

**Central Administrative Tribunal
Principal Bench**

OA No.484/2017

New Delhi, this the 8th day of November, 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)**

Dr. A. S. Narayana Rao
aged 66 years,
3/77, First Floor,
Old Rajendra Nagar,
New Delhi 110 060.

... Applicant.

(Applicant is present)

Versus

Secretary (R)
Cabinet Secretariat
Room No.1001, B-1, B-2 Wing,
10th Floor (Paryavaran Bhavan)
Pt. Deendayal Antyodaya Bhavan,
CGO Complex, Lodhi Road,
New Delhi 110 003.

... Respondent.

(By Advocate, Shri Rajeev Kumar)

: O R D E R (ORAL) :

Justice Permod Kohli, Chairman:

From the pleadings of the parties, it is noticed that the facts on record are not in dispute. Briefly stated, the facts are that the applicant was serving as a Director in R&AW, Cabinet Secretariat. On registration of a criminal case against him, he was arrested by the Central Bureau of Investigation (CBI) on 02.02.2009 for alleged demand and accepting illegal gratification. On being produced before the CBI Court on 03.02.2009, he was remanded to custody till

19.02.2009. He was placed under deemed suspension on 25.02.2009 in terms of sub-rule (2) of Rule 10 of CCS (CCA) Rules, 1965 as he remained in police custody for a period exceeding 48 hours. The applicant retired from service on 31.10.2010 while he was under suspension. His Gratuity was withheld and he was paid only subsistence allowance which was later increased by 10%. On the basis of an FIR, a criminal case was filed against the applicant in Special CBI Court, Tis Hazari, New Delhi. On conclusion of the trial, the applicant was acquitted vide judgment dated 11.12.2015. On earning acquittal, the applicant requested for revocation of his suspension vide communication dated 14.01.2016 along with copy of the judgment of the Trial Court. His request was responded vide letter dated 21.06.2016 stating therein that his case cannot be taken up until a reply is received from CBI regarding not filing of an Appeal against the Trial Court Order.

2. Aggrieved of the action of the respondents, the applicant filed OA No.2524/2016 before this Tribunal on 29.07.2016 seeking quashment of the suspension order. The said OA was disposed of on the same date with a direction to the respondents to examine the representation filed by the applicant and dispose of the same by a reasoned and speaking order. The directions of the Tribunal having not been complied with, applicant filed CP No.551/2016. During the pendency of this CP, the respondents passed order dated 26.12.2016

rejecting claim of the applicant. This order was placed before the Tribunal. Based upon that, vide order dated 17.01.2017, the contempt proceedings were dropped. However, liberty was granted to the applicant to challenge the order dated 26.12.2016 in accordance with law. It is under these circumstances that the present Application has been filed.

3. The applicant is seeking for the following reliefs:-

- “a. quash suspension order issued against Applicant dated December, 2016 and that on 25.02.2009 immediately without further delay.
- b. treat his period of suspension as on duty.
- c. regularize his service from 2.2.2009 to 31.10.2010 and finalise his last pay to be drawn considering annual increments as per law.
- d. to release his lawful Gratuity with interest as available in Banks as on 31.10.2010 as such amount should have been given on the date of his retirement.
- e. provide arrears with interest of 9% since his date of illegal arrest and suspension.
- f. to allow the OA with costs.
- g. And/or any other appropriate direction, orders which this Tribunal may deem fit and proper in the facts and circumstances of the present case.”

4. While admitting all the facts as noticed hereinabove, the stand of the respondents in the counter affidavit for denying the relief claimed by the applicant is that he is not fully exonerated of the charges leveled against him by the Special CBI Court, Tis Hazari, and the appeal against the order of acquittal has been filed before the Hon'ble High Court of Delhi in which notice has been issued to the

applicant. It is further stated that the competent authority after considering all the aspects of the case and gravity of charges leveled against the applicant decided that the status quo in respect of the period of suspension as also payment of retiral benefits, etc., should be maintained till the case is finally decided by the Hon'ble High Court of Delhi.

5. We have heard learned counsel for the parties.
6. It is admitted case that no disciplinary proceedings were initiated against the applicant. The applicant was placed under deemed suspension in terms of sub-rule (2) of Rule 10 of CCS (CCA) Rules, 1965. Sub-rule (2) of Rule 10 is reproduced hereunder:-

“(2) A Government servant shall be deemed to have been placed under suspension by an order of Appointing Authority-

- (a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;
- (b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.”

