

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 833/86      1986  
T.A. No.

DATE OF DECISION 20.7.1988

Shri M.L. Malik

Petitioner

Shri G.R. Matta

Advocate for the Petitioner(s)

Versus

Lt. Governor, Delhi

Respondent

Smt. Avinash Ahlawat

Advocate for the Respondent(s)

**CORAM :**

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judicial)

The Hon'ble Mr. S.P. Mukerji, 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*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*

*S.P.M.*  
(S.P. Mukerji)  
Administrative Member

*P.K.K.*  
(P.K. Kartha)  
Vice-Chairman (Judl.)

(a)

Central Administrative Tribunal  
Principal Bench, New Delhi

Regn. No. OA-833/86

Date: 20.7.1988

Shri M.L. Malik .... Applicant

Versus

Lt. Governor, Delhi & .... Respondents  
Another

For the Applicant .... Shri G.R. Matta, Advocate.

For the Respondents .... Smt. Avnish Ahlawat,  
Advocate.

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman(Judl.)  
Hon'ble Shri S.P. Mukerji, Administrative Member.

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

The applicant, who retired from the Delhi Administra-  
tion from the post of Joint Director(Enforcement) in the  
Directorate of Transport on attaining the age of supera-  
nnuation on 30th November, 1985, filed this application  
under Section 19 of the Administrative Tribunals Act,  
1985, praying that the respondents should be directed to  
sanction and pay to him full pension, commutation of  
pension and gratuity admissible under the rules. He has  
also prayed that the respondents should be directed to  
pay interest at the rate of 18 per cent per annum on the  
amounts due to him.

2. The applicant has served the Government for more  
than 37 years in various capacities. While he was working  
as Joint Director (Enforcement), Shri J.S. Waraich, Deputy  
Supdt. of Police of the Special Police Enforcement, raided  
the office of the applicant. According to the applicant,  
the Deputy Supdt. of Police forcibly planted in the

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applicant's pocket currency notes of Rs.500/- and thereafter falsely conducted the further proceedings. It has been alleged that one, Shri Jaswinder Singh, resident of 1680, Kotla Mubarakpur, New Delhi, had sent a written complaint to the Delhi Branch of the Special Police Enforcement on 18.11.1985 stating that the applicant demanded on 15.11.1985 from him an illegal gratification of Rs.500/- for condoning the period of Learner's Driving Licence. The applicant was not placed under suspension but continued to discharge his duties and responsibilities upto the date of his retirement. On 15.7.1986, the S.P.(E) filed the charge-sheet in the Court of the Sp.Judge, Delhi, who thereafter took cognizance of the alleged offence.

3. The applicant has stated that no judicial or departmental proceedings were instituted or <sup>were</sup> pending on the date of his retirement and, therefore, he became entitled to the grant of full pension, gratuity and other pensionary benefits, according to rules. The respondents have only given to him provisional pension.

4. The respondents have stated in their counter-affidavit that the applicant submitted pension papers on 16.9.1985. The pension case of the applicant was processed by them but due to the fact that a case under Section 161 I.P.C. was registered on 18.11.1985, his pension case could not be finalised. However, provisional pension has been sanctioned to him vide letter dated 10.11.1986. Final pension and D.C.R.G. will be sanctioned after the finalisation of the C.B.I. case pending against the applicant.

5. The respondents have admitted in their counter-affidavit that a criminal case was registered by the C.B.I. against the applicant in R.C. 72/85/DLI/CIU(F) under Section 161 I.P.C. in the C.B.I. GOW Branch, New Delhi, on 18.11.1985 and a charge-sheet was filed against the applicant on 15.7.1986 and that the case is still pending.

6. We have carefully gone through the records of the case and heard the learned counsel for both the parties. The short point for consideration is whether payment of full pension, commuted pension and gratuity could be withheld in the facts and circumstances of the present case.

