

**Central Administrative Tribunal
Principal Bench**

OA No. 541/2016

Order reserved on: 28.09.2018
Order pronounced on : 16.10.2018

Hon'ble Mr. Pradeep Kumar, Member (A)

Sh. S.P.Mishra,
Retd. General Manager,
Telecom Department,
S/o Late Sh. A.K.Mishra
Aged about 64 years,
R/o C-29, Sector-47,
Noida-201301, U.P.

... Applicant

(By Advocate: Sh. Nilansh Gaur)

Versus

1. Union of India,
Through its Secretary,
Ministry of Communications & Information Technology,
Sanchar Bhawan,
New Delhi-110017.
2. Union Public Service Commission,
Through its Secretary,
Dholpur House, Shahjahan Road,
New Delhi-110001.

... Respondents

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

ORDER

Heard Sh. Nilansh Gaur, learned counsel for applicant and Sh. K.M.Singh, learned counsel for respondents.

2. The applicant brought out that he joined Telecom Department as JTO on 05.03.1994. In due course he was promoted as General

Manager (GM) on 15.02.2001. He was transferred from Delhi to Nadiad (Gujarat) on 05.03.2004. While he was serving in Gujarat area, complaints regarding certain fraud committed by the applicant, were filed against him. One case also involved alleged acceptance of illegal gratification by the applicant. In turn, the applicant was deemed suspended w.e.f. 29.10.2004 and this suspension was revoked on 30.06.2008. Thereafter he joined as GM (Marketing) at Meerut w.e.f. 01.09.2008.

3. As a result of the complaints lodged against the applicant, one trial was conducted under Prevention of Corruption Act 1988 by the Special Judge (ACB) and the judgment was passed on 15.12.2009 wherein the applicant was held guilty and was convicted and was sentenced to jail for a period of three years.

4. After this conviction proceedings were concluded in the Court of Special Judge (ACB) on 15.12.2009, the respondents had also served a show cause memorandum under Rule 19 of CCS (CCA) Rules, 1965 on 19.04.2010, proposing dismissal of the applicant from service. The applicant made a representation against this memorandum. While this memorandum was still under process, the applicant attained superannuation on 31.01.2012.

5. After superannuation on 31.01.2012, the disciplinary proceedings were continued under Rule 19 of CCS (CCA) Rules, 1965. The respondents sent the case for UPSC's advice. Thereafter

the punishment of 100% cut in pension on permanent basis and forfeiture of gratuity was imposed upon the applicant vide order dated 07.08.2012.

6. Feeling aggrieved, the applicant had approached Tribunal vide OA No.3107/2012 praying that the UPSC's advice was not made available to him before the punishment was imposed. He made certain other averments also. However, the Tribunal dismissed the OA vide orders dated 13.01.2014. The applicant preferred a Writ Petition no.2552/2014 in Hon'ble High Court of Delhi. This was decided on 02.12.2014 wherein the punishment imposed was quashed and Hon'ble High Court directed that UPSC's advice be furnished to the applicant so that he has an opportunity to make a representation and respondents were given liberty to proceed ahead in the disciplinary case from this stage onwards. The treatment of the intervening period from date of superannuation, i.e. 31.01.2012 until the date of imposition of punishment 07.08.2012, was left at the discretion of the respondents.

After receipt of UPSC's advice applicant made a fresh representation against the proposed punishment vide his letter dated 27.07.2015. However, the punishment of 100% cut in pension on permanent basis and forfeiture of gratuity was imposed again on 14.12.2015. The applicant had approached the Tribunal against this order of punishment in the instant OA.

7. The applicant pleaded that while respondents sought advice of UPSC, certain facts were misrepresented. In support of this misrepresentation, the applicant drew attention to para 4.16 of his OA. The same is reproduced below:

“That an Advice was sought by the disciplinary authority from UPSC distorting the facts. The UPSC wrongly recorded in the Advice that the appeal filed by the applicant against conviction has been dismissed by the Hon’ble High Court of Delhi and that SLP is pending before the Hon’ble Apex Court where, execution has not been stayed. Whereas, the appeal preferred by the applicant against conviction has not been dismissed and rather admitted for hearing and is sub-judice before the Hon’ble High Court of Judicature at Gujarat. Copy of the UPSC Advice is at Annexure A-4.”

