

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.1206/2004

New Delhi this the 22nd March, 2005

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HON'BLE SHRI JUSTICE M.A.KHAN, VICE-CHAIRMAN(J)
HON'BLE SHRI S.A.SINGH, MEMBER(A)

Shri Tribhuvan Nath
S/o Shri Late Shri S.D.Gupta,
R/o 1201, Sector 16-A, HIG Flats,
Vasundra, Gaziabad (UP).
(By Advocate: Shri Sachin Chauhan)

...Applicant.

Versus

1. Union of India,
Through its Secretary,
Ministry of Water Resources,
Shram Shakti Bhawan, Rafi Marg,
New Delhi-110001.
2. Controller General of Accounts,
Ministry of Finance, Department of Expenditure,
7th Floor, Lok Nayak Bhawan, Khan Market,
New Delhi.
3. Joint Secretary & Financial Adviser,
Govt. of India, Ministry of Water Resources,
Shram Shakti Bhawan, Rafi Marg,
New Delhi-110001.
4. Director (A) & Chief Vigilance Officer,
Govt. of India, Ministry of Water Resources,
Shram Shakti Bhawan, Rafi Marg,
New Delhi-110001.
(By Advocate: Shri B.S.Jain)

ORDER

By Shri S.A.Singh, Member (A):

The applicant was a Senior Accounts Officer in the Ministry of Water Resources and was placed under suspension vide order dated 30/31.1.2001 under Sub Rule (1) of Rule 10 of CCS (CCA) Rules, 1965. The applicant approached this Tribunal in OA 3450/2001 seeking relief for quashing and setting aside the orders of suspension. The same was disposed of vide order dated 6.6.2001 with the following directions:

It is more than one year since the applicant was placed under suspension. Till Now, the respondents have neither issued any charge-sheet to the applicant nor any criminal case has been filed in the court of competent jurisdiction against the applicant. It is, therefore, incumbent on the respondents to review the suspension order in terms of the aforesaid Govt. of India's instructions / guide-lines.

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For the reasons recorded above, we direct the respondents to hold a review of suspension orders issued on 30/31.1.2001 till 28th June 2002 with intimation to the applicant.

The present OA is disposed of in the aforesaid terms. No orders as to costs.

2. The applicant superannuated in the normal course on 30.6.2002. He made a representation on 17.6.2002 requesting that since he retired from service on 30.6.2002, his suspension may be revoked in the light of the Tribunal's order dated 6.6.2001. This suspension order was reviewed on 28.5.2003 in light of Tribunal's order dated 6.6.2002

3. The order was reviewed by the Joint Controller General of Accounts vide his order dated 28.5.2003 wherein suspension was retrospectively revoked w.e.f. 28.6.2002 by exercising powers under clause (c) of sub rule 5 of Rule 10 of the CCS (CCA) Rule, 1965.

4. The applicant was informed by the impugned order dated 30.6.2003 that the revocation of suspension by the Joint Controller General of Accounts order dated 28.6.2002 had been set aside by the President in exercise of powers under Rule 29 of the CCS (CCA) Rules, 1965. Aggrieved by this order, the applicant has approached this Tribunal praying that the impugned order may be set aside and the respondents be directed to grant retiral / pensionary benefits including gratuity, leave encashment, regular pension etc. with 12% rate of interest.

5. The main grounds of the applicant is that after superannuation he cannot be considered to be on suspension and as there is nothing adverse against the applicant nor any departmental or judicial enquiry there should be no impediment for release of retiral benenfits. There is only an FIR.

6. According to the applicant, his case is squarely covered by Rule 9 of the CCS (Pension) Rules. This retiral benefits cannot be withheld because grounds mentioned under Rule 9 for withholding pension are not in existence in the case of applicant and they did not exist prior to the date of superannuation nor subsequent to that date.

7. Needless to say the respondents have vehemently contested the averments of the applicant stating that the applicant was involved in a fraud to the tune of Rs. 23, 67, 951/-. Since it was a criminal offence, the respondents referred this case to the Special Police Establishment of the CBI for conducting a detailed investigation. Based on this investigation, an FIR was registered on 06.2.2001 and the applicant was suspended. The Tribunal in its

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order dated 6.6.2002 in OA 3450/2001 had only directed the respondents to hold a review of his suspension order issued on 30/31.1.2002 before 28.6.2002. This was not done by 28.6.2002 but the Joint Controller General of Accounts, Ministry of Finance issued an order dated 28.5.2003 revoking the suspension of the applicant retrospectively w.e.f. 28.6.2002. He had, however, indicated that this had been done under the provisions of Rule 10 of CCS (CCA) Rules. This was incorrect since the applicant had already superannuated on 30.6.2002 and his status was of a pensioner and not a Government servant. Hence, provisions of Rule 10 were not applicable. Consequently taking the totality of the facts and circumstances of the case, the President who is the sole authority to issue any order in the case of the applicant after retirement according to the provisions contained in Rule 9 of CCS (Pension) Rules, 1972 and Rule 29 of the CCS (CCA) Rules, 1965 reviewed and set aside the order of Joint Controller General of Accounts dated 28.5.2003. It was also directed that regarding the period of suspension of the applicant from 30.1.2001 to 30.6.2002 it would be decided after receipt of the report of investigation from CBI. The respondents contended that the President is fully competent for passing the impugned order and under Rule 69 of the CCS (Pension) Rules, 1972 when a departmental or judicial proceedings are pending only provisional pension could be authorized. No gratuity shall be paid until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.