7. Rule 9 of the Central Civil Services(Pension) Rules, 1972 deals with the right of the President to withhold or withdraw pension. Sub-Rule(1) of Rule 9 provides that "the President reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specific period and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement." Sub-rule(3) provides that "no judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of an event which took place, more than 4 years before such institution." Sub-rule (4) stipulates that "in the case of Government servant

who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule(2), a provisional pension as provided in Rule 69, shall be sanctioned."

8. Rule 69 of the C.C.S.(Pension) Rules, deals with the payment of provisional pension where departmental or judicial proceedings may be pending. The provisional pension may be equal to the maximum pension which would have been admissible on the basis of qualifying service upto the date of retirement of the Government servant.

It shall be authorised by the Accounts Officer during the period <sup>or</sup> 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.

9. As regards the gratuity, it has been provided in Rule 69(1)(c) that no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.

10. Sub-rule(6) of Rule 9 provides as to when judicial proceedings shall be deemed to have been instituted. Sub-rule(6) (b) reads as follows:-

"For the purpose of this rule.....,

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

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognisance, is made, ...."

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11. The learned counsel for the applicant contended that criminal proceedings shall be deemed to be instituted only when the charge-sheet was ~~was~~ filed in the criminal court. The learned counsel for the respondents contended that the date of registration of the First Information Report (F.I.R.), would be the date on which the judicial proceedings shall be deemed to be instituted. The Court

12. In this context, it may be pointed out that the Criminal Procedure Code, 1974 (hereinafter referred to as the 'Code') does not define the expressions 'FIR', or 'charge-sheet'. Section 190 of the Code deals with cognizance of offences by magistrates. Sub-section(1) of Section 190 provides that subject to the provisions of this Chapter (Chapter XIII), any Magistrate of the 1st Class and any Magistrate of the Second Class specially empowered in this behalf under Sub-section(2), may take cognizance of any offence - (a) upon receiving a complaint of facts which constitute such offence; (b) upon a Police report of such facts; (c) upon the information received from any person other than a Police Officer or upon his ~~or~~ knowledge of own ~~or~~ that such offence has been committed.

13. Clause (b) mentioned above which is relevant to the instant case, refers to 'Police report'. The expression 'Police report' has been defined in Section 2(b) of the Code to mean a report forwarded by a Police Officer to a Magistrate under Sub-Section (2) of Section 173.

14. Sub-section (2) of Section 173 provides that as soon as investigation is completed, the Officer in charge of the Police Station shall forward to a Magistrate empowered to take cognizance of the offence on a Police

report, a report in the form prescribed by the State Government stating -

- (a) the names of the parties;
- (b) the nature of the information;
- (c) the names of the persons who appear to be acquainted with the circumstances of the case;
- (d) whether any offence appears to have been committed, and if so, by whom;
- (e) whether the accused has been arrested; ~~his~~ ~~or~~
- (f) whether he has been released on/bond, and if so, whether with or without sureties; and
- (g) whether he has been forwarded in custody under Section 170.

Sections 154 to 176 deal with information to the Police and, their powers to investigate. Section 154 deals with information relating to the commission of a cognizable offence and procedure to be followed in respect of the same. This Section deals with what is known as the First Information Report (FIR). The object of FIR from the point of view of the informant is to set the criminal law in motion and from the point of view of the investigating authorities is to obtain information about the alleged criminal activity so as to be able to take suitable steps for pressing and bringing to book the guilty party. Section 155 deals with information in respect of non-cognisable offences. Section 156 authorises a Police Officer in charge of a Police Station to investigate any cognizable case without the order of a Magistrate. Section 169 authorises a Police Officer to release a person from

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custody on his executing a bond to appear, if and when so required, before a Magistrate empowered to take cognisance of the offence on a Police report and to try the accused or commit him for trial. Section 170 empowers the officer in charge of a Police Station after investigation and if it appears to him that there is sufficient evidence, to forward the accused, under custody to a competent Magistrate, or to take security from the accused for his appearance before the Magistrate, in cases where the offence is bailable.

