

**Central Administrative Tribunal
Principal Bench**

T.A. No. 33/2013

Order reserved on: 11.07.2016
Order pronounced on: 23.07.2016

Hon'ble Mr. V.N. Gaur, Member (A)

Sh. Onkar Singh Tyagi
S/o Late Sh. Kabul Singh
Vill. And P.O. Sara
Tehsil. Modi Nagar
Distt. Ghaziabad (U.P) 201201.

- Applicant

(By Advocate :Sh. A.K.Tyagi)

Versus

1. The State
Govt. of NCT of Delhi
Through Chief Secretary,
New Secretariat,
I.P.Estate,
I.T.O., New Delhi.
2. Municipal Corporation of Delhi
Through Commissioner,
Delhi.

- Respondents

(By Advocates: Sh.K.M.Singh)

O R D E R

The applicant while working as Assistant Sanitary Inspector (Health) in the erstwhile Municipal Corporation of Delhi (MCD) was accused of an offence committed under Section 161 of IPC and 5(2) read with 5 (1)(d) of Prevention of Corruption Act, 1947

vide FIR No.522/71. He was suspended immediately thereafter. The Trial Court of learned Special Judge, Delhi vide order dated 16.12.1972 acquitted the applicant and the respondents reinstated the applicant in service on 25.01.1973. In the appeal filed by the State against the order of the Special Judge, Delhi, the Hon'ble Delhi High Court vide order dated 30.10.1979 set aside the acquittal order and convicted the applicant to undergo imprisonment for one year and fine of Rs.500 for the offence under Prevention of Corruption Act and rigorous punishment for nine months of the offence under IPC. The two sentences were to run concurrently. The applicant filed appeal in the Hon'ble Supreme Court which was disposed of by the Apex Court on 30.01.1992 by confirming the order of the Hon'ble High Court but modifying the sentence to six months on each count, both the sentences to run concurrently. The bail granted to the applicant was vacated with a direction that the applicant shall surrender forthwith to serve out the remaining portion of his sentence. The applicant, who claims that he never knew of this order of Hon'ble Supreme Court, did not surrender and retired in the normal course on 30.11.1993. The respondents granted him pension also. On 24.04.1996 the Court of Special Judge, Delhi passed an order that the applicant whose conviction was upheld by the Hon'ble Supreme Court on 30.01.1992 in Criminal Appeal No.527/1980, and who was on bail during the pendency of

appeal, had to surrender to undergo remaining jail term. Noting that despite repeated warrants the applicant had neither surrendered nor had been arrested, and was avoiding arrest, the Special Judge, Delhi directed the respondents to seize the pension account of the applicant. The respondents had under the above direction seized the account of the applicant and informed the Court. The applicant finally surrendered for undergoing the remaining sentence in the year 2005 and thereafter moved application before the Special Judge, Delhi for release of his pension and to de-seize of his account.

2. The learned Special Judge, Delhi on 19.07.2006 asked the respondents to take a view whether the offence committed by the applicant amounted to grave misconduct or whether the respondents would consider the offence committed by the applicant as serious and to intimate whether the respondents had decided to withdraw or withhold the pension of the applicant or not. The respondents took a decision on 01.03.2007 to withhold the pension of the applicant. The applicant again filed an application before the Special Judge, Delhi in 2012 with a prayer to de-seize his pension account. The petition was dismissed as not maintainable as his previous application with the same prayer had been withdrawn after the court of Special Judge noted that under the rules the decision has been taken to withhold the pension of the applicant and thereafter nothing survives in the

case. The applicant could not have agitated the same matter again. It was noted that the Court did not have power to review its order dated 09.04.2007. The Court also noted that the applicant only tried his luck for the second time after six years by filing the frivolous application.

3. The present application has been filed by the applicant with the following prayer:

“(a) to release an appropriate Writ/Order/Direction to the respondent no.2 to release the pension to the petitioner and de-seize the pension account of the petitioner.

(b) pass the direction to the respondent no.2 to release the pension w.e.f. date of stopping the pension of the petitioner.”

4. Learned counsel for the applicant argued that the applicant had rendered long service with the respondents and thereafter pension was his right. Recognising this, the applicant was given his pension in the year 1993 after his superannuation but the same was stopped by the Court in 1996 only to force him to surrender before the Trial Court to undergo punishment of imprisonment as upheld by the Hon'ble Supreme Court. The Court of Special Judge, Delhi never passed any order to the respondents to deny pension to the applicant on permanent basis. As soon as the applicant completed the sentence, he became eligible for pension and de-seizing of his account. Explaining the reason for not surrendering immediately after the judgment of the Supreme Court, the learned Counsel stated that the Trial Court

never gave any direction to the respondents for surrender of the applicant. The applicant was not aware of the judgment of the Supreme Court. The Trial Court after receiving the file from the Supreme Court in 1992 issued non-bailable warrant on 14.04.1992, but did not send it to the official address, which was the reason that applicant was not been able to surrender.

