

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 757 OF 2003

ALLAHABAD, THIS THE 23rd DAY OF July 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

Dukhan Prasad Singh,
son of Late Karu Prasad Singh,
resident of 17, Strachey Road,
Allahabad.

.....Applicant

(By Advocate : Shri Amit Saxena)

V E R S U S

1. Union of India through Secretary,
Ministry of Communication,
Department of Post, New Delhi.
2. Director of Accounts (Postal), Patna-I.
3. Senior Superintendent RMS 'C' Dn. Gaya.
4. Chief Post Master General,
Bihar Circle, Patna-I.

....Respondents

(By Advocate : Shri N.C. Nishad)

O R D E R

By this O.A. applicant has sought quashing of the order dated 01.05.2003 and a direction to the respondents to pay the arrears of pension accrued till date along with market rate of interest and to pay him full pension from month to month apart from paying the entire retiral benefits along with interest from the date, the applicant became entitled to the same.

2. The brief facts as stated by the applicant are that he retired from service on 31.07.2000 on attaining the age



of Superannuation. He was not given his post retiral benefits but vide order dated 05.09.2000 he was granted only a provisional pension w.e.f. 01.08.2000 that too for a period of 6 months or till the receipt of final PPO whichever is earlier (Annexure-2).

3. It is submitted by the applicant that there was no departmental proceedings ^{pending B} against him, therefore, respondents could not have withheld his retiral benefits. But since it was not paid to him, he filed O.A. No.1417/2002, which was disposed off on 05.12.2002 by giving direction to the respondents to dispose off the applicant's representation dated 19.02.2001 within a period of two months from the date of receipt of a copy of the order (Pg.15). Pursuant to it, respondents passed a detailed order on 01.05.2003 (Pg.9) stating therein that there was a court case pending against the applicant, therefore, provisional pension under Rule 69 of CCS (Pension) Rules was authorised. He was already paid his G.P.F. on 21.11.2000 and the claim of C.G.E.G.I.S. on 02.02.2001. As far as full payment of pension and other retiral benefits are concerned, it was stated that the controlling officer of the applicant has reported that applicant is facing Police Case No.148/1992 under Trial Court in Ginidih Court having CR No.93/92. The total amount of loss involved is Rs.20,490/- and as per the report of the S.P.M., it is apparant that the applicant had committed a fraud by abstracting 19 insured articles addressed to different addressees. Thus, it appears that he had committed not only ^{fraud B} with the department but has committed mischief with the 19 honourable citizens of the country. Heavy punishment including R.I. is expected to be awarded to the applicant on conclusion of the court case. Therefore, it is not justifiable to release the accrued or commute the amount of

B

pension in his favour at this stage.

4. It is this order, which was challenged by the applicant by filing second O.A. bearing No.753 of 2003. The said O.A. was decided by the Tribunal at the admission stage itself without even giving notice to the respondents. The order dated 01.05.2003 was quashed and respondents were directed to release the pension of the applicant and other payments including ^{pension, R} commutation of ^R gratuity also along with interest @10% per annum. This court had further directed ~~the~~ Chief Post Master General, Bihar Circle, Patna to fix the responsibility on the officials responsible for their illegal action causing embarrassment to the department and to recover the loss accrued to the department by way of payment of interest on the arrears. (Pg.6 of the M.A.398/04). This order dated 05.09.2003 was challenged by the respondents by filing Writ Petition No.268/04 which was decided on 08.01.2004 whereby the order passed by the Tribunal was set aside and the case was remanded back to the Tribunal to decide afresh after giving opportunity to the Union of India to file the counter affidavit (Pg.12 of M.A.398/04). This is how the matter ^{has} come before me for final disposal.

5. Respondents have opposed this O.A. by submitting that applicant was promoted to time bound one promotion after completion of 16 years of service in the sorting assistant cadre with effect from 20.05.1994 vide memo dated 26/31-10-94 because by that time no chargesheet had ^{been} filed in the court of law. Applicant is fortunate that the chargesheet dated 30.11.1994 was filed in Sadar Court under GR. No.932/92 and TR No.1004/98 on 01.04.1998. Had this charsheet ~~been~~ been filed earlier, applicant could not have ~~been~~ got his promotion, ~~as well~~. They have clarified that applicant was never promoted as HSG II cadre and was only sorting assistant at the time



of retirement on 31.07.2000. It was only due to oversight that it was erroneously mentioned as HSG-II soring assistant in the retirement memo. This fact has been admitted by the applicant himself in his representation dated 21.09.2000 (Annexure CA-3).

