

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO.134/2010

Dated this the 29th day of October , 2010

C O R A M

**HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER
HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER**

T. Ayyappan
Superintendent of Central Excise(Retd.)
Narmada Bhavan
Thekkummuri PO
Tirur, Malapuram District.

..Applicant

By Advocate Mr. CSG Nair & Chandini G. Nair

Vs

- 1 Commissioner of Customs (Preventive)
 Central Revenue Buildings
 IS Press Road, Cochin-18
- 2 Assistant Commissioner of Customs(Preventive)
 Central Revenue Buildings
 Mananchira, Calicut
- 3 Senior Accounts Officer
 Pay &Accounts Officer
 Customs House, Cochin-9
- 4 Pay & Accounts Officer
 Central Pension Accounts Office
 Trikoot II Comple, Bhikaji Cama Place
 New Delhi.-66
- 5 Union of India represented by its Secretary
 Department of Revenue
 North Block, New Delhi-110001

.. Respondents

By Advocate Mr. Millu Dandapani, ACGSC

The Application having been heard on 20.10.2010 the Tribunal delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The grievance of the applicant, a retired Superintendent of Central Excise & Customs, is that though he retired from service on superannuation on 30.6.2009, he has not been paid the retiral benefits so far.

2 The applicant, who joined service of the respondents on 18.3.1977, retired from service on superannuation on 30.6.2009 after completion of 32 years 3 months and 14 days of service. Though he received sanction orders for disbursement of the retirement benefits issued by the 3rd respondent (A-1, A-2 & A-3), no amount was paid to him. He also received provisional pension instead of regular pension from the month of July, 2009. The applicant came to know that the delay in finalisation of retiral benefits and payment of provisional pension was due to pendency of a criminal case filed by his wife before the Judicial First Class Magistrate Court, Tirur, in which the Court convicted him and sentenced to undergo simple imprisonment for three months under Section 324 of the IPC. On appeal, the punishment was modified to a fine of Rs. 3,000/- which was stayed by the High Court on revision. His representation for intimating the ground for withholding of pension and gratuity was not answered (A-9). Hence he filed this Application for a direction for payment of retiral benefits with 12% interest. He urged that there is no order from any authority for



withholding of the retiral benefits, no action was taken against him while he was in service and that he was paid provisional pension without issuing any formal order. He also relied on the cases of Krishnan kuttty Vs. Superintendent of Post Offices (1975 KLT 503) and the judgment of the High Court of Delhi in Union of India & Another Vs. Prabu Lal (WP(C) NO. 383/2010) dated 25.1.2019.

3 The respondents opposed the O.A by filing reply statement. They submitted that Government of India decision No. 2 under Rule 19 of CCS (CCA) Rules, 1965, stipulates that as soon as a Government servant is convicted on a criminal charge, he may in appropriate cases be placed under suspension if not already suspended. As per Rule 10(2)(B) of CCS(CCA) Rules, 1965, a Government servant is deemed to have been placed under suspension w.e.f the date of conviction, if in the event of date of conviction of offence, he is sentenced to imprisonment exceeding 48 hours. They submitted that the applicant has been convicted and sentenced for imprisonment, that the conviction awarded to the applicant has not yet been set aside and the appeal filed by him before the High Court is still pending. Therefore, no retiral benefits can be given to him under Rule 69(1)(C) of CCS (Pension) Rules, 1972.

4 We have heard learned counsel appearing for the parties and perused the records produced before us.

5 There is no dispute that the applicant while working as Superintendent of Central Excise & Customs House, Cochin, was convicted on 8.8.2005 in C.C. No. 1200/2001 filed by his wife alleging that she was assaulted in public and the applicant was sentenced to



undergo simple imprisonment under Section 324 of IPC which was modified to payment of fine of Rs. 3000/- in Criminal Appeal No. 308/2005 and that the punishment stands stayed by the High Court. The question that comes up for consideration is whether the respondents are legally right in withholding the retiral benefits and granting provisional pension.

6 Rule 19 of CCS (CCA) Rules, 1965 and other rules relied on by the respondents for denying the retiral benefits to the applicant reads as follows:

19. Special procedure in certain cases

Notwithstanding anything contained in Rule 14 to Rule 18

(i) where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge or

Rule 4 of CCS (Commutation of Pension) rules, 1981.

No government servant against whom departmental or judicial proceedings have been instituted before the date of his retirement, or the pensioner against whom such proceedings are instituted after the date of his retirement shall be eligible to commute a fraction of his provisional pension authorised under Rule 69 of the Pension rules or the pension, as the case may be, during the pendency of such proceedings.

Rule 69(1)(C) of CCS (Pension) Rules, 1972

No Gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon. In order to mitigate the hardship to the Government servants who on the conclusion of the proceedings are fully exonerated, it has been decided that the interest on delayed payment of retirement gratuity may also be allowed in their cases in accordance with the aforesaid instructions.