From the reading of the aforesaid provisions, it appears that the suspension of the applicant is under sub-rule (2) (a) of Rule 10. Now the applicant has been acquitted by the Trial Court. It is contended on behalf of the respondents that the applicant has not been fully exonerated from the charges. The judgment of the Trial Court dated

11.12.2015 has been placed on record by the applicant. The relevant observations of the Trial Court are as under:-

“Conclusion

26. To conclude, material on record as a whole adumbrated hereinabove, leaves no manner of doubt that the prosecution-in the instant case has failed to prove unequivocally demand of illegal gratification as well as voluntary acceptance thereof and abuse of his position by the accused. Evidence produced by prosecution falls short of quality and decisiveness of the proof of demand of illegal gratification as enjoined by law and lacks intrinsic worth to return a clear conclusion of guilt against the accused beyond the shadow of reasonable doubts and therefore, accused is entitled to benefit of doubt. This court finds that prosecution has failed to prove charges that for grant of NOC, accused had demanded illegal gratification of Rs.8.00 lacs on or after 9th January, 2009 as well as on 29th January, 2009 or that on 2nd February, 2009, accused demanded or accepted Rs.1.00 lacs at Hotel India Palace Guest House, Arya Samaj Road, Karol Bagh, New Delhi. It has not been established by the prosecution beyond reasonable doubts that accused used corrupt or illegal means or by abusing his official position obtained any pecuniary advantage. In the result, accused is hereby acquitted of the charges against him in this case. His previous bail bonds stand canceled and surety discharged. Accused shall furnish his personal bond along with a surety bond in the sum of Rs.25,000/- each required U/S 437A Cr.P.C.”

From the above, it is evident that acquittal of the applicant is on account of failure of the prosecution to establish any charge against him beyond doubt. Such an acquittal cannot be said to be under cloud. Sub-rule (5) (c) of Rule 10 empowers the competent authority to modify or revoke the suspension at any time irrespective of the fact whether it is the suspension under sub rule (1) or (2) of Rule 10. The competent authority is also entitled to direct that the government servant shall continue to be under suspension until the termination of

all or any of the disciplinary/criminal proceedings. Sub-rule (6) of Rule 10 provides that the suspension made or deemed to have been made under this rule shall be reviewed by the authority which is competent to modify or revoke the suspension before expiry of ninety days from the effective date of suspension on the recommendations of the Review Committee constituted for the purpose. Such extension shall not exceed a period of 180 days at a time. Sub-rule (7) of Rule 10 also imposes an embargo for continuation of suspension beyond 90 days unless it is extended after review for a further period before the expiry of 90 days. However, proviso to sub-rule (7) of Rule 10 is an exception whereunder no review of suspension is necessary in the case of deemed suspension under sub-rule (2), if the Government servant continues to be under suspension at the time of completion of ninety days of suspension and the ninety days period in such case will count from the date the government servant detained in custody is released from detention or the date on which the fact of his release from detention is intimated to his appointing authority.

7. No date of release of the applicant from custody is mentioned. However, the acquittal of the applicant vide judgment dated 11.12.2015 was communicated to the respondents vide letter dated 14.01.2016 with a request for revocation of suspension which request has been rejected vide impugned order dated 26.12.2016. While

rejecting the request of the applicant for revocation of his suspension and payment of retiral benefits including gratuity, the only ground taken is pendency of an appeal before the High Court, and that the applicant has not been fully exonerated of the charges.

8. We have already noticed that the applicant has been fully exonerated of the charges by the Trial Court.

9. Admittedly, no disciplinary proceedings were initiated against the applicant. The suspension was only on account of a criminal case and arrest of the applicant exceeding 48 hours. The applicant retired from service while under suspension. Under such circumstances, the question arises as to whether the applicant can be denied pensionary benefits and gratuity merely on account of pendency of an appeal.

10. In the matter of *Deokinandan Prasad vs. State of Bihar* (1971) 2 SCC 330, the Hon'ble Supreme Court has held as under:-

“The last question to be considered, is, whether the right to receive pension by a Government servant is property, so as to attract Articles 19 (1) (f) and 31 (1) of the Constitution. This question falls to be decided in order to consider whether the writ petition is maintainable under Article 32. To this aspect, we have already adverted to earlier and we now proceed to consider the same.

29. According to the petitioner the right to receive pension is property and the respondents by an executive order dated June 12, 1968 have wrongfully withheld his pension. That order affects his fundamental rights under Arts. 19 (1) (f) and 31 (1) of the Constitution. The respondents, as we have already indicated, do not dispute the right of the petitioner to get pension, but for the order passed on August 5, 1966. There is only a bald averment in the counter -affidavit that no question of any fundamental right arises for consideration. Mr. Jha,

learned counsel for the respondents, was not prepared to take up the position that the right to receive pension cannot be considered to be property under any circumstances. According to him in this case no order has been passed by the State granting pension. We understood the learned counsel to urge that if the State had passed an order granting pension and later on resiles from that order, the latter order may be considered to affect the petitioner's right regarding property so as to attract Arts. 19 (1) (f) and 31 (1) of the constitution.

30. We are not inclined to accept the contention of the learned counsel for the respondents. By a reference to the material provisions in the Pension Rules, we have already indicated that the grant of pension does not depend upon an order being passed by the authorities to that effect. It may be that for the purposes of quantifying the amount having regard to the period of service and other allied matters, it may be necessary for the authorities to pass an order to that effect, but the right to receive pension flows to an officer not because of the said order but by virtue of the Rules. The Rules, we have already pointed out, clearly recognise the right of persons like the petitioner to receive pension under the circumstances mentioned therein.

