

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 478/2003

this the 18<sup>th</sup> day of March, 2004

HON'BLE SHRI S.P. ARYA, MEMBER (A)

R.N. Bhatia, aged about 61 years son of Sri Chaudhari Harnarain Bhatia, Resident of 3/36, Vishwas Khand, Gomti Nagar, Lucknow.

...Applicant

By Advocate: Sri D.K. Upadhyay

Versus

1. Union of India through Secretary, Department of Personnel and Training, Ministry of personnel and Training, Ministry of Personnel and Public Grievance and Pension, Govt. of India, North Block, New Delhi.
2. State of U.P. through Secretary, Department of Appointments, Govt. of U.P., Civil Secretariat, Lucknow.
3. Principal Secretary, Finance Department, Govt. of U.P., Civil Secretariat, Lucknow.

...Respondents

By Advocate: Sri A.K. Chaturvedi

ORDER

BY HON'BLE SHRI S.P. ARYA, MEMBER (A)

Applicant, a member of Indian Administrative Service, was placed under suspension on 12.7.2000 and departmental proceedings were initiated against him. The suspension was extended from time to time. The suspension was challenged in O.A.No. 583/2000 and 235/2002. The suspension order was revoked and respondents were directed to reinstate the applicant on the date and relinquish the charge on superannuation. The disciplinary proceedings in pursuance of the charge sheet dated 4.4.2001 were allowed to continue and decision taken thereon as per rules. The applicant during the suspension period from 12.7.2000 to 31.3.2002 has been paid

subsistence allowance @ 50% of the salary and from 1.4.2002 to 30.9.2002 @ 2/3rd of the salary. The disciplinary proceeding enquiry has yet not been finalised. Applicant by this O.A. has sought for issuance of directions to the respondents to make payment of balance salary of suspension period and amount of leave encashment, Group Insurance Scheme, Gratuity and final pension with commutation along with 12 % interest for the delayed payment thereof.

2. Respondents in the counter reply have stated that the suspension order dated 12.7.2000 was ~~reviewed~~ <sup>revised</sup> ~~v~~ in terms of Rule 3(8) of the All India Service (Disciplinary and Appeal) Rules, 1969 and it has been extended by orders dated 9.10.2000, 4.4.2001, 3.10.2001 and 1.4.2002. The suspension order along with extension orders were recommended to be withdrawn by the Review Committee in its meeting held on 19.9.2002. The competent authority after considering the recommendations, has accepted the same and reinstated the applicant on 30.9.2002 (Annexure No. 3). It has further been stated that the ~~review~~ <sup>relief</sup> ~~v~~ sought for in O.A. No. 583/2000 for setting aside the order dated 6.11.2002, was not granted by this Tribunal. The difference of salary from the intervening period from 12.7.2000 to 29.9.2002 was to be decided after finalisation of the disciplinary proceedings in terms of the Rules. The applicant was paid ~~substance~~ <sup>subsistence</sup> allowance @ 50% of the salary from 12.7.2000 to 27.2.2002 and thereafter from 28.2.2002 to 29.9.2002 @ 3/4th of the salary. Leave encashment due to the applicant has been sanctioned by order dated 31.12.2003. The applicant submitted representation on the enquiry report and the same was considered by the State Government. The State Govt. has proposed the punishment of recovery of Rs.

11,44,055.00 and accordingly sought advice of the Union Public Service Commission. The Commission has sought certain information/documents and the same has been made available to the Commission by letter dated 19.11.2002. The punishment order has to be passed by the Central Government and First Information Report bearing Crime No. 448/2000 under Section 13 (1) (E) read with Section 13(2) of the Prevention of Corruption Act, 1988 has also been registered against the applicant. The applicant has been paid Provident Fund, Provisional Pension w.e.f. 1.10.2002. It has also been stated that the applicant has approached the Lok Ayukt, Uttar Pradesh and the same relief has been sought for there also. The applicant is not entitled to file the present O.A. The applicant has not availed any departmental remedy and O.A. is also barred by limitation.

