

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH**

...  
**Order reserved on: 25.07.2018**

**ORIGINAL APPLICATION NO. 060/00053/2017**

**Chandigarh, this the 7<sup>th</sup> day of August, 2018**

...  
**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &  
HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)**

...

Harjit Singh son of late Shri Chanan Singh, aged 65 years, resident of House No. 325, Phase-VII, Mohali, Group-A.

....APPLICANT

(Argued by: Shri J.R. Syal, Advocate)

VERSUS

1. Union of India through Secretary, Ministry of Home Affairs, North Block, New Delhi-110001.
2. Union Territory, Chandigarh through Finance Secretary, U.T. Chandigarh, Deluxe Building, Sector 9, Chandigarh.
3. Estate Officer, U.T. Chandigarh, Estate Office Building, Sector 17, Chandigarh.

....RESPONDENTS

(Argued by: Shri Rakesh Verma)

**ORDER**

**AJANTA DAYALAN, MEMBER (A)**

Applicant Harjit Singh in the present Original Application (O.A.) has assailed impugned order dated 9.1.2015 (Annexure A-7) passed by the Disciplinary Authority (Respondent no. 3), whereby punishment of withholding of his whole pension has been imposed w.e.f. the date of his conviction on 31.7.2014 in the two criminal cases, as well as order dated 19.10.2016 (Annexure A-10) passed by the Appellate Authority (Respondent no. 2) whereby appeal

preferred by him against the order of Disciplinary Authority was dismissed. He has also prayed for a direction to the respondents to restore the pension of the applicant alongwith interest @ 12% p.a. from the date the same was withheld.

2. The learned counsel for the applicant pleaded that the order of the punishing authority is harsh and non-speaking. The report of inquiry officer is questioned and the order of the Disciplinary Authority is challenged. The order of appellate authority is challenged on the grounds that the Appellate Authority has agreed with the order of Disciplinary Authority without assigning any reasons thereto and ignoring the provisions of Rule 19 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 whereby the Appellate Authority has to consider the following:-

- [a] Whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provision of the Constitution of India or in the failure of justice;
- [b] Whether the finding of the punishing authority are warranted by the evidence on the record; and
- [c] Whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders confirming, enhancing, reducing or setting aside the penalty;

The Trial Court judgments are questioned as according to the applicant the circumstances and the evidence on record have not been considered properly.

3. The learned counsel further pleaded that as per note below Rule 2.2 (b) of the Punjab Civil Services Rules (Volume-II), the amount of pension withheld under clause (b) should not ordinarily exceed one third of pension originally sanctioned, regard should be had to the consideration whether the amount of pension left to the

pensioner in any case would be adequate for his maintenance. In the present case, the whole of the pension has been withheld. Further, the counsel for the applicant submitted that on the same allegations which were subject matter of criminal trial, the disciplinary proceedings were initiated vide charge memo dated 13.12.2004 and after holding an inquiry, punishment of reduction of one increment with cumulative effect was imposed vide order dated 4.2.2008. After the finalization of the criminal proceedings and judgment by the Trial Court on the same charge, punishment of withholding of full pension has been imposed. The counsel pleaded that the impugned order is hit by the doctrine of double jeopardy as once a penalty has been imposed under disciplinary proceedings, the second penalty of withholding whole pension is not permissible as both the disciplinary proceedings as well as criminal proceedings are on the same cause of action.

4. Further, it is pleaded that Rule 13 of Punjab Civil Services (Punishment and Appeal) Rules, 1970 makes a special procedure in cases of conviction, *inter alia*, stating that where any penalty is imposed on a Government servant on the ground of misconduct which has led to his conviction of a criminal charge, Punishing Authority is required to consider the circumstances of the case and to make such orders thereupon as it deems fit. In the present case, the impugned order does not specifically talk about the conduct of the applicant during the entire service. According to the counsel for the applicant, it seems as if the impugned order has been

passed only on the ground of conviction alone and is thus not sustainable in the eyes of law.

5. The respondent no. 3 has filed the written statement to the O.A. which seems to have been adopted by other respondents as the same counsel is appearing for all the respondents and no other written statement has been filed by other respondents.

6. The written statement filed by respondent no. 3 is detailed and the basic facts of the case are not in dispute.

7. The learned counsel for respondents has pleaded that the applicant has been convicted and sentenced by the Special Judge, Chandigarh vide two separate orders dated 28.7.2014 and 31.7.2014 in Challan no. 33 and 34 respectively in connection with FIR No. 2 dated 11.6.2014. It is pleaded that though the Hon'ble High Court vide order dated 28.8.2014 extended the interim bail till the next date of hearing i.e. 21.11.2014, thereby making it absolute; this was with the directions to the applicant-petitioner to appear before the Trial Court and submit his fresh bail bonds and to the Trial Court to accept the same. But the applicant has not furnished any information regarding fresh bail bonds and these being accepted by the Trial Court. He has also not furnished order passed by any Court setting aside or staying the conviction or sentence and hence the same are still in force. The order dated 9.1.2015 was passed by the respondent no. 3 to withhold the whole pension of the applicant w.e.f. the date of his conviction i.e. 31.7.2014 keeping in view the provisions of Rule 2.2 (a) of Punjab Civil Services Rule (Volume II) which is as follows;

“2.2 (a) Future good conduct is an implied condition of every grant of a pension. The Government reserves to themselves the right of withholding or withdrawing a pension or any part of it if the pensioner be convicted of serious crime or be guilty of grave misconduct.

