

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA 2548/2015

New Delhi, this the 7th day of December, 2016

**Hon'ble Mr. Justice M.S. Sullar, Member (J)
Hon'ble Mr. P.K. Basu, Member (A)**

Shri S.K. Chopra
S/o Late Shri Satyapal Chopra
R/o H. No. 88,
AIIMS Apartment,
Mayur Kunj, Mayur Vihar,
Phase-I, New Delhi-110096

(Through Shri Ajesh Luthra, Advocate)

Versus

1. Union of India
Through its Secretary
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
North Block,
New Delhi-110001
 2. Principal Chief Commissioner of Income Tax
Central Revenue Building
I.P. Estate, New Delhi
 3. Chief Commissioner of Income Tax
(CCA)
Central Revenue Building
I.P. Estate, New Delhi

... Respondents

(Through Shri C. Bheemanna, Advocate)

ORDER (Oral)Mr. P.K. Basu, Member (A)

The applicant, while working as Inspector in the Income Tax Department, was caught red handed by the CBI while accepting bribe amount of Rs.50,000/- (Rupees fifty thousand only), which was part of Rs.2.5 lakh demanded by him and one Assistant Commissioner, Shri K.C. Chugh. The applicant was prosecuted by the CBI for various criminal offences under the provisions of Indian Penal Code and Prevention of Corruption Act 1988. He was convicted after he was found guilty for offences under Section 120-B read with Sec. 7 and 13 (2) read with 13 (1) (d) of Prevention of Corruption Act 1988. The judgment was delivered by Special Judge, CBI on 26.09.2012.

2. The applicant had meanwhile retired from service on 31.12.2008 on attaining the age of superannuation, while criminal charges were pending. At that time, the departmental proceeding was not initiated against the applicant. Vide order dated 14.11.2013, a memorandum was issued to the applicant proposing penalty of permanently withholding full pension and gratuity under Rule 9 of the CCS (Pension) Rules 1972 taking into account the gravity of the criminal charges and his conviction by a Court of Law.

3. Vide order dated 4.03.2015, after considering the reply of the applicant against the show cause notice dated 14.11.2013; his reply to the OM dated 5.11.2014 by which the copy of UPSC advice was sent to the applicant for his reply; the respondents have imposed punishment of withholding 100% of the monthly pension otherwise admissible to the applicant on a permanent basis and further withholding 100% of gratuity admissible to him permanently by invoking the provisions of Rule 9 of CCS (Pension) Rules 1972.

4. Being aggrieved with the impugned orders dated 4.03.2015, 5.11.2014 and 14.11.2013, the applicant has prayed for the following reliefs:

- a) Quash and set aside the impugned action/ order placed at Annexure A/1, A/2 and A/3 and
- b) Direct the respondents to release the arrears of pension of the applicant w.e.f. the month of March 2015 alongwith interest @ 15% p.a. and
- c) And the respondents be further directed to continue paying pension to the applicant and also to release his gratuity and other retiral benefits alongwith interest @ 15% p.a.
- d) Award costs of the proceedings.

5. The grounds on which this OA has been filed are as follows:

- (i) the respondents have initiated departmental action after four years of applicant's retirement and inflicted penalty, which is illegal and unsustainable;
- (ii) the impugned orders have been passed under the influence and guidance of UPSC and without application of independent mind;
- (iii) the comments of the applicant on UPSC advice ought to have been considered in consultation with the UPSC before issuing the impugned orders;
- (iv) there was complete non-application of mind to the aspect that the Hon'ble High Court has admitted the appeal of the applicant against the judgment of conviction and since an appeal is a continuation of trial, final outcome of appeal should have been awaited;
- (v) the impugned order dated 4.03.2015 has not been issued by the competent authority. The power to withdraw pension and gratuity lies absolutely with the President and nobody else. However, the impugned orders have been passed by an undisclosed 'DA';
- (vi) The respondents have further failed to consider his unblemished service record, his 67 years of age and family liabilities.

