the order of Special Judge dated 11.4.89 discharging the accused, i.e., the applicant (Annexure A-5). That was on the ground that no sanction for prosecution of the Government servant was filed alongwith the chargesheet and, therefore, cognizance of the offence could not have been taken by the trial Court. The applicant had in the meanwhile been permitted to retire on attaining the age of superannuation on 31.10.86, though he was under suspension. It is in these circumstances that he filed this OA on 15.11.89 seeking the following reliefs:-

- "i) Revoke the order suspension;
- ii) Fix salary consequent to revision of pay as per recommendations of the Pay Commission;
- iii) Count increment which became due during period of suspension and to pay all dues with interest.
- iv) Pay balance amount of of pay etc. for the period 16.10.1985 to 31.10.1986 not paid so far on the basis of revised pay scale.
- v) Pay group insurance with interest.
- vi) Pay-death-cum-retirement gratuity.
- vii) Pay leave encashment;
- viii) Pay commuted pension;
- ix) to revise pension in the new pay scale;

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x) to count service of applicant in Armed Forces for purposes of pension and other retirement benefits."

3. The contention of the respondents is that subsequent to his discharge, which itself was about three years after his retirement, a fresh criminal case has been instituted which is still pending. The chargesheet therein was filed on 15.11.89. The respondents contend that the prayers made by the applicant cannot be considered because Government have acted in accordance with the provisions of Rules 9 & 69 of CCS (Pension) Rules, 1972.

4. On 1.8.95 we had posed two questions to the learned counsel for the respondents. The first is whether, when the respondents allowed the applicant to retire on superannuation on 31.10.86, though he was under suspension, the order of suspension did not get automatically revoked. The second is whether the criminal proceedings instituted afresh on 15.11.89 could be said to be a proceeding instituted while the applicant was in service for the purposes of Rule 9.

5. Though the learned counsel took time to argue these points later, she did not appear as stated above. She, however, had submitted that unless the order of suspension is specifically revoked, it cannot be held that that order has become ineffective.

6. It is clear that the order of suspension was passed only in view of the criminal proceedings to be instituted against the applicant. The order of the trial Court discharging him was passed after he

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retired. Therefore, there was no question of revoking the order of suspension on the date of discharge with a view to reinstating him in service as he had already retired. But it could be revoked to permit him to retire, if he had not been permitted by a positive order to retire on account of his suspension. No positive order was passed that he shall not retire on superannuation as he was under suspension. Therefore, he was allowed to retire on attaining the age of superannuation. It has, therefore, to be implied that an order of revocation of the suspension and an order reinstating him on the post from which he was suspended was issued before he was allowed to retire.

7. Rule 10(1) of the CCS (CCA) Rules, 1965 authorises suspension of a "government servant". The definition of that expression in Rule 2(h) excludes a retired employee who ceases to be a member of the service and also ceases to hold the posts mentioned therein. Therefore, on retirement the suspension would automatically stand revoked, because there cannot be a suspension of a retired employee. Government have been given specifically a right to withhold permission to a person who seeks voluntary retirement under FR 56(k) if he is under suspension. Here, the applicant did not seek voluntary retirement. Likewise, there are instructions regarding acceptance of resignation when the employee is under suspension (see Swamy's Compilation of CCS (CCA) Rules 1965 - Twentieth Edition - page 210). If Government wanted that the suspension should continue, his service should have been extended beyond the age of superannuation and he should not have

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been permitted to retire. We do not wish to consider whether Government has a unilateral right to extend service beyond the age of superannuation merely to continue the order of suspension, as it does not arise in this OA.

8. Hence, we hold that the suspension was revoked by necessary implication when he was allowed to retire on superannuation.

