



**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

O.A No.612/2015

Order reserved On: 15.01.2021

Pronounced On: 01.02.2021

(Through Video Conferencing)

Hon'ble Mr. Pradeep Kumar, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Gopinath Tripathy, aged about 78 years,
Son of Late Rana Krushna Tripathy,
Resident of 74 Madhusudan Nagar,
P.S: Kharvelnagar,
Bhubaneswar, Dist: Khurda

.... Applicant

(By Advocate: Sh. H.K.Mund)

Versus

1. The Union of India represented
through its Secretary,
Ministry of Communications,
Department of Telecommunications,
Government of India,
West Block No.1,
Room No.2, Ground floor,
R.K.Puram, Sector-1,
New Delhi-110066.

2. Chief General Manager,
Telecommunications,
Orissa Telecom Circle,
Bhubaneswar-751001.

..... Respondents

(By Advocate: Sh. A.C.Deo and Sh. L.Jena)

ORDER**By Hon'ble Mr. Pradeep Kumar, Member (A):**

1. The applicant herein was working as a Director, Telecom (Headquarters) at Bhubaneswar. A charge-sheet was issued to him on 24.11.1993 under Rule 9 (i), (ii) & (iii) of CCS (Conduct) Rules, 1964 for certain alleged incidents pertaining to the period from 07.02.1992 to 26.10.1992 wherein it was alleged that certain procurements were undertaken which had led to a substantial loss to the department. A punishment of 25% cut in pension for a period of five years was imposed vide orders dated 23.04.1996. This punishment was challenged by filing OA No.385/1996. This was allowed on 09.11.2004 and the punishment order dated 23.04.1996 was quashed and it was ordered that full pension shall be paid. This order by the Tribunal was challenged before Hon'ble High Court of Orissa in WPC-8360/2006 wherein the orders by the Tribunal were stayed on 18.09.2006. This Writ is still pending.



Meanwhile, the applicant retired from service on 31.07.1993.

2.0 For the said alleged incidents, an FIR was also lodged by CBI, against the applicant and some others, on 07.08.1997 under Prevention of Corruption Act, 1988 and under Section 120-B/420 IPC. The allegation made in this FIR is reproduced as under from the relevant para of instant OA:

“4.1 It was alleged in the F.I.R. that the Chief General Manager of Orissa Telecom Circle, Bhubaneswar during 1992-93 entered into a criminal conspiracy with M/s B.R.Electricals and some other staff of his office including the applicant and in furtherance of the said conspiracy placed purchase orders with the aforesaid firm for procurement of PVC Insulated wire at an exorbitant rate causing wrongful loss to the Government.”

In this FIR, a charge-sheet was filed by the CBI on 17.09.1999, against the applicant and certain other co-accused, before Special Judge, CBI, Bhubaneswar in TR case No.157/1999. This case was decided by the said Court on 24.12.2012 and the applicant and the co-accused were

convicted. The operative part of this judgment reads as under:



“16) In view of the above discussion I find that accused Basanta Kumar Sahu and Gopinath Panda are found not guilty of the offence U/S 120-B and 420 IPC and U/S 13(2) read with Sec. 13(1)(d) of the P.C.Act, 1988. Hence they are acquitted thereof u/s 248(1) of the Cr.P.C. **But there had been criminal conspiracy amongst accused-public servants namely M.G.Jillani, Gopinath Tripathy, Pravakar Lenka, deceased accused Padmanav Acharya and Batakrushna Jena on one side and Pradeep Godhwani and Bhabana Godhwani, partners of M/S B.R Electricals on the other and they had cheated the Orissa Telecom State to the tune of Rs.2.80 Crores.** The above accused-public servants by misusing their power had shown undue favour to accused Pradeep Godhwani and Bhabana Godhwani, Partners of M/S B.R Electricals. Hence accused M.G. Jilani, Gopinath Tripathy, Batakrushna Jena and Pravakar Lenka are found guilty of the offence U/S 13(2) read with Sec. 13(1)(d) of the P.C Act 1988 and U/S 120-B and 420 IPC and are convicted thereunder.

Accused Pradeep Godhwani and Mrs Bhabana Godhwani are found guilty of the offence U/S 120-B and 420 IPC and convicted thereunder.

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Hearing on the question of sentence

17) The learned counsels appearing for the convicts submits that the convicts are facing trial since 1999. Hence they may be dealt with leniently. The learned Special P.P on the other hand submits to give them exemplary punishment considering huge loss to the telecom department. **Considering the nature of offence, age of the convict and quantum of loss, each of the convicts is sentenced to undergo R.I. for one year and**



to pay a fine of Rs.25,000/- (Rupees twenty five thousands) i.d to undergo R.I for six months more U/S 120-B IPC and R.I for two years and to pay a fine of Rs.25,000/- (Rupees twenty five thousands) in default to undergo R.I for six months more U/S 420 IPC.

Further convict M.G.Jillani, Gopinath Tripathy, Pravakar Lenka and Batakrushna Jena are sentenced to undergo R.I for one year and to pay a fine of Rs.25,000/- (Rupees twenty five thousands) in default to undergo further R.I. for six months each U/S 13(2) read with Sec. 13(1)(d) of the P.C.Act, 1988. The substantive sentences are to run concurrently. The period of detention in jail custody, if any, is liable to be set off."

(Emphasis supplied)

3. The applicant challenged these orders of trial court by filing an appeal before Hon'ble High Court of Orissa on 21.01.2013 in CRLA No.48/2013. Applicant also preferred an MA before Hon'ble High Court of Orissa vide MA No.1245/2013, seeking stay on the said conviction. Both these matters are said to be still pending before Hon'ble High Court of Orissa.

4. Once the trial court convicted the applicant on 24.12.2012, a Show Cause Notice (SCN) was issued to the applicant on 22.08.2013 as to why not to withhold 100% of his monthly



pension on permanent basis under Rule 9 of CCS (Pension) Rules, 1972.

The applicant submitted his defence on 24.10.2013 that he was already awarded punishment in this very case in the departmental proceedings wherein 25% cut in pension was imposed for a period of five years (para 1 supra). It was pleaded that imposition of withholding of 100% pension on permanent basis tantamounts to a second punishment and double jeopardy for the same offence.

