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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.407/2004

New Delhi, this the 27th day of September, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K.Naik, Member (A)

K.L.Sharma
(Retired Senior Bradma Supervisor)
B-14, Panchwati
Delhi – 110 033.

... Applicant

(By Advocate: Sh. S.N.Anand)

Versus

1. Govt. of NCT of Delhi
Through Chief Secretary
Delhi Secretariat
New Delhi – 110 002.

2. Secretary-cum-Director of Employment
2, Battery Lane
Delhi – 110 054.

... Respondents

(By Advocate: Sh. Ajesh Luthra)

ORDER

By Mr. Justice V.S.Aggarwal:

Applicant, who was Senior Bradma Supervisor, was arrested vide FIR No.235/1997, PS, Lahori Gate. He absented himself from duty on many occasions in the months of July-August, 1997. A charge-sheet was served on him on the allegations that he remained absent unauthorisedly without intimation; did not attend the office in time and left early on many occasions and that he did not intimate the department about his arrest. The applicant was suspended on 16.9.1997. Subsequently, he was reinstated vide order of 27.7.1998. After inquiry report was received, penalty of removal from service was passed on 26.6.2001 and his appeal was also dismissed on 28.11.2001. The applicant preferred OA 509/2002. On 28.10.2002, the order of removal from service was quashed by this Tribunal.

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2. In compliance of this Tribunal's order, the respondents issued an order dated 23.7.2003 whereby the status quo of the applicant was restored.

3. At this stage, it is relevant to mention that the applicant had again been placed under suspension from 1.10.1999 to 30.11.2001 because another criminal case was registered against him vide FIR No.315/1999, PS, R.K.Puram as he was involved in making bogus employment cards. Meanwhile, the applicant had superannuated on 30.11.2001. Provisional Pension had been sanctioned and no Gratuity was allowed awaiting the conclusion of the judicial proceedings in criminal case (FIR No.315/1999), PS, R.K.Puram.

4. The applicant by virtue of the present application, seeks setting aside of the orders dated 25.10.1999 and 23.7.2003 whereby the full pay and allowances have not been paid for the period 1.10.1999 to 30.11.2001 and further that he should be released full Pension with post retrieval benefits.

5. The learned counsel for the applicant contended that the applicant was suspended afresh from 1.10.1999 to 30.11.2001. Thereafter, he had superannuated on 30.11.2001. The order of removing him from service had been set aside. Resultantly, the suspension order must be deemed to have come to an end. No fresh order has been passed and the applicant is entitled to the full salary for that period. He further argued, as a second limb of the contentions raised, that the applicant has only been sanctioned a provisional pension whereas he is entitled to full pension. The respondents' counsel controverted the plea of the applicant. Taking up the second contention, in the first instance, it is obvious that provisional pension has been sanctioned and this fact was not in dispute. The Memorandum dated 10.12.2003 had been passed by the Directorate of Employment, Govt. of NCT of Delhi which reads:

"Reference order No.F.21(3)/2002/Vig./Emp./4763-67 dated 23.7.2003 of Shri R.K.Verma, the then Director of Employment, regarding Shri K.L.Sharma (Retd. Senior Bradma Supervisor), it is reiterated that Shri K.L.Sharma is entitled only

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for provisional pension and no gratuity shall be paid to him till the conclusion of the judicial proceedings in the court of law in the criminal case vide FIR No.315/1999, PS, R.K.Puram, New Delhi and issue of final order thereon. Concerned Departments/Officers while finalizing the provisional pension case of Shri K.L.Sharma, shall keep in mind the above orders and the provisions of Rule 69 of CCS (Pension) Rules.

This issues with the prior approval of Director (Employment)."

6. This makes it clear that provisional pension has been sanctioned till the conclusion of judicial proceedings pending in the Court of Law with respect to FIR No.315/1999, PS, R.K.Puram.

7. Sub-Rule (1)(b) to Rule 69 of the Central Civil Services (Pension) Rules, 1972 reads as under:

"(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 on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the Competent Authority."

8. Necessarily, it has to be read along with Sub-Rule (4) to Rule 9 of the CCS (Pension) Rules, 1972 which reads as under:

"(4) 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."

9. What is a Judicial proceeding and when it shall be deemed to be instituted has been explained under Sub-Rule (6) (b)(i) of Rule 9 of the Rules and it makes it clear that 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, shall be deemed judicial proceedings pending from that particular date.

10. In the present case, there was a little contradiction to the plea of the respondents that judicial proceedings are pending in the Court. In fact, learned counsel for the respondents has informed that it is pending before the Matripolitan Magistrate, Patiala House, New Delhi. Once the judicial proceedings are pending,

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it is obvious that the learned Court has taken cognizance of the same. In that view of the matter, once the criminal proceedings are pending, sequence of events clearly would show that the provisional pension has rightly been sanctioned.