4(b) Case falling under Rule 19(1): When action is taken under clause (a) of the second proviso to Art. 311(2) of the Constitution or Rule 19(1) of the CCS(CCA) Rules, 1965, or any other service rule similar to it, the first prerequisite is that, the Disciplinary Authority should be aware that a Government servant has been convicted on a criminal charge. But this awareness alone will not suffice. Having come to know of the conviction of a Government servant on a criminal charge, the Disciplinary Authority must consider whether his conduct which had led to his conviction, was such as warrants the imposition of a penalty and if so, what that penalty should be. For that purpose, it will have to peruse the judgment of the Criminal Court and consider all the facts and circumstances of the case. In considering the matter, the Disciplinary authority will have to take into account the entire conduct of the delinquent employee, the gravity of the misconduct committed by him, the impact which his misconduct is likely to have on the administration and other extenuating circumstances or redeeming features. This, however, has to be done by the Disciplinary Authority by itself. Once the Disciplinary Authority reaches the conclusion that the Government servant's conduct was blameworthy and punishable, it must decide upon the penalty that should be imposed on the Government servant. This too has to be done by the Disciplinary Authority by itself. The principle, however, to be kept in mind is that, the penalty imposed upon the civil servant should not be grossly excessive or out of all proportion to the offence committed or one not warranted by the facts and circumstances of the case.

5 After the competent authority passes the requisite orders as indicated in the preceding paragraph, a Government servant who is aggrieved by it can agitate in appeal, revision or review, as the case may be, that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case....."

An exactly identical case came up for consideration of the High Court of Kerala in Krishnan kutty Vs. Senior Superintendent of Post Offices, Ernakulam (1975 KLT 503). In that case the High Court held

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as follows:

10 Article 311(2) of the Constitution enshrines a valuable right to a Government servant. Rules 14 and 18 of the Rules which lay down the procedure for imposing penalties upon a government servant are there because of the protection contained in Article 311(2) of the Constitution. Proviso (a) to Article 311(2) of the Constitution and the special procedure prescribed in rule 19 of the Rules are really exceptions. Rule 19 (i) can be invoked only in cases where it is strictly applicable. A conduct not in the course of employment cannot be a misconduct. Similarly, a conduct which is not a misconduct as per the conduct rules also cannot be the subject matter of disciplinary action against a Government servant. In that case, the conviction on a criminal charge for a conduct which is not a misconduct as per the conduct rules cannot be a reason for taking action against a government servant under rule 19(i) of the Rules. A domestic quarrel which has nothing to do with the employment of the Government servant cannot be a misconduct. Moreover, if the same occurs at a place far away from the place of employment, that cannot in any way be made a subject matter of a disciplinary action against the Government servant. In this case a scuffle between the petitioner Government servant and his step brother at the place where they live resulted in the criminal charge and the conviction thereon. If the conduct of the petitioner cannot be subject matter for taking disciplinary action against him under rules 14 to 18 of the Rules, the mere fact that he was convicted on a criminal charge on the ground of that conduct cannot be a reason for invoking rule 19(i) of the Rules....."

11 The Original Petition is allowed. There shall be no order as to costs."

In this case the misconduct occurred at a place far away from the place of employment, that cannot be made a subject matter of a disciplinary action against the Government servant. This case squarely applies in the case of the applicant.



7 In another identical case in WP(C)No. 383/2010 the High Court of Delhi considered an identical issue and held as follows:

13 We are satisfied that while exercising power under Rule 69/9 of the CCS Pension Rules, the President has to be satisfied, that the pensioner committed grave misconduct in discharge of his duties. In WP(C)No. 383/2010 the absence of any such finding, the President cannot hold the pension or withhold gratuity. In the present case also there is no finding against the respondent warranting withholding of any part of pension or gratuity by the President as the respondent was neither facing any departmental proceedings nor the judicial proceedings having anything to do with his official functions. There is nothing on record that any loss has been caused to the Government by any act/omission of the respondent.

14 Thus, we find no infirmity in the aforesaid order which requires this Court to intervene in the matter under Article 226 of the Constitution of India. Accordingly, the writ petition filed by the petitioners is dismissed with costs of Rs. 10,000/- to be paid to the respondent with his dues within one month from today.

The gist of the above judgments is that the retiral benefits of an employee under the CCS CCA rules cannot be withheld for any punishment imposed on him for a conduct or misconduct not in the course of the employment.

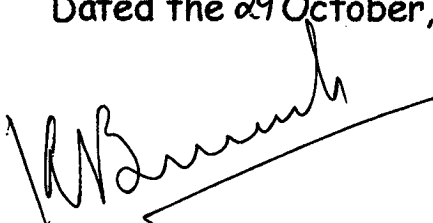
8 More over, the respondents have not issued any order or notice informing the applicant about the decision of the respondents to withhold the retiral benefit / payment of provisional pension on the basis of the punishment imposed on him by the criminal court, thus denying an opportunity to defend his case.



9 In the light of the above, we are of the considered view that the action of the respondents in withholding the retiral benefits of the applicant and in granting provisional pension is bad in law. Accordingly, we allow the O.A and direct the respondents to make payments of retiral benefits as per Annexure A-1, A-2 and A-3 with interest at 9 per annum from July, 2009. This shall be done within a period of two months from the date of receipt of this order.

10 The O.A. is allowed. No costs.

Dated the 29th October, 2010



DR.K.B. SURESH
JUDICIAL MEMBER



K.NOORJEHAN
ADMINISTRATIVE MEMBER

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