

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA NO.3111/2014

Order reserved on 05.01.2017
Order pronounced on 12.01.2017

HON'BLE DR BRAHM AVTAR AGRAWAL, MEMBER (J)

Mr. Madan Mohan Agarwal,
Aged about 77 years,
S/o late Shri Mussaddi Lal,
Stenographer 'C' (Retired),
Directorate of Film Festivals,
Siri Fort Auditorium Complex,
August Kranti Marg,
New Delhi-110049
R/o 117-B, DDA Flats, Sunlight Colony-II,
New Delhi-110014. ...Applicant

(By Advocate: Shri Sanjay Kumar Das)

VERSUS

1. Union of India through
The Secretary,
Ministry of Information & Broadcasting,
6th Floor, A-Wing, Shastri Bhawan,
New Delhi-110001.
2. Director,
Directorate of Film Festivals,
Siri Fort Auditorium Complex,
August Kranti Marg,
New Delhi-110049.
3. Secretary,
Ministry of Personnel, Public
Grievances and Pensions,
Department of Pension and
Pensioners' Welfare,
3rd Floor, Lok Nayak Bhavan,
Khan Market, New Delhi-110003. ...Respondents

(By Advocate: Shri A.K. Singh)

:ORDER:

The applicant superannuated as a stenographer 'C' on 30.11.1995, when he was in judicial custody due to his involvement in a criminal case under sections 498A/304B, IPC, and owing to pendency of the said case he was granted provisional pension under rule 69(1)(b) of the CCS (Pension) Rules 1972. The provisional pension was stopped w.e.f. October 2004 upon his conviction on 27.09.2004 in the said case. The applicant's request for restoration of the provisional pension was not acceded to, vide the impugned order dated 23.04.2014 (Annexure A1 colly). He has filed the instant OA praying that the impugned order be quashed and that the respondent no.1 be directed to restore the provisional pension.

2. I have heard the learned counsel for the parties, perused the pleadings as well as the rulings cited at the Bar, and given my thoughtful consideration to the matter.

3. The impugned order reads, *inter alia*, as under:

"This is to inform you that your request for restoration of provisional pension was examined in consultation with Department of Pension & Pensioners' Welfare who opined as follows:-

"Once the court has awarded the punishment of life imprisonment, the case has attained finality and, therefore, the action of Deptt. to stop his provisional pension would be in order in terms of Rule 69 (1) (b) of CCS (Pension) Rules, 1972 just because an appeal against the trial court is pending, there seems to be no reason to resume his provisional pension unless the sentence awarded by the trial court is set aside by the High Court."

2. As advised by Department of Pension & Pensioners' Welfare, the opinion of Ministry of Law was also solicited who opined as follows:-

"In this regard we agree with the views of the Department of Pension & Pensioners' Welfare. No further views are required till the matter of conviction is pending before the court."

3. In view of the above opinion of both Deptt. of Pension & Pensioners' Welfare and Ministry of Law, your request for restoration of your pension is not acceded to."

4. The learned counsel for the applicant submitted that the impugned order was illegal, as the judicial proceedings were yet not concluded, there being pending an appeal against the conviction in the Hon'ble High Court of Delhi, relying on this Tribunal's order dated 08.12.2011 in the OA No.733-CH of 2010 (S.P.S. Rathore Vs. UOI) [holding that proceedings in appeal are continuation of original proceedings and until and unless appeal has been decided proceedings would be deemed to be pending], and, admittedly, no action under rule 9 of the aforesaid Rules was taken.

5. Per contra, the respondents, in their reply, placed reliance on rule 8 of the aforesaid Rules to justify withholding of the pension in question. Rule 8 reads, *inter alia*, as under:

"Pension subject to future good conduct

- (1) (a) Future good conduct shall be an implied condition of every grant of pension and its continuance under these rules.
- (b) The Appointing Authority may, by order in writing, withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, if the pensioner is

convicted of a serious crime or is found guilty of grave misconduct:

Provided that, where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of Rupees three thousand five hundred per mensem.

(2) Where a pensioner is convicted of a serious crime by a Court of Law, action under sub-rule (1) shall be taken in the light of the judgment of the Court relating to such conviction.

...

(4) Where the authority competent to pass an order under sub-rule (1) is the President, the Union Public Service Commission shall be consulted before the order is passed."

6. However, no material has been brought on record to show that action under rule 8 was taken or even initiated while withholding the provisional pension of the applicant.

7. The impugned order is legally unsustainable and is, therefore, set aside. Provisional pension granted to the applicant shall be restored and arrears due shall be paid along with interest at the GPF rate within four weeks from the date of receipt of a copy of this Order. The respondents shall be at liberty to take action as per law.

8. The OA is allowed in the above terms. No order as to costs."

**(DR BRAHM AVTAR AGRAWAL)
MEMBER (J)**

/jk/