

OA-3787/2017

2. In the OA, the grounds taken for interim relief are that the impugned order is violative of Article 21 of the Constitution of India; that in case operation of the impugned order is not stayed, grave injustice and irreparable loss will be caused to the applicant; that the applicant would have to fend for livelihood as he is the sole bread earner of the family and has been singlehandedly raising his unmarried daughter; that the applicant also has a prima facie good case and the balance of convenience is also in his favour.

3. The main grounds taken, i.e., concerning issue of livelihood and he being the sole bread earner of the family have little legal bearing. However, we need to carefully consider his argument with regard to his being a prima facie good case and the balance of convenience being in his favour. We may add at this juncture that at the time of oral hearing, learned counsel for the applicant very emphatically raised the issue of equity and said that the Tribunal must take into account the issue of equity and by not granting interim stay, the equity aspect of this case will be seriously compromised.

4. In addition, learned counsel for the applicant has placed before us an interim stay granted in OA No. 2110/2017 claiming that as an interim stay has been granted in this OA and the facts are similar to the OA being considered by us, it is appropriate that the Tribunal grants interim relief in this OA as well. We have seen the interim order granted in OA No. 2110/2017. The fact of the matter is that in the said OA, respondents have been directed to maintain the status quo in pursuance of the impugned show cause notice. In the instant case, it is not the show cause notice that is being impugned but the final penalty order and therefore there is a very significant difference between the facts and circumstances of these two OAs and the connection between these two OAs is at best tenuous and cannot become credible basis for claiming the parity.

5. Let us now examine whether prima facie, the applicant has a good case. It so happens that a Co-ordinate Bench of this Tribunal has decided identical issues in another OA No. 1175/2012 decided on 13.09.2013. Here also, the applicant in that OA was given a penalty of withholding of 100% monthly pension as well as forfeiture of full gratuity on permanent basis and the applicant had moved the Tribunal seeking quashing of this order on the ground

that his appeal in the criminal case was pending in the judicial court. The order in this OA has very extensively discussed the issue and has eventually reached the following conclusion:

"29. We have considered the matter very carefully and we find that in view of the answers provided to the issues framed above, there is merit in the basic contention of the respondents. We have already discussed that a criminal act is a crime against the State and, therefore, by implication it could also be against the people at large. If we accept the plea of the applicant that the suspension of criminal sentence would indefinitely remain in limbo and all the rights existing prior to the criminal sentence are suo motu to be continued, then this would not only put fetters on the provision of Rule 9(1) of the Pension Rules, 1972 but also by and large render the provisions of Rule 41 meaningless. This is not the spirit of the legislature. A punishment is always expected to have a deterrent effect. A point of equilibrium has to be arrived at between the individual justice and deterrent punishment. If it is overweighed on the side of individual justice, the cause of the Government and that of ordinance happen to be undermined.

30. In view of our above discussion, we are very clear in our opinion that Rule 41 and Rule 9 are two different rules. We are also of the view that the applicant has not been able to establish his case for grant of continued provisional pension for the reasons that we have discussed above. Original Application thus stands dismissed leaving the parties to bear their own costs. We leave it open, at the same time, to the applicant to apply for compensate allowance u/r 41 of the CCS (Pension) rules, 1972 which the respondent authorities may consider on its merits."

6. It is evident from the above that another case similar in nature and scope has already been adjudicated by the Tribunal and the order in that judgment has not been given in the favour of the applicant. Given this fact, it will be extremely difficult for us to accept the contention of the applicant that he has prima facie a good case which is likely to succeed. The same applies to his contention of balance of convenience. This being not the case presently, the argument of the applicant having a prima facie good case and the balance of convenience in his favour do not deserve to be accepted. There is yet another aspect of this case, namely, that in the event of the High Court upholding his conviction and sentence and our granting him interim stay, a situation of huge amount of recovery from the applicant would arise which will cause serious practical problems both for the applicant as well as for the respondents. If, however, the High Court sets aside the conviction and the sentence, the

applicant would have the right to claim the withheld pension along with interest. And in this sense, any perceived loss caused to the applicant is neither irreparable nor irrevocable.

7. So, while not speculating on the upholding or setting aside of the order of conviction, a legal and proper way forward lies in allowing the penalty to be put into operation during the pendency of the case and not granting the interim stay.

8. The respondents are directed to file their counter affidavit to the main OA within four weeks with an advance copy to the counsel opposite who may file the rejoinder within two weeks thereafter.

9. List the OA on 15.12.2017 before the Court of Principal Registrar for completion of pleadings.

(Uday Kumar Varma)
Member (A)

(Jasmine Ahmed)
Member (J)

/ns/

