

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD**

Original Application No. 021/00281/2016

Date of C.A.V. : 02.07.2018

Date of Order : 03.08.2018

Between :

M.Dharmaraj, aged about 60 years,
S/o Late Sri Mayandi,
Deputy Labour Welfare Commissioner (C) (Retd),
R/o Qrt.No.4/1, RLC Quarters,
ATI Campus, Vidya Nagar,
Hyderabad – 500007.

... Applicant

And

1. Union of India,
Rep. by the Secretary to Government of India,
Ministry of Defence, South Block,
New Delhi – 110001.

2. The Secretary to the Government of India,
Ministry of Labour and Employment,
Shram Shakti Bhawan, Rafi Marg,
New Delhi – 110001.

3. The Deputy Chief Labour Commissioner (Central),
Government of India,
Ministry of Labour and Employment,
ATI Campus, Vidya Nagar, Hyderabad – 500007.

4. The Director,
Defence Electronics Research Lab (DLRL),
Chandrayangutta Lines, Hyderabad – 500005.

5. The Controller of Defence Accounts (R&D),
Chandrayangutta Lines, Hyderabad – 500005.

6. Pr.Controller of Defence Accounts (Pension),
Drowpati Gardens, Allahabad, U.P.

... Respondents

Counsel for the Applicant ... Mr. T.Koteswara Rao, Advocate
Counsel for the Respondents ... Mrs.K.Rajitha, Sr.CGSC

CORAM:

Hon'ble Mr.Justice R.Kantha Rao ... Member (Judl.)

ORDER

{ As per Hon'ble Mr.Justice R.Kantha Rao, Member (Judl.) }

The applicant filed the OA to declare the inaction on the part of the respondents in sanctioning the pensionary benefits to him as irrational, irresponsible, arbitrary and violative of Article 14, 16 and 21 of the Constitution of India and to direct the respondents to release the pensionary benefits to him with interest at 12% per annum from the date of his retirement till the actual date of payment.

2. The applicant who was initially recruited as Labour Enforcement Officer in the year 1992 secured promotions and was posted as Assistant Labour Commissioner in the 3rd respondent office in the year 2009 and worked in the said office till 29.06.2015 i.e. one day prior to his retirement. The applicant was promoted as Deputy Labour Welfare Commissioner (C) subject to the outcome of the Writ Petition No.1508/2014 pending in the Hon'ble High Court of Hyderabad. On attaining the age of superannuation the applicant submitted his pension papers in the office of the 3rd respondent in June 2015. He, however, was not paid the retiral benefits within a reasonable time after his retirement. He was paid

only provisional pension and the other pensionary benefits were withheld. He made repeated representations to sanction the pensionary benefits, but they were not sanctioned to him, on that he filed the present OA.

3. The reason for withholding the pensionary benefits seems to be that the applicant was issued with a charge memo under Rule 14 of CCS (CCA) Rules, 1965 framing four charges, he denied the charges and the Disciplinary Authority vide proceedings dated 19.12.2011 appointed Enquiry Officer for the purpose of conducting disciplinary enquiry against him. The charges relate to the year 2001-2002 in relation to his discharge of duties at Tirunelveli in the State of Tamilnadu. A preliminary enquiry was conducted in 2004, but no action was taken against him within a reasonable time after the preliminary enquiry. A charge memo was issued to him on 19.10.2011. The indictment against the applicant is that he diverted the scholarship amount of Rs.2,69,512/- to the students of some schools without approval of the competent authority, though the said amount was sanctioned to some other school. He filed OA.57/2012 before the Tribunal stating that the disciplinary proceedings were initiated against him were as a measure of harassment, the charges were stale and untenable. His prayer in the OA was to quash and set aside the charges.