8. The applicant also drew attention to certain paras of the UPSC’s advice in support of his contention of misrepresentation of facts by the respondents. The relevant paras of UPSC’s advice are brought out below:

“3. The Commission note that the CO in his representation dated 12.11.2012 submitted that he had filed an appeal before the Hon’ble High Court of Gujarat. Hon’ble High Court, Gujarat, has however dismissed the application of the CO on 20.7.2010 for stay on the conviction. Shri S.P.Mishra, the CO has filed SLP before the Hon’ble Supreme Court of India against the judgment of the Hon’ble High Court of Gujarat. Although the SLP has been admitted but no stay has been granted by the Hon’ble Supreme Court of India. Before the finalization of the disciplinary proceedings, the CO retired on superannuation as such the proceedings are deemed to continue under Rule 9 of CCS (Pension) Rules, 1972. After considering the representation of the CO, the DA forwarded the case records to the Commission for their consideration and advice in this matter.

4.2 The Commission note that the DA in his comments has stated that the CO has filed SLP before the Hon’ble Supreme Court of India. Although SLP has been admitted by the Hon’ble Supreme Court but no stay has been given on the conviction order of the Special Judge for CBI cases at Nadiad.

4.3 The Commission observe that the CO has been found guilty by the Special Judge, CBI Court and the appeal of the CO has been dismissed by the Hon’ble High Court of Gujarat. The CO has

filed SLP in the Hon'ble Supreme Court which is still pending. The conviction order of the Special Judge, CBI Court still stands and its execution has not been stayed by the Hon'ble Supreme Court. The judgment of the Special Court, CBI is based on the oral depositions of the complainant, witnesses and the documents.

5. In the light of their findings, as discussed above, and after taking into account all other aspects relevant to the case, the Commission consider that the charges proved against the CO constitute grave misconduct and that the ends of justice would be met in this case if 100% of the monthly pension otherwise admissible to the CO, Shri S.P.Mishra, GM UP Telecom Circle is withheld permanently and his entire gratuity is forfeited. They advise accordingly."

9. The applicant further pleaded that he had earlier approached Hon'ble High Court of Gujarat by filing Writ Petition No.2561/2009 against the decision of Special Judge (ACB) dated 15.12.2009 (para 4 supra). This petition was admitted by Hon'ble High Court vide their orders dated 24.12.2009 wherein even though conviction was not stayed the sentence was suspended.

Thereafter, he filed another petition for suspension of conviction also in the Hon'ble High Court. This was, however, dismissed on 20.07.2010.

Thereafter, he preferred a SLP in Hon'ble Supreme Court vide SLP No.9235/2010. This was dismissed vide orders dated 14.01.2011 with a direction to Hon'ble High Court to expeditiously dispose off the pending appeal in Hon'ble High Court of Gujarat in WP No.2561/2009. The applicant thus pleaded that the matter in respect of his conviction is still subjudice. In this context the

applicant further drew attention to para 69 (1) (b) of CCS (Pensions)

Rules which read as under:

"The provisional pension shall be authorised by the accounts officer during the period commencing from the date of retirement upto and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority."

10. In respect of non-conclusion of judicial proceedings in his case, the applicant drew attention to a judgment by Hon'ble High Court of Karnataka titled **N.K.Suparna vs. Union of India**, ILR 2004 KAR 4628 decided on 23.09.2004 wherein specific attention was drawn to certain observations by the Hon'ble High Courts as under:

"7. Having heard the learned Counsel for the parties, the point that arises for decision is whether the entitlement of the petitioner to receive provisional pension in terms of Rule 69 of the Rules is limited to the pendency of the proceedings before the original Court or that entitlement continues till the finality is reached by way of appeal to this Court or further appeal to the Supreme Court.

8. In order to answer this point, it would be beneficial to first notice the provisions of Rule 69 of the Rules itself. Clause (b) of Sub-rule (1) of Rule 69 reads as follows:-

"69(1)(b):-

The provisional pension shall be authorised by the accounts officer during the period commencing from the date of retirement upto and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority."

The provision of Clause (b) is quite clear, plain, unambiguous and does not admit more than one meaning. Clause (b) in unmistakable terms directs that a delinquent employee will be entitled to provisional pension from the date of retirement upto and including the date on which the final order that may be made by the competent authority, after the conclusion of the departmental or judicial proceedings. The key words for our purpose are 'after the conclusion of departmental or judicial proceedings'. The interpretation suggested by the learned CGSC

for the department is not acceptable to us for more than one reason. It is well settled that the appeal is a continuation of the original proceedings. Since the petitioner being aggrieved by the judgment and order of the CBI Court has preferred appeal to this Court and the same is pending, we have to necessarily hold that the proceedings are pending. Undoubtedly, the pendency of the appeal in this Court is a judicial proceedings. It also needs to be noticed that the final order envisaged under Rule 9(1) of the Rules in terms of Clause (b) of Sub-rule (1) of Rule 69 of the Rules is required to be passed by the President of India only after the conclusion of the departmental or judicial proceedings. In the instant case, since the judicial proceedings, we mean the launching of the prosecution against the petitioner have not been concluded so far in terms of finality, the President of India invoking the power conferred upon him under sub-rule (1) of Rule 9 would not arise. Therefore, the impugned order passed by the President of India in the purported exercise of power under Rule 9(1) of the Rules should be condemned as one without authority of law inasmuch as the necessary condition to invoke that power did not exist as on the date of the impugned order nor does it exist as on today also.

