



CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

O.A. No. 060/791/2019

(Order reserved on 02.03.2021)

Chandigarh, this the 5th day of March, 2021

HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)

Udham Singh aged about 64 years (s/o Late Sh. Dharam Singh), Inspector Grade-I (Audit) (Retired), Cooperative Societies, U.T., Chandigarh now resident of H. No. 726, Sector 48-A, D.C. Office Coop. House Building Societies, Chandigarh-160047.

.....Applicant

By Advocate: Mr. J.C. Kapoor

Versus

1. Union of India through the Advisor to the Administrator, Chandigarh Administration Sector-9, U.T. Secretariat, Chandigarh-160009.
2. The Secretary Cooperation, Chandigarh Administration, U.T. Secretariat Building, Sector-9, Chandigarh-160009.
3. The Registrar Cooperative Societies-cum-Deputy Commissioner, U.T., Sector 17, Chandigarh-160017.
4. The Additional Registrar, Cooperative Societies, U.T., Govt. Printing Press Building, Sector 18, Chandigarh-160018.
5. The Senior Superintendent of Police, U.T., Police Headquarters, Sector 9, Chandigarh-160009.

.....Respondents

By Advocate: Mr. V.K. Arya

ORDER

AJANTA DAYALAN, Member (A):

1. The present OA has been filed by the applicant Udham Singh seeking quashing of order dated 18.09.2015



endorsed to the applicant on 23.09.2015 (Annexure A-2) whereby provisional pension at the rate of 90% of basic pension has been sanctioned in his favour.

2. The facts of the case are not disputed. The applicant retired on 31.05.2015 on attaining the age of superannuation and after completion of extension in Government service for two years. He was governed by Punjab Civil Service Rules as applicable to Chandigarh Administration. Prior to his retirement, an FIR No. 290 dated 14.08.2012 was registered against him under Sections 420, 451, 467, 468 and 120-B IPC in the Police Station, Sector 31, Chandigarh. The complainant Mrs. Saroj Sharma had made a complaint against him. But vide her letter dated 08.08.2014 (Annexure A-8), she requested SSP, UT to withdraw complaint made by her against the applicant in FIR No. 290. Despite her withdrawing the complaint, FIR No. 290 of 2012 has not been quashed till date. Further, as indicated in Annexure A-9, a charge sheet had been served upon the applicant and vide memo dated 22.08.2016, an Inquiry Officer had been appointed vide orders of Registrar Cooperative Societies dated 27.10.2017 issued vide endorsement dated 10.11.2017. The inquiry report was submitted by the Inquiry Officer on 04.07.2018 and he had exonerated the charged officer of all charges (Annexure A-9). However, the charged officer is receiving only provisional pension at the rate of 90% till now and his gratuity and leave encashment have also been withheld.

3. The case of the applicant is that despite his exoneration by the Inquiry Officer, he has still been deprived of



his full pension and his other retiral benefits including DCRG and leave encashment have also been withheld. He holds these actions of the respondents as illegal and seeks interest at the rate of 24% p.a. for delayed payment.

4. In support of his claim, the applicant had relied on the case of State of Jharkhand and Others versus Jitendra Kumar Srivastava and Another in Civil Appeal No. 6770 of 2013 (arising out of SLP (C) No. 1427 of 2009), whereby it is held that pension is an hard earned benefit which accrues to an employee and is in nature of property. The right to property cannot be taken away without due process of law as per Article 300 A of the Constitution of India. Similarly, leave encashment and gratuity cannot be taken away by the Government without any statutory provision and under the umbrage of administrative instructions. The instructions have to be of statutory character and should be able to be termed as law within the meaning of Article 300 A of the Constitution.

5. The applicant has also pleaded that respondents have no legal right to cut his pension by 10% and retain gratuity and other retiral dues as he does not owe anything to the Government.

6. The applicant has, therefore, pleaded that the relief sought by him in the OA needs to be granted to him as he is entitled for the same.

7. The respondents have contested the claim of the applicant. They have stated that the FIR No. 290 dated 14.08.2012 was registered by the State against the applicant.



The same is still pending. The case is being investigated by EOW of Chandigarh Police. The Investigating Officer vide memo dated 17.06.2019 (Annexure R-1) requisitioned certain documents from the respondents. These documents were forwarded to the Investigating Officer vide memo dated 25.06.2019 (Annexure R-2).

8. The respondents have further stated that since FIR is still pending against the applicant, the respondent department took legal advice. This was received vide note dated 17.02.2016 (Annexure R-3) wherein the respondents were advised that the case of the applicant needs to be regulated in the light of Rule 2.2(c) of Punjab Civil Services Rules Volume II as well as of the observations made by Hon'ble High Court of Punjab and Haryana in judgement dated 31.01.2013 in CWP No. 562 of 2012 titled Union Territory Chandigarh and Another vs. Central Administrative Tribunal, Chandigarh Bench and Others.

9. The respondents have further submitted that unless and until the FIR is quashed or the applicant is acquitted of the charges by the Hon'ble Trial Court in the FIR No. 290, the respondent department is not in a position to take any decision regarding release of the claims made in the OA. However, respondents have stated that 90% provisional pension has already been granted to the applicant. The gratuity, leave encashment and other claims have not been released as the FIR No. 290 registered by the State against the applicant is still pending.