6. On merits they have submitted that the applicant is involved in criminal charge in C/W loss of 19 insured letters during his duties Hazaribagh Road RMS on 16/17-11-1991 and is still facing trial in case No. GR No.932/92 in Sadar Court Giridih, the next date of hearing has been fixed on 16.03.2004. Since the judicial proceedings ~~are~~ pending in the court against the applicant, retiral benefits like pension, commutation of pension and retirement gratuity has been kept held up under the provision of sub rule-4 of Rule 9 read with clause (C) of Rule 69 of CCS (Pension) Rule 1972. However, provisional pension is being paid to the applicant regularly without any interruption after his retirement i.e. from 01.08.2000.

7. They have further submitted that since there is no provision for release of gratuity and full pension in case of pendency of judicial proceeding in the court the PPO and other retiral benefits has been kept held up by the Director of Accounts (Postal) Patna. That is why the director of Accounts (Postal) Patna vide his letter dated 01.05.2003 rejected the representation of the applicant dated 19.02.2001 in the light of orders passed by this Hon'ble Tribunal in O.A. 1417/02 which is based on Rule 9 and 69 of CCS (Pension) Rules 1972. It is also submitted that the Hon'ble Tribunal passed an order dated 05.09.2003 in C/W O.A. No.757/03 filed by the applicant directing the respondents to release retiral benefits. This order was challenged vide writ petition No.268 (A) of 2004 in the Hon'ble High Court Allahabad. The Hon'ble High Court



Allahabad passed an order dated 08.01.2004 directing the Hon'ble CAT Allahabad to decide afresh after giving opportunity to the present applicant i.e. Union of India and Ors. to file counter affidavit and place the material against the said employee if any. They have thus submitted that the applicant has failed to make out any case for interference by this Tribunal, therefore, O.A. may be dismissed with costs.

8. I have heard both the counsel and perused the pleadings as well.

9. Counsel for the applicant advanced two submissions:-

(i) The criminal case has been pending for years now and no one knows ^{when it} ~~that~~ it will be finally decided, so far only 4 prosecution witnesses have been examined. Therefore, all his benefits cannot be withheld indefinitely till the said case is decided.

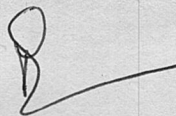
(ii) ^{next} He submitted that even if applicant is ultimately convicted in the criminal case at best he will be punished and the department cannot pass any order ~~now~~ against the applicant because he has already retired from service on 31.07.2000.

10. He next contended that Rule 94 ^(of CCS Pension Rules) ~~94~~ would have no application in the present case because this is a case where criminal proceedings were already pending against the applicant, whereas Rule 94 talks of only two eventualities namely either in that case where departmental proceedings or judicial proceedings are instituted against Government Servant after his retirement or where the departmental proceedings are continued under sub clause Rule ~~94~~ ⁹⁴⁽ⁱⁱ⁾ that a provisional pension as provided in Rule 69 shall be sanctioned. Whereas in the instant case after his retirement neither any judicial proceedings was instituted against him nor any departmental enquiry was instituted against him nor any departmental proceedings were continued against him under sub rule ⁹⁴⁽ⁱⁱ⁾ ~~(ii)~~. He therefore, submitted that respondents ~~could~~ ^{could} not have ~~been~~ ^{in the} held his pensionary benefits nor can they give him only the

provisional pension. On the contrary since he has already retired, he is entitled to be given all the retiral benefits as already held by this Tribunal in the earlier order.

Perusal of Rule-9 of CCS (Pension) Rules 1972 shows that President has the right of withholding a pension or gratuity or both either in full or in part, whether permanently or ^{for} specified period and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the government if, in any departmental or judicial proceedings, pensioners is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement. This rule makes it clear that if in the judicial proceedings any pensioner is found to be guilty of grave misconduct or negligence during the period of service, President has right to withhold ~~or withdraw~~ the pension or gratuity or both. He can even order ~~ed~~ recovery of the amount of pecuniary loss caused to the Government. Therefore, the contention of applicant's counsel that even if applicant is ultimately convicted in the criminal case, department cannot pass any orders against the applicant is not valid, the same is accordingly, rejected.