9. This takes us to the next question whether the President of India is justified in forfeiting the gratuity payable to the petitioner? In terms of Clause (c) of Sub-rule (1) of Rule 69 of the Rules, the petitioner is not entitled to be paid gratuity inasmuch as judicial proceedings are pending and the petitioner has been convicted and sentenced by the original Court. However, we hasten to add that the President of India ought to have awaited the result of the appeal pending before this Court or in the event of further appeal to the Apex Court till the result of such appeal before passing final order in exercise of the power conferred upon him in Sub-rule (1) of Rule 9 of the Rules. Without awaiting for the finality of the proceedings, the President of India has issued the order forfeiting the gratuity also. The only thing he could have done under the circumstances is that he ought to have deferred the payment of gratuity. We clarify this position and direct accordingly.

10. In the result and for the foregoing reasons, we cannot sustain the impugned order of the Tribunal.

i) Writ Petition is allowed and the impugned order of the Tribunal is set aside;

ii) Original Application is allowed in part and Annexure-A8 dated 17.7.2003 is set aside subject to the observations made above.

iii) The provisional pension withheld so far by the department to be paid to the petitioner forthwith.

No costs.”

It was thus pleaded that his Writ Petition is still pending and therefore matter is *sub judice* and as such he is entitled for payment of provisional pension, which is not being paid to him since December 2015.

11. The applicant further drew attention to another judgment by Hon'ble High Court of Punjab and Haryana titled **Union of India and another vs. Central Administrative Tribunal Chandigarh Bench, Chandigarh and another**, CWP No.982/2007 delivered on 19.11.2010 wherein the question considered by the Hon'ble Court and the decision thereof were based upon **N.K.Suparna's case** (para 10 supra). The relevant paras are reproduced below:

"8. The short question which arises for consideration in this petition is whether the criminal proceedings would be deemed to have concluded within the meaning of Rule 69 (1) (b) of the Rules when the trial Court has rendered its decision or it would attain finality after the decision of the appeals pending either before this court or before Hon'ble the Supreme Court. In such like situation the beneficial interpretation of piece of social legislation has always been preferred. Accordingly, the Division bench judgment of Karnataka High Court rendered in the case of N.K.Suparna (supra), on which reliance has been placed by the Tribunal, has taken the view that criminal proceedings would be deemed to be pending during the pendency of the appeals before the High Court or before Hon'ble the Supreme Court.

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10. With utmost respect we are in agreement with the view of the Division Bench of Karnataka High Court in N.K.Suparna's case (supra). We are also in agreement with the view taken by the Tribunal that the proceedings in appeal is continuation of the original proceedings and until and unless the appeal is decided, pendency of such proceedings in appeal would be deemed to be pending and Rule 69(1)(b) would continue to apply. For the aforesaid purpose the Tribunal has rightly placed reliance on the judgment of Hon'ble the Supreme Court rendered in the case of Smt. Akhtari Bi (supra).

11. We are also in agreement with the view taken by the Division Bench in N.K.Suparna's case (supra) with regard to payment of gratuity under sub-rule (1) of rule 9 of the Rules. The

President should have awaited finality of the proceedings and should not have forfeited the gratuity. As best he could have deferred the payment of gratuity.

12. As a sequel to the above discussion, the writ petition filed by the Union of India is dismissed and order of the Tribunal is upheld. Since the order passed by the Tribunal was stayed on 22.1.2007, the petitioners are directed to release the provisional pension of the applicant-respondent No.2 expeditiously preferably within a period of two months from today.”

It was thus pleaded that he is entitled for payment of provisional pension.

12. The applicant pleaded that in his case the matter regarding conviction is still subjudice and the issue of payment of provisional pension when the case is still subjudice have been gone into by the Hon’ble High Courts (para 10 & 11 supra), and has been upheld. Accordingly, he is also required to be paid provisional pension.

In this connection, it was brought out that provisional pension was paid to him for the period February 2012 to July 2012 and thereafter it was stopped and it was again paid for the period May to November in 2015, it has been stopped thereafter.

13. With the above in view, the applicant had pleaded for the following relief in this OA:

“8.1 Set aside the impugned order dated 14.12.2015 (Annexure A-1) in so far it withholds the entire pension and foreits full gratuity and to the extent of denying provisional pension to the applicant.