The respondent-department obtained advice of the UPSC, which in turn was supplied to the applicant also to submit his defence. This defence was submitted on 25.05.2015. Thereafter the Hon'ble President passed an order on 14.07.2015 withholding 100% of applicant's monthly pension on permanent basis. The relevant part of this order reads as under:

"2. AND WHEREAS, Shri Gopinath Tripathy is already retired and hence, on account of his conviction, he was proceeded under Rule 9 of CCS (Pension) Rules, 1972. He deserved the penalty of 100% cut in



pension, in consonance with the judgement of the CBI Court.

3. AND WHEREAS, a show cause notice was issued to Shri Gopinath Tripathy, DGM (Retired) on 22nd Aug, 2013 inviting his representation on the penalty of 100% pension cut tentatively proposed to be imposed on him. The representation of Shri Tripathy was received on 24.10.2013. He had inter-alia submitted that being aggrieved with the SBI judgment and order of conviction he preferred Criminal Appeal No.48 of 2013 before the Hon'ble High Court of Orissa. After admission of the aforesaid appeal he also filed an application U/s. 389 Cr. PC for stay of the order of conviction. The aforesaid Misc. Case was pending in the Hon'ble High Court of Orissa and hence, he had prayed to allow one month time to obtain necessary orders from the Hon'ble Court and till then to keep the matter in abeyance.

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8. NOW THEREFORE, after taking into consideration the records of the case, advice of the UPSC, representation of the CO, overall circumstances of the case, the President accepts the advice of the UPSC and imposes the penalty of "withholding of 100% of the monthly pension, otherwise admissible to the CO, on permanent basis' on Shri Gopinath Tripathy."

It is this order dated 14.07.2015 which has been challenged in the instant OA.

Once the payment of provisional pension was stopped, after the order of withholding of 100% of monthly pension on permanent basis was issued on 14.07.2015, the applicant preferred a



representation dated 10.03.2016 seeking revision of his pension as per 6th CPC, which was rejected vide orders dated 23.06.2016. While the instant OA was under consideration of the Tribunal, the applicant also preferred an MA seeking payment of arrears of pension as per 6th CPC. This MA was considered by the Tribunal and it was ordered on 23.06.2016 that applicant needs to file a separate OA for this prayer, if he is so advised.

5. The applicant pleads that Rule 9 (b) (iii) of the CCS (Pension) Rules stipulates that if a departmental enquiry, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, it cannot be initiated in respect of an event which took place more than 04 years before such initiation of departmental enquiry. The applicant pleads that the alleged incidents took place between 07.02.1992 to 26.10.1992 while he had superannuated on 31.07.1993 and the FIR was filed on 07.08.1997.



5.1 The applicant further pleads that even otherwise the said conviction by the trial court has been challenged by filing an appeal before the Hon'ble High Court of Orissa (Para 3 supra) and that appeal is still pending. Further, since the judicial proceedings have not been concluded, imposition of withholding of 100% monthly pension on permanent basis is not justified and he is required to be paid provisional pension in accordance with relevant rules. The applicant relies upon certain judgments by Hon'ble Supreme Court in this regard (para 8,9,10 & 11 below).

6. Applicant has sought relief to quash the punishment order dated 14.07.2015. Pending disposal of the OA, a prayer has also been made to stay the operation of this order.

7. The Counter-reply was filed by the respondent No.1 (Department of Telecom) on 07.09.2016 and by respondent No.2 (OTC/BSNL) on 26.09.2016. However, due to one reason or the other, the OA could not be taken up for



hearing earlier. Thereafter, the applicant filed an MA on 11.01.2021 to seek expeditious disposal of the OA. The OA was heard on 12.01.2021, 13.01.2021 and 15.01.2021 through Video Conferencing.

8. Applicant relied upon certain observations made by Hon'ble Apex Court in **Smt. Akhtari Bi. v. State of Madhya Pradesh**, [(2001) 4 SCC 355], wherein the Hon'ble Apex Court observed as under:

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Appeal being a statutory right, the trial court's verdict does not attain finality during pendency of the appeal and for that purpose his trial is deemed to be continuing despite conviction.”

It was pleaded that since the appeal against the conviction by the trial court is still pending before the Hon'ble High Court of Orissa, the applicant's case is of pending judicial proceedings and hence provisional pension payment needs to be continued.

9. In respect of non-conclusion of judicial proceedings in his case, the applicant drew



attention to a judgment by Hon'ble High Court of Karnataka titled **N.K.Suparna vs. Union of India**, ILR 2004 KAR 4628 decided on 23.09.2004 wherein specific attention was drawn to certain observations by the Hon'ble High Courts as under:

"7. Having heard the learned Counsel for the parties, the point that arises for decision is whether the entitlement of the petitioner to receive provisional pension in terms of Rule 69 of the Rules is limited to the pendency of the proceedings before the original Court or that entitlement continues till the finality is reached by way of appeal to this Court or further appeal to the Supreme Court.

8. In order to answer this point, it would be beneficial to first notice the provisions of Rule 69 of the Rules itself. Clause (b) of Sub-rule (1) of Rule 69 reads as follows:-

"69(1)(b):-

The provisional pension shall be authorised by the accounts officer during the period commencing from the date of retirement upto and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority."

The provision of Clause (b) is quite clear, plain, unambiguous and does not admit more than one meaning. Clause (b) in unmistakable terms directs that a delinquent employee will be entitled to provisional pension from the date of retirement upto and including the date on which the final order that may be made by the competent authority, after the conclusion of the departmental or judicial proceedings. The key words for our purpose are 'after the conclusion of departmental or judicial



proceedings'. The interpretation suggested by the learned CGSC for the department is not acceptable to us for more than one reason. It is well settled that the appeal is a continuation of the original proceedings. Since the petitioner being aggrieved by the judgment and order of the CBI Court has preferred appeal to this Court and the same is pending, we have to necessarily hold that the proceedings are pending. Undoubtedly, the pendency of the appeal in this Court is a judicial proceedings. It also needs to be noticed that the final order envisaged under Rule 9(1) of the Rules in terms of Clause (b) of Sub-rule (1) of Rule 69 of the Rules is required to be passed by the President of India only after the conclusion of the departmental or judicial proceedings. In the instant case, since the judicial proceedings, we mean the launching of the prosecution against the petitioner have not been concluded so far in terms of finality, the President of India invoking the power conferred upon him under sub-rule (1) of Rule 9 would not arise. Therefore, the impugned order passed by the President of India in the purported exercise of power under Rule 9(1) of the Rules should be condemned as one without authority of law inasmuch as the necessary condition to invoke that power did not exist as on the date of the impugned order nor does it exist as on today also.

