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In the Central Administrative Tribunal

Principal Bench: New Delhi

OA No.2273/92

Date of decision: 8.1.1993.

Shri K.C. Sharma

...Petitioner

Versus

Union of India through the
Secretary, Department of Revenues, Ministry
of Finance, New Delhi & Others

...Respondents

Coram:-

The Hon'ble Mr. I.K. Rasgotra, Member(A)

For the petitioner

Shri S.K.Bisaria with
Shri R.R.Rai, Counsel.

For the respondents

Shri M.L. Verma, Counsel.

1. Whether reporters of local papers may be allowed to
see the Judgement? *NO*
2. To be referred to the Reporter or not? *yes*

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A)

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Judgement(Oral)

The petitioner was working as Superintendent of Customs and Central Excise at Palam Airport, Cargo Section. He was placed under suspension on 10.4.1985 as he is said to have cleared some air cargo in violation of the rules for export to U.S.A. and Canada. Common proceedings were initiated against the petitioner and some others. Petitioner herein challenged his suspension in OA-1479 of 1987. The Tribunal rendered its judgement in the said O.A. on 4.1.1988 and quashed the order of suspension dated 10.4.1985 with the direction to the respondents to pay all emoluments due to the petitioner for the period of suspension until reinstatement. He was further allowed to join duties with immediate effect. The respondents however, were not precluded to proceed against the petitioner under the law in case something substantial is found against him, warranting criminal or departmental action. In the present application the petitioner is aggrieved of non-payment of his retirement dues even though he retired on attaining the

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age of superannuation on 30.11.91. The petitioner submits that he has been paid provisional pension and all other retiral benefits except D.C.R.G. and commutation of pension.

2. The respondents represented by Shri M.L. Verma, learned counsel have pointed out that the petitioner was involved in a vigilance case which was investigated by the CBI. Eventually the CBI recommended that a criminal case be filed in the Court of Chief Metropolitan Magistrate under Section 120-B read with Section 5 of IMPEX Act. The CVC cleared the prosecution of the petitioner on 6.2.1990. Further clearance for prosecution of the petitioner was given by the departmental authorities on 29.11.1991 to the CBI. The CBI, however, has yet to act on the instructions of the Chief Controller of Import and Export although over a year has since elapsed. In the course of the hearing it transpired that the clearance for export in question relates to the period of April, 1985. In terms of Rule-9 of CCS (Pension) Rules, the President has the right of "withholding or withdrawing a pension or part thereof, whether permanently or for a specified 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." In this case neither any departmental proceedings have been initiated nor a chargesheet has been filed in the Court of the Chief Metropolitan Magistrate. Rule 9 (2)(b) of CCS (Pension) Rules, 1972 further prescribes the following conditions for taking action against a retired government servant:-

"(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment,--

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(i) shall not be instituted save with the sanction of the President,

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service."

3. The event in this case according to the statement of the learned counsel for the petitioner made at the Bar took place sometime in April, 1985. If that is so, the respondents are barred from instituting departmental or criminal proceedings against the petitioner, as no such proceeding had been initiated within four years from the date the event in question took place.

4. In the facts and circumstances of the case, I am of the opinion that the respondents cannot withhold the retirement benefit viz. D.C.R.G. and commutation of pension of the petitioner when no departmental or criminal proceedings have been started against him, as are admissible in time period prescribed in the statutory rules. Accordingly, the respondents are directed to make payment to the petitioner of the amount of DCRG due and commutation of pension as early as possible but preferably within a period of three months from the date of communication of this order. As far as the D.C.R.G. is concerned, the petitioner shall also be entitled to payment of interest after three months from the date of retirement at the rate of 7% for the first year and 10% for the subsequent period. He shall also be paid final pension in accordance within the rules

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with the same time frame, as prescribed above. The respondents, however, are not precluded to proceed against him in accordance with the law on criminal charges, if so advised.

5. The O.A. is disposed of, as above. No costs.

I. K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A)

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