5. Learned counsel for the respondents, on the other hand, raised the preliminary objections of jurisdiction, limitation and *res judicata*. It was submitted that the respondent had stopped the pension and seized the account of the applicant by the order of the Special Judge on 24.04.1996, and therefore, this Tribunal has no jurisdiction to issue any direction in the matter. It was further submitted that the cause of action for the applicant first arose when the order to seize his account was issued in 1996. Thereafter, respondents issued an order to withhold his pension in the year 2007. The applicant has filed this TA only on 06.05.2013. Counting from either of the dates, the TA is not maintainable on account of limitation. Learned counsel further submitted that the applicant had earlier approached the court of Special Judge, Delhi in MA No.46/1992 in CC no.83/71 on 20.11.2005 and in the year 2012 with the prayer of de-seizing of his account and release of pension but did not succeed. In this background the present TA is not maintainable as the same matter has been taken up twice in the past. On merits, the

learned counsel submitted that it was the applicant who did not surrender after the appeal was rejected by the Court. He continued to serve and never informed the respondents about the outcome of his appeal. Not knowing these developments the respondents sanctioned the pension in the normal course after his superannuation. But the same was stopped and account seized when the Court of Special Judge, Delhi directed them to do so in the year 1996. Again in the year 2007 following the direction of the Special Judge, Delhi the respondents considered the question whether the crime for which he was convicted was serious enough warranting withholding of the pension of the applicant and it was decided to withhold the pension of the applicant. Once a conscious decision was taken by the respondents under Rule 8 of the Pension Rules to withhold the pension, it can no more be linked with the seizure of the account order of 1996. Decision dated 01.03.2007 is an independent decision and has nothing to do with the coercive action ordered in 1996 to secure his surrender in undergoing similar sentence in the criminal case.

6. We have heard the learned counsel from both the sides and perused the record. Firstly, I will address the preliminary objections raised by the learned counsel for the respondents. With regard to the jurisdiction, it is noted that the issue before us is regarding de-seizing of the pension account of the applicant

which was first seized in the year 1996 to force the applicant to surrender. Later the respondents had taken a decision in 2007 under Rule 8 of the CCS Pension Rules to withhold the pension. At present the applicant is denied pension in terms of the order dated 01.03.2007 passed by the respondents and not the order of seizure issued in 1996. The aforementioned order dated 01.03.2007 is covered under Section 14 of the Administrative Tribunals Act, 1985 and hence this Tribunal has jurisdiction to consider the present TA.

7. We agree with the learned counsel for the respondents on the other two preliminary objections of *res judicata* and limitation. An application was filed in the Court of Special Judge, Delhi in the year 2005 for de-seizing of his account. In this context it is relevant to note the observation of Special Judge, Delhi in a letter dated 19.07.2006 addressed to Deputy Commissioner (Health), MCD. The relevant para is reproduced below:

“It is a matter of record that the conviction of applicant Onkar Singh Tyagi was up held by the Hon’ble Supreme Court of India vide judgment dated 30.1.92 (copy enclosed) and thereafter, applicant/Convict Onkar Singh Tyagi evaded his arrest despite issuance of Non Bailable Warrants issued against him and distress proceedings of attachment and sale of his property had to be resorted to by the court and applicant/Convict Onkar Singh Tyagi cleverly through his sons got a decree of his civil death on 25.9.02 which was not accepted by Ld. Predecessor of this court and “hue and cry” notice was issued against applicant/Convict Onkar Singh Tyagi and a reward for his arrest was also announced and thereafter, vide order dated 24.4.96 your department was called upon to attach the pension of applicant/Convict Onkar Singh Tyagi. When the attached agricultural land of applicant/Convict Onkar Singh Tyagi was to be sold, then it transpired that applicant/Convict Onkar Singh Tyagi had already got the said land transferred in the name of his sons and after objections to the attachment and sale of the above said agricultural land were

dismissed by Id. Predecessor of this court and after application of the son of the applicant/Convict Onkar singh Tyagi for stopping the proceedings against applicant/Convict Onkar singh Tyagi was dismissed vide order dated 12.8.04 (copy attached), then only applicant/ Convict Onkar singh Tyagi surrendered before the court and had to undergo the sentenced upon him. Now, applicant/ Convict Onkar singh Tyagi is seeking withdrawal of order dated 24.4.96 vide which pension of the applicant/ Convict Onkar singh Tyagi was stopped.”