9. This takes us to the next question whether the President of India is justified in forfeiting the gratuity payable to the petitioner? In terms of Clause (c) of Sub-rule (1) of Rule 69 of the Rules, the petitioner is not entitled to be paid gratuity inasmuch as judicial proceedings are pending and the petitioner has been convicted and sentenced by the original Court. However, we hasten to add that the President of India ought to have awaited the result of the appeal pending before this Court or in the event of further appeal to the Apex Court till the result of such appeal before passing final order in exercise of the power conferred upon him in Sub-rule (1) of Rule 9 of the Rules. Without awaiting for the finality of the proceedings,



the President of India has issued the order forfeiting the gratuity also. The only thing he could have done under the circumstances is that he ought to have deferred the payment of gratuity. We clarify this position and direct accordingly.

10. In the result and for the foregoing reasons, we cannot sustain the impugned order of the Tribunal.

i) Writ Petition is allowed and the impugned order of the Tribunal is set aside;

ii) Original Application is allowed in part and Annexure-A8 dated 17.7.2003 is set aside subject to the observations made above.

iii) The provisional pension withheld so far by the department to be paid to the petitioner forthwith.

No costs.”

It was thus pleaded that his Criminal Appeal is still pending and therefore matter is *sub judice* and as such he is entitled for payment of provisional pension, which is not being paid to him since July 2015 (para 8 supra).

10. The applicant further drew attention to another judgment by Hon’ble High Court of Punjab and Haryana titled **Union of India and another vs. Central Administrative Tribunal Chandigarh Bench, Chandigarh and another**, CWP No.982/2007 delivered on 19.11.2010



wherein the question considered by the Hon'ble Court and the decision thereof were based upon **N.K.Suparna's case** (para 9 supra). The relevant paras are reproduced below:

"8. The short question which arises for consideration in this petition is whether the criminal proceedings would be deemed to have concluded within the meaning of Rule 69 (1) (b) of the Rules when the trial Court has rendered its decision or it would attain finality after the decision of the appeals pending either before this court or before Hon'ble the Supreme Court. In such like situation the beneficial interpretation of piece of social legislation has always been preferred. Accordingly, the Division bench judgment of Karnataka High Court rendered in the case of N.K.Suparna (supra), on which reliance has been placed by the Tribunal, has taken the view that criminal proceedings would be deemed to be pending during the pendency of the appeals before the High Court or before Hon'ble the Supreme Court.

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10. With utmost respect we are in agreement with the view of the Division Bench of Karnataka High Court in N.K.Suparna's case (supra). We are also in agreement with the view taken by the Tribunal that the proceedings in appeal is continuation of the original proceedings and until and unless the appeal is decided, pendency of such proceedings in appeal would be deemed to be pending and Rule 69(1)(b) would continue to apply. For the aforesaid purpose the Tribunal has rightly placed reliance on the judgment of Hon'ble the Supreme Court rendered in the case of Smt. Akhtari Bi (supra).

11. We are also in agreement with the view taken by the Division Bench in N.K.Suparna's case (supra) with regard to payment of gratuity under sub-rule (1) of rule



9 of the Rules. The President should have awaited finality of the proceedings and should not have forfeited the gratuity. As best he could have deferred the payment of gratuity.

12. As a sequel to the above discussion, the writ petition filed by the Union of India is dismissed and order of the Tribunal is upheld. Since the order passed by the Tribunal was stayed on 22.1.2007, the petitioners are directed to release the provisional pension of the applicant-respondent No.2 expeditiously preferably within a period of two months from today.”

It was thus pleaded that he is entitled for payment of provisional pension.

11. Further, in regard to the need to continue payment of provisional pension when matter is *sub-judice*, reliance was also placed on a judgment dated 18.02.2020 by Hon’ble Apex Court in Civil Appeal No.1677-1678 of 2020 arising out of SLP (C) Nos. 4722-4723 of 2020, **Dr. Hira Lal v. State of Bihar**. The relevant parts of this judgment are reproduced below:

“1. The short issue which arises for consideration is whether the State of Bihar was justified in withholding 10% pension and full gratuity of the Appellant under Circulars dated 22.08.1974 and 31.10.194, and Government Resolution dated 31.07.1980, on the ground of pending criminal proceedings?



2. The Appellant was appointed to the post of Touring Veterinary Officer (TVO) at Pawana, Bihar by the Respondent- State. While the Appellant was in active service, he was made an accused in the Fodder Scam lodged by the CBI in RC Case No.48A/1996 wherein **a Charge-Sheet was filed against him on 21.11.2003. The Special Judge, CBI, Animal Husbandry took cognizance in the criminal case.** The Appellant was placed under suspension on 31.05.2002 under Rule 49(a) of the Civil Services (Classification, Control & Appeal) Rules, 1930, which were in force prior to the enforcement of the Bihar Government Servant (Classification, Control & Appeal) Rules, 2005. **The Appellant continued to remain under suspension till he attained the age of superannuation on 31.03.2008.**

3. **On attaining the age of superannuation, the State Government vide Order dated 17.09.2008 sanctioned payment of 90% of the provisional pension of the Appellant, and withheld 10% of the pension, entire gratuity, leave encashment and GPF on account of pending criminal proceedings.**

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5. **The Appellant inter alia contended that the Bihar Pension Rules, 1950 do not prohibit payment of full pension and gratuity to a retired Government servant against whom criminal proceedings were pending. Rule 43(b) of the Bihar Pension Rules is not applicable, until the delinquent employee is found to be guilty of grave misconduct in a departmental or judicial proceedings or to have caused pecuniary loss to the Government by misconduct or negligence. Consequently, Rule 43(b) would not be applicable during the pendency of criminal proceedings. Reliance was placed on the judgment of this Court in [State of Jharkhand and Ors. vs. Jitendra Kumar Srivastava and Ors.](#), wherein it has been that Rule 43(b) does not permit withholding of pension and gratuity when departmental or judicial proceedings are still pending. **It was further contended the Government Resolution dated 31.07.1980, being an executive instruction had no force of****



law, and could not take away the right to receive pension, which is recognised as a constitutional right under [Article 300A](#) of the Constitution.

