

(15)

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 10.05.2012

OA No. 102/2011

Mr. Mahendra Shah, counsel for applicant.
Mr. Shyam Lal Sharma, counsel for respondent nos. 1 & 2.
Mr. Mukesh Agarwal, counsel for respondent no. 3.

Learned counsel for the respondent nos. 1 & 2 is directed to furnish the information with regard to the progress of the disciplinary proceeding as well as the progress of the vigilance proceeding initiated against the applicant, on the next date of hearing.

Put up the matter on 26.07.2012 for hearing.
Certified copy of this order be made available to the learned counsel for the respondent nos. 1 & 2.

*Copy sent
R.P.
10/5/11*

K.S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

26/07/2012

OA No. 102/2011

Mr. Mahendra Shah, Counsel for applicant.
Mr. Shyam Lal Sharma, Counsel for R-1 & 2.
Mr. Mukesh Agarwal, Counsel for R-3.

Heard
Q.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

K.S. Rathore
(Justice K.S. Rathore)
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 26th day of July, 2012

Original Application No.102/2011

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)

H.R.Choudhary
s/o late Shri Kana Ram Choudhary,
r/o D-40, Chomu House,
Sardar Patel Marg, Jaipur,
Retired on 31.12.2004.

.. Applicant

(By Advocate: Shri Mahendra Shah)

Versus

1. Bharat Sanchar Nigram Limited,
Corporate Office,
Personnel Branch-II,
B-102, Statesman House,
148, Barakhamba Road,
New Delhi through its
Chairman-cum-Managing Director
2. The Principal General Manager,
Telecom District, Jaipur,
10, Bharat Sanchar Nigam Limited,
Jaipur
3. The Member (Services),
Telecom Commission,
Govt. of India,
Ministry of Telecom & Information Technology,
Department of Telecommunication,
Vigilance Second Section,
New Delhi-110 001.

.. Respondents

(By Advocate: Shri Shyam Lal Sharma for resp. No. 1 and 2 and Shri Mukesh Agarwal for resp. No. 3)

ORDER (ORAL)

Brief facts of the case are that the applicant filed Writ Petition No.8604/2005 before the Hon'ble Rajasthan High Court claiming therein to release pensionary benefits to the applicant in accordance with Rule 69 of CCS (Pension) Rules, 1972 and order dated 24.3.2003, with all consequential benefits.

2. During pendency of the Writ Petition, the Central Government issued notification dated 11.10.2008 whereby jurisdiction in respect of service matters of the employees of Bharat Sanchar Nigam Limited (BSNL) has been conferred to this Tribunal. Therefore, the applicant moved application before Hon'ble High Court on 17.8.2010 for withdrawal of Writ Petition with liberty to redress his grievance before this Tribunal. The Hon'ble High Court allowed the application on 12.1.2011 and permitted the applicant to pursue the matter before the Tribunal.

3. The applicant was a substantive employee of Telecom Department and after creation of BSNL, he adopted the services of BSNL. Ultimately, he was absorbed by BSNL and after attaining the age of superannuation, he retired provisionally w.e.f. 31.12.2004 vide order dated 31.12.2004 (Ann.A/1).



4. The applicant was suspended vide order dated 13.12.2004 and during suspension, he attained the age of superannuation, therefore, the applicant was retired by granting provisional pension as the respondents have issued memorandum dated 29.11.2004 under Rule 19 of CCS (CCA) Rules, 1965. Aggrieved and dis-satisfied with the action of the respondents, the applicant has filed this OA, claiming following reliefs:-

"i) and the respondents be directed by issuing writ of mandamus or any other writ or direction to release all pensionary benefits to the applicant in accordance with Rule 69 of CCS (Pension) Rules, 1972 read with order dated 24.3.2003 with all consequential benefits including 18% interest thereupon on withhold amount w.e.f. the date on which become due.

ii) any other relief which this Hon'ble tribunal deem fit and proper in the facts and circumstances of this case may also be passed in favour of the applicant."