In a case where a pensioner convicted of a serious crime, action shall be taken in the light of judgment of the court relating to such conviction”.

8. The respondents have pleaded that the applicant was being given 90% pension w.e.f. 1.8.2008 to 31.1.2009 as per Rule 2.2 (c) and 9.14 (1) (a) Punjab Civil Services Rule, Volume II, Part-I and the position continued till conviction by the Trial Court. After the conviction by the Court, whole pension was withheld vide order dated 9.1.2015. This Tribunal vide order dated 21.4.2016 directed the respondents to pay the balance 10% provisional pension from 1.8.2008 to 30.7.2014 as well as DCRG alongiwith interest @ 9 % p.a. As regards non-release of superannuation pension to the applicant, the applicant was relegated to the remedy of departmental appeal which should be decided by the Competent Authority on merits and not dismissed on the ground of limitation. Respondent no. 3 has filed CWP against order of this Tribunal in the jurisdictional High Court and the case is ongoing.

9. The respondents have also stated that there is another case wherein the applicant was convicted and sentenced by the Special Judge U.T. in FIR No. 8 dated 27.12.2007. It is clearly stated that this conviction order, as the other two conviction orders, has not been set aside till date though the appeals against the orders are pending in the High Court.

10. The counsel for respondents has further pleaded that the action under the Punjab Civil Services (Punishment and Appeal)

Rules, 1970 and criminal action under Criminal Procedure Code and Prevention of Corruption Act are separate statutory actions and have no overriding effect on each other. Thus the applicant cannot claim double jeopardy debarring the Punishing Authority to take further course of action after his conviction and sentence by the Court of law under Criminal Procedure Code and Prevention of Corruption Act.

11. It is further stated that opportunity of personal hearing was afforded to the applicant on 19.10.2016 by the Appellate Authority wherein the applicant had nothing to say except the prayer for making sympathetic approach in his case and to set aside the impugned orders. He failed to produce any documentary evidence to support his contention.

12. The applicant has filed a rejoinder to the written statement.

13. We have heard the learned counsels for the parties and have carefully perused the pleadings available on record.

14. We are of the view that Rule 2.2 (a) of the Punjab Civil Services Rules (Volume II) is very clear. The same is quoted in para 7 above. It categorically provides that future good conduct is an implied condition of every grant of pension. Further, it is provided that 'the Government reserves to themselves the right of withholding or withdrawing a pension or any part of it if the pensioner be convicted of serious crime or be guilty of grave misconduct'. The Rule then goes on to provide that 'in cases where the pensioner is convicted of a serious crime, action shall be taken in the light of judgment of the court relating to such conviction'.

Thereafter the Rule deals with cases not covered in this paragraph if the Government considers that the pensioner is *prima facie* guilty of grave misconduct and lays down procedure therefore. Thus two distinct processes to be followed are clearly spelt out – (1) where pensioner is convicted of serious crime and (2) where he is *prima facie* guilty of grave misconduct. In the case of a pensioner convicted of serious crime, it is mandatory for the Government to take action in the light of the judgment of the Court relating to such conviction. In the present case the applicant has been convicted and sentenced in multiple criminal cases. Though the appeals are pending in the High Court, neither the conviction nor sentence have been set aside or stayed and are, therefore, in operation.

15. Rule 2.2 (b) is also not relevant as this relates to recovery from pension for the pecuniary loss caused to the Government. Hence, there can no doubt about the right of the Competent Authority to order stoppage of pension on the basis of criminal conviction of a Government servant. Further, the words used in Rule 2.2 relied upon by the applicant are that pension withheld should not ordinarily exceed 1/3<sup>rd</sup> of pension originally sanctioned. But in the present case, considering the gravity of offence and as discussed, withholding of whole pension is not found unjustified.

16. Another question before this Court is whether the impugned orders are hit by the doctrine of double jeopardy. The action under Punjab Civil Service (Punishment and Appeal) Rules 1970 and criminal cases under Cr. P.C. are separate statutory actions and

they do not have any overriding effect on one another as has been submitted by the counsel for the respondents. If the contention of double jeopardy is accepted, a government servant could get away with a crime by choosing to undergo departmental proceeding, thereby avoiding criminal proceedings and conviction. The Tribunal also note that in the case of **Union of India and Anr. Vs Purushottam**, Civil Appeal No. 7133 of 2008 the Apex Court has held that doctrine of double jeopardy is not attracted when both criminal and departmental proceedings are initiated on the same charge. Hence, this Tribunal is of the clear view that doctrine of double jeopardy does not apply in the present case.

