



CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

O.A.NO.060/01206/2018

Order pronounced on:11.02.2021
(Order reserved on: 04.02.2021)

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

Harjit Singh

son of Late Sh. Chanan Singh,

aged 65 years,

Resident of House No. 325, Phase-VII,

Mohali – 160059 (Group 'B')

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Applicant

(BY ADVOCATE: MR. J.R. SYAL)

VERSUS

1. Union of India through Secretary, Ministry of Home Affairs,
North Block, New Delhi-110001.
2. Union Territory, Chandigarh through Finance Secretary, U.T.
Chandigarh, Deluxe Building, Sector 9, Chandigarh-160009,.
3. Estate Officer, U.T. Chandigarh, Estate Office Building, Sector
17, Chandigarh-160017.

Respondents

**(BY ADVOCATE: NONE FOR RESPONDENT NO.1
MR. MUKESH KAUSHIK FOR
RESPONDENTS NO.2&3)**



ORDER
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)

1. The present Original Application has been filed by the applicant Harjit Singh seeking quashing of the order dated 19.7.2018 (Annexure A-8) whereby his request for release of 100% LTC for 3 terms from 1.8.2008 to 30.7.2014 has been rejected. The applicant has also sought interest @ 12% per annum on the delayed payment.

2. The applicant was an employee of the Estate Office, Union Territory, Chandigarh. In 2004, while working as Superintendent, he was issued a charge-sheet vide memorandum dated 13.12.2004 (Annexure A-1) on the allegation of fraudulent allotment of two sites in connivance with one Sodhi and later disposing them off. Inquiry Officer was appointed. Inquiry Officer held the charge against the applicant as proved vide the report dated 18.12.2006 (Annexure A-2). The Disciplinary Authority imposed the penalty of reduction of one increment with cumulative effect vide order dated 4.2.2008 (Annexure A-3).

3. Later on, on the same charges an FIR No. No.2 dated 11.6.2004 under sections 419, 420, 467, 468, 471 and 120-B IPC read with Section 13(1)(d) and 13(2) of P.C. Act, was registered against the applicant in which two challans were prepared on 19.3.2009. Two separate trials were conducted. Two separate judgements were pronounced on 28.7.2014 by the Special Judge, Chandigarh, holding the applicant guilty of offences for which he was charged.



4. Against the above judgements of the Special Judge, Chandigarh, the applicant filed Criminal Appeal No.S-3533-SB of 2014 (O&M) in the Hon'ble Punjab and Haryana High Court. The Hon'ble High Court has admitted the appeal and issued notice regarding suspension of sentence. A copy of the order dated 21.11.2014 in this case is attached as Annexure A-4.

5. The applicant retired on 31.7.2008. However, his pension and D.C.R.G. were not released. Therefore, he filed O.A.No.060/01139/2014 in this Bench. During the pendency of the O.A. the respondents passed order dated 9.1.2015 holding that prosecution sanction was accorded during service period of the applicant who later on retired. Respondent No.3 also passed an order on 14.1.2015 withholding the whole pension of the applicant w.e.f. the date of his conviction on 31.7.2014.

6. As the order dated 14.1.2015 was passed during the pendency of the O.A., the applicant had to make an amendment in the O.A. This O.A. was decided vide order dated 21.4.2016 (Annexure A-5) partly allowing the O.A. with a direction to the respondents to pay balance 10% provisional pension to the applicant w.e.f. 1.8.2008 to 30.7.2014 and also to pay him DCRG along with interest @ 9% for delayed payment. Regarding non-release of the full pension, the applicant was directed to seek departmental remedy by way of appeal with the further specific direction that if applicant files such appeal within four weeks, the same shall be decided on merits and shall not be dismissed on the ground of limitation.



7. As this order of the Tribunal was not complied with, the applicant filed Execution Application. This was disposed of on 11.5.2018 on the filing of the reply by the respondents that they have decided to comply with the order of this Tribunal. Some further directions regarding furnishing of surety to ensure recovery of amount from the applicant in case Writ Petition filed by the respondents is decided in their favour were also passed. Pursuant to this, withheld amount of provisional pension and gratuity were released to the applicant. Regarding withholding of whole of pension the applicant filed an appeal and on rejection of the same O.A.No.060/00053/2017 was filed. This O.A was dismissed by the Tribunal.