4. The relief prayed for by the applicant was opposed by the respondents by filing the reply statement. The Tribunal upon examining the contentious issues, arrived at a positive and definite conclusion, that the charges

were without any substance. The Tribunal found that the disciplinary action was initiated in 2011, whereas the preliminary enquiry was conducted in 2004. The respondents have not furnished any reasons for the inordinate delay in initiating the disciplinary proceedings. The Tribunal also expressed the view that even according to the respondents the applicant had not indulged any sort of misappropriation of funds. The Tribunal went on to hold that the charges namely diverting the scholarship amount from one school to other ignoring the priority and falsification of records is without any basis. The Tribunal following the judgement of Hon'ble Supreme Court in the case of State of A.P. Vs. N.Radhakishan reported in 1998 (4) SCC 154 held that the delay in initiation of departmental enquiry against the applicant caused prejudice to him. The Tribunal further relied on the judgement of the Hon'ble Supreme Court in the case of State of Madhya Pradesh Vs. Bani Singh and another reported in 1990 (Supp) SCC 733 wherein the Hon'ble Supreme Court held that when there is unexplained delay of 12 years which is not satisfactorily explained in issuing charge memo, that would be unfair to permit the departmental enquiry to proceed to go on. The Tribunal also relied on another decision in the case of P.V.Mahadevan Vs. MD, T.N.Housing Board reported in 2005 (6) SCC 636 wherein the Hon'ble Supreme Court held that the delay of 10 years in filing of charge memo for which no convincing explanation was given is fatal in proceeding with the departmental enquiry against the employee and the charge memo is liable to be quashed. Thus the Tribunal took into consideration the nature of the charges levelled against the applicant, the delay of 8 years in issuing the charge memo, for which there is no satisfactory

explanation. The Tribunal repelled the contention of the respondents that there occurred delay of more than three years on account of misplacement of the file relating to the applicant. Thus on a thorough examination, the Tribunal recorded a finding that the charges levelled against the applicant are not serious and they do not show that the applicant had any motive to have any monetary gain and at the most they would attract deviation in following the procedure, quashed the charge memo dated 19.10.2011 and allowed the OA.

5. Against the order passed by the Tribunal quashing the charges against the applicant, the respondents filed W.P.No.1508/2014 in the Hon'ble High Court of Hyderabad and the same is pending. The Hon'ble High Court however did not suspend the order passed by the Tribunal. Further the 2nd respondent issued order dated 29.06.2015 promoting the applicant to Senior Time Scale (STS) Grade of Central Labour Service (CLS) on notional basis w.e.f. 03.03.2014. It is however mentioned in the promotion order that the promotion and payment of pay and allowances to the applicant shall be subject to the outcome of the Writ Petition No.1508/2014 filed by the Ministry of Labour and Employment before the Hon'ble High Court of Hyderabad against the order dated 21.06.2013 passed by the Central Administrative Tribunal, Hyderabad. Thus, according to the respondents since a judicial proceeding i.e. Writ Petition No.1508/2014 filed by the respondents is pending before the Hon'ble High Court of Hyderabad, the pensionary benefits were withheld. That is the only contention set-forth by the respondents in the reply statement filed by them in the OA.

6. Heard Mr.T.Koteswara Rao, learned counsel for the applicant and Mrs.K.Rajitha, learned Senior Central Government Standing Counsel for the respondents.

7. The sole question requires determination in the present OA therefore is whether the pendency of Writ Petition No.1508/2014 filed by the respondents against the applicant in the High Court of Hyderabad amounts to pendency of a judicial proceeding against the applicant within the meaning of Rule 9 of CCS (Pension) Rules.

8. Rule 9 of CCS (Pension) Rules speaks of the right of President to withhold or withdraw pension or gratuity or a part thereof. 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 recruitment. Sub-rule -4 of Rule 9 lays down that in the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom departmental or judicial proceedings are instituted or whether a departmental proceedings are continued under sub-rule (2) , a provisional pension as provided in Rule 69 shall be sanctioned. According to this rule and sub-rule 2 if the departmental or judicial proceedings are instituted against an employee while he was in service and are continued after his retirement, provisional pension shall be paid to the said

employee.

