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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 186 of 1991

Date of Decision: 22.9.92.

Abdul Wahid

Applicant

Versus

Union of India & Others

Respondents

For the applicant

Mr. Antaryami Rath,
Advocate

For the respondents

Mr. Aswini Kumar Mishra,
Sr. Standing Counsel
(Central Government)

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C O R A M

THE HONOURABLE MR. K. P. ACHARYA, VICE-CHAIRMAN

AND

THE HONOURABLE MISS USHA SAVARA, MEMBER (ADMN)

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1. Whether the reporters of local newspapers may be allowed to see the judgment ? Yes
2. To be referred to reporters or not ? *Yes*
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes

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JUDGMENT

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MR.K.P.ACHARYA, VICE-CHAIRMAN, In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner prays for a direction to be issued to the Opposite Party No.1 to pay the usual full amount of monthly pension due to the petitioner and thereby quash the order contained in Annexure-2 dated 10.7.1990 withholding payment of pension to the petitioner under Rule-8(1)(B) of the C.C.S. (Pension) Rules, 1972.

2. Shortly stated the case of the petitioner is that he is a retired employee of the Postal Department. While working as a Sorting Postman in Chandini Chauk Head Post Office, the petitioner retired on superannuation in the year 1986. In the year 1985, a chargesheet was submitted under Section 302 read with Section 34 of I.P.C. against the petitioner and his son for having been committed murder of one of his younger brothers. The Learned Additional Sessions Judge, Cuttack by his judgment dated 26.2.1983 passed in Sessions Trial Case No.74 of 1982 acquitted the petitioner and his son. After the petitioner retired in the year 1986, he had been granted full pension which he was drawing every month. While the matter stood thus, an appeal was preferred by the State of Orissa against the judgment of acquittal to the Hon'ble High Court of Orissa, which formed subject matter of Government Appeal No. 58 of 1983. A Division Bench of the Orissa High Court set aside the order of acquittal and convicted the petitioner and his son under Section ~~302~~34 I.P.C. and sentenced each of them to undergo rigorous imprisonment for life. The petitioner

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and his son preferred an appeal to the Hon'ble Supreme Court which ~~forms~~^{is} subject matter of Criminal Appeal No. 160 of 1990 and it ~~still~~^{is} remains pending. Vide order dated 26.3.1991, (contained in Annexure-1) the Hon'ble Supreme Court have released the petitioner and his son on ~~bail~~. Due to the above mentioned order of conviction passed by the Hon'ble High Court of Orissa, the Senior Superintendent of Post Offices, Cuttack City Division, vide his order dated 10.7.1992 contained in Annexure-2 exercising his powers under Rule-8 (1)(B) of C.C.S.(Pension) Rules, 1972, has ordered ~~withholding~~ of ~~payment~~ of pension to the petitioner Abhul Wahid till the decision of the Supreme Court. Hence this application has been filed with the aforesaid prayer.

3. In their counter the opposite parties maintain that payment of pension is subject to future good conduct of the pensioner and the appointing authority has every right to ~~withhold~~ or withdraw any part of the pension or a part thereof if the pensioner is convicted of a serious ~~offence~~. Hence there being no illegality in passing of the order withholding pension of the petitioner, the case is devoid of merit and is liable to be dismissed.

4. We have heard Mr. ~~Antaryami~~ Rath, learned Counsel for the petitioner and Mr. Aswini Kumar Mishra, learned Standing Counsel on the merits of the case. The ^{admitted} facts are stated under :

- 1) The petitioner has been acquitted by the judgment of the Learned Additional Sessions Judge, Cuttack

- 2) On appeal preferred by the State of Orissa, Hon'ble High Court of Orissa has convicted the petitioner and his son under Section 302/34 I.P.C. and each of them has been sentenced to the imprisonment for life.
- 3) Appeal to the Hon'ble Supreme Court still remains pending.

Now the Bench is required to consider as to whether Rule-8(1) (B) of the C.C.S.(Pension) Rules, 1972 authorises the appointing authority to withdraw or withhold the entire pension and/or a part thereof. Rule-8 runs thus :

" Pension Subject to future good conduct:

- (1) (a) Future good conduct shall be an implied condition of every grant of pension and its continuance under these rules.
- (b) The appointing authority may, by order in writing, withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct".

From the above quoted provision it is clear that a pensioner is required to maintain good conduct after the pension is settled in ones' favour, or withdrawn the same. While drawing the pension, the appointing authority has a discretion to withhold or withdraw a pension or a part thereof either permanently or for a specified period if the pensioner is convicted of a serious offence. There cannot be a second opinion that an offence of murder is a serious crime especially because the penalty is either death or imprisonment for life. The petitioner having been convicted of the offence of murder, it cannot but be said that the petitioner is not convicted in a serious crime. Hence

exercising the discretion vested with the appointing authority by virtue of this Rule, the Superintendent of Post Offices, who is admittedly the appointing authority has withheld the pension for a specified period i.e. till the appeal is disposed of by the Hon'ble Supreme Court. We find no illegality to have been committed by the Superintendent of Post Offices (OP No.3) as he has acted according to law. Hence the decision of the Hon'ble Supreme Court will certainly be taken into consideration by the Superintendent of Post Offices and he would certainly acted according to the decision of the Hon'ble Supreme Court. Hence we do not like to interfere with the impugned order. The case is devoid of merit which stands dismissed leaving the parties to bear their own costs.

B. Sawant
MEMBER (ADMINISTRATIVE)

[Signature]
22.9.92
VICE-CHAIRMAN



Central Administrative Tribunal
Cuttack Bench, Cuttack

22.9.92, /BKSahoo