8. The applicant obtained some information/documents under RTI Act which are annexed as Annexures A-7. These documents clarify as to why 100% LTC @ Rs.12,360/- for 3 terms w.e.f. 1.8.2008 to 30.7.2014 has not been released to him. It is mentioned therein that only 100% provisional pension has been paid to the applicant as per the order of the Estate Officer dated 7.5.2018. However, pension has been withheld w.e.f. 31.7.2014 that is from the date of his conviction

9. The case of the applicant is that he retired from service on 31.7.2008 and enjoyed pension and pensionary benefits upto 31.7.2014 on which date whole of his pension was withheld. As such, he will be entitled for 100% LTC for 3 terms covered in this period, as during this period he was drawing his full pension.



10. The applicant also alleges that Punjab Government Instructions dated 23.2.2017 are not applicable in his case as these are of 2017 and adopted by Chandigarh Administration in 2018 and cannot be applied retrospectively to the period of his claim of 2008 to 2014.

11. The applicant has further stated that his conviction has been challenged in the Punjab and Haryana High Court. The pension was also stopped only w.e.f. 31.7.2014 i.e. the date of his conviction. Hence he is entitled to entire service benefit including release of 100% LTC at prescribed rates upto 31.7.2014. He has, therefore, claimed release of the same along with interest.

12. The respondents have contested the claim of the applicant. They have stated that the applicant has concealed material facts. He applied for LTC vide letter dated 20.6.2017 which was rejected vide order dated 5.7.2017. These facts have not been disclosed by the applicant. Besides, he has not filed any appeal against this rejection order dated 5.7.2017 to the Finance Secretary-cum-Administrative Secretary, U.T. Chandigarh. As such, he has not exhausted departmental remedies before approaching this Tribunal.

13. The respondents have also stated that before his retirement, prosecution sanction was accorded by the competent authority in connection with FIR No.2 dated 11.6.2004. The applicant was only paid provisional pension w.e.f. 1.8.2008 to 30.7.2014 prior to his conviction on 31.7.2014 in the two challans filed on 19.3.2009/26.4.2011.



14. The respondents have further stated that though the applicant has placed on record various orders of the Hon'ble High Court extending the bail granted by the Trial Court and also order dated 28.8.2014 for making the bail absolute with direction to the applicant to appear before the Trial Court and submit fresh bail bonds, but he has not furnished any order passed by Court of law against his conviction. Therefore, the order dated 9.1.2015 issued vide endorsement dated 14.1.2015 was passed by the respondents withholding full pension of the applicant w.e.f. the date of his conviction on 31.7.2014.

15. The respondents have further stated that vide impugned order dated 19.7.2018, the respondents have rejected the claim of the applicant regarding LTC in the light of the Punjab Government instructions dated 23.2.2017 duly adopted by the Chandigarh Administration vide letter dated 5.2.2018. In these instructions, it is clarified that no LTC will be granted to the retirees drawing provisional pension against whom any departmental or judicial proceedings are pending. Respondents have stated that as judicial proceedings were admittedly pending against the applicant, no LTC could be granted to the applicant in terms of these instructions.

16. The respondents have also stated that in the departmental proceedings, inquiry officer was appointed and charges were proved against the applicant. Penalty of stoppage of one increment with cumulative effect was imposed on the applicant. Proper procedure was followed and enquiry was conducted in terms of the PCS (Punishment & Appeal)



Rules, 1970. They have also stated that only provisional pension has been granted to the applicant on the directions of the Court. He has never been granted full/regular pension even prior to his date of conviction.

17. The respondents have also relied upon provisions of Rule 2.2(a) of the Punjab Civil Services Rules Vol. II which reads as under:-

"2.2(a) Future good conduct is an implied condition of every grant of pension. The Government reserve to themselves the right of withholding or withdrawing a pension or any part of it if the pensioner be convicted of serious crime or be guilty of grave misconduct".

18. The respondents have finally concluded that in view of all above, the O.A. has no merit and the applicant does not deserve the relief sought in the O.A.

19. I have heard the learned counsel of opposing sides and have carefully gone through the pleadings on record. I have also given my thoughtful consideration to the entire matter.

20. The applicant retired on 31.7.2008. Prior to his retirement, on 11.6.2004, an FIR was registered against him for fraudulent allotment of two sites and later disposing them off by selling them. Charge memo dated 13.12.2004 was also issued against him by the department in this regard. On the basis of the Inquiry Officer's report dated 18.12.2006, penalty of stoppage of one increment with cumulative effect was imposed on him vide order dated 4.2.2008. Thereafter the applicant retired on 31.7.2008.