3. I have heard learned counsel for both the parties and perused the pleadings.

4. During the course of argument, it was found that the amount of leave encashment has been paid to the applicant and orders with regard to Group Insurance Scheme has been issued on 23rd December, 2003. It was argued by the counsel for the applicant that revocation of suspension order passed by the Tribunal on 13th September, 2002 in O.A. No. 583/2000 and 2135/2002 amounts to cancellation of the suspension order dated 12.7.2000 and subsequent extension orders ab initio. The Legal Glossary published by Govt. of India, Ministry of Law, Justice and Company Affairs in 1992 'revoke' means "to call back, to rescind, to cancel, to annul by recalling or taking back". The meaning of word 'revoke' as given in Funk and Wagnalls standard dictionary is "to annul or make void by recalling, cancel, rescind." This was also discussed in AIR, 1967 page 417 in the case of R.P. Kapur Vs.

-51-

Union of India where it was held:

"We are, therefore, driven to construe the order in the light of the language used therein. True, that etymologically 'revoke' means "to recall, call back: to withdraw: but the order has to be construed reading it as a whole. If 'revoke' was intended to convey the meaning of completely nullifying the suspension 'ab initio', it appears that there was no necessity to follow it up with the words 'with immediate effect'. Once the suspension order is revoked in the sense urged by petitioner, it would automatically disappear and the addition of the words 'with immediate effect' would hardly be necessary. On the reading of the entire order, it appears that it intended to revoke the suspension from the date thereof and did not mean to destroy it completely."

5. It was also held that suspension is not one of the punishment prescribed by Rule 3 of Disciplinary Rules. Consequently the suspension contemplated by Rule 9 must mean suspension otherwise than by way of penalty. <sup>of life</sup> Justifiability of suspension order in Rule 9 must be determined ~~in~~ <sup>and not necessarily after conclusion thereof</sup> irrespective of the result of the enquiry. The respondents must decide and make an order as to whether the suspension of the petitioner was justified or not and to allow the petitioner consequential relief in terms of Rule 9 depending on such decision. The respondents were held not justified in their stand ~~that~~ <sup>they</sup> they can decide this question only on the conclusion of the enquiry.

6. The order dated 30.9.2002 of this Tribunal was only for revocation of the suspension order and allow the applicant relinquish the charge on attaining the age of superannuation on the same date. The suspension order was ~~neither~~ <sup>not</sup> quashed, ~~nor annulled~~ <sup>nor</sup> declared null and void or ~~nor~~ declared invalid. In absence of quashing of the suspension order, it cannot be said that the suspension order has become void ab initio i.e. the date of passing the order on 12.7.2000. The orders dated <sup>30.11.2002</sup> ~~3rd September, 2002~~ <sup>(Annexure A-3)</sup> specifically

said that "निलम्बन दिनांक 30-9- 2002 से समाप्त करते हुये सेवा में बहाल करते हैं" meaning thereby that the applicant is being reinstated after revoking the suspension order w.e.f. 30.9.2002. This being the situation , it cannot be said that the applicant was entitled for full salary and allowances for the period of suspension. However, Rule 5 -B of All India Services (Disciplinary and Appeal ) Rules, 1969:

"5 B- Admissibility of pay and allowances and treatment of Service on reinstatement after suspension - (1) When a member of the Service under suspension is reinstated or would have been so reinstated but for his retirement under All India Services (Death-cum-Retirement Benefits) rules, 1958, while under suspension, the authority competent to order reinstatement shall consider and make a specific order-

(a)regarding the pay and allowances to be paid to the member of the Service for the period of suspension ending with reinstatement or the date of his retirement on superannuation, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty. "

We find that the competent authority has not complied with this rule and made no specific orders with regards to the pay and allowances to be paid to the applicant and whether the period of suspension is treated as a period spent on duty. The competent authority while passing the order revoking the suspension of the applicant should have passed the orders under Rule 5 (B). Thus , the statutory provisions have not been complied with.