10. In view of above, the respondents have concluded that the applicant is not entitled to any relief claimed by him and the OA deserves to be dismissed.
11. I have heard the counsel of the opposing parties and have also gone through the pleadings in the case. I have also given my thoughtful consideration to the entire matter.
12. The issue at hand is rather limited. The applicant retired on 31.05.2015 after attaining the age of superannuation and completion of extension in Government service for two years. However, prior to his retirement, on 14.08.2012, an FIR No. 290 was registered against him based on the complaint of one Mrs. Saroj Sharma. The complaint was about handing over the physical possession of flat No. 1176 in Universal Enclave, Sector 48-B, Chandigarh to Harsimran Kaur instead of Smt. Saroj Sharma. However, later on 08.08.2014 (Annexure A-8), the complainant Saroj Sharma wrote to the SSP withdrawing her complaint. Despite this, the FIR continues to be pending. An Inquiry Officer was appointed vide letter dated 27.10.2017. The Inquiry Officer submitted his report on 04.07.2018 exonerating the applicant of all the charges (Annexure A-9). Vide order dated 25.10.2018 (Annexure A-10), charge sheet filed against the applicant vide memo dated 22.08.2016 was filed. However, the case is now being investigated by EOW of Chandigarh Police. In this regard, vide letter dated 17.06.2019 (Annexure R-1), certain documents were sought by the Investigating Officer in regard to FIR No. 290. These documents were supplied on 25.06.2019 vide Annexure R-2. These facts are undisputed.



13. From the above, it is clear that the applicant was charge sheeted with criminal offence prior to his retirement. In this case, FIR No. 290 was registered. It is true that the Inquiry Officer has given its report and has held that the charged officer needs to be exonerated of all charges. It is also true that the disciplinary authority has filed the charge sheet issued against the applicant on 22.08.2016 vide its order dated 25.10.2018 (Annexure A-10). However, the fact remains that in the criminal proceedings, the FIR No. 290 still stands. In fact, the case is now being investigated by EOW of Chandigarh Police and the same is in active consideration as the Investigating Officer demanded and received some documents in this regard in June 2019. It is also not sufficient that the complainant withdraws her complaint against the applicant. The criminal case is filed by the State against the applicant. Hence, it is for the State to decide whether it wishes to drop the criminal case in the light of withdrawal of complaint by the complainant or it wishes to pursue the same irrespective of such withdrawal.

14. I also observe that in her withdrawal application, the complainant herself has not let go the applicant of the charge against him. If one reads her withdrawal letter carefully which is at Annexure A-8, it says that two Inspectors Amarjit Singh and Udhamb Singh were Administrators at that time. Hence, she named these two Inspectors. But later on, she "came to know that they were only puppets in the hands of the then Assistant Registrar, Cooperative Societies". Thus, from mere reading of this, it can be inferred that she is not really saying that the



applicant had no hand. She is only saying that he was working under the orders of his superiors. Thus, only on the basis of this withdrawal letter, the criminal case against the applicant cannot be closed.

15. As regards the rule position, the applicant has in general mentioned Punjab Civil Services Rules. However, he has not given any specific provisions of these Rules even in passing - either in the main pleadings in the OA or in the grounds for relief. Without such specific provisions, a general pleading is of no use to the applicant.

16. I also observe that it is not disputed that a criminal case was pending against the applicant prior to his retirement. The same is still pending even though the Inquiry Officer has exonerated the applicant of all charges. A Government servant who is charged of criminal offence, is not at par with other retiring Government servants who earn pension and other retiral benefits in view of their long service in the Government. A Government employee, if found guilty of criminal offence, is to be dealt with severely so that Government employees who have wide powers - and therefore have wide scope for misuse of these powers, are put at alert and do not indulge in such activities. In the instant case, the charge against the applicant is serious as he has been charged with wrongly handing over physical possession of the private property of the complainant Saroj Sharma. It is unfortunate that the case is dragging on for the last over eight years. But, this delay cannot be used to the benefit of the applicant who is charged with a serious criminal



offence especially considering his status as a Government employee in position of authority.

17. Further, I observe that even though no specific rules have been quoted in the OA or in the grounds for relief pleaded therein by the applicant, Rule 8.21, 9.14 and 2.2 (c) of Punjab Civil Services Rules have been quoted by the respondents in Annexure A-7 while replying to Legal Notice served by the counsel for the applicant. I observe from perusal of these Rules that provisions of Rule 9.14 which are the most relevant are as follows:-

"Rule 9.14 of Punjab Civil Services Rules Vol. II

- (1)(a) In respect of Government employee referred to in clause (c) of Rule 2.2, the Head of Office shall authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of Government employee or if he was under suspension on the date of retirement, up to the date immediately preceding the date on which he was placed under suspension.
- (b) The provisional pension shall be authorized by the Accountant General, Punjab during the period commencing from the date of retirement up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.
- (c) No gratuity shall be paid to the Government employee until the conclusion of the departmental or judicial proceedings and issue of final order thereon:"

It is thus obvious that provisional pension can be authorized to the Government employee upto the conclusion of departmental or judicial proceedings. However, gratuity shall be withheld till conclusion of departmental and judicial proceedings and issue of final orders thereon. Hence, the action of the respondents in not releasing the gratuity and other retiral dues is not an illegality. Also, the provisional pension to the extent of 90% has already been paid to him. As such, even this action of the respondents is



not illegal. In fact, payment of 90% of pension in itself is on the liberal side as the charges against the applicant are quite serious.

18. In view of all above, I am of clear view that the applicant is not entitled for any relief. OA is, therefore, dismissed being devoid of merits.

19. There shall be no order as to costs.

**(Ajanta Dayalan)
Member (A)**

Place: Chandigarh
Dated: March 5th, 2021
ND*