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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.199/98

Date of order: 12/11/98

P.D.Paliwal, S/o late Sh.Ayodhya Prasad Paliwal, R/o 28, Sangram Colony, C-Scheme, Jaipur.

...Applicant.

Vs.

1. Union of India through Secretary to the Govt. of India, Ministry of Personnel, Public Grievances and Pension, Deptt. of Personnel & Training, New Delhi.
2. State of Rajasthan through Chief Secretary, Secretariat, Jaipur.
3. Director, Pension Deptt, Jyoti Nagar, Rajasthan, Jaipur.

...Respondents.

Mr.Paras Khandelwal ) Counsel for applicant

Mr.Mahendra Singh)

Mr.S.S.Hasan - Counsel for respondent No.1

Mr.U.D.Sharma - Counsel for respondent No.2

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer for seeking the following relief:

(i) Declaration to the effect that on having been promoted to the Indian Administrative Service vide order dated 8.3.94, the charge sheet issued to the applicant on 6.3.92 under the Rajasthan Civil Services (Classification Control & Appeal) Rules, 1958 has lost its legal sanctity because after his promotion to IAS departmental proceedings could have been initiated against the applicant only under and in accordance with the All India Service (Discipline & Appeal) Rules, 1969.

(ii) Retirement benefits as envisaged under the All India Service (Commutation of Pension) Regulation, 1959 cannot and ought not to have been with-held after his retirement having regard to the provisions of All India Service (Death cum Retirement) Rules and the Commutation of Pension Regulations.

(iii) Direction to the respondents to release the entire retirement benefits to the applicant including gratuity, commutation of pension with interest @ 18% per annum w.e.f. the date of retirement i.e. 31.7.96.

2. The facts of the case as stated by the applicant are that the applicant was initially appointed in the year 1962 as member of the Rajasthan Administrative Service. While serving in the Rajasthan Administrative Cadre, the applicant was served with a charge-sheet on 6.3.92 under Rule 16 of the Rajasthan Civil Service (Classification,

Control and Appeal) Rules, 1958 with a view to jeopardise the promotion of the applicant to IAS. The applicant filed an O.A before this Tribunal which was allowed by the Tribunal vide order dated 25.11.92. An appeal was filed against the said order before Hon'ble Supreme Court and the Supreme Court vide its judgment dated 12.4.93 modified the impugned order by giving certain directions to the State Government. Accordingly, the applicant was promoted to IAS vide order dated 8.3.94 issued by respondent No.2 which was communicated to the applicant vide communication dated 23.3.94. It is stated by the applicant that the charge-sheet issued to the applicant on 6.3.92 was challenged by him in Writ Petition No.2335/92 before the Rajasthan High Court. Hon'ble the Rajasthan High Court was pleased to allow the Writ Petition of the applicant vide its judgment dated 17.1.97 and quashed the said charge sheet issued to the applicant on 6.3.92. It is stated that the applicant was superannuated on 31.7.96 but vide order dated 10.10.96, respondent No.1 has directed the payment of provisional pension only to the applicant and further directed that no gratuity and commutation shall be released to him. It is further stated that after the charge sheet dated 6.3.92 quashed by the High Court, an order dated 17.3.98 was issued by respondent No.2 apprising respondent No.3 the entitlement of the applicant and to release monthly pension of Rs.7210/- and gratuity of Rs.2,72,844/-. But the applicant was neither been paid gratuity nor commutation of pension. It is stated that the CCA Rules shall not be applicable to members of All India Services and the Central Govt after consultation with the State has framed the All India Services (Death cum Retirement Benefits) Rules, 1958 and All India Service (Commutation of Pension) Regulation, 1959, which are applicable to the Members of All India Service, the charge sheet which was issued to the applicant on 6.3.92 while he was member of the State Service was lost its sanctity and became ineffective consequent to the applicant's promotion to IAS on 8.3.94. The said charge sheet was also quashed by the Hon'ble Rajasthan High Court. Therefore, with-holding the retirement benefits payable to the applicant on the strength of the charge sheet dated 6.3.92 is patently illegal, invalid and ultra vires to the Constitution of India and the power to with-hold the payment of gratuity can only be exercised by the Central Govt in view of Rule 6 of the DCRB Rules. It is also stated that the pension and gratuity can only be with-held if a valid departmental enquiry is initiated against the applicant. Since no charge sheet was issued to the applicant after his promotion to IAS under the Rules of 1969, therefore, the provisions of Rule 6 of the DCRB Rules cannot be pressed into service for with-holding the retirement benefit including pension, gratuity and commutation of pension. Therefore, the applicant filed this O.A for the relief as mentioned above.