6. The respondents in their reply have stated that the order withdrawing full pension and gratuity is strictly as per provisions of Rule 9 of CCS (Pension) Rules and is commensurate with the grave misconduct proved against the applicant. It is further stated that the order has been passed after considering all the facts and circumstances of the case and in consultation with the UPSC. Due procedure has been followed by the department before issuing the final orders. Regarding appeal in the Hon'ble High Court, it is stated that the High Court has only suspended the sentence of imprisonment of the applicant and the conviction has not been stayed. Regarding the order not being passed by the competent authority, it is stated that the punishment order is a valid order in the name of the President of India as prescribed in the rules.

7. We have heard the learned counsel for the parties and gone through the pleadings available on record.

8. Rule 9 of CCS (Pension) Rules provides as follows:

"9. Right of President to withhold or withdraw pension

¹[(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of

service, including service rendered upon re-employment after retirement :

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy-five per mensem.]

9.(2) (b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment,-

- (i) shall not be instituted save with the sanction of the President,
- (ii) shall not be in respect of any event which took place more than four years before such institution, and
- (iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service."

9. The Government of India's decision vide OM dated 6.06.1967 is also relevant, which is as follows:

"(3) Final order under Rule 9 will be issued in the name of President – It has been clarified in consultation with the Ministry of Home Affairs and the Law Ministry that the function of the Disciplinary Authority is only to reach a finding on the charges and to submit a report recording its findings to the Government. It is then for the Government to consider the findings and take a final decision under Article 351-A, CSRs (Rule 9). In case Government decide to take action under Article 351-A, CSRs (Rule 9), in the light of the findings of the Disciplinary Authority, the Government will consult the Union Public Service Commission. If as a result of such consideration in consultation with the Commission, it is decided to pass an order, necessary orders will be issued in the name of the President."

10. From the above, it would be clear that four year restriction is regarding institution of departmental proceedings. Rule 9 (1) of the aforesaid Rules would make it clear that the President has absolute powers. The President has decided to withhold 100% pension and gratuity after availability of verdict of the CBI Court dated 26.09.2012. Therefore, the contention of the applicant that the impugned order withholding 100% pension could not have been passed after four years of his retirement, is not a valid argument. As regards the contention that the impugned orders are under the guidance of UPSC, this argument is completely misplaced as would be clear from a reading of the order dated 4.03.2015, which itself clarifies in detail why the respondents have passed the order of withholding 100% of pension and gratuity and it was not because the UPSC told them to do so.

11. The advice of the UPSC was provided to the applicant vide OM dated 5.11.2014. There is no provision in the rules, neither has the learned counsel for the applicant placed before us directions of any superior Courts that before issuing the impugned orders, the comments of the applicant on UPSC advice ought to have been considered in consultation with the UPSC. Therefore, this is a frivolous argument.

12. It is clear from the order of the Hon'ble High Court of Delhi that it had only suspended the sentence of imprisonment and

not set aside the conviction. Therefore, the mere fact of suspension of sentence, in the light of the defence taken by the applicant that he has filed an appeal before the Hon'ble High Court, is of no avail.

13. We have already quoted above the instructions of the government regarding order under Rule 9 to be issued in the name of the President. It is a specious argument on behalf of the applicant that this means that the order has to be passed by the President himself. All orders in the name of the President are issued by officers authorized to do so in the ministries.

14. As regards applicant's advanced stage and family liabilities, it is clear that the order has been passed because the charge was very grave of demanding and accepting illegal gratification of Rs.50,000/- and keeping in view this fact, the competent authority came to the conclusion that the applicant has indeed indulged himself in grave misconduct.

15. In view of above discussion, the OA is found to be devoid of merit and is dismissed. There shall be no order as to costs.

(P.K. Basu)
Member (A)

(Justice M.S. Sullar)
Member (J)

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