6. The State of Bihar filed its Counter-Affidavit stating that a sum of Rs.12,78,711/- towards G.P.F and Rs.1,35,256/- towards leave encashment had since been paid to the Appellant on 15.01.2009 and 03.02.2009 respectively. **The State justified its stand on the basis of Circulars dated 22.08.1974 and 31.10.1974 issued by the Finance Department read with Government Resolution dated 31.07.1980, which lays down that if a government servant retires while under suspension, he will not be entitled to payment of full pension and gratuity, and at best, would be entitled to payment of 90% of the provisional pension till the conclusion of the departmental or judicial proceedings.** It further provided that no gratuity or death-cum- retirement gratuity would be payable until the conclusion of the said proceedings, and the issuance of final orders thereon.

7. The issue which remained for consideration was with respect to withholding payment of 10% of the pension and full amount of gratuity.

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9. Aggrieved by the Order of the Single Judge, the Appellant preferred an LPA, which was dismissed by a division bench of the High Court vide impugned Judgment & Order dated 21.03.2017. The division bench followed the judgment in [Vijay Kumar Mishra v. State of Bihar](#) on the interpretation of Rules 43(b) and (c) of the Bihar Pension Rules, and dismissed the LPA. **The division bench held that the Appellant would be required to await the outcome of the pending criminal case, before he becomes entitled to payment of 10% pension and full amount of gratuity, which had been withheld.**



The Review Petition preferred by the Appellant was dismissed as not pressed vide Order dated 23.08.2017.

10. Aggrieved by the judgment of the High Court, the Appellant has filed the present SLP before this Court.

We have heard learned counsel for the parties, and have considered the submissions made on their behalf.

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13.1 In our considered view, the Circulars dated 22.08.1974 and 31.10.1974, and Government Resolution No. 3104 dated 31.07.1980, were merely administrative instructions/executive orders. They were not issued in exercise of the power under [Article 309](#) of the Constitution and cannot be said to have the force of law.

The Government Resolution dated 31.07.1980 came up for consideration before this Court in [State of Jharkhand and Ors. vs. Jitendra Kumar Srivastava and Ors.](#)³. After considering Rule 43(b) of the Bihar Pension Rules and Government Resolution No. 3104 dated 31.07.1980, this Court held that the State had no authority or power to withhold the full amount of pension or gratuity of a Government servant during the pendency (2013) 12 SCC 210 of judicial or departmental proceedings. This Court held that:

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14.A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in [Article 300A](#) of the Constitution. It follows that attempt of the Appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.

15. It hardly needs to be emphasized that the executive instructions are not having statutory character and, therefore, cannot



be termed as "law" within the meaning of aforesaid [Article 300A](#). On the basis of such a circular, which is not having force of law, the Appellant cannot withhold-even a part of pension or gratuity. As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different.” [emphasis supplied] It was held that pension is ‘property’ within the meaning of [Article 300A](#) of the Constitution, and executive instructions which do not have any statutory sanction cannot be termed as "law" within the meaning of [Article 300A](#). It was further held that in the absence of statutory rules permitting withholding of pension or gratuity, the State could not do so by way of executive instructions. **It was observed that “So far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different”.**

13.2 The position has however changed with the amendment to the Bihar Pension Rules on 19.07.2012 by the Governor of Bihar in exercise of the powers under [Article 309](#) of the Constitution, whereby Clause (c) has been inserted in Rule 43, which reads as follows:

“(c) Where the departmental proceeding or judicial proceeding, in which the prosecution has been sanctioned against such servant, initiated during the service period of the government servant, is not concluded till the retirement of the government servant, the amount of provisional pension shall be less than the maximum admissible amount of pension but shall in no case be less than 90% (ninety percent).”

13.3 Rule 43 (c) provides that where a departmental proceeding or judicial proceeding is initiated during the service period of a Government servant, and



prosecution had been sanctioned but not concluded till superannuation, the provisional pension payable shall be less than the maximum admissible amount, but shall in no case be less than 90%.

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14. In view of the above, we hold that the Respondent-State was unjustified in withholding 10% pension of the Appellant under administrative Circulars dated 22.08.1974 and 31.10.1974, and Government Resolution No. 3104 dated 31.07.1980 after the Appellant had superannuated on 31.03.2008.

We direct that 10% of the pension amount which had been withheld after superannuation on 31.03.2008 till 19.07.2012 is liable to be paid to the Appellant within a period of 12 weeks from the date of this Judgment.

After Rule 43(c) was inserted in the Bihar Pension Rules and brought into force on 19.07.2012, the State is empowered to legally withhold 10% of the pension amount of the Appellant, till the criminal proceedings in R.C. Case No. 48A/1996 are concluded. Consequently, the State will deduct 10% from the pension amount w.e.f. 19.07.2012 subject to the outcome of the criminal proceedings."

(Emphasis Supplied).

It was pleaded that since judicial proceedings are still not concluded, given that appeal is pending before Hon'ble High Court of Orissa, the applicant is required to be paid provisional pension, as was held in above case.



12. *Per contra*, the respondents opposed the OA. It was pleaded that the impugned order dated 14.07.2015 has been issued by the competent authority in accordance with relevant statutory rules and instructions on the subject and after due consultation with the UPSC. The applicant was also extended the opportunity of perusing UPSC advice and submit his defence, which was duly availed and this defence was also taken into account by the respondents while imposing the punishment on 14.07.2015 (Para 4 supra). Further, the punishment has been imposed as a result of follow up action after his conviction by the competent criminal court of law (Para 2 supra).

13. In regard to the plea for treating the applicant's case as that of continuation of judicial proceedings, by way of appeal before the Hon'ble High Court against the conviction by the trial court, the respondents pleaded that the observations made by the Hon'ble Apex Court in



Smt. Akhtari Bi (Para 8 supra) were relied upon by one petitioner in another case, namely, **K.C. Sareen v. CBI, Chandigarh**, (2001) 6 SCC 584, wherein the Hon'ble Apex Court has observed as under:

“Shri Vikram Chaudhary, learned counsel for the appellant repeated before us those grounds and further submitted that as a trial can logically reach its final end only when the appellate court decides the matter the conviction passed by the trial court cannot be treated as having become absolute. He made an endeavour to draw support for the said proposition from the following observations made by this Court in Smt. Akhtari Bi vs. State of M.P. {2001 (4) SCC 355}:

Appeal being a statutory right, the trial courts verdict does not attain finality during pendency of the appeal and for that purpose his trial is deemed to be continuing despite conviction.

