

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH, JABALPUR

CIRCUIT SITTING AT INDORE

O.A.NO.393/2002

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri R.K.Upadhyaya, Member (A)

Indore, this the 12th day of August, 2003

Keshav Prasad s/o Shri Mahavir Prasad Mehra
r/o Geeta Bhawan Kothari Colony
H.No.3, Mandsaur (MP). .. Applicant

(By Advocate: Sh. Umesh Gajankush)

vs.

1. Union of India through
The Secretary
Post & Telegraph Department
Sansad Marg
New Delhi.
2. The Director
Postal Services
Office of Post Master General
Indore Region, INDORE (MP).
3. Superintendent of Post Office
Mandasaur (MP). .. Respondents
(By Advocate: Sh. Vivek Saran, through Sh. Sajid Akhtar)

O R D E R (Oral)

By Shri Shanker Raju, Member (J):

Applicant, a ~~retiree~~^h, impugns respondents' order dated 23.3.2002 whereby the provisional pension granted to the applicant has been withdrawn in full permanently under Rule 8 of CCS (Pension) Rules, 1972. He has sought quashment of the aforesaid order with grant of all consequential benefits.

2. Applicant while working as Sub-Post Master retired on superannuation on 31.12.2000. On account of arrest in a criminal case under Sections ^h 498(A) /304(B), ^{I.P.C. h} applicant was tried ^{cd} in Session ~~Case~~^h ~~xxxxxxx~~ ^h ~~xx~~ case No.341/1996 and was imposed upon an imprisonment

Contd.....2/-

of seven years vide judgement dated 17.3.1999.

3. Applicant was placed under suspension on 30.3.1999, which was revoked on 4.8.1999. A criminal appeal No.397/99 preferred against conviction order is subjudice before the High Court of Madhya Pradesh, Indore where the sentence has been suspended.

4. By an order dated 3.4.2001 provisional pension has been allowed to the applicant under the provisions of Rule 69(1)(b) of the CCS (Pension) Rules, 1972.

5. By a show-cause notice of 21.1.2002 issued under ~~Section~~ Rule 8 of the Pension Rules ibid it has been proposed to withdraw the provisional pension in full. Applicant represented against the same and contended that no serious offence has been committed and as the conviction of the trial court has been suspended involvement in a criminal case is relevant till the pension is sanctioned but future conduct after superannuation cannot be taken into consideration.

6. By the impugned order dated 23.3.2002, show cause notice was confirmed and provisional pension has been withdrawn in full permanently with immediate effect, giving rise to the present OA.

7. Sh. Umesh Gajankush, learned counsel for applicant, contended that action taken without approval of the President is without jurisdiction.

Contd.....3/-

According to him, provisions of Rule 69(1)(b) are mandatory and once the provisional pension was sanctioned, it cannot be withdrawn till the final disposal of the original proceedings.

8. As the matter is sub-judice before the High Court, Rule 8 of the Rules *ibid* cannot be invoked as withholding of Pension is on the ground of future good conduct, the career of the applicant was unblemished till superannuation and as the conviction was on 17.3.1999, on his superannuation on 31.12.2000 grant of provisional pension cannot be withheld under Rule 8 *ibid*.

9. On the other hand, no reply has been filed by the respondents. However, Shri Sajid Akhtar, learned proxy counsel of Sh. Vivek Saran, learned counsel for the ~~app~~ respondents, opposed the OA on the ground that the action has been taken by the respondents is in accordance with rules, and as suspension of sentence does not obliterate the offence, keeping in view the grave misconduct and serious crime, the action is in accordance with rules.

10. We have carefully considered the rival contentions of the parties and perused the material on record. Rule 8 of the Pension Rules *ibid* provides that future good conduct is an implied condition of every grant of pension and its continuance. Rule 8(1)(b) empowers the appointing authority to withdraw or withhold a pension or a part thereof whether permanently or for a specified period, if the pensioner is convicted in a serious crime⁴ or is found guilty of grave misconduct.

Contd....4/-


However, such an action is to be taken after Judgement of the Court and on show cause notice to the concerned.

11. From the perusal of the Judgement ~~of the~~^h applicant has been held guilty of cruelty ~~of~~^u woman as well as causing death on account of dowry death. Rule 69(1)(b) refers to judicial proceedings and cannot be extended to the proceedings in appeal as well. Once the applicant has been convicted suspension of sentence does not obliterate conviction and it is still subsists, on acquittal, law shall take its own course.

12. As per Rule 8 of the Rules *ibid* not only grant but continuance of pension depends on good conduct of the Government servant. Having involved in serious crime of dowry death and has been held guilty and ~~convicted~~^h convicted, the action taken is in accordance with the rules. The judgement of the trial speaks volumes about involvement of the applicant. Accordingly, we do not find any infirmity in the order passed by the respondents.

13. We also find that before withholding permanently the provisional pension, it is within the ambit of the respondents, a show cause notice has been issued and contentions put forth ~~has~~^h been meticulously dealt with in a reasoned order passed by the respondents, which does not suffer from any infirmity.

14. In the result, for the foregoing reasons, OA is found bereft of merit and is accordingly dismissed. No costs.


(R.K. UPADHYAYA)
MEMBER (A)


(SHANKER RAJU)
MEMBER (J)

/rao/