15. Referring to the aforesaid provisions in the Code, the Supreme Court has observed in Abhinandan Jha Vs. Dinesh Mishra, A.I.R. 1968 S.C. 117 on 122 as follows:-

"It will be seen that the Code, as such, does not use the expression 'charge-sheet' or 'final report'. But it is understood in the Police Manual containing Rules and Regulations, that a report by the police, filed under section 170 of the Code, is referred to as a 'charge-sheet'. But in respect of the reports sent under section 169, i.e., when there is no sufficient evidence to justify the forwarding of the accused to a Magistrate, it is termed variously, in different States, as either 'referred charge', 'final report', or 'Summary'."

16. The Code does not contain the terms 'charge-sheet' and 'final report'. When the case comes under Section 169, it is called 'final report', deferred charge-sheet, etc., and when the case comes under Section 170, it is called 'charge-sheet' or 'challan'. Police report under Section 173(2) includes both cases covered under Section 169 and 170 and they refer to the satisfaction of the officer in-charge of the Police Station. With this report under Section 173, the investigation by the Police comes to its natural end. When the Magistrate takes cognisance of any offence (cognizable or non-cognisable), on such a Police report,

setting out facts constituting an offence, he takes cognisance under Section 190(1)(b) and the case becomes one instituted in the Magistrate's Court on a Police report.

17. From the foregoing discussion, it will be clear that a Magistrate may take cognizance of an offence under Section 190 of the Code on the report of a Police Officer forwarded to him in accordance with the provisions of Section 173(2). The report of a case sent by the Police Officer to the Magistrate may indicate whether any offence appears to have been committed or not. If it indicates that an offence appears to have been committed, it is called a 'charge-sheet' or 'challan'. This has to be clearly distinguished from the First Information Report relating to the commission of an offence given to a Police Officer under Section 154 of the Code.

18. In the case before us, the registration of a criminal case by the C.B.I. under Section 161 of the I.P.C. was on 18.11.1985 which was before the superannuation of the applicant on 30.11.1985. This is only in the nature of a First Information Report. The charge-sheet was filed against the applicant in the court of the Special Judge, Delhi, only on 15.7.1986, i.e., after his superannuation.

19. In view of the above, the date of institution of criminal proceedings has to be taken as 15.7.1986 when the charge-sheet was filed in the criminal court and not as 18.11.1985 when the F.I.R. was registered by the C.B.I. against the applicant. Therefore, in the instant case, it cannot be said that judicial proceedings had been instituted before the date of retirement of the applicant.

20. It follows from the above discussion that on the date of superannuation of the applicant, no judicial proceedings had been instituted or were pending, warranting the grant of only provisional pension and the withholding of gratuity under Rule 69 of the C.C.S. (Pension) Rules. The applicant would be entitled to receive full pension and gratuity as admissible under the rules. He would also be entitled to commute a portion of his pension as admissible under the rules.

21. In the circumstances, we order and direct that the respondents shall sanction and pay to the applicant full pension as admissible under the rules. Such payment will not be provisional in nature. The respondents should also release the gratuity to the applicant in the manner in which it would have been payable on the date of his retirement. The respondents should also sanction and pay the full amount admissible on account of commutation of pension. In addition, the respondents shall pay to the applicant interest at the rate of 10 per cent per annum on the amounts due to him towards pension and gratuity w.e.f. the expiry of three months after his retirement. We, however, make it clear that the respondents will be at liberty to initiate action with regard to pension and gratuity as may be allowed by law after the conclusion of the criminal proceedings against the applicant. This order should be complied with within a period of three months from the date of its communication to the parties. There will be no order as to costs.

*S.P.M.*  
20.7.88  
(S.P. Mukerji)  
A.M.

*P.K.K.*  
20.7.88  
(P.K. Kartha)  
Vice-Chairman (Judl.)