11. Now the question arise when can this punishment be imposed by the President. ^{purpose,} For that ^{Rule 8} sub-rule (2) of ⁹ is important wherein it is stated that if department proceedings were instituted while a government servant was in service whether before his retirement or during his re-employment shall after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service. We are not concerned with this Rule because admittedly there were no departmental proceedings



against the applicant on the day when he retired. Sub Rule (4) is important for this case, which for ready reference reads as under:-

"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."

12. It nowhere says that departmental or judicial proceedings should be instituted after the retirement as is being read by the counsel for the applicant. On the contrary the plain reading of sub-rule (4) shows that in the case of a Government Servant who has retired and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued even after his retirement, a provisional pension as provided in Rule 69 shall be sanctioned. The second part of sub rule (4) is given separately because it deals with the departmental proceedings which can be instituted even after the retirement of the employee, otherwise the first part of sub rule (4) covers the departmental proceedings or judicial proceedings which are instituted against the Government servant. I cannot accept the contention of counsel for the applicant that this would relate only to those departmental or judicial proceedings, which are instituted after the retirement of the Government servant because in that event the second part of sub rule -4 was not necessary to be incorporated. Even otherwise there is no logic in the argument advanced by the counsel for the applicant because if his argument is accepted, it would mean that in those cases where judicial proceedings are instituted after retirement provisional pension may be paid but where judicial proceedings are already pending full pension should be released such an argument cannot be accepted as there is no rational why the cases where judicial proceedings are

instituted



initiated during service or after retirement should be dealt with in different manner. The object behind rule (9) read with 69 is that in case the departmental proceedings or criminal case is decided against the Government Servant, his pension or gratuity can be withdrawn by the President, therefore, till such time only provisional pension is paid and other benefits are withheld.


13. Even otherwise sub rule (6) of Rule 9 of CCS Pension Rules makes it further clear as it has been elaborated in sub-rule(6)(b) that a judicial proceedings shall be deemed to be instituted; in the case of criminal proceedings, on the date on which the complaint or report by Police Officer, of which the Magistrate takes cognizance, is made, and in the case of civil proceedings, on the date of plaint is presented in the court.

14. In the instant case, as per applicant's own argument 4 prosecution witnesses have already been examined. Meaning thereby that cognizance has already been taken by the criminal court. Therefore, this contention of applicant's counsel is also rejected. It is held that since criminal case is already pending against the applicant on the ground that applicant had committed fraud by abstracting 19 Insured Articles addressed to different addresses and had caused loss of Rs.20,490/-, which is rather a serious matter and ultimately, if this criminal case is decided against the applicant, President would have the right to recover the amount from his pension or gratuity and he can also pass the order for withholding the pension and gratuity both. Whatever he may think appropriate at that time. Therefore, in these circumstances naturally rule 69 gets attracted which once again clearly states in the heading itself, 'Provisional Pension where departmental or judicial proceedings may be pending'. Rule 69(1) stipulates that only provisional pension shall be paid to a government servant referred to in sub

B

rule (4) of rule 9 sub rule (1)(c) of 69 makes it further clear that no gratuity shall be paid to the Government Servant untill the conclusion of departmental or judicial proceedings and issue of final orders thereon and sub rule(2) of 69 makes it further clear that payment of provisional pension made under sub rule (1) shall be adjusted against final retirement benefits sanctioned to such government servant upon conclusion of such proceedings but no recovery shall be made where pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period. In fact sub rule (2) of 69 itself takes care as to how the matter is finally to be adjusted on the conclusion of judicial proceedings and after the final orders are passed by the President.

15. In these circumstances, I am satisfied that since judicial proceedings are already pending against the applicant that too with the charge that he had caused loss to the Government, no illegality can be found in the order dated 01.05.2003. The said order is absolutely in accordance with CCS (Pension) Rules. Therefore, I find no merit in the O.A. The same is accordingly dismissed with no order as to costs.


Member (J)

shukla/-