5. In support of his submissions, the learned counsel appearing for the applicant Shri Mahendra Shah submits that the applicant has not been served the charge sheet upto now and the respondents turned their stand from contemplation of disciplinary proceedings to the pendency of vigilance case, as is evident from order dated 18.1.2005 and referred to the clarification regarding payment of pensionary benefits to a retiree against whom personal Court case (other than Department) is pending in the Competent Court, as contained in letter dated 24.3.2003 (Ann.A/6), relevant portion of which is reproduced as under:-

"The department of Pension & PW (vide their I.D. No.17729/03-P&PW(F) dated 10.3.2003) have advised that the term judicial



proceedings mention in Rule 69 of CCS (Pension) Rules, 1972 is relating to judicial proceeding initiated against a Govt. servant in his official capacity by the Government authorities. The judicial proceedings initiated against the Government servant by a private person/agency will not come the ambit of this Rule. Hence there is no objection in releasing DCRG and final pension to those Govt. servants against whom judicial proceedings have been initiated by private parties."

6. After referring the clarification, the learned counsel submits that since this clarification is given under Rule 69 of CCS (Pension) Rules, 1972, the applicant is entitled to receive the retrial benefits as the criminal case is initiated by private parties.

7. As per order dated 18.1.2005 (Ann.A/2) it is stated that as vigilance case is pending against the officer and only provisional pension is granted to him and his DCRG/CVP is withheld till the conclusion of the vigilance case.

8. In support of his submissions, the learned counsel appearing for the applicant placed reliance upon order dated 20.9.2011 passed in OA No.577/2009, Chhotu Singh vs. BSNL, wherein this Tribunal after considering the clarification, held that the applicant therein is entitle for final pension including commutation and gratuity.

9. On the contrary, the learned counsel appearing for respondent No.1 and 2 submitted that the applicant was not absorbed in BSNL on the ground that presidential order of absorption could not be issued due to non-clearance of vigilance

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enquiry against the applicant and few days prior to his superannuation, it came to the notice of the department that applicant has been convicted and sentenced by Trial Court under Section 306 IPC against which the applicant has filed appeal in the High Court. In order to survive his livelihood till the final outcome of criminal case, he was sanctioned provisional pension vide order dated 18.1.2005 issued by office of respondent No.2. It is further stated that the applicant was placed under suspension under Rule 19(2)(ii) of CCS (CCA) Rules where in it is mentioned that as soon as a Government servant is convicted on a criminal charge, he may be placed under suspension, if not already suspended.

10. It is further stated on behalf of respondent No.1 & 2 that memorandum dated 29.11.2004 issued by the Member (services) Telecom Commision, New Delhi was served upon the applicant in which it was mentioned that he was not fit person to be retained in service in view of the gravity of criminal charges, but before serving the chargesheet the applicant retired on 31.12.2004 and as per provisions he has been granted provisional pension till final outcome of the criminal case.

11. The learned counsel appearing for the respondent No. 1&2 referred to Government of India's decisions under Rule 19 of CCS (CCA) Rules, wherein under decision No. (1) it is provided that conviction of Government servants to be promptly communication to the administrative authorities and decision No. (2) is regarding



action on conviction on a criminal charge and para (i) and (ii) of decision No. (2) provides as under:-

- (i) In a case where a Government servant has been convicted in a Court of Law of an offence which is such as to render further retention in public service of a Government servant *prima facie* undesirable, the Disciplinary authority may, if it comes to the conclusion that an order with a view to imposing a penalty on the Government servant on the ground of conduct which had led to his conviction on a criminal charge should be issued, issue such an order without waiting for the period of filing an appeal, or, if an appeal has been filed, without waiting for the decision in the first Court of appeal. Before such an order is passed, the Union Public Service Commission should be consulted where such consultation is necessary.
- (ii) 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."

12. On behalf of respondent No.3, the learned counsel Shri Mukesh Agarwal, supporting the submissions made on behalf of respondent No.1 and 2, submitted that as per Rules 69 (1) (C) of CCS (Pension) Rules, 1972 the gratuity shall not be paid to the Government servant until conclusion of the departmental proceedings and issue of final order thereon and referred Para 1 (b) and (c) of Rules 69 which is reproduced as under:-

"69. Provisional pension where departmental or judicial proceedings may be pending. 1 (a).....

- (b) The provisional pension shall be authorized by the Accounts Officer during the period commencing from the date of retirement upto and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.



(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon:

Provided that where departmental proceedings have been instituted under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 for imposing any of the penalties specified in clauses (i), (ii) and (iv) of Rule 11 of the said rules, the payment of gratuity shall be authorized to be paid to the Government servant."