9. In so far as the second question is concerned, the following provisions of the CCS (Pension) Rules, 1972 are relevant:-

- (a) Rule 8 (1) provides that "future good conduct" is an implied condition of every pension. The appointing authority has been given powers to withhold or withdraw the pension if the pensioner is "convicted of a serious crime or is found guilty of grave misconduct." This Rule therefore relates to conviction or misconduct both relating to events which took place after the pensioner retired.
- (b) In respect of misconduct during service, only the President can withhold or withdraw the pension if the pensioner is found guilty of misconduct in a disciplinary proceedings or judicial proceedings. This is hedged by two conditions. The first is that if a departmental proceeding had been instituted,

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while the pensioner was in service, that proceeding can continue after retirement but no penalty under the CCA Rules, 1965 can be imposed. Only the President can take punitive action which will be limited what is provided in Rule 9 (1) viz. withhold pension or gratuity, withdraw pension - in either case whether permanently or for a specified period - and order recovery from pension or gratuity of any pecuniary loss caused to Government. The second is that if a departmental proceeding had not been so instituted, it shall not be instituted except with the sanction of the President and such proceeding shall not be in respect of any event which took place more than four years before such institution.

(c) We are concerned with sub rule (4) of Rule 9 which reads as follows:-

"(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 [Rule 69] shall be sanctioned."

Rule 69 provides for the quantum of provisional pension and except in a case where the departmental proceeding relates to imposition of certain minor penalties, gratuity is not made payable under this Rule.

(d) Rule 83 provides that except in a case involving Rule 37 - with which we are not concerned - a pension other than family pension shall become payable from the date on which a Government servant ceases to be on the Government establishment, but this is subject to Rule 9 and Rule 69.

We have to examine how these Rules apply to the facts of this case.

10. In the normal course the applicant would have been entitled to regular pension on the date of his retirement viz. from 1.11.86. However, as a judicial proceeding (criminal case) was pending on that date, he was entitled to a provisional pension under Rule 9 (4) read with Rule 69. In that proceeding he was discharged on 11.4.89. The question is whether he is entitled to a regular pension from 11.4.89, including payment of gratuity etc. or whether, in view of the fact that the criminal proceeding has again been instituted on 15.11.89 by filing a proper chargesheet he is entitled to continued provisional pension only under Rule 69 and that no gratuity can be paid.

11. Rule 9 (6) (b) provides as to when a judicial proceeding shall be deemed to be instituted. That reads as follows:-

"(b) judicial proceedings shall be deemed to be instituted---

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(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 cognisance, is made, and

(ii) in the case of civil proceedings, on the date the plaint is presented in the court."

In the applicant's, case the court found by the order dated 11.4.89 that cognizance of the offence was taken wrongly. Hence he was discharged. The pending proceedings, thus came to an end on 15.4.89. Therefore, on this date, the applicant was entitled to regular pension, including payment of gratuity, commutation of pension etc. A fresh chargesheet is filed only on 15.11.89. Hence, if cognizance of this report is taken by the Magistrate, it will mean this proceeding will pend only from 15.11.89, i.e., definitely not on the date on which the applicant retired. We have to consider the implication of this development.

12. The question is what Rule 9 (4) means in such a circumstance. We have carefully considered the matter. It is Rule 9 (1) which gives a substantive power to the President, vis-a-vis a pensioner. The power to "withholding" pension/gratuity or "withdrawing" a pension and ordering recovery can be invoked only if the pensioner is finally found guilty of grave misconduct in any disciplinary or judicial proceedings. Pension can be "withheld" only if it has not yet been paid. Conceptually, once regular pension has been paid it cannot be withheld even if the conclusion of those proceedings justify action against the pensioner. The President can only "withdraw" the

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pension already granted. In other words, a pension can be "withdrawn" only if it has already been paid. If disciplinary or judicial proceedings are pending as on the date of retirement (i.e. where, finally the pension can be 'withheld') a provisional pension should be paid under Rule 9 (4) read with Rule 69 so that the pensioner has some means of livelihood. Gratuity shall not be paid except when the disciplinary proceeding relates to the imposition of certain specified minor penalties. Such a situation necessitating payment of provisional pension obtained only upto 11.4.89 when the applicant was discharged. On that date, the applicant was entitled to regular pension as also to the final payment of retiral dues e.g. gratuity, commutation etc. These could not have been withheld thereafter, because he was not found guilty of misconduct and hence no order under Rule 9 (1) could have been passed.