By the said observation this Court did not mean that the conviction and sentence passed by the trial court would remain in limbo automatically when they are challenged in appeal. The said observation was made in a different context altogether when notice of the executive government was drawn to the need to appoint requisite number of judges to cope up with the increased pressure on the existing judicial apparatus, and for highlighting the consequences of non-filling existing vacancies of judges in the High Courts. We are unable to appreciate how the said observation can be culled out of the said context for the purpose of using it in a different context altogether such as this where the convicted accused is seeking



to have an order of conviction suspended during the pendency of the appeal.

Section 389(1) of the Code of Criminal Procedure (for short the Code) deals with the powers of the appellate court regarding suspension of execution of the sentence or order appealed against during the pendency of the appeal. It must be remembered that the same powers are invocable by the revisional court also during the pendency of the revision, (vide Section 401 of the Code). **That is obviously not a reason for holding that the trial of the case could reach its culmination only when the revisional proceedings end.**

A three Judge Bench of this Court have elaborately considered the scope and ambit of the powers of the appellate court envisaged in Section 389 of the Code. Vide Rama Narang vs. Ramesh Naraang & ors. {1995 (2) SCC 513}. Ahmadi, CJ, who authored the judgment for the Bench said that what can be suspended under Section 389(1) of the Code is the execution of the sentence or execution of the order and obviously the order referred to in the sub-section must be an order which is capable of execution. Learned Chief Justice then observed thus:

An order of conviction by itself is not capable of execution under the Code. It is the order of sentence or an order awarding compensation or imposing fine or release on probation which are capable of execution and which, if not suspended, would be required to be executed by the authorities. Since the order of conviction does not on the mere filing of an appeal disappear it is difficult to accept the submission that Section 267 of the Companies Act must be read to apply only to a final order of conviction. Such an interpretation may defeat the very object and purpose for which it came to be enacted.



Nevertheless, the three Judge bench further stated that in certain situation the order of conviction can be executable and in such a case the power under [Section 389\(1\)](#) of the Code could be invoked. The ratio of the judgment can be traced out in the said paragraph which is extracted below:

In certain situations the order of conviction can be executable, in the sense it may incur a disqualification as in the instant case. In such a case the power under [Section 389\(1\)](#) of the Code could be invoked. In such situations the attention of the appellate court must be specifically invited to the consequences which are likely to fall to enable it to apply its mind to the issue since under [Section 389\(1\)](#) it is under an obligation to support its order for reasons to be recorded by it in writing. If the attention of the Court is not invited to this specific consequence which is likely to fall upon conviction how can it be expected to assign reasons relevant thereto? No one can be allowed to play hide and seek with the Court; he cannot suppress the precise purpose for which he seeks suspension of the conviction and obtain a general order of stay and then contend that the disqualification has ceased to operate.

The legal position, therefore, is this: Though the power to suspend an order of conviction, apart from the order of sentence, is not alien to [Section 389\(1\)](#) of the Code, its exercise should be limited to very exceptional cases. Merely because the convicted person files an appeal in challenge of the conviction the court should not suspend the operation of the order of conviction. The court has a duty to look at all aspects including the ramifications of keeping such conviction in abeyance. It is in the light of the above legal position that we have to examine the question as to what should be the position when a public servant is convicted of an



offence under the [PC Act](#). **No doubt when the appellate court admits the appeal filed in challenge of the conviction and sentence for the offence under the [PC Act](#), the superior court should normally suspend the sentence of imprisonment until disposal of the appeal, because refusal thereof would render the very appeal otiose unless such appeal could be heard soon after the filing of the appeal. But suspension of conviction of the offence under the [PC Act](#), de hors the sentence of imprisonment as a sequel thereto, is a different matter.**

Corruption by public servants has now reached a monstrous dimension in India. Its tentacles have started grappling even the institutions created for the protection of the republic. Unless those tentacles are intercepted and impeded from gripping the normal and orderly functioning of the public offices, through strong legislative, executive as well as judicial exercises the corrupt public servants could even paralyse the functioning of such institutions and thereby hinder the democratic polity. Proliferation of corrupt public servants could garner momentum to cripple the social order if such men are allowed to continue to manage and operate public institutions. **When a public servant was found guilty of corruption after a judicial adjudicatory process conducted by a court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior court. The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings.** If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction it is public interest which suffers and sometimes even irreparably. When a



public servant who is convicted of corruption is allowed to continue to hold public office it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction the fall out would be one of shaking the system itself. **Hence it is necessary that the court should not aid the public servant who stands convicted for corruption charges to hold only public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level. It is a different matter if a corrupt public officer could continue to hold such public office even without the help of a court order suspending the conviction.**

The above policy can be acknowledged as necessary for the efficacy and proper functioning of public offices. If so, the legal position can be laid down that when conviction is on a corruption charge against a public servant the appellate court or the revisional court should not suspend the order of conviction during the pendency of the appeal even if the sentence of imprisonment is suspended. It would be a sublime public policy that the convicted public servant is kept under disability of the conviction in spite of keeping the sentence of imprisonment in abeyance till the disposal of the appeal or revision.

We are fortified in holding so by two other decisions of this Court. One is [Deputy Director of Collegiate Education vs. S. Nagoor Meera](#) {1995 (3) SCC 377}. The following observations of this Court are apposite now:



The more appropriate course in all such cases is to take action under clause (a) of the second proviso to [Article 311\(2\)](#) once a government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be. If, however, the government servant accused is acquitted on appeal or other proceeding, the order can always be revised and if the government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to, had he continued in service. The other course suggested, viz., to wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a criminal court.