3. Reply was filed. In the reply it has been stated that the

departmental proceedings were pending against the applicant on the date of his retirement, therefore, the amount of gratuity and commutation of pension had rightly been with-held under the provisions of the Rules of 1958 as well as the Regulations of 1959 and the applicant is not entitled to any relief sought for. It is further stated that the revised pension and gratuity was not released to the applicant as the State Govt has filed a D.B Special Appeal alongwith stay application before the High Court, which is pending, therefore, the matter is subjudice. It is also stated that the charge-sheet was issued to the applicant on 6.3.92 when he was member of the Rajasthan Administrative Service and his subsequent appointment to IAS will not have an effect of closing the earlier departmental proceedings pending against him. Therefore, this O.A is devoid of any merit and is liable to be dismissed.

4. Heard the learned counsel for the parties and also perused the whole record.

5. The learned counsel for the applicant vehemently argued that the charge sheet issued to the applicant on 6.3.92 has already been quashed by the Rajasthan High Court vide its judgment dated 17.1.97 in the Writ Petition filed by him and no stay is operating <sup>against</sup> the said judgment. He has further argued that the Rajasthan High Court has quashed the impugned charge sheet on the ground that on promotion of the applicant to IAS the departmental proceedings against the applicant is not maintainable under CCA Rules and the applicant on his promotion to IAS on account of his outstanding merit in the service, therefore, misconduct if any leading to the charge sheet and initiation of departmental proceedings has been washed out by the subsequent course of event. He has also argued that delay in payment of pension is attributed to the respondents, therefore, the applicant is entitled to interest at the market rate. In support of his contention, he has referred to State of Jammu & Kashmir Vs. M.S. Farooqi & Ors. (1972) 1 SCC 872 and O.P.Gupta Vs. UOI & Ors. AIR 1987 SC 2257.

6. On the otherhand the learned counsel for the respondents while objecting the above arguments has submitted that with-holding of gratuity and commutation was based on the ground of pending departmental proceedings against the applicant. He has further argued that against the judgment dated 17.1.97 passed by the Rajasthan High Court, Special Appeal was filed, which is pending. Therefore, the matter is subjudice before the High Court. In view of this, with-holding of gratuity and commutation is not illegal and unconstitutional. In support of his contention, he has referred to State of Orissa Vs. Kalicharan Mohapatra & Anr. 1995(31)ATC 471(SC), R.Kalliappan Vs. UOI & Ors. 1989(5) SLR 243 (CAT Madras) and Awadhut Vasudeo Waikar Vs. UOI & Ors. (1996) 34 ATC 520 (CAT Bombay).

7. I gave thoughtful consideration to the rival contentions of both the

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parties and also perused the whole record.

8. It is a public policy that officials who are found to be guilty of grave misconduct during their service should be proceeded against even if the misconduct came to light after their retirement. It is for this reason the provision has been made for taking action against them, but it is again a public policy that after retirement of a government servant, he should not be haunted indefinitely by the ghosts of his actions and inactions during the service, thereby disturbing his peace and tranquility in the evening of his life.

9. For a proper understanding of this argument it is profitable to extract the provisions of Rule 6 of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 which are reproduced as follows:

6. Recovery from pension,-- (1) The Central Government reserved to itself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from pension of the whole or part of any pecuniary loss caused to the Central or a State Government, if the pensioner is found in a departmental or judicial proceeding 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, including service rendered on re-employment after retirement.

Provided that no such order shall be passed without consulting the Union Public Service Commission:

Provided further that--

(a) such a departmental proceedings, if instituted while the pensioner was in service, whether before his retirement or during his re-employment, shall, after the final retirement of the pensioner, be deemed to be a proceeding under this sub-rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the pensioner had continued in service.

