

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

C.A.No.332/99

Date of order: 02.05.2000

Deo Kishan Sharma, S/c Rewa Chand, R/c House No.28/2424,
Bihari Ganj, Cpp.Grave Yard, Ajmer, Ex-Sub Postmaster.

...Applicant.

Vs.

1. Union of India through the Secretary, Deptt. of Posts, Mini. of Communications, New Delhi.
2. The Desk Officer(VP), Govt. of India, Deptt. of Post, Dak Bhawan, Sansad Marg, New Delhi.
3. Director General, Deptt. of Post, Dak Bhawan, Sansad Marg, New Delhi.
4. Postmaster General, Ajmer
5. Chairman, Union Public Service Commission, New Delhi.

...Respondents.

Mr. Shamsheer Singh - Counsel for the applicant

Mr. M. Rafiq - Counsel for respondents.

CORAM:

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

Hon'ble Mr. N.P. Nawani, Administrative 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 that the impugned order at Annx.A1 be declared as having become infructuous and ineffective. A further prayer has also been made to direct the respondents to pay the applicant all arrears of pay, gratuity and other retiral benefits and provisional pension from the date of his retirement i.e. from 31.12.79.

2. Facts of the case as stated by the applicant are that while working as Sub-postmaster, Dargah Dharref Post Office, Ajmer, he was placed under suspension w.e.f. 10.7.74 and three separate cases were registered against him with SPE, CBI, Jaipur and after trial he was convicted in case No.21/75 dated 13.5.91 and was acquitted in cases No.22/75 and 23/75. Aggrieved against the said conviction, he was filed Criminal Appeal before the Rajasthan High Court and the High Court has suspended the operation of the sentence pending the appeal, vide order dated 30.5.91. It is further stated that the High Court vide its judgment dated 13.5.98 set aside the conviction and the case was remanded back to the Trial Court and the Special Judge, CBI, Jaipur thereafter acquitted the applicant from all the charges levelled against him in case No.21/75 vide its judgment dated 3.9.98. Therefore, no criminal case remained pending after the judgment dated 3.9.98 against the applicant. It is also stated that on 29.10.98, fresh charge sheet

for criminal trial in respect of FIR No.21/74 for the offences under Sec.5(2) read with Sec.5(1) of the Prevention of Corruption Act and Sec.9 of the Indian Penal Code was filed in the Court of Special Judge, CBI cases, Jaipur which is pending. The applicant's prayer for provisional pension to the respondents to save him from starvation and thereafter reminders heed no response. Ultimately the applicant on 21.9.99 sent a notice to the respondents for payment of provisional pension and arrears of pay, etc but no response. It is stated that the order Annx.A1 was issued without any authority, therefore, the order is altogether void. It is stated that the conviction of the applicant in criminal case No.21/75 was set aside by the High Court on 13.5.98 and thereafter on remand of the case, the applicant was acquitted by the Special Judge, CBI Court, Jaipur. Therefore, the applicant is entitled to cent percent provisional pension under Rule 9(6) and Rule 69 of the CCS(Pension) Rules, 1972. Applicant, therefore, filed the O.A for the relief as mentioned above.

3. Reply was filed. It is admitted that the applicant was placed under suspension w.e.f. 10.7.74 and 3 separate charge sheets were filed against the applicant in the Court of CBI, Jaipur. It was also admitted that the applicant was convicted vide judgment dated 3.5.91 of Special Judge, CBI cases in case No.21/75 and on appeal, the High Court set aside the conviction and remanded the case back to the Trial Court and the Trial Court was acquitted the applicant from all the charges. It is also admitted that the applicant has already retired on 31.12.79 on attaining the age of superannuation. It is also admitted that Supdt.of Police, CBI, Jaipur also filed another charge sheet against the applicant before the Court of CBI, Jaipur which is pending. It is stated that the order dated 3.11.95 passed by the respondents withdrawing/withholding the entire pension of the applicant and the payment of DCRG under Rule 9 of the CCS(Pension) Rules is a detailed and speaking order. It is also stated that the Desk Officer, Govt. of India is competent to sign on the said order on behalf of the President. It is made clear that a fresh chargesheet in case No.18/98 was filed against the applicant by the CBI authority in CBI Court, Jaipur which is pending trial against the applicant. It is stated that order Annx.A1 was issued after following the procedure laid down under Rule 9 of the CCS(Pension) Rules and the government is well within its rights and have the authority in law for passing such order and the applicant has no case for interference by the Tribunal.

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

the whole record.