7. It was argued by the learned counsel for the applicant that no specific order for detaining the amount of pension and gratuity has been passed by the respondents. Relying on **State of Punjab vs. K.R. Erry and Sobhag Rai Mehta (1973) 1 Supreme Court Cases, 120** it was argued that pensionable benefits are not merely bounty but property to which they are entitled . It is also held that State Government may have had some material before it for imposing a penalty by way of a cut in the pension, it had failed to give a reasonable opportunity to

officers to put forward their defence or facts in extenuation before the cut was imposed." <sup>✓</sup>

8. Learned counsel for the respondents has placed reliance on Rule 6 of All India Services (Death cum Retirement Benefit) Rules, 1958 which provide "The Central Government reserves the right of withholding a pension and gratuity if the pensionary is found in a departmental or judicial proceedings to have been guilty of grave misconduct or to have caused pecuniary loss to the Central or a State Government by misconduct or negligence during his service." Rule 6(2) of the said rules provide for

"Where any departmental or judicial proceedings is instituted under sub rule (1) or where a departmental proceeding is continued under clause (a) of the proviso, ~~thereto against an officer who has retired on attaining the age of compulsory retirement or otherwise, he shall be sanctioned by the Government which instituted such proceedings, during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceedings, final orders as passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service upto the date of retirement, or if he was under suspension on the date of retirement, upto the date immediately preceding the date on which he was placed under suspension, but no gratuity or death-cum- retirement gratuity shall be paid to him until the conclusion of such proceedings and the issue of final orders thereto:~~

Provided that where disciplinary proceedings has been instituted against a member of the service before his retirement from service under Rule 10 of the All India Services (Disciplinary and Appeal) Rules 1969 for imposing any of the penalties specified in clauses (i) (ii) and (iv) of sub Rule (1) of Rule 6 of the said rules and continuing such proceeding under sub rule (1) of this rule after his retirement from service, the payment of gratuity or death-cum- retirement gratuity shall not be withheld."

9. In the present case, provisional pension has been sanctioned. Provisional pension not exceeding the maximum pension which would have been admissible on the basis of the qualifying service. Gratuity could be paid only when the disciplinary proceedings are concluded. The charge sheet in the departmental

proceedings has been issued under Rule 8 of All India Service (Disciplinary and Appeal) Rules, 1969 which prescribed the procedure for imposing major penalty. I accordingly find that the pecuniary loss to the State Govt. being involved, the disciplinary proceedings instituted for major penalty, the applicant is not entitled for gratuity till the finalisation of the disciplinary enquiry.

10. It has also been argued on behalf of the applicant that applicant is unnecessarily being harassed. He has already submitted his representation to the enquiry report. Matter is unnecessarily being delayed. However, it is found that the matter has already been referred to the Union Public Service Commission and the querries made by the UPSC have also been replied. It is to the respondents that the respondent would expedite the finalisation of the departmental enquiry as early as possible. Gratuity cannot be paid till the finalisation of the ~~enquiry~~ <sup>proceedings</sup>. Consultation with the UPSC is not optional but it is mandatory, as given in the Rule 9 of All India Service (Disciplinary and Appeal) Rules, 1969. As the applicant has retired from IAS, it is the Central Govt. on behalf of the Present of India empowered for taking final decision in the matter. The procedure prescribed have to be complied with by the respondents.

11. Amount of leave encashment to the applicant should have been paid within a month of his retirement. It is stated that it has been paid after 1½ years. In the circumstances, it is found that the delay in payment of leave encashment has not been caused by the applicant. The applicant would be entitled for 6% interest from 1.11.2002 till the date of actual payment of amount of leave encashment.

12. In view of the above circumspactus, the O.A. is partly allowed. Respondents are directed to pass the orders under Rule 5 B of All India Service (Disciplinary and Appeal) Rules, 1969 within a period of 2 months from the date of communication of this order with regards to admissibility of salary and period of suspension to be treated as duty or not, as per rules. Applicant is also entitled to 6% interest on the delayed payment of leave encashment w.e.f. 1.11.2002 till the date of actual payment.

13. In the circumstacnes no orders as to costs are made.

*243M*  
\_\_\_\_\_  
MEMBER (A)

HLS/-