31. The question whether the pension granted to a public servant is property attracting Article 31 (1) came up for consideration before the Punjab High Court in *Bhagwant Singh v. Union of India*, AIR 1962 Punj 503. It was held that such a right constitutes "property" and any interference will be a breach of Article 31 (1) of the Constitution. It was further held that the State cannot by an executive order curtail or abolish altogether the right of the public servant to receive pension. This decision was given by a learned Single Judge. This decision was taken up in Letters Patent Appeal by the Union of India. The Letters Patent Bench in its decision in *Union of India v. Bhagwant Singh*, ILR (1965) 2 Punj 1 approved the decision of the learned Judge. The Letters Patent Bench held that the pension granted to a public servant on his retirement is "property" within the meaning of Article 31 (1) of the Constitution and he could be deprived of the same only by an authority of law and that pension does not cease to be property on the mere denial or cancellation of it. It was further held that the character of pension as "property" cannot possibly undergo such mutation at the whim of a particular person or authority.

32. The matter again came up before a Full Bench of the Punjab and Haryana High Court in *K.R. Erry v. The State of Punjab*,

ILR (1967) 1 Punj & Har 278 (FB). The High Court had to consider the nature of the right of an officer to get pension. The majority quoted with approval the principles laid down in the two earlier decisions of the same High Court, referred to above, and held that the pension is not to be treated as a bounty payable on the sweet-will and pleasure of the Government and the right to superannuation pension including its amount is a valuable right vesting in a Government servant. It was further held by the majority that even though an opportunity had already been afforded to the officer on an earlier occasion for showing cause against the imposition of penalty for lapse or misconduct on his part and he has been found guilty, nevertheless, when a cut is sought to be imposed in the quantum of pension payable to an officer on the basis of misconduct already proved against him, a further opportunity to show cause in that regard must be given to the officer. This view regarding the giving of further opportunity was expressed by the learned Judges on the basis of the relevant Punjab Civil Service Rules. But the learned Chief Justice in his dissenting judgment was not prepared to agree with the majority that under such circumstances a further opportunity should be given to an officer when a reduction in the amount of pension payable is made by the State. It is not necessary for us in the case on hand to consider the question whether before taking action by way of reducing or denying the pension on the basis of disciplinary action already taken, a further notice to show cause should be given to an officer. That question does not arise for consideration before us. Nor are we concerned with the further question regarding the procedure, if any, to be adopted by the authorities before reducing or withholding the pension for the first time after the retirement of an officer. Hence we express no opinion regarding the views expressed by the majority and the minority Judges in the above Punjab High Court decision on this aspect. But we agree with the view of the majority when it has approved its earlier decision that pension is not a bounty payable on the sweet-will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a Government servant.

33. This Court in *State of Madhya Pradesh v. Ranojirao Shinde*, 1968-3 SCR 489 = (AIR 1968 SC 1053) had to consider the question whether a "cash grant" is "property" within the meaning of the expression in Articles 19 (1) (f) and 31 (1) of the Constitution. This Court held that it was property, observing "it is obvious that a right to sum of money is property."

34. Having due regard to the above decisions, we are of the opinion that the right of the petitioner to receive pension is property under Article 31 (1) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under Article 19 (1) (f) and it is not saved by sub - article (5) of Article 19. Therefore, it follows that the order dated June 12, 1968 denying the petitioner right to receive pension affects the fundamental right of the petitioner under Articles 19 (1) (f) and 31 (1) of the Constitution, and as such the writ petition under Article 32 is maintainable. It may be that under the Pensions Act (Act 23 of 1871) there is a bar against a civil Court entertaining any suit relating to the matters mentioned therein. That does not stand in the way of a Writ of Mandamus being issued to the State to properly consider the claim of the petitioner for payment of pension according to law.

11. The above view was reiterated by the Hon'ble Supreme Court in *State of Jharkhand & Ors. vs. Jitendra Kumar Srivastava & Anr.* (2013) 12 SCC 210.

12. The applicant has earned acquittal, meaning thereby that there is no charge against him as on date. The applicant on termination of the criminal proceedings has intimated to the respondents. It was obligatory on the respondents to have passed an order under Fundamental Rule 54-B regarding treating the period of suspension. No such order has been passed. Merely pendency of an appeal does not empower the respondents to withhold full pension and gratuity of the applicant.

13. Under these circumstances, the claim of the applicant for release of full pension and gratuity is to be allowed. This Application is accordingly allowed. The respondents are directed to release full pension of the applicant from the date of his retirement and also

gratuity. The gratuity will earn interest as payable on it under the relevant law. Insofar as the period of suspension from 02.02.2009 to 31.10.2010 is concerned, the respondents are directed to pass an order under rule 54-B keeping in view the fact of acquittal of the applicant and the findings recorded by the Trial Court within a period of two months from the date of receipt of a copy of this order. On passing of such order, if the respondents treat the period of suspension of the applicant as on duty, the applicant shall be entitled to differential amount between the subsistence allowance and admissible salary for the period the applicant remained under suspension and shall be released to him within a period of two months from the date of passing of such order.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/pj/