21. Later on, on the same charges, two separate challans were prepared on 19.3.2009 in FIR No.2 of



11.6.2004. The applicant was convicted in both the cases by Special judge, Chandigarh. He was released on bail by the Trial Court. The applicant filed Criminal Appeal in Hon'ble High Court against this judgement which is still pending. Meanwhile, Hon'ble High Court passed various orders extending his bail. Finally on 28.8.2014, the bail was extended upto the next date i.e. 21.11.2014 when it was made absolute. The applicant was directed to appear before the Trial Court and furnish his fresh bail bonds which the Trial Court was directed to accept.

22. These facts of the case are not disputed. It is also not disputed that the applicant has not been granted regular pension from 1.8.2008 till 31.7.2014 – that is the date on which he was convicted by the Trial Court. It is also not disputed that his appeal against the conviction is still pending in the Hon'ble High Court. What the applicant has achieved after pursuing his case in this Tribunal is only grant of provisional pension and not regular pension.

23. Besides, I also note that Rule 2.2 (a) of the Punjab Civil Service Rules relied upon by the respondents is relevant. The future good conduct is an implied condition for grant of pension. In the instant case, pension of the applicant has been withheld on account of applicant's own conduct. In the departmental proceedings, the applicant has already been found guilty. The charges were proved by the Inquiry Officer and he was awarded punishment of withholding of one increment with cumulative effect. This decision has already attained finality and no appeal or case is pending in this



regard. Besides this, in the criminal proceeding also the applicant has already been convicted by the Special Judge, Chandigarh. Hence the conduct of the applicant has been faulted with both by the departmental and by the judicial authorities. Further, though the applicant has approached the Hon'ble High Court and the case is still pending, but the Hon'ble High Court has not granted any stay on conviction. As such, the conviction of the applicant still stands.

24. I also observe that the applicant himself in para 4 (xiii) of O.A. has submitted that the order dated 23.2.2017 of the Punjab Government adopted by the Chandigarh Administration on 5.2.2018 states as follows :-

"It has been clarified that no LTC will be granted to the retirees who are drawing provisional pension against whom any departmental enquiry or judicial proceeding are pending"

It is not disputed that judicial proceedings were already pending against the applicant and two challans were already submitted on 19.3.2009 and 26.4.2011. So, the conduct of the applicant was already under cloud and he was finally convicted on 31.7.2014.

25. In this regard, I do not agree with the argument of the learned counsel for the applicant that these instructions can apply only prospectively and not retrospectively. These instructions are only clarification and not fresh orders. In the first para of the letter itself, it is mentioned that "some of the departments have been seeking clarification from the Finance Department to the effect that whether these benefits are liable to be given/paid to the pensioners or not in case departmental



or judicial proceedings are pending against them". While deciding the matter, it is held that such pensioners are not entitled for travel concession. Needless to mention that a clarification takes effect from the date of original decision and not prospectively. Even otherwise, it is not that prior to 2017, in all cases of provisional pension, travel concession benefit was being granted. Else, there would have been no need for clarification.

26. In view of above, the judgement of Hon'ble Punjab and Haryana High Court in the case of **HIGH COURT OF PUNJAB AND HARYANA, CHANDIGARH VS. JASWANT SINGH**, 2019(4) SCT, 292 laying down the law that "the punishment/penalty takes effect prospectively from the date of its imposition" would not be applicable here and would be of no help to the applicant in view of specific facts of this case.

27. I also find that the request of the applicant for grant of the benefit sought in the O.A. was rejected by the respondents vide order dated 5.7.2017 (Annexure R-2) as pleaded by them in the written statement. However, this order is not under challenge despite objection taken by the respondents. Thus, no relief can be granted to the applicant without setting aside or quashing of this order, legality of which has been accepted by the applicant by its non-challenge. Hence, the relief sought by the applicant in this O.A. is not permissible.

28. In view of all the above, I find that applicant does not deserve the relief sought for by him in the O.A. The O.A. is, therefore, dismissed being devoid of merits.

29. There shall be no order as to costs.



Place: Chandigarh
Dated: 11.02.2021

HC*

(AJANTA DAYALAN)
MEMBER (A)