The other decision is [State of Tamil Nadu vs. A Jaganathan](#) {1996 (5) SCC 329} which deals with the case of some public servants who were convicted, inter alia, of corruption charges. When the appeal, filed by such public servants, was dismissed the High Court entertained a revision and ordered suspension of the sentence as well as the order of conviction, in exercise of the powers under [Section 389\(1\)](#) of the Code, taking cue from the ratio laid down in [Rama Narang vs. Ramesh Narang](#) (supra). But when the State moved this Court against the order of suspension of conviction a two Judge Bench of this Court interfered with it and set aside the order by remarking that in such cases the discretionary power to order suspension of conviction either under [Section 389\(1\)](#) or even under [Section 482](#) of the Code should not have been exercised.

We therefore dismiss this appeal. However, we wish to state that it is open to the appellant to move the High Court for early hearing. If the High Court is satisfied that the appellant has a reasonably good prospect of being exonerated or that there is any other



special reason we hope that the High Court would board the appeal for hearing on an early date.”

(Emphasis supplied)

It was pleaded that once the trial court has convicted an employee, the State has an obligation as well as the authority to take a view as regards the punishment, which includes cut in pension to any extent and pendency of appeal before the Hon'ble High Court, cannot be said to be continuation judicial proceedings in the context of punishment by the department and especially so as has been observed by the Hon'ble Apex Court themselves, as brought out above.

14. In regard to the observations made in **N.K. Suparna** (Para 9 supra) by Hon'ble High Court of Karnataka and denial of provisional pension in the instant case after conviction by the trial court even though appeal was pending before the Hon'ble High Court, the respondents relied upon a decision by the Hon'ble High Court of Delhi on



26.11.2018 in **P.C. Mishra, DANICS v. UOI** in WPC No.12470/2018.

In regard to this case of **P.C. Mishra DANICS v. UOI**, it is brought out that petitioner therein was working as a Selection Grade Officer of NCT of Delhi in DANICS. A criminal case No. 31/2008 was instituted against him by the CBI on the allegation that he had demanded and received bribe while working as Assistant Commissioner, Sales Tax Department. The Court of the Special Judge-IV (PC Act), CBI, Tis Hazari convicted the petitioner for the offence punishable under Section 7 and 13 (1) (d) of the Prevention of Corruption Act and sentenced him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.10,000/-. He was convicted by the trial court by judgment dated 24.05.2010 and he was sentenced, as aforesaid, on 26.05.2010. He attained the age of superannuation on 30.06.2010, i.e., after his conviction. Upon his superannuation, provisional



pension was sanctioned in favour of the petitioner on 14.12.2010 under Rule 69 of the Pension Rules.

The appointing authority initially passed an order dated 02.02.2012 imposing a punishment of withholding 100% pension and forfeiture of gratuity. The petitioner was aggrieved by the same and preferred OA No.1175/2012 before Principal Bench of this Tribunal. The OA was dismissed on 13.09.2013. The operative para of this order reads as under:

“30. In view of our above discussion, we are very clear in our opinion that Rule 41 and Rule 9 are two different rules. We are also of the view that the applicant has not been able to establish his case for grant of continued provisional pension for the reasons that we have discussed above. Original Application thus stands dismissed leaving the parties to bear their own costs. We leave it open, at the same time, to the applicant to apply for compensate allowance u/r 41 of the CCS (Pension) Rules, 1972 which the respondent authorities may consider on its merits.”

The petitioner was not satisfied with the order passed by the Tribunal and preferred a WP(C) No.6509/2013 before Hon'ble High Court of Delhi. During pendency of the Writ Petition, the



appointing authority withdrew the order dated 02.02.2012. After issuance of SCN to the petitioner, a fresh order dated 19.01.2016 was passed and consequently this Writ Petition was disposed of on 18.05.2016 with liberty to the petitioner to challenge the order dated 19.01.2016.

Thereafter the petitioner preferred OA No.712/2016 which was dismissed vide order dated 15.10.2018. Aggrieved with the said order, the petitioner preferred Writ Petition No.12470/2018, which was disposed of vide orders dated 26.11.2018.

In regard to the observations made in **N.K. Suparna** (Para 9 supra) by Hon'ble High Court of Karnataka, the Hon'ble High of Delhi has held as under in this WP(C) No.12470/2018:

“29. In N.K. Suparna (supra), the petitioner retired on attaining the age of superannuation while being prosecuted before the Special CBI Court in a corruption case. The petitioner stood convicted and sentenced on the corruption charge on 31.12.2001 i.e. one month before attaining the age of superannuation. The petitioner's appeal before the High Court against the conviction and sentence was



preferred and was pending, wherein the sentence awarded to her was suspended. The President of India invoked his power under Rule 9(1) of the Pension Rules and forfeited the pension and gratuity payable to her. The petitioner N.K. Suparna raised a similar plea, that since the criminal appeal was pending, the judicial proceedings have not come to an end and the criminal appeal was a continuation of the trial. The Karnataka High Court interpreted clause (b) of Rule 69(1) of the CCS Pension Rules to mean that a delinquent employee would be entitled to provisional pension from the date of retirement upto and including the date on which the final order may be made by the competent authority after conclusion of departmental or judicial proceedings. The words "after conclusion of departmental or judicial proceedings" were interpreted as conclusion of the appellate proceedings and not the original proceedings on the premise that an appeal is a continuation of the original proceedings. The Division Bench held that the final order envisaged under Rule 9(1) of the CCS Pension Rules - in terms of clause (b) of sub rule (1) of Rule 69, would require to be passed by the President only after the conclusion of the departmental or judicial proceedings. The Division Bench observed:

"8. ... In the instant case, since the judicial proceedings, we mean the launching of the prosecution against the petitioner have not been concluded so far in terms of finality, the President of India invoking the power conferred upon him under sub-rule (1) of Rule 9 would not arise. Therefore, the impugned order passed by the President of India in the purported exercise of power under Rule 9(1) of the Rules should be condemned as one without authority of law inasmuch as the necessary condition to invoke that power did not exist as on the date of the impugned order nor does it exist as on today also".

30. The decision in N.K. Suparna (supra) was assailed before the Supreme Court. The SLP was, however, withdrawn by the petitioner on 20.08.2008. Thus, the issue



decided by the Karnataka High Court in N.K. Suparna (supra) has not received the seal of approval of the Supreme Court.

