

OA No.060/00008/2014
(Ved Parkash Dhingra v. Union of India)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**



O.A.No.060/00008/2014

Decided on: 6.1.2015

Coram:

Hon'ble Mr. Sanjeev Kaushik, Member (J)
Hon'ble Mrs. Rajwant Sandhu, Member (A)

Ved Parkash Dhingra, aged 64 years S/o Late Sh. K.R. Dhingra, Superintending Engineer (Electricity) (Retired), Resident of House No. 1008, Sector 44-B, Chandigarh.

-Applicant

(By Advocate Shri R.K. Sharma)

Versus

1. Chandigarh Administration, through its Administrator.
2. Secretary, Engineering Department U.T. Sector 9, Chandigarh.
3. Chief Engineer, Union Territory, Sector 9, Chandigarh.
4. Superintending Engineer, Electricity Operations Circle, U.T. Chandigarh.

-Respondents

(By Advocate Shri K.K. Thakur)

O R D E R

Mr. Sanjeev Kaushik, Member (J):

By means of the present Original Application a challenge has been made by the applicant to an order dated 16.09.2013 passed by the Administrator, UT Chandigarh and conveyed to him by respondent no.2 vide order dated 24.10.2013, where a penalty of dismissal has been imposed with effect from 30.06.2008 when the applicant retired from



service on attaining the age of superannuation and also a punishment of stoppage of pension.

2. The facts, which led to filing of the present Original Application are that the applicant, who was working as Superintending Engineer, Electricity 'OP' Circle, U.T. Chandigarh was placed under suspension w.e.f. 02.08.2006 on his arrest in a criminal case registered by Central Bureau of Investigation (for brevity, CBI) on 02.08.2006 in connection with an FIR dated 02.08.2006 under Section 7 of the Prevention of Corruption Act, 1988. The applicant retired on attaining the age of superannuation on 30.06.2008 pending criminal proceedings. The learned Special Judge, CBI, Chandigarh vide its judgment dated 07.05.2010 convicted the applicant. The applicant preferred a Criminal Appeal no.1316-SB of 2010 before the Hon'ble High Court against his conviction. The Hon'ble High Court vide order dated 24.05.2010, while admitting the criminal appeal, suspended the sentence. It is the case of the applicant that pending criminal appeal the applicant was served with a charge-sheet under Rule 8 of the Punjab Civil Services (Discipline & Appeal) Rules, 1970 on 03.08.2007 for the alleged misconduct committed in the year 1999-2000 and ultimately vide order dated 18.01.2010 inflicted the punishment of 5% cut in pension for a period of two years, which was the subject matter before this Tribunal in OA No.135-CH-2011. The impugned order therein was set aside by this Tribunal vide order dated 05.07.2012 and the matter was remitted back to the respondent-department to give a fresh

look. The applicant was served with another show cause notice on 29.09.2011 under Rule 2.2 (b) of the Punjab Civil Services (Pension) Rules, 1970 (for brevity, Pension Rules) on 29.09.2011, which was replied to by him on 11.01.2012. By the impugned order dated 16.09.2013 the respondents not only dismissed the applicant from service but also imposed a punishment of stoppage of pension. Hence the Original Application.

3. Pursuant to the notice the respondents resisted the claim of the applicant by filing written statement wherein they submitted that the applicant was found guilty by the criminal court in FIR No.RCCHG2006A0021 dated 02.08.2006 under Section 7 and read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988 by the CBI. He was placed under suspension on 02.08.2006 vide order dated 04.08.2006 and pending criminal case he retired from service on attaining the age of superannuation. The learned Special Judge, CBI convicted the applicant vide its judgment dated 07/08.05.2010. The said judgment is the subject matter of criminal appeal pending before the Hon'ble High Court where only sentence has been stayed and not the conviction. It is submitted that in terms of the instructions issued by the Government of Punjab, Department of Personnel and Administrative Reforms dated 05.08.1988, which are adopted by the Chandigarh Administration on 16.09.1998, pending criminal appeal an action can be taken by the respondent-department in terms of proviso to Article 311 (2) of the

Constitution of India and it is in this light the respondents served a show cause notice to the applicant, which ultimately culminated into imposition of penalty of dismissal from service and also stoppage of pension.

4. The applicant has filed rejoinder wherein he submitted that there is no rule, which empowers the respondents to pass an order of dismissal with retrospective effect and the show cause notice is nothing but a vindictive action on the part of the respondents, as he has filed OA before this Tribunal against the respondents while imposing 5% cut in pension.

5. We have heard Shri R.K. Sharma, learned counsel for the applicant and Shri K.K. Thakur, learned counsel for the respondents.

6. Shri R.K. Sharma, learned counsel appearing on behalf of applicant vehemently argued that the impugned order is bad in law because the respondents have dismissed the applicant from service with retrospective effect, i.e., the date when he retired on attaining the age of superannuation, which they cannot. Therefore, he submitted that the impugned order be set aside. Though no specific ground has been taken, but at the time of argument learned counsel submitted that while ordering stoppage of pension the respondents have not sought advice from the Public Service Commission, which is mandatory. Therefore also the order is bad in law.