13. The filing of a fresh chargesheet on 15.11.89 does not alter this legal position. It cannot be treated to be a continuation of the judicial proceedings which was pending on the date of retirement for, that proceeding finally concluded on 11.4.89. It is a fresh judicial proceeding in respect of a pensioner. Nevertheless, Rule 9 (4) seems to suggest that, in such a situation also, a provisional pension is payable according to Rule 69. We have consider this matter. A regular pension already paid cannot be treated as 'provisional' under Rule 9 (4) in these circumstances because, in our view such a declaration serves no purpose whatsoever. In such a case the President can pass a final order under Rule 9 (1). He

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cannot order recall of gratuity already paid because his order on the conclusion of the disciplinary proceedings/judicial proceedings initiated after retirement, can have only prospective effect. For the same reason, he cannot pass any order regarding the pension already given - even if it is called provisional - in the same way the subsistence allowance already paid cannot be reduced retrospectively by the final order in the D.E. Therefore, in our view, Rule 9 (4) has to be read down to apply to only cases where a departmental proceeding/judicial proceeding was pending on the date of retirement - as defined in Rule 9 (6) and not to a case where such proceedings are initiated after the Government servant has retired.

14. There is one more aspect to this case. Merely because Government has not sanctioned regular pension and all other benefits to the applicant to which he became due on 11.4.89 on the conclusion of the proceedings which were pending when he retired - his entitlement, to which has been declared by us - they cannot continue to withhold pension etc. and treat the pension paid as provisional under Rule 9(4) read with Rule 69, because this will be illegal on the ratio of the decision rendered by the Supreme Court in Union of India vs. Jankiraman & Others (1991 (4) SCC 109). It was held in that case that the Departmental Promotion Committee is not authorised to place its recommendations in a sealed cover unless the chargesheet in respect of the DE has been issued or chargesheet in a criminal case has been filed in Court as on the date the DPC meets. Likewise the powers of



Government to withhold pension is hedged by the condition that a departmental or judicial proceeding is pending on the date of retirement. In this case that proceeding came to an end on 11.4.89 when regular payment thereof had to be made. Government has no right to withhold such regular pay and continue with payment of provisional pension on the ground that they intend to initiate a fresh judicial proceeding, which was so initiated on 15.11.89.

15. Having settled the two major legal issues we can now consider the prayers which fall in their places.

16. The first question is about his entitlement to fixation of pay in the revised pay scales. This is squarely covered by the Ministry of Finance OM dated 27.8.58 (page 235-236 of Swamy's Compilation of CCS (CCA) Rules, 1965 Twentieth Edition - 1993. The relevant instruction is in para 2 thereof, which reads as follows:-

"2. Cases in which the revised scale of pay takes effect from a date falling within the period of suspension:

(a) Under suspension a Government servant retains a lien on his substantive post. As the expression 'holder of a post' occurring in F.R. 23 includes also a person who holds the lien or a suspended lien on the post even though he may not be actually holding the post, such a Government servant should be allowed the option under F.R. 23 even while under suspension. The



benefit of option will, however, practically accrue to him in respect of the period of suspension, only after his reinstatement depending on the fact whether the period of suspension is treated as duty or not.

(b) A Government servant who does not retain a lien on a post the pay of which is changed, is not entitled to exercise the option under F.R. 23. If, however, he is reinstated in the post and the period of suspension is treated as duty, he may be allowed to exercise the option after such reinstatement. In such cases, if there is a time-limit prescribed for exercising the option and such period had already expired during the period of suspension, a relaxation may be made in each individual case for extending the period during which the option may be exercised."

We have already held that the applicant's suspension was revoked on the date of his retirement and he was reinstated on that post by implication. The competent authority should now determine under FR 54(B) whether the period of suspension is to be treated as duty or not and if so what emoluments are to be paid. This has to be done as on the date on which he was discharged (i.e. 11.4.89). This cannot be postponed to the date when final judgement would be passed in the fresh criminal proceedings instituted on 15.11.89. For, the judgement in those proceedings can give authority to the President to only pass an order under Rule 9(1) of the Pension Rules and not under FR-54 B. If the period of suspension is treated as duty the applicant gets the benefit of revised pay scale as provided above. Otherwise, he does not get any such benefit.