11. Reverting back to the first argument, namely, that the removal order from service has been set aside and therefore, the suspension order in pursuance of the criminal case that had been registered would come to an end automatically. The learned counsel relied upon the decision of the Supreme Court in the case of H.L. MEHRA v. UNION OF INDIA AND OTHERS, (1974) 4 SCC 396. In the cited case, departmental proceedings were launched against him on four charges. The principal charge was that while functioning as Officer on Special Duty at Goa, he sent four consignments in trucks or railway wagons hired by the Department from Goa to Daman without payment of prior charges. During the pendency of the criminal case, the President proposed to hold an enquiry against him. He was convicted by the criminal court on this charge and the conviction was upheld by the Division Bench of Bombay High Court. He was dismissed from service. The Supreme Court had set aside that conviction. The President passed the order dated 9.6.1971 setting aside the dismissal order and directed the inquiry against him. It is in this backdrop that the Supreme Court held:

“6. The argument of the appellant was that on the passing of the order of dismissal, his suspension came to an end even though the order of dismissal was subsequently set aside by the President by the first part of the impugned order, that did not have the effect of reviving the suspension and the appellant was accordingly not under suspension at the date when the impugned order was made. The respondents, on the other hand, contended that by reason of sub-rule 5(b) of Rule 10 the order of suspension passed on April 11, 1963 continued to remain in force despite the making of the order of dismissal and in any event, even if the suspension came to an end as a result of the passing of the order of dismissal, it was revived with retrospective effect when the order of dismissal was set aside by the President by the first part of the impugned order and, therefore, at the instant of time when the third part of the impugned order was made under sub-rule 5(b) of Rule 10, the appellant was under suspension. We find there is great force in the argument of the appellant and the contention of the respondents to the contrary must be rejected. Both principle as well as precedent compel us to this conclusion.

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7. Let us first examine the question on principle. When an order of suspension is made against a Government servant pending an enquiry into his conduct, the relationship of master and servant does not come to an end. What the Government, as master, does in such a case is merely to suspend the Government servant from performing the duties of his office. The Government issues a direction forbidding the Government servant from doing the work which he was required to do under the terms of the contract of service or the statute or rules governing his conditions of service, at the same time keeping in force the relationship of master and servant. In other words, to quote Hegde, J. from *V.P. Gindreniya v. State of M.P.* [(1970) 3 SCR 448] "the employer is regarded as issuing an order to the employee which because the contract is subsisting, the employee must obey". This being the true nature of an order of suspension, it follows that the Government servant would be entitled to his remuneration for the period of suspension unless there is some provision in the statute or rules governing his conditions of service which provides for withholding of such remuneration. Now, when an order of dismissal is passed, the *vinculum juris* between the Government and the servant is dissolved: the relationship of master and servant between them is extinguished. Then the order of suspension must *a fortiori* come to an end. But what happens when the order of dismissal is subsequently set aside? Does that revive the order of suspension? We do not think so. Once the suspension has come to an end by an order of dismissal, which was effective when made, it cannot be revived by more subsequent setting aside of the order of dismissal in the absence of a statutory provision or rule to that effect. That is precisely the reason why sub-rules (3) and (4) had to be introduced in Rule 10 providing for retrospective revival and continuance of the suspension in cases falling within those sub-rules. This position which emerges clearly on principle is supported also by authority."

12. The ratio *decidendi* does apply to the facts of the present case. As already referred to above, the order removing the applicant from service was in pursuance of a departmental action. It was not that because of criminal proceedings he was placed under suspension and that meantime he superannuated. Therefore, the decision in the case of *Shri H.L. Mehra (supra)* is clearly distinguishable.

13. Reliance was further placed on the decision of this Tribunal in T.A. No.129/1986 (*Shri Krishna Mohan Agrahari v. Chief Secretary, Delhi Admn.*) decided on 28.8.1987. In that case also, the applicant, while working as an Assistant Employment Officer in the Directorate of Employment, was served with a charge sheet and after the departmental inquiry, he was dismissed from service. In the meantime, on the basis of another contemplated enquiry, he was placed

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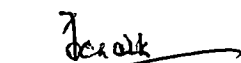
under suspension. In judicial proceedings, the order was set aside and was noted that there was no order of suspension that had been passed during the entire disciplinary proceedings. It was on these facts that this Tribunal relied upon the decision of H.L.Mehra's case (supra). The sequence of facts clearly show that it is distinguishable.

14. In fact, Rule 69 of the CCS (Pension) Rules, 1972 makes it clear that if a person was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension, the provisional pension can be allowed. In the present case before us, the applicant had been placed under suspension on the FIR registered against him. We have already recorded above in the preceding paragraphs that because of the criminal case being pending, it has to be deemed that the proceedings were continuing against him, i.e., the judicial proceedings.


15. At the risk of repetition we mention that suspension order was passed again while the applicant was in service because of a fresh criminal case that was registered. He was removed from service because of the disciplinary proceedings. That order was set aside. This would not put an end to the suspension which was because of the pending criminal proceedings. Admittedly, such criminal proceedings are still pending before the Court of Law. Once that is the situation, provisional pension could only be sanctioned. This is obvious from the plain reading of Rule 69 of the CCS (Pension) Rules, 1972 which we have reproduced in Paragraph 7 of the present order.

16. No other arguments have been raised.

17. For the reasons given above, the Original Application is without merit and is accordingly dismissed.


(S.K. Naik)
Member (A)

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(V.S. Aggarwal)
Chairman