8. Once the respondents took a decision to withhold the pension vide order dated 01.03.2007 the Special Judge, Delhi vide order dated 09.04.2007 disposed of the application dated 22.11.2005 for de-seizing of his account and releasing his pension with the following observation and direction:

“Sh. Ashok Jindal Ld. Counsel for MCD has placed on record order dated 1.3.07, of the Additional Commissioner (Health) of MCD which shows that under the rules the decision has been taken to withhold the pension of the applicant/Convict Onkar singh Tyagi.

At this stage, an application has been filed by the applicant through his counsel seeking permission to withdraw the application dated 22.11.05 for release of pension to him.

In view of the order dated 1.3.07 of MCD, although nothing survives in the application dated 22.11.05 of the applicant/convict but in view of the application filed today by the applicant/convict for withdrawal of the application dt. 22.11.05, the main application dt. 22.11.05 is permitted to be withdrawn and is disposed of as such.”

9. The applicant once again filed a review application in the Court of Special Judge, Delhi and that was disposed of on 26.05.2012. The paras 6 and 7 of that order read as follows:

“6. The first application brought by applicant Onkar Singh Tyagi on 22.01.2005 (sic.) for release of his pension was disposed off vide order dated 09.07.2007 and on his request, he was permitted to withdraw his application. The applicant Onkar Singh Tyagi despite his application dated 22.01.2005 for release of pension disposed off vide order dated 09.07.2007, moved the present application dated 02.06.2011 wherein he mentioned “That previously also the applicant moved an application for release of pension which was withdrawn by

him on 09.04.2007.” The applicant knowing fully well of the detailed order passed by the then Special Judge and that the issue of release of pension stood settled and decided. The applicant did not disclose the true picture in Court proceedings.

7. This Court has no power to review its order dated 09.04.2007 and the applicant only tried his luck for the second time after a gap of 6 years by filing this frivolous application. The application being not maintainable is dismissed.”

10. From the preceding orders it is clear that the applicant after lapse of some time is trying to test the institutional memory of the Courts by filing applications with the same prayer. The grievance of the applicant with regard to withholding of his pension has already been dealt with by the Special Judge, Delhi in order dated 17.07.2006 but despite that he made the same prayer to Court of Special Judge in 2012 and this Tribunal in 2013. It is a clear case of misuse of the legal fora and wasting the precious judicial time. However, considering that the applicant is an aged retired employee, I refrain from imposing any cost on him.

11. On the ground of limitation it is noticed that firstly, the cause of action for the applicant arose in the year 1996 but ostensibly to avoid the remaining part of the sentence he did not approach the Court. After severe coercive measures taken by the Trial Court, the applicant was compelled to serve and complete the remaining term of the sentence and only thereafter he could muster courage to approach the Court with a prayer to de-seize the pension account. Even then once his request was rejected by the Special Judge in the year 2007 and the review was also

dismissed, the cause of action for any other legal remedy arose at that time but he did not pursue the same. It is trite that rejection of his subsequent application by Special Judge, Delhi in 2012 would not extend the period of limitation in respect of the present TA which was filed in the year 2013. The OA therefore badly suffers from delay and laches.

12. On merits the claim of the applicant is based on two grounds:

- (i) That he had served the respondents from 1972 to 1993 and therefore pension had become his right.
- (ii) The seizure of his pension account in 1996 was only to compel him to complete his sentence and once he had undergone sentence thereafter there was no continuous seizure of that account.

13. No doubt the applicant had served the respondents for a long period of time but that was because his suspension order of 1971 was revoked on 25.01.1973 once he was acquitted by the Trial Court on 16.12.1972. However, once the High Court had convicted him, and the same was upheld by the Hon'ble Supreme Court, his conviction would be effective from the date of the judgment of the Trial Court. In other words, the service rendered by the applicant to the respondents was a consequence of the order of the Trial Court which was upturned by the superior

courts. It is trite that the applicant cannot be given benefit of the period served in the employ of the respondents as an outcome or as a consequence of the order of the Trial Court which was quashed by the High Court. The applicant, therefore, cannot claim pension as a matter of right.

14. With regard to the second ground, it has already been discussed earlier in this order that 1996 order of the Court by which the respondents seized the account has already been superseded by the Court order of 09.04.2007 which took cognisance of the order of respondents dated 01.03.2007 withholding the pension of the applicant. The 2007 order withholding his pension is not related to securing his presence in the Court or completion of the prison. Learned counsel for the applicant has not cited any law that would show that the applicant will be entitled to pension on account of his service rendered to the respondents even as a convict.

15. In the light of the preceding discussion and the reasons stated, I do not find any merit in the TA and the same is dismissed. No costs.

(V.N. Gaur)
Member (A)

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