7. Per contra, Shri K.K. Thakur, learned counsel appearing on behalf of the respondents vehemently opposed the prayer of the applicant. He submitted that the applicant is trying to mislead this Tribunal by giving an

impression that the same very charge-sheet, which ultimately culminated into punishment order, which has been quashed by this Court in the earlier round of litigation. He submitted that both the proceedings are independent and distinct, as in that case the respondents issued him a charge-sheet for misconduct, whereas in the present case the applicant was served with a show cause notice merely on the ground that he was convicted by the court of law in a case registered by the CBI under the Prevention of Corruption Act. Therefore, both the proceedings are independent of each other and distinct in nature. While supporting the impugned order he submitted that since the applicant was convicted by the criminal court after his date of superannuation, i.e., 07.08.2010, therefore the respondents in terms of Article 311 (2) of the Constitution of India served the show cause notice and after complying with the principles of natural justice passed the impugned order of dismissal and also stoppage of pension.

8. We have given our thoughtful consideration to the entire matter and have perused the material available on record with the able assistance of the learned counsel for the respective parties. Before coming to the question we may record here that in OA-135-CH-2011 the charge-sheet dated 03.08.2007 for a misconduct of the year 1999-2000 was the subject matter and the order pursuant to the charge-sheet was quashed by this Tribunal and the matter was remitted back to be decided afresh from the stage where fault has been detected, whereas in the present OA

the applicant was served with a show cause notice on 29.09.2011 under Rule 2.2 (b) of the Pension Rules read with Rule 13 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970. After receiving his reply the impugned order of dismissal from service has been passed and in terms of Rule 2.2 an order of stoppage of pension was also inflicted. The impugned order has been challenged on the ground that there shall be no order of dismissal with retrospective effect. In this regard, at the very outset, it may be stated here that in **Jeevaratnam v. State of Madras**, (1966) 2 SCR 204, the Hon'ble Apex Court has held as under:

“An order of dismissal with retrospective effect is, in substance, an order of dismissal as from the date of the order with the superadded direction that the order should operate retrospectively as from an anterior date. The two parts of the order are clearly severable. Assuming that the second part of the order is invalid, there is no reason why the first part of the order should not be given the fullest effect. The Court cannot pass a new order of dismissal, but surely it can give effect to the valid and severable part of the order.”

Referring to the above, the Hon'ble Apex Court has, in **Gujarat Mineral Development Corporation v. P.H. Brahmbhatt**, (1974) 3 SCC 601, held as under:

“Though the order is one purporting to terminate his services from a date anterior to the date of the order of termination, that order ex facie is severable. In fact it is an order discharging the services of the respondent as from the date of the order with the super-added direction that the order should operate retrospectively as from an anterior date. Even if the super-added part is invalid, there is no reason why the first part of the order does not take effect. It was so held by this Court in **Jeevaratnam v. State of Madras**.”

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9. The above two authoritative judgments on the subject show that an order of dismissal has only prospective effect and not retrospective effect and if an order of dismissal has been passed with retrospective effect, it is only the retrospective character that is invalid, leaving the order of dismissal intact. If we apply the above law to the facts of the present case we find that the applicant has been dismissed from service with retrospective effect, i.e., 30.06.2008 when he retired on attaining the age of superannuation. Insofar as retrospective effect of the impugned order is concerned, the same has to be out rightly held invalid but the order of dismissal from the date when it is ordered, i.e., 16.09.2013 is held to be valid. Insofar imposition of stoppage of pension is concerned, we may hold that the same is valid in the eye of law because once an order of dismissal has been passed by the respondent-authority then as per the necessary corollary the applicant loses everything. In this case, since the applicant has retired and was allowed to draw provisional pension, therefore, in terms of Rule 2.2 of the Pension Rules the respondents have rightly passed an order of stoppage of pension. Perusal of the impugned order also makes it clear that services of the applicant have been dismissed solely on the ground that he has been convicted by the court of law and, therefore, in terms of Article 311 (2) of the Constitution of India the impugned orders passed by the respondents cannot be said to be without jurisdiction.

10. Now, we deal with the contention put-forth by the applicant that while inflicting the punishment the respondents have not consulted the Public Service Commission. We may notice here that once a person has been convicted by the court of law then in terms of Rule 13.4 of the Punjab Civil Services (Discipline & Appeal) Rules, 1970 read with Article 311 (2) of the Constitution of India the respondents can pass an order considering the judgment of the criminal court for which they are not required to seek any opinion/advice from the Public Service Commission because that would be an exercise in futility. Therefore, at this stage, we find no fault to interfere with the impugned order. Accordingly the OA is dismissed, being devoid of merit. However, the applicant will be at liberty to make a representation after the decision in the pending criminal appeal before the Hon'ble High Court, if so required.

11. In the facts and circumstances of the case the parties are left to bear their own costs.

(Rajwant Sandhu)
Member (A)

(Sanjeev Kaushik)
Member (J)

Place: Chandigarh

Dated: 6.1.2015

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