

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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O.A. NO. 2014/1991

DATE OF DECISION : 14.2.92

SHRI K.K. SARIN

...APPLICANT

VS.

UNION OF INDIA

...RESPONDENTS

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SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

...SHRI B.K. AGGARWAL

FOR THE RESPONDENTS

...SHRI M.L. VERMA

1. Whether Reporters of local papers may be allowed to see the Judgement?

2. To be referred to the Reporter or not?

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J)).

The applicant working as Director w.e.f. 20.7.1972 attained the age of superannuation on 1.6.1978 and stood retired from that date. However, before his retirement, the applicant was placed under suspension in February, 1977 because of a pending criminal case against him. After the date of superannuation, the applicant was granted a provisional pension because the criminal case against the applicant did not conclude by that time.

However, the applicant was convicted by the Sessions Court on 29.10.1986 and was sentenced to various terms of imprisonment. The applicant has assailed that judgement before the Hon'ble High Court. The provisional pension continued to be paid to the applicant upto 30.4.1989. A show cause notice dt. 5.2.1992 under Rule 9(iv) of the CCS (Pension) Rules was served on the applicant on 24.2.1990.

2. The grievance of the applicant is that the provisional pension granted to him has been withdrawn w.e.f. May, 1989. The Government of India by the order dt. 5.12.1991 by a presidential order withheld on a permanent basis the entire monthly pension otherwise admissible to the applicant. Though the applicant has not assailed this order, but in fact the pension has been withheld permanently under the provisions of CCS Rules, 1972. In fact, the reply by the respondents has also been filed before the passing of the presidential order dt. 5.12.1991, a copy of which has been made available during the course of the arguments and placed on the judicial file with a copy to the learned counsel for the applicant. Now the context in this application by the applicant is that the presidential order has been passed on 5.12.1991 and so the applicant is entitled to the pension till that date as the presidential order does not mention any retrospective operation of the order.

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3. The learned counsel for the parties have been heard at length. In fact an order takes effect from the date when it is passed. The pension of the applicant has been discontinued w.e.f. May, 1989. Subsequently, he has been served with a notice on 24.2.1990 and after considering the reply to this notice, the said presidential order dt. 5.12.1991 has been passed. Thus there is substance in the contention of the learned counsel for the applicant that this order has come into effect only from 5.12.1991. The learned counsel for the respondents, however, pointed out that there was a similar case of co accused of the applicant in the criminal case of one Shri R.P. Vashney, who was also serving as Director in the Planning Commission w.e.f. January, 1974. Said Shri Vashney filed OA 1063/91 before the Principal Bench and it was decided by the Division Bench on 17.9.1991. That application was dismissed at the admission stage because the applicant in that case had come assailing the show cause notices dt. 19.7.1989 and 5.2.1990 issued to him for withholding pension. Thus the facts of the case are somewhat different because the applicant of that case, Shri Vashney had come prematurely before the Tribunal.

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4. The applicant has since been convicted by the Sessions Court, though he has assailed his conviction before the Delhi High Court, still under the provisions of Rule 9, right of President to hold or withhold pension is not suspended. The Union Public Service Commission has since also been consulted in the matter and the order of the President dt. 5.12.1991 has also not been assailed. So the withholding of the pension of the applicant permanently cannot be said to be in any way irregular or illegal. The question only remains that from which date this order has to be given effect to, dt. 5.12.1991 since this order/does not mention any specific date from which it has to be given effect to. The learned counsel for the respondents could not show that this order withholding pension permanently has to be effected from the date from which the respondents discontinued the payment of pension to the applicant. Even the amended Rule 9(ii) does not reflect any light to support the contention of the learned counsel for the respondents.

5. In view of the above discussion, the OA is disposed of in the manner that the application is partly allowed and the respondents are directed to pay the

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provisional pension, which was paid earlier to the applicant from May, 1989 till 5.12.1991 within a period of six weeks from the date of receipt of this order. In the circumstances, the parties to bear their own costs.

J. P. Sharma
(J.P. SHARMA) 14.2.92
MEMBER (J)