(b) such departmental proceeding, if not instituted while the pensioner was in service, whether before his retirement or during his re-employment--

(i) shall not be instituted save with the sanction of the Central Government;

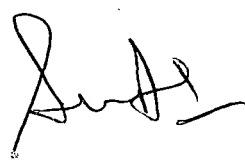
(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

(iii) shall be conducted by such authority and in such place or places as the Central Government may direct and in accordance with the procedure applicable to proceeding on which an order of dismissal from service may be made;

(c) such judicial proceeding, if not instituted while the pensioner was in service, whether before his retirement or during his re-employment, shall not be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution.

Explanation - For the purpose of this rule -

(a) a departmental proceeding shall be deemed to be instituted when the charges framed against the pensioner are issued to him or, if he has been placed under suspension from an earlier date, on such date and



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(b) a judicial proceeding shall be deemed to be instituted-

(i) in the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to the criminal court; and

(ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made to a civil court.

(2) Where any departmental or judicial proceeding is instituted under sub-rule (1) or where a departmental proceeding is continued under clause (1) 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 proceeding, final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service up to the date of retirement or if he was under suspension on the date of retirement, up to 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 thereon.

(Provided that where disciplinary proceedings has been instituted against the All India Services (Discipline 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.)

(3) Payment of provisional pension made under sub-rule (2) shall be adjusted against the final retirement benefits sanctioned to the pensioner upon conclusion of the aforesaid proceeding, but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

10. In the instant case, it is not disputed that a charge-sheet was given to the applicant on 6.3.92 when he was a member of RAS. The said charge sheet was given to the applicant under Rule 16 of CCA Rules of 1958. It is also not disputed that the applicant was promoted to IAS vide order dated 8.3.94. It is also undisputed that Writ Petition No.2335/92 was filed before the Rajasthan High Court and the High Court was pleased to quash the impugned charge sheet on the ground that on promotion of the applicant to IAS, the departmental proceedings against the applicant are not maintainable. The High Court has also observed that the applicant has earned his promotion to IAS on account of his outstanding merit in the service, therefore, misconduct if any leading to the charge-sheet and initiations of departmental proceedings has been washed out by the subsequent course of event. It is also not disputed that for members of All India Services, All India Services(Death cum Retirement Benefits) Rules, 1958 and All India Services(Commutation of Pension) Regulation, 1959 are applicable. Therefore, the charge sheet given to the applicant on 6.3.92 as Member of Rajasthan Administrative Service was quashed as per

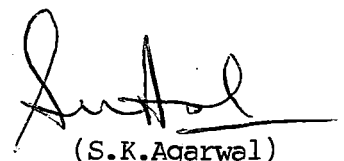
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Hon'ble High Court's judgment dated 17.1.97 passed in Writ Petition No.2335/92 on the ground that the same is not maintainable. Therefore, on the basis of such a charge sheet which has been quashed, withholding of gratuity and commutation is not altogether sustainable in law. No doubt against the said judgment dated 17.1.97, the respondents filed a Special Appeal which is pending before the High Court but it is admitted by the learned counsel for the respondents that no stay order was issued by the High Court in the said Special Appeal. Therefore, merely a Special Appeal was filed against the judgment dated 17.1.97 and the same is pending is no ground to with-hold the gratuity and commutation payable to the applicant and the judgment dated 17.1.97 passed by the High Court in Writ Petition No.2335/92 cannot be ignored or escaped notice especially when there is no stay order passed by the High Court. The legal citations referred by the learned counsel for the respondents do not help the respondents in any way.

11. The learned counsel for the applicant has argued that the act of withholding the gratuity and commutation payable to the applicant is due to the indifferent outlook of the respondents, therefore the applicant is entitled to interest on the amount so with-held. This ground has been objected by the learned counsel for the respondents and submitted that the applicant is not entitled to interest on the amount not paid. I am of the opinion that in the facts and circumstances of this case, the applicant is also entitled to interest @ 12% per annum from the date of his superannuation till the date of payment.

12. I, therefore, allow this O.A and direct the respondents to pay the amount of gratuity and commutation of pension, payable to the applicant alongwith interest @ 12% per annum, within 90 days from the date of receipt of a copy of this order.

13. No order as to costs.



(S.K.Agarwal)

Judicial Member