17. It is important to note that there is disparity in the degree proofs required for disciplinary proceedings and criminal offence - in the departmental proceedings it is only on the basis of preponderance of probability whereas in criminal case it is beyond reasonable doubt. On this account also the two are not comparable.

18. As regards the plea taken by the counsel for the applicant that Disciplinary Authority passed order for stoppage of pension based on the fact of conviction in two criminal cases but no due process of law as provided for disciplinary proceedings was followed while passing this impugned order of his stoppage of pension or the question being raised about the level of evidence in criminal cases, this Court is of the view that as discussed above, in case of criminal offence, it is mandatory for the Government to take action in the light of the judgment. Besides, conviction in the criminal

case is done after giving due opportunity to the applicant to put forth his case and after following due process which is detailed and time tested with regard to its integrity, fairness and transparency. It was after following this detailed process that the guilt of the applicant was fixed and he was convicted in multiple criminal offences by Court of law. The Tribunal also notes that consequent to disciplinary proceedings, only specified penalties can be imposed on the defaulting government servant, but these do not include stoppage of pension. Hence, a clear separate Rule 2.2 is provided to meet the contingency of conviction or misconduct on part of a retired government servant. In view of all above, this Tribunal is of the view that the Disciplinary Authority was within its rights to make an order suo motu punishing the applicant with the stoppage of pension consequent to the judgment in the two criminal cases.

19. We have perused the Disciplinary Authority orders (Annexure A-7) and find that it is a very detailed and speaking order and do not find any reason to interfere with the same. The grounds contemplated by the Apex Court in the case of **Noharlal Verma N. vs. District Cooperative Central Bank Ltd.** (2008) 14 SCC 445 for intervening the decision of the disciplinary authority are not found applicable in the present case. It is laid down therein that the Court will not substitute its own judgment for the decision of the disciplinary authority unless:

- (i) The order shocks the conscience of the Court;
- (ii) No reasonable man would impose such punishment;
- (iii) The decision maker must have taken leave of his senses.

20. The Appellate Authority order dated 19.10.2016 (Annexure A-10) is also found to be a speaking order. The order interalia indicates that an opportunity of personal hearing was afforded to applicant who had nothing to say except a prayer for sympathetic approach. He failed to show any documentary evidence which could support his contention.

21. The plea of the applicant that the punishment is harsh is not accepted as good conduct of government servant is precondition for continuation of pension. Government servant is to set a model for others and a criminal offence is not expected even of an ordinary citizen. Hence a Government servant who is convicted of criminal offence does not deserve leniency. A Government servant who is guilty of criminal offence needs to be dealt with appropriately without misplaced sympathy. It is important to note that the applicant was working as Superintendent in the Estate office at the time of the criminal offence and the offences which stand proved by the court of law are his conniving with one Silva Raj to impersonate a dead person and get property registered fraudulently based on forged documents. Hence he is convicted on the charges of forgery and facilitating impersonation to get property registered in favour of his partner in crime. The crimes are grave and indicate breach of trust placed in him as a public servant.

22. The applicant has mentioned that three specific considerations which are required to be done by the Appellate Authority as per Punjab Civil Services (Punishment and Appeal) Rules, 1970 are not done. This Tribunal is of the view that these

are not applicable as the penalty is not under Punjab Civil Services (Punishment and Appeal) Rules, but is under Rule 2.2 (a) of Punjab Civil Services Rules (Volume 2) which is specific to stoppage of pension. Irrespective of this fact, we find that these considerations have been substantially complied with as these relate to whether the procedure has been followed, whether the findings of the punishing authority are warranted by evidence on record and whether the penalty is adequate. The procedure is to be followed in the matter of disciplinary cases and not in order of punishment consequent to conviction in criminal offence where a much more detailed procedure has already been followed with much more rigorous standard of proof. Further, the findings of the punishing authority are based on evidence which has already been gone through in detail by the Court of law and has been found adequate to punish him in a criminal offence. The Appellate Authority has also considered the penalty as not harsh considering the gravity of offence which led to his conviction in multiple cases.

23. In the light of above, we are of the view that the impugned orders dated 9.1.2015 (Annexure A-7) passed by the Disciplinary Authority and 19.10.2016 (Annexure A-10) passed by the Appellate Authority are not required to be interfered with.

24. Therefore, the O.A. is dismissed with no order as to costs.

**(AJANTA DAYALAN)**  
**MEMBER (A)**

**(SANJEEV KAUSHIK)**  
**MEMBER (J)**

**Dated: 07.08.2018**  
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