8.2 Direct the respondents to sanction and pay provisional pension to the applicant w.e.f. December 2015 till the conclusion of the judicial proceedings with arrears and an interest of 12% p.a. till actual payment; and

8.3 Any other relief which this Hon'ble Tribunal may deem fit and appropriate, in the circumstances of the case."

14. The respondents pleaded that the impugned order dated 14.12.2015 has been issued by the competent authority in accordance with the relevant rules and instructions on the subject and after due consultation with the UPSC. The applicant was also extended the opportunity of perusing UPSC's advice and submitting his defence which was done and this was taken into account by respondents while imposing punishment on 14.12.2015.

Further, the punishment has been imposed as a result of his conviction by a Civil Court of law. The respondents also drew attention to their counter affidavit wherein following averment has been made:

"4.19 That it is submitted that the issues arising out of the judgment of the Hon'ble High Court in case of Shri N.K. Suparna is no longer resjudicata. This Hon'ble Tribunal in the case of P.C. Mishra vs Chief Secretary in OA No.1175 of 2012 has considered these issues/contentions on the basis of various judgments of the Hon'ble High Courts and Hon'ble Supreme Court and have found them untenable in law. A copy of the same is annexed herewith as Annexure R-1."

The relevant extracts of the decision by the Tribunal, in OA No.1175/2012 quoted in above para, is reproduced below:

22. We have considered all these cases very carefully. In view of the diverse decisions, there appears to be a direct contradiction between the case of N.K. Suparana Versus Union of India and Others (supra) and S.S. Chaudhary versus M.C.D. (supra) and the same have to be reconciled harmoniously. The main issue is what is the effect of suspension of the criminal sentence does it amount to abrogation of the sentence till the proceedings are finally decided by the highest court of appeal or

that the sentence continues to be in operation and only its effect has been put on hold. The case of N.K. Suparana Versus Union of India and Others (supra) is the holder of the judgment while that of S.S. Chaudhary versus M.C.D. (supra) is a later of the two. The matter has received more confusing situation and the court has unequivocally held that the order of conviction does not lose its strength on account of the suspension and the same holds good so long it is not finally set aside. The effect of suspension is that it merely mitigates some of the rigors of the sentence but does not abrogate it altogether were it to be otherwise, the distinction between final acquittal and suspension of sentence would have been thinned out if not vanished altogether for the purposes of provisional pension. This is not the intention of the framers of the rules. The question thus stands conclusively answered.”

15. It was thus pleaded that the relevant judgment of **N.K.Suparna** (supra) was passed in the year 2004 and thereafter Hon’ble Apex Court had already taken a view in regard to subjudice matter and as such the reliance cannot be made on **N.K.Suparna** judgment to plead that the judicial proceedings are still continuing. The Tribunal in the above quoted case OA No.1175/2012 had also considered this matter and pronounced the following judgment:

“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.”

In view of the foregoing, the contention of the applicant that his case is still *sub judice* and accordingly the provisional pension should be continued cannot be accepted.

16. Matter has been heard at length. The instant case is one wherein the applicant was convicted under Prevention of Corruption Act by a Civil Court and was sentenced to jail term for three years. The Hon’ble High Court of Gujarat had only suspended the jail sentence while conviction has not been stayed. Thus, the judicial proceedings in Trial Court were concluded. The provision of payment of provisional pension has been kept in the Pension rules to avoid financial difficulty to an employee who is otherwise awaiting decision in respect of the disciplinary proceedings. In the instant case the conviction was upheld by a Civil Court. Thereafter, the department had initiated the disciplinary proceedings and obtained UPSC’s advice which was in turn given to the applicant and thereafter applicant had also availed the opportunity to make his representation which he did. It was only after completion of this entire process, that respondents had passed the final punishment order dated 14.12.2015. Therefore, full opportunity has already been given and it was only after the due process of law that

punishment was imposed. This punishment order, therefore, cannot be quashed and will continue to have full force of law.

17. This Tribunal is in full agreement with the reasoning given by another bench of Tribunal, reproduced in para 15 above. The ratio applies to this instant case also. Grant of provisional pension in this case will go against the very intent of relevant legislation. Hence no such relief can be given.

18. In regard to the claim of misrepresentation by the respondents, a close reading of UPSC's advice reproduced in para 8 above, makes it clear that there has been no representation. This plea of the applicant, therefore, also does not hold.

19. The entire construct and purpose of the disciplinary rules, CCS (Pension) Rules will get nullified if pleas of applicant are accepted. That will also go against the basic intent of legislation. This cannot be allowed even in the least in view of the sequence as brought out above.

In the event, the pleas of the applicant do not sustain. The present OA is dismissed being devoid of merit. No order as to costs.

(Pradeep Kumar)
Member (A)

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