31. Having given our anxious consideration to the matter, we cannot persuade ourselves to agree with the view taken by the Karnataka High Court in N.K. Suparna (supra). Under clause (b) of Rule 69(1), the relevant expression used is "from the date of retirement upto and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority". Pertinently, while making the said rule by resort to proviso to [Article 309](#) of the Constitution of India, the President uses the expression "final" only once i.e. in relation to orders which are passed by the competent authority. However, no such word or expression is used before the word "conclusion of departmental or judicial proceedings". If the intendment of the President - while framing the said rule was to release provisional pension to the government servant upto the date of "final" conclusion of departmental or judicial proceedings, the President would have used the said expression "final" before the words "conclusion of departmental or judicial proceedings", just as he used the expression "final" in respect of the orders to be passed by the competent authority. **Thus, the plain grammatical and literal interpretation of clause (b) of Rule 69(1) does not support the interpretation that the conclusion of departmental or judicial proceedings means the "final" conclusion of departmental or judicial proceedings.**

32. Rule 69(2), inter alia, provides that no recovery shall be made from the provisional pension after the conclusion of the proceedings if the pension finally sanctioned is less than the provisional pension, or the pension is reduced or withheld either permanently, or for a specified period. Thus, whatever is released by way of provisional pension to the government is not secured or recoverable from him. Rule 69(1)(a) provides that the provisional pension shall be equal to



the maximum pension which would have been admissible on the basis of the qualifying service of the government servant. Thus, if the interpretation sought to be advanced by the petitioner were to be accepted, it would mean that the government would have to pay - month after month, the provisional pension, which - in most cases would be equal to the full pension, even though the government servant stands convicted by the Trial Court of conduct which tantamount to a serious and grave misconduct, merely because his criminal appeal is pending before the higher Court. This could not have been the intendment of the President while framing either Rule 69(1)(b), or Rule 9(1) of the Pension Rules.

33. The decision in the appeal may not come for years for myriad reasons. Firstly, the heavy pendency of criminal appeals would come in the way of disposal of the appeal on an early date. Secondly, even the Government servant/ appellant may seek adjournments to delay the disposal of the appeal.

Is it to be accepted that a government servant - who stands convicted of a corruption charge before a criminal Court, should continue to receive provisional pension, just as good as the full pension, only on account of pendency of his criminal appeal? In our view, the answer to this question has to be an emphatic "No".

34. If the interpretation of the petitioner were to be accepted, the conviction would not attain finality even for purposes of Rule 19 of the CCS (CCA) Rules, or Rule 9 of the Pension Rules even after dismissal of the Criminal Appeal, because the petitioner would still have a right to prefer a Special Leave Petition under [Article 136](#) of the Constitution of India before the Supreme Court. There would be no end to this process as the petitioner could file one petition after another and seek review, recall, or even file a curative petition. Pertinently, the conviction of the petitioner has not been stayed by the appellate court



and only his sentence has been suspended. Therefore, for all purposes, he is a convict. To permit such a convict to draw provisional pension - which in most cases would be equal to the full pension, would be to make a mockery of the law. The same would mean that despite his conviction by the criminal court involving a serious and grave case of misconduct, he would get away without any adversity, and would continue to remain a burden on the State. **Thus, in our view, for purposes of Rules 9(1) and 69(1)(b) of the Pension Rules, the judicial proceedings have attained conclusion upon the conviction of the petitioner by the trial Court, and the competent authority is entitled to pass final orders for withdrawing the whole or part of the pension permanently or for a specified period; for forfeiture of the Gratuity, and; for ordering recovery of the pecuniary loss caused to the government due to the grave misconduct established in the judicial proceedings.**

35. The decision in K.C. Sareen (supra) was not brought to the notice of the Karnataka High Court when it decided N.K. Suparna (supra). The Punjab & Haryana High Court in Central Administrative Tribunal, Chandigarh Bench (supra), primarily, relies upon N.K. Suparna (supra) and Akhtari Bi (supra). Unfortunately, the decision of the Supreme Court in K.C. Sareen (supra) was not noticed even by the Punjab and Haryana High Court Bench while rendering its decision.

36. In V.K. Bhasker (supra), the respondent employee had been dismissed from service by resort to Rule 19(i) of the CCS (CCA) Rules consequent upon his conviction in the corruption case. He assailed his dismissal from service on the ground that his criminal appeal was pending. The tribunal allowed the O.A. of the respondent on the premise that his appeal against his conviction and sentence was pending. The Supreme Court set aside the said order by, inter alia, observing:



"5. The Tribunal was, therefore, not right in holding that the respondent could not be dismissed by invoking the provision of Rule 19(i) of the Rules because the appeal filed by him against the conviction and sentence is pending in the High Court".

(Emphasis supplied)

15. The respondents also relied upon another decision by Hon'ble High Court of Delhi dated 07.12.2018 in WP (C) No. 13056/2018, **S.P.Mishra vs. UOI**. In this case, the petitioner was convicted under PCA-1988 and he preferred an appeal before Hon'ble High Court which was pending. The department issued a SCN and imposed the punishment of 100% cut in pension on permanent basis. This grievance was ventilated in OA No.541/2016. The OA was dismissed on 16.10.2018 relying on judgment dated 13.09.2013 in OA No.1175/2012 (para 14 supra). Operative para of this order in OA No.541/2016, reads as under:

"17. This Tribunal is in full agreement with the reasoning given by another bench of Tribunal, reproduced in para 15 above. The ratio applies to this instant case also. Grant of provisional pension in this case will go

against the very intent of relevant legislation.
Hence no such relief can be given.”



This was challenged before Hon'ble High Court of Delhi in WP (C) No.13056/2018. The Hon'ble High Court relied extensively on their earlier decision in **P.C.Mishra** case (Para 14 supra) and concluded as under:

“10. Thus, in view of our judgment in P.C. Misra (Supra), **we are of the view that for purpose of passing orders under Rule 19 (i) of the CCS (CCA) Rules, or Rule 9 of the Pension Rules - as the case may be, the conviction of the government servant in respect of an offence which also tantamount to misconduct, is sufficient, and the pendency of the criminal appeal before the appellate Court is not an impediment to passing of an order under the above provisions.** Mere filing of an appeal against conviction does not automatically stay the conviction.