8. We have heard the counsel of the parties and have gone through the documents placed on record. We find that the short question before the Tribunal is whether the status of the applicant would come under the ambit of Rules 9 and 69 of the CCS (Pension) Rules.

9. Rule 69 of the CCS (Pension) Rules is as under:

“(1) (a) In respect of a Government servant referred to in sub-rule (4) of Rule 9, the Accounts Officer shall authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant, or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorized by the Accounts Officer during the period commencing from the date of retirement up to and including the date of which, after the conclusion of departmental or judicial proceedings and issue of final orders thereon.

From the forgoing it is clear that for those Government servants referred to in Sub-rule (4) of Rule 9 a provisional pension has to be paid. Sub rule (4) of

Rule 9 read as under:

(4) In the case of Government servant who had 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."

From the reading of sub rule (4) of Rule 9 it is apparent that the provisions of Rule 69 would be attracted in case a departmental and or a judicial proceedings are instituted against a Government servant. Sub Rule (6) of Rule (9) clarifies that for the purpose of this Rule, the meaning of departmental and judicial proceedings.

10. Sub Rule (6) reads as under:

"(6) For the purpose of this Rule-

- a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and
- 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 cognizance, is made, and
 - ii) in the case of civil proceedings, on the date the plaint is presented in the Court."

From the reading of sub rule 6 (a) and (b), it is evident that mere filing of an FIR would not make for a judicial proceedings. However, according to sub rule 6 (a) the departmental proceedings would be considered to have been instituted if the Government servant has been placed under suspension. In case of the applicant, he was placed under suspension on 30/31.1.2001 and he superannuated on 30.6.2002.

11. The applicant superannuated on 30.6.2002 without revocation of suspension despite the order of the Tribunal to review before 28.6.2002. The review contemplated by the Tribunal in its order was, however, carried out by Joint Controller General of Accounts on 28.5.2003. The Joint Controller General of Accounts revoked the suspension ~~with~~ retrospectively w.e.f. 30.1.2001 under clause (c) of sub rule 5 of Rule 10 of CCS (CCA) Rules, 1965. This order was reviewed by the President under Rule 29 of the CCA (CCS) Rules, 1965 and set aside ordering that the original suspension order passed by the then Joint Controller General of Accounts, Ministry of Finance on 30.1.2001 shall prevail. The

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President further ordered that the period of the applicant from 30.1.2001 to 30.6.2002 will be decided after the receipt of the investigation report from the CBI.

12. The position that emerges from the forgoing is that on the date of superannuation, i.e. 30.6.2002, the applicant had retired without his suspension order being revoked. He, therefore, would come squarely under the provisions of Rule 9 and Rule 69 of the CCS (Pension) Rules, 1972. The Tribunal had directed that this period of suspension be reviewed. This was done retrospectively by the respondents. A Government servant, who retired under suspension, ceases to be under suspension. Hence any review of suspension would be under the CCS (CCA) Rules. The President under Rule 29 has power of revocation, confirmation, modification or set aside the order notwithstanding anything contained in the Rules. The relevant portion of the rules read as under:

“29 [Revision]

(1) Notwithstanding anything contained in these rules-

(i) the President; or

may at any time, either on his or its own motion or otherwise call for the records of any inquiry and [revise] any order made under these rules or under the rules repealed by Rule 34 from which an appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may -

a) confirm, modify or set aside; or

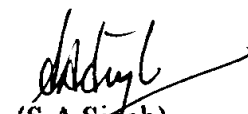
b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

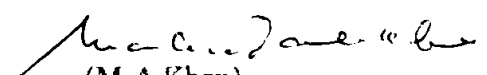
c) remit the case to the authority which made the order to or any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or

d) pass such other orders as it may deem fit”

13. The President vide his order has set aside the order revoking the suspension of the applicant passed by the Joint Controller General of Accounts in his order on 28.5.2003. The applicant, therefore, would be under ~~the~~^{his} suspension on the date of superannuation.

14. In view of the forgoing we find that the applicant is not entitled to the relief sought for the reason that a departmental proceeding is pending against him in terms of Sub Rule (6) of Rule 9 wherein suspension is considered to be the date from which a departmental proceeding shall deem to have been initiated. He was suspended before his date of superannuation and under review the same was confirmed by the competent authority. The OA is, therefore, without merit and accordingly is dismissed. No costs.


(S.A. Singh)
Member (A)


(M.A. Khan)
Vice-Chairman(J)