5. It is contended by the learned counsel for the applicant that pending criminal trial against the applicant, the applicant was being paid provisional pension under the CCS (Pension) Rules after his retirement. It is also contended that the applicant is entitled to 100% provisional pension under the rule even if judicial proceedings are pending against the applicant, therefore, he submits that the applicant is entitled to pension and pensionary benefits due to him.

6. On the other hand, the learned counsel for the respondents has submitted that the applicant is not entitled to any pensionary benefits as another charge sheet filed by the CBI is pending against him before the CBI Court.

7. We have given anxious consideration to the rival contentions of both the parties and also perused the whole record.

8. The applicant attained the age of superannuation on 31.12.89 but no retiral benefits were given to him as such the applicant has approached the Tribunal. The learned counsel for the applicant has urged that Rule 9 of the CCS(Pension) Rules can be invoked only if the pensionary is found guilty of grave misconduct or negligence or he has been convicted in the judicial proceedings or the pensioner has caused pecuniary loss to the government. Rule 9 of the CCS(Pension) Rules is reproduced as below:

"Rule 9: Right of President to withhold or withdrawn pension: President reserves to himself the right to withholding or withdrawing pension or part thereof, whether permanently or for a specified period and or ordering recovery from a pension of the whole or part of any pecuniary loss caused to the government if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement provided that the Union Public Service Commission shall be consulted before orders are passed."

9. According to the provisions given in Rule 9 supra, the President has a right to with-hold/withdraw a pension whole or part thereof either permanently or for a specified period and ordering recovery of pension whole or part of any pecuniary loss caused to the Govt. This power can be exercised if any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service. The power therefore, can be exercised in all cases where the pensioner

is found guilty of grave misconduct or negligence during the period of his service. This Rule 9 of the CCS(Pension) Rules has also come up before Hon'ble Supreme Court in the case of D.V.Kapoor Vs. UOI & Ors., AIR 1990 SC 1923. In this case the disciplinary proceedings were initiated against the Govt servant under Rule 3(ii)(iii) of the CCS(Conduct) Rules and were later continued under Rule 9 of the CCS(Pension) Rules, 1972. The charge against the appellant there was that he absented himself from duty without any authorisation and despite his being asked to join duty he remained absent. The Inquiry Officer, however, held that his absenting himself from duty could not be termed as entirely wilful because he could not move due to his wife's illness. The Inquiry Officer recommended that the case of the appellant should be considered sympathetically. The recommendation and finding of the Inquiry Officer were accepted by the President. However, it was decided to withhold full gratuity and payment of pension in consultation with the Union Public Service Commission. In these circumstances, this Court held that there was no finding that the appellant had committed grave misconduct as charged and that the exercise of power under Rule 9 was not warranted.

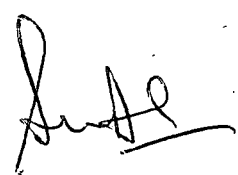
10. In the instant case, the applicant admittedly was retired on 31.12.89 and in case No.21/75, the applicant was prosecuted before the CBI Judge, Jaipur. He was convicted vide judgment dated 3.5.91 but he was acquitted in appeal by the High Court vide its judgment dated 13.5.98.

11. In view of the above facts, the prosecution against the applicant made in case No.21/75 does not survive. The applicant had already retired on 31.12.89, therefore filing another charge sheet before the CBI Court Jaipur in the year 1998 does not permit the respondents to with-hold/withdraw the pensionary benefits in full or in part.

12. It is pertinent to mention here that in this case, there is no order issued under Rule 9 of the CCS(Pension) Rules, regarding with-holding/withdrawing pensionary benefits of the applicant.


13. In view of the above legal position, facts and circumstances of the case and in the absence of any order issued under Sec.9 of the CCS(Pension) Rules, we are of the considered opinion that the respondents have no right to with-hold the pension/pensionary benefits of the applicant.

14. We, therefore, allow the O.A and direct the respondents to pay pension and release the amount of gratuity and other retiral benefits payable to the applicant within a period of 3 months from

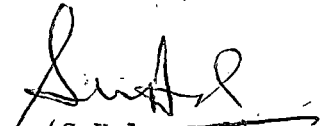


the date of receipt of a copy of this order subject to the applicant executing an indemnity bond with two sureties to the effect that the applicant will refund the amount to the respondents in the event of recovery being ordered from him by the appropriate authorities.

15. No order as to costs.


(N.P. Nawani)

Member (A).


(S.K. Agarwal)

Member (J).