

(9)

Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. DA-849/89

Date: 24-5-89

Shri S.P. Sehgal Applicant

Versus

Union of India & Respondents
Another

For the Applicant In person

For the Respondents Shri P.P. Khurana, Advocate.

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Shri D.K. Chakraverty, 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*

(Judgement of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice-Chairman)

The applicant, who had worked as Under Secretary in the Ministry of Surface Transport, filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying that the notification dated 8th April, 1987 whereby he was retired from Government service w.e.f. 31.3.1987 on attaining the age of superannuation, be quashed, that he be ordered to be paid subsistence allowance w.e.f. 1.4.1987 till the orders of suspension are revoked in terms of Rule 10 (5) (a) of the C.C.S. (CCA) Rules, 1965, that the Union of India be directed not to dispossess him from the accommodation in government quarter No.601, Laxmibai Nagar, New Delhi, till the decision on this application, and that as and when the respondents take recourse to the revocation of suspension orders, they should be directed to pay to him the pensionary benefits which were withheld on account of impugned suspension orders.

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2. The applicant has also prayed, by way of interim relief, that he may be allowed to retain the Government accommodation allotted to him till the decision of the Tribunal on this application.

3. The application came for hearing on 25.4.1989 when the Tribunal directed issue of notice to the respondents on admission and interim relief. On 8.5.1989, the case was admitted and it was decided to hear the parties on the question of interim relief on 19th May, 1989. The case was heard on 19.5.1989 and 22.5.1989.

4. The learned counsel for the respondents stated that the questions raised in the present application is whether the suspension of a Government servant would continue after his retirement on superannuation and whether he will continue in service merely on account of the absence of an order of revocation of suspension. These issues being legal in nature, he stated that they could be decided at the admission stage itself. Therefore, the respondents have not filed their counter-affidavit.

5. We have gone through the records of the case and have heard the applicant in person and the learned counsel for the respondents. The facts of the case in brief are that the applicant, who has been in Government service for over 37 years, was placed under suspension w.e.f. 29.1.87. This was just about two months before the due date of his retirement on 31.3.1987. The order of suspension was passed by the President under Rule 10(1) of the C.C.S. (CCA) Rules, 1965 in view of the fact that disciplinary proceedings for major penalty against the applicant were contemplated. On 8.4.1987, the respondents issued a notification to the effect that on attaining the

age of superannuation, the applicant retired from Government service w.e.f. the afternoon of 31st March, 1987.

6. The applicant has submitted representations against the orders of suspension and of superannuation, mentioned above. On 6th October, 1988, the respondents informed the applicant that since suspension orders have automatically come to an end on his retirement after attaining the age of superannuation, the question of revocation of the suspension orders does not arise.

7. The admitted factual position is that the order of suspension was passed in the instant case while the applicant was in Government service. Rule 10 (5) (a) of the C.C.S. (CCA) Rules, 1965 provides that "an order of suspension made or deemed to have been made under this rule, shall continue to remain in force until it is modified or revoked by the authority competent to do so." It is implicit in this provision that the competent authority may revoke an order of suspension during the subsistence of 'master and servant' relationship between the Government and the Government servant concerned. That relationship ceases to exist w.e.f. the date of retirement of the Government servant on superannuation. There is no rule under which a Government servant under suspension can be retained in service for departmental proceedings. Proceedings in such cases may, however, be continued in accordance with the provisions of Rule 9 of the C.C.S. (Pension) Rules, 1972. Such an officer is also not entitled to any subsistence allowance after the date of retirement, but is paid provisional pension under Rule 69 of the C.C.S. (Pension) Rules, 1972. The C.C.S.

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(Commutation of Pension) Rules, 1981 also provide that no Government servant against whom departmental or judicial proceedings as referred to in Rule 9 of the C.C.S. (Pension) Rules, 1972, have been instituted, before the date of his retirement, or the pensioner against whom such proceedings are instituted after the date of his retirement, shall be eligible to commute a fraction of his provisional pension authorised under Rule 69 during the pendency of such proceedings.

B. F.R. 56(a) provides that "Except as otherwise provided in this rule, every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of fiftyeight years". This is a mandatory provision. In the absence of a service rule providing for extension of service of an employee placed under suspension beyond his normal date of superannuation, the Government has no power to extend the services of a Government servant after he had retired from service, merely for the purpose of continuing the departmental inquiry (vide State of Assam Vs. Padma Ram Borah, A.I.R. 1965 S.C. 473). The suspension order comes to an end by the retirement of a Government servant. After retirement from service, he could no longer be deemed to be under suspension (vide D.D. Suri Vs. A.K. Barren, 1976 (1) S.C.C. 967). There is neither any logic nor law to hold that in spite of reaching the age of superannuation, a person should be deemed to continue in service till the conclusion of the departmental or judicial proceedings against him. Since the order of retirement brings to an end the service

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career of a Government servant, his suspension automatically stands revoked (vide D.O. Sadbtra Vs. State and Another, 1983 (1) SLJ 242).

9. We are, therefore, of the opinion that the order of suspension of a Government servant, which was passed while he was in Government service, would be deemed to have been revoked by the order passed by the Government retiring him from service on attaining the age of superannuation. After superannuation, the relationship of 'master and servant' does not subsist. The penalties enunciated in Rule 11 of the C.C.S. (CCA) Rules, 1965, cannot be imposed on a retired Government servant. The Government can only withhold the pension payable to a pensioner in accordance with the provisions of Rule 9 of the C.C.S. (Pension) Rules, 1972. In the circumstances, we are of the opinion that when the Government passes an order retiring a Government servant under suspension on his attaining the age of superannuation, the suspension ceases to exist even in the absence of a specific order of revocation. The fact that the Government does not pass an order of revocation of suspension in such a case does not lead to an inference that the person concerned continues under suspension until it is revoked. There is an implied revocation of suspension in such a case. The stand taken by ~~the respondents~~ the respondents is in conformity with the service jurisprudence. The applicant has not cited before us any rule under which he can claim that his service stands extended by the non-issue of order of revocation of suspension.

10. In the facts and circumstances of the case, we see no merit in the present application. The applicant is

not entitled to any of the reliefs prayed for by him. The application is, therefore, dismissed at the admission stage itself. The applicant will also not be entitled to retain the Government accommodation allotted to him beyond the normal period which is allowed to a retired Government servant under the relevant rules. The interim order passed on 8.5.1989 is hereby vacated. The parties will bear their own costs.

Deekenn 24/5/89
(D.K. Chakravorty)
Administrative Member

P.K. Kartha
24/5/89
(P.K. Kartha)
Vice-Chairman (Judl.)