9. It appears obviously from the facts of the present case that the respondents are under the impression that the pendency of the Writ Petition before the Hon'ble High Court against the order passed by the Tribunal quashing the charges levelled against the applicant would amount to pendency of judicial proceedings against the applicant and therefore the applicant is entitled only for provisional pension and all his pensionary benefits can be withheld under Rule 9 of CCS (Pension) Rules. Right to receive pension is a constitutional right of the retired employee conferred upon him by virtue of the provisions of statute. The said right cannot be deprived of, unless there is sufficient and justifiable cause which is traceable to the provisions of a statute. In the instant case no doubt a charge memo was issued to the applicant levelling certain charges of misconduct on 19.10.2011. The applicant was retired on 30.06.2015 on attaining the age of superannuation. Before the said retirement, the applicant filed OA.57/2012 and the Tribunal accepted the contentions urged by him, quashed and set aside the charge memo issued against him. Against the said order the respondents filed Writ Petition before the Hon'ble High Court of Hyderabad. The respondents also promoted the applicant mentioning in the promotion order that the promotion and payment of pay and allowances of the applicant shall be subject to the outcome of the Writ Petition. After the Tribunal quashed and set aside the charges, there were no disciplinary proceedings pending against the applicant. However, the contention of the respondents is that since the respondents

preferred the Writ Petition against the order passed by this Tribunal, a judicial proceeding is deemed to be pending against the applicant. From the scheme of Section 9 of the revised pension rules, it has to be necessarily understood that a judicial or disciplinary proceeding is said to be pending against the applicant, only when the proceeding which was originally initiated is pending. Here, it is not the case where the applicant was found guilty in the disciplinary proceeding and he challenged the order by filing a Writ Petition. The charge memo filed against the applicant was quashed by the Tribunal in the OA filed by him and the department preferred a Writ Petition against the said order. Since the order passed by the Tribunal quashing the charges is the subject matter pending consideration before the Hon'ble High Court in Writ Petition No.1508/2014, I am not supposed to examine the merits of the order passed by the Tribunal quashing the charges. The only point which has to be kept in mind in this context is that on the date of retirement of the applicant the charge memo issued to him by the department was quashed by the Tribunal. The department is at liberty to challenge the order passed by this Tribunal in higher courts and normally in such an event the matter would be pending for considerable length of time. The question therefore requires examination is whether till such time the applicant can be deprived of the pensionary benefits. In this context it would be necessary to refer to sub-rule 2 (b) of Rule 9 of CCS (Pension) Rules which is to the effect of the departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment shall not be in respect of any event which took place more than four years before such

institution.

10. In the instant case as observed by the Tribunal in OA.57/2012 there is delay of 08 years in issuing the charge memo. As per the mandatory provisions of sub-rule 2 (b) of Rule 9 of CCS (Pension) Rules, such charge memo shall not be issued. In any event having regard to the Scheme of Rule 9 of CCS (Pension) Rules, a judicial or departmental proceeding which is said to be pending against the applicant must be the original proceeding which is initiated against him. If in the original proceeding, if the employee is found not guilty or the charge memo issued to him itself is quashed, the further proceeding, if any carried by the department to the higher courts cannot be said to be a judicial proceeding pending against the applicant. Therefore, in the instant case the department is not justified in withholding the pensionary benefits to the applicant on the ground that Writ Petition No.1508/2014 filed before the Hon'ble High Court is pending against him. The said view taken by the department is contrary to the true spirit of the provisions of Rule 9 of CCS (CCA) Rules. Withholding of pensionary benefits to the applicant by the respondents is illegal and contrary to the provisions of Rule 9 of CCS (Pension) Rules.

11. Therefore, the OA deserves to be allowed and accordingly it is allowed. The respondents are directed to release all the pensionary benefits to the applicant within a period of eight weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

(JUSTICE R.KANTHA RAO)
MEMBER (JUDL.)

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