13. The learned counsel appearing for the respondents also placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of Union of India and others vs. Sunil Kumar Sarkar, reported in AIR 2001 SC 1092 and referred para 8 of the judgment, which is reproduced as under:-

".....The very foundation of imposing punishment under R.19 is that there should be a prior conviction on a criminal charge. Therefore, the question of having a pre-determined mind does not arise in such cases. All that disciplinary authority is expected to do under R.19 is to be satisfied that the officer concerned has been convicted of a criminal charge and has been given a show cause notice and reply to such show cause notice, if any, should be properly considered before making any order under this Rule. Of Course, it will have to bear in mind the gravity of the conviction suffered by the Government servant in the criminal proceedings before passing any order under Rule 19 to maintain the proportionality of punishment. In the instant case, the disciplinary authority has followed the procedure laid down in Rule 19, hence it cannot be said disciplinary authority had any pre-determined mind when it passed the order of dismissal on basis of conviction suffered by respondent in Court martial proceedings."

14. After referring the judgment, the learned counsel for the respondents submitted that since the very foundation of imposing punishment is that there should be a prior conviction on a criminal



charge, and as the Hon'ble Supreme Court has held that such proceedings are not illegal on the ground of being passed on pre-determined mind.

15. I have heard the rival submissions of the respective parties and carefully perused the relevant provisions of law as referred to by the respective parties and the judgment referred by the applicant as well as the counsel appearing for the respondents. Much emphasis has been given by the learned counsel appearing for the applicant on the clarification Ann.A/6, according to which, judicial proceedings initiated against a Govt. servant by a private person/agency will not come in the ambit of Rule 69 of CCS (Pension) Rules and hence there is no objection in releasing DCRG and final pension to those Govt. servant against whom judicial proceedings have been initiated by private parties. Reliance has been placed by the learned counsel appearing for the applicant to the order passed by this Tribunal in OA No.577/2009 decided on 20.9.2011. Upon perusal of the order passed by this Tribunal it reveals that in the said case the counsel appearing for the respondents had no objection if the applicant is released gratuity as per circular dated 24.3.2003. Further both the parties admitted that criminal case pending against the applicant was of private nature and it was not filed against the applicant in his official capacity. Therefore, condition of circular dated 24.3.2003 was applicable in that case.

16. Following the clarification issued by the respondents vide circular dated 24.3.2003 and considering the admission of both the



parties and further that the respondents have not objected for granting final retrial benefits pursuant to clarification, the final retrial benefits have been granted in OA No. 577/2009. Here the facts and circumstances are altogether different as the respondents have issued memorandum dated 29.11.2004 under Rules 19 of CCS (CCA) Rules 1965 and as per decision No. 2(i) under Rule 19 which has been referred by both the parties, in a case where a Government servant has been convicted in a Court of Law of an offence which is such as to render further retention in public service of a Government servant *prima facie* undesirable, the disciplinary authority may, if it comes to the conclusion that an order within a view to imposing a penalty on the Government servant on the ground of conduct which has led to his conviction on a criminal charge should be issued, issue such order without waiting for a period of filing appeal, or, if an appeal has been filed, without waiting for decision of the first Court of Appeal.

17. It is not disputed by the respective parties, that memo dated 29.11.2004 has been issued under Rule 19 of CCS (CCA) Rules, 1965 on the basis of conviction and sentence awarded under Section 306 IPC vide judgment dated 6.8.2004 by the Additional Session Judge, Jaipur.

18. In my considered view the ratio decided by this Tribunal in OA No. 577/2009 in the case of Chhotu Singh (*supra*) is not applicable and since the memorandum has been issued under Rule 19 of CCS (CCA) Rules and a criminal appeal has been filed against the



conviction before the Hon'ble High Court, which is still pending, I find no good reason to interfere with the present matter as the memorandum has been issued by the respondents following the relevant provisions of Rules. The judgment referred to by the respondents in the case of Sunil Kumar Sarkar (supra) squarely covers the controversy in the present case as in the instant case the disciplinary authority has followed the procedure laid down under Rule 19 of CCS (CCA) Rules, and the applicant was called upon to show the reason as to why proceedings under Rule 19 may not be initiated against him.

19. In view of the ratio decided by the Hon'ble Supreme Court in the case of Sunil Kumar Sarkar (supra) and in view of the observations made hereinabove, I find no merit in the present OA and the same is liable to be dismissed being devoid of merit, which is hereby dismissed with no order as to costs.

K. S. Rathore
(JUSTICE K.S.RATHORE)
Judl. Member

R/