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17. The retiral benefits can be finally determined only after a final decision is taken on the period of suspension under FR 54 B.

18. Therefore, this OA is disposed of with the following declarations/directions/orders:-

- i) We declare that when the applicant who was placed under suspension by the order dated 16.10.85 (Annexure A-1) was permitted to retire w.e.f. 1.11.86 after attaining the age of superannuation on 31.10.86, the respondents had, by implication, revoked the order of suspension and reinstated the applicant on the post from which he was suspended before such retirement, i.e., on the last date of his service viz. 31.10.86.
- ii) As criminal proceedings had been initiated against the applicant before his retirement the applicant was entitled to only provisional pension under Rule 9 (4) of the CCS (Pension) Rules, 1972 readwith Rule 69 thereof. However, when the applicant was finally discharged in the criminal case by the order of the Special Judge (Annexure A-5) on 11.4.89 these criminal proceedings came to an end and, therefore, with effect from this date,



the applicant became entitled to payment of pension and all other retiral benefits such as DCRG, commutation of pension etc. on a regular basis.

iii) The applicant is also entitled to the benefit of the revised pay scale in terms of the OM No.F.2(36)-Est.III/58 dated 27.8.58 of the Ministry of Finance, reproduced in para 16 supra. We have already declared that the applicant has been reinstated in service on 31.10.86. The question of the application of the revised pay scale can be decided only after the disciplinary authority first decides under F.R. 54-B the question as to how the period of suspension upto the date of retirement, when he was reinstated by implication, is to be treated. A decision on this issue became due on 11.4.89 when the applicant was discharged in the criminal proceedings which were pending when he 'retired. That decision under FR 54-B shall be taken by the disciplinary authority within two months from the date of receipt of this order.

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iv) We also declare that Rule 9 (4) of the CCS (Pension) Rules, 1972 does not apply to a pensioner, who had already been paid his pension and other dues on a regular basis or, who has become entitled to such payment, if any departmental proceeding/judicial proceeding is initiated after the date of his retirement or the date of his entitlement referred to above, as the case may be, and, accordingly, Rule 69 shall also not apply to such cases.

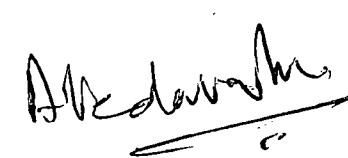
v) We declare that the initiation of the fresh criminal proceedings on 15.11.89 cannot be treated to be a continuation of the earlier criminal proceedings which were pending on the date of retirement. Hence the regular pension etc. to which the applicant became due under (ii) above cannot be declared to be provisional under Rule 9 (4). The regular pension so paid can be altered only by an order of the President under Rule 9 (1) of the CCS (Pension) Rules, 1972 after the criminal proceedings instituted on 15.11.89 came to an end.

vi) The prayers at serial Nos. (ii) to (ix), reproduced in para-2 supra are connected with the order regarding how the period of suspension will be

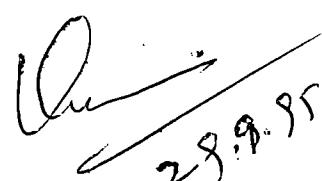
treated under FR 54-B, in the absence of which the dues cannot be quantified. Therefore, after a final decision is taken thereon, as directed in (iii) above, the respondents shall pass further orders in regard to all these prayers within a further period of three months (i.e. five months from the date of receipt of this order). All dues found payable shall be paid within one more month thereafter, i.e., within six months from the date of receipt of this order.

vii) In so far as prayer No.(x) is concerned, regarding counting of service of the applicant in the Armed Forces for purpose of pension and retirement benefits the respondents have stated in a written note that this has already been granted to him.

17. The OA is, therefore, disposed of with the above declaration/directions/orders. No costs.



(Dr. A. Vedavalli)
Member (J)



(N.V. Krishnan)
Acting Chairman

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