11. In these circumstances, we find absolutely no merit in this petition. The same is, accordingly, dismissed.

(Emphasis supplied)

16. The respondents also relied upon a judgment dated 16.10.2019 in OA-367/2017, by Jodhpur Bench of the Tribunal in **Pritam Singh v. UOI**. The OA was decided relying upon the judgment in **P.C. Mishra** (para 14 supra) by

Hon'ble High Court of Delhi. The Tribunal
decided as under:



“12. So far as release of provisional pension, DCRG and Leave Encashment is concerned, I find no merit in the contention of the applicant in view of the ratio decided by the Hon'ble Delhi High Court in the case of [P.C.Mishra vs. Union of India](#) vide judgment dated 26.11.2018 wherein while dealing with a similar controversy the Hon'ble Delhi High Court has also dealt with the ratio decided by the Hon'ble Apex Court in various judgments on the issue and also the ratio of the Hon'ble Karnataka High Court in the case of [N.K.Suparna vs. Union of India and Ors.](#) on which reliance has been placed by the applicant. ...

Xxx xxx xxx

14. In view of above discussions, I find no merit in this OA and the same is liable to be dismissed, which is accordingly dismissed. However, in case the applicant succeeds in criminal appeal pending before the Hon'ble High Court, his claim for pension and other dues, which have been denied 22 to him by virtue of the order dated 16.06.20004, would need reconsideration. No order as to costs.”

17. In regard to the judgment by the Hon'ble Apex Court, relied upon by the applicant, in **Hira Lal v. State of Bihar** (Para 11 supra), it was pleaded that in this case the State ordered for payment of provisional pension at 90% of the full pension, based on circulars dated 22.08.1974, 31.10.1994 and Govt. Resolution dated



31.07.1980 on the ground that criminal proceedings were pending in trial court. The statutory provisions to release provisional pension, pending judicial proceedings, was enacted much later on 19.07.2012.

In this case, the proceedings in trial court were still not finalized at that time. It was under such circumstances and in absence of statutory provisions, that Hon'ble Apex Court ordered for payment of full pension from the date of retirement to the date of statutory enactment on 19.07.2012 and for payment of provisional pension in the period 19.07.2012 onwards when statutory provision was enacted.

As against this, in the instant case the trial court had already convicted the applicant. It was only thereafter that withholding of 100% of monthly pension on permanent basis was ordered on 14.07.2015. This punishment is in accordance with CCS (Pension) Rules, which are admittedly and statutorily applicable. Reliance on **Dr. Hira**



Lal (Para 11 supra) is, therefore, of no help to the applicant.

18. The matter has been heard at length. Sh. H.K.Mund, learned counsel, represented the applicant and Sh. A.C.Deo and Sh. L. Jena, learned counsel represented the respondents.

19. In instant case, it comes out that applicant retired on 31.07.1993. Thereafter, on certain incidents of 07.02.1992 to 26.10.1992 an FIR was lodged on 07.08.1997. A criminal charge-sheet was filed by the CBI on 17.09.1999 alleging that action by the applicant led to a loss of Rs.2.8 crores to the department. The applicant was convicted vide order dated 24.12.2012.

It was thereafter that a SCN for withholding of 100% of monthly pension on permanent basis was issued on 22.08.2013. The applicant submitted his defence on 24.10.2013. Thereafter, the matter was referred to UPSC for their advice. The applicant was supplied with this advice by the UPSC to offer his defence which was submitted on



25.05.2015. It was only thereafter that Hon'ble President imposed the penalty of "withholding of 100% of the monthly pension, otherwise admissible to CO, on permanent basis".

It is also to be recalled here that departmental proceedings were also initiated for these alleged incidents on 24.11.1993 and were concluded on 23.04.1996.

20. The charges levelled against the applicant are grave and he has been given full opportunity to defend himself and this opportunity was availed also by him. It is on conclusion of this process and in keeping with the statutory rules on the subject that punishment was imposed by an authority who is otherwise competent. This action on the part of the respondents cannot be faulted.

21. The pleas made by applicant in para 5 supra, are devoid of merit in facts and circumstances of this case as brought out above.



22. The plea of the applicant that since conviction by the trial court has been challenged before the Hon'ble High Court of Orissa and still pending, the judicial proceedings cannot be said to have been concluded and thus the applicant needs to be paid provisional pension, is not acceptable in view of the observation and adjudication made by the Hon'ble Apex Court (para 13 supra).

Subsequently, this decision was relied upon by Hon'ble High Court of Delhi in two other cases (Para 14 & 15 supra) and by Jodhpur Bench of Tribunal (para 16 supra).

In view of foregoing, this pendency of appeal before the Hon'ble High Court of Orissa, cannot have any effect on the punishment of withholding of 100% of monthly pension on permanent basis, which is imposed under the relevant rules.

23. The case of **Dr. Hira Lal vs. Govt. of Bihar** relied upon by applicant (Para 11 supra), is



of no help to him as the circumstances of instant case are entirely different. In **Dr. Hira Lal** case, the judicial proceedings were still not concluded by the trial court and hence payment of provisional pension was ordered. As against this, in instant case, the trial court has convicted the applicant and it is only the appeal against this conviction which is pending in Hon'ble High Court.

In the present case, the operation of the sentence has been stayed by the Appellate Court but there has been no suspension of the conviction of the applicant. Under such circumstances, in keeping with the observations of Hon'ble Apex Court (para 13 supra) and Hon'ble High Court of Delhi (para 14 supra), the pendency of judicial proceedings in Hon'ble High Court, cannot have any effect on the decision taken by respondents, which is in accordance with statutory provisions, following conviction by trial court. This aspect has been unambiguously made clear by Hon'ble Apex Court themselves (Para 13



supra) which in turn was relied upon by Hon'ble High Court of Delhi (Para 14 & 15 supra) and by Jodhpur Bench (para 16 supra).

The reliance on **N.K.Suparna's** case (Para 9 supra) is also of no help to applicant, in view of unambiguous views expressed by Hon'ble High Court of Delhi (Para 14 supra).

24. In view of foregoing, there is no merit in the OA and accordingly same is dismissed. No order as to costs.

25. It is, however, observed that depending upon the outcome of the pending Criminal Appeal before the Hon'ble High Court of Orissa, the applicant shall have liberty to seek his remedies in accordance with law.

(Swarup Kumar Mishra)
Member (J)

(Pradeep Kumar)
Member (A)

‘San.’