

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A. No. 1063/91.

Date of decision 17.9.91

R.P. Varshney

.....Applicant.

Vs.

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. Chairman, Planning Commission, Yojna Bhawan, New Delhi.Respondents.

CORAM: HON'BLE MR. B.S. SEKHON, VICE CHAIRMAN.
HON'BLE MR. D.K. CHAKRAVORTY, MEMBER(A).

For the Applicant

- Mr. B.K. Aggarwal, Advocate

For the Respondents

- Mr. M.L. Verma, Advocate.

B.S. SEKHON:

Omitting un-necessary details, the factual background to the instant Application is:-

Applicant who was initially recruited in the Ministry of Defence on the post of Senior Inspecting Officer (Air) on 13.10.1966 had been serving as a Director in the Planning Commission u.e.f. 21.1.1974. He was arrested on 4.2.1977, on which date he was also placed under suspension. Applicant was prosecuted for the offences punishable under Sections 3, 4, 5 and 9 of the Official Secrets Act for the read with Section 120-B I.P.C. as also offence punishable under Section 120-B I.P.C. The prosecution ended in conviction of the Applicant. The conviction was handed down by the Additional Sessions Judge,

New Delhi vide his judgment dated 20.11.1986 and the following sentences were imposed on the Applicant:-

- i) Under Section 120B IPC. 3 years R.I.
- ii) Under Section 3(1)(C) of Official Secrets Act. 3 years R.I.
- iii) Under Sections 5(1)(a), 5(1)(b) and 5(1)(c) of Official Secrets Act. 2 years R.I.

Applicant retired on attaining the age of superannuation on 31.5.1985. His appeal against his conviction and sentence has been admitted by the Delhi High Court and the same is sub-judice. The State has also preferred counter appeal seeking enhancement of the punishment. Provisional pension was sanctioned to the Applicant vide orders dated 3.8.1985 (Annexure A/1). Applicant had been drawing till 30.4.1989 Rs. 1325/- per month on account of provisional pension including the relief for pension.

(Memo.) Show cause notice/dated 19.7.1989 (Annexure A/3) was issued to the Applicant. It has been recited in para 3 of the Memo. that on a careful consideration of the judgment passed by the Court and the evidence which has come on record in the Court case which establishes that the Applicant had been passing vital information (documents and report) which were available with him in his official capacity to agents of foreign powers, the President has come to the conclusion that the gravity of the offences is such as to warrant imposition of a major penalty and, accordingly, proposes to impose on the Applicant the withdrawal of full pension permanently under

Rule 9 of the Central Civil Services (Pension) (hereinafter called the 'Rules') Rules, 1972. Applicant was given an opportunity for making a representation in writing on the penalty imposed within a period of 15 days from the date of receipt of the Memo. Applicant submitted a reply on 7.8.1989. In the aforesaid reply Applicant, interalia, referred to the factum of filing an appeal in the High Court and the pendency thereof and requested that he be allowed to draw his pension till the case is decided by the High Court. Vide O.M. dated 5.2.1990 (Annexure A/4), Applicant was advised that if he does not show cause against the proposed action or does not send a reply within 15 days of the receipt of the Memo. the decision in the matter will be taken ex-parte. Applicant has prayed for quashing of Show Cause notices dated 19.7.89 and 5.2.1990 and declaring the action of the Respondents in stopping the provisional pension illegal, arbitrary, in violation of the principles of natural justice and Article 14 of the Constitution. Applicant has also requested that further directions be issued to restore the provisional pension and make payment of the arrears with interest from the date the payment is due to him. It was admitted on both hands that no decision has so far been taken in view of the pendency of this case.

2. Respondents have resisted the Application interalia, on the ground that Application is barred under Sections 20 and 21 of the Administrative Tribunals Act, 1985 (for short the Act). Provisional pension is stated to have been stopped from June, 89 and not withdrawn pending final decision. which is

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to be taken in consultation with the Union Public Service Commission (for brevity sake called the 'Commission') and that the order of withdrawal of provisional pension could be issued only after an approval from the Commission is received.

3. We have heard the arguments addressed by the learned counsel for the parties and have considered the pleadings, documents on record and the authorities cited at the Bar.

4. Inviting our attention to the reliefs claimed by the Applicant, the learned counsel for the Respondents strenuously urged that the present Application is not sustainable as decision is yet to be taken and that the Show Cause Notices - Annexures A/3 and A/4 which are sought to be quashed by the Applicant cannot be regarded as 'order' within the meaning of Section 19 of the Act. In support of the aforesaid submission, the learned counsel pressed into service the following decisions rendered by the Tribunal:-

1) N. Gunavijayan Vs. The Assistant Director, Census Operations, Pondicherry.

2) V.P. Sidhan Vs. Union of India and others

The learned counsel for the Applicant countered by stating that the decisions relied upon by the learned counsel for the Respondents are distinguishable and are not applicable to the present case adding that the Respondents cannot withdraw the pension before making an order. There was also a debate on the point as to whether or not notices in this behalf have been issued under

1. A.T.R. 1986(2) CAT 603.

2. (1988) 7 ATC 402.

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Rule 8 or 9 of the Rules. Since no decision has yet been taken pursuant to the show cause notices - Annexures A/3 and A/4, the matter is still at interlocutory stage. It is difficult to regard the show cause notices as 'orders' within the meaning of Section 19 of the Act. That being so, the Application is held to be not maintainable at this stage. This view is fortified by the decisions rendered in *Gunavijayan* (supra) and *Sidhan* (supra). We, therefore, hereby sustain the preliminary objection raised by the learned counsel for the Respondents. Consequently, the Application merits rejection at the admission stage and the same is hereby rejected. This order will not, however, preclude the Applicant from filing a fresh Application in case he feels aggrieved by the order which may be made by the Respondents. It would, however, be just and fair that Respondents should pass a final order in the matter within a reasonable period. Accordingly, it is hereby directed that the Respondents shall pass a final order in the matter within a period of 3 months of the receipt of a copy of this judgment. The Application is disposed of accordingly. No order as to costs.

D. K. Chakravorty
(D.K. CHAKRAVORTY)

MEMBER (A) 17-9-1991

B. S. Sekhon
(B.S. SEKHON)
VICE CHAIRMAN

17-9-91