

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/021/1244/2016
Date of Order : 16-07-2018

Between :

S.Upender S/o Laxmi Narsiah, Age : 67 years,
Junior Telecom Officer (Op)(Retd),
O/o General Manager, Dept of Telecom,
Ashok Nagar, Karimnagar (Dist),
R/o 8-3-308, Saptagiri Colony, Karimnagaer (Dist),
State of Telangana.

....Applicant

AND

1. Union of India
Rep by its Secretary,
Department of Telecommunication,
Sanchar Bhavan, New Delhi.
2. Member (Services),
Telecom Commission,
Govt of India, Department of Telecommunication,
Sanchar Bhavan, New Delhi.
3. Chairman,
Telecom communication,
Sanchar Bhavan, New Delhi.

...Respondents

Counsel for the Applicant: Mr.K.Sudhakar Reddy

Counsel for the Respondents : Mrs.K.Rajitha, Sr.CGSC

CORAM :

THE HON'BLE MR.JUSTICE R.KANTHA RAO, JUDICIAL MEMBER

(Oral order per Hon'ble Mr.Justice R.Kantha Rao, Judicial Member)

The applicant while working as Jr. Telecom Officer in the Respondents organization was kept under suspension by the order dated 01.12.2006 of the General Manager, Telecom District, Karim Nagar, in exercise of powers

conferred by Sub-rule (c) of Rule-30 (1) of BSNL Conduct, Discipline and Appeal Rules, 2006, on the ground that a Criminal offence against the applicant is under investigation by the Police.

2. Admittedly the said Criminal Offence does not relate to the discharge of the duties of the applicant in the Department. It relates to a matter wherein the applicant borrowed loan from the Bank. The allegation against him in that he produced some forged documents for the purpose of obtaining loan. The matter was investigated into by the Police and Calander Case No.449/2009 came to be filed in the Court of VI Addl. Judicial Magistrate of Warangal alleging commission of offence under section 420, 467, 468, 471 read with 34 of IPC.

3. The applicant filed OA No. 595/2007 challenging the suspension order on the ground that he was kept under suspension beyond 90 days and the same was not reviewed. The Tribunal allowed the OA directing the Respondents to review the suspension order and pass appropriate orders. The Respondents, Department of Telecommunications reviewed the suspension , revoked the same and reinstated the applicant. Subsequently the BSNL again suspended the applicant on the very same ground which lead the applicant to file OA No. 627/2008. The Tribunal set aside the suspension order and allowed the OA. The Respondent BSNL challenged the order passed by the Tribunal by filing the Writ Petition and the same is pending. It is submitted by the learned Standing Counsel appearing for the Respondents that in the Writ Petition an interim order was passed by the

Hon'ble High Court suspending the order passed by the Tribunal in the OA.

4. However the applicant retired on 30.04.2008 on attaining the age of superannuation. On the ground that he was involved in a Criminal Case which is not connected to his duties, he was not paid / granted the retiral benefits. Present OA is therefore filed by the applicant challenging the action of the Respondents in not releasing the retiral benefits and to issue a direction to them to release all the retiral benefits such as DCRG, GPF, Leave Encashment, Insurance amount etc., with effect from 30.04.2010.

5. The Respondents filed reply statement contending interalia that the applicant was suspended on the ground that the Criminal case against him was under investigation and in view of his detention in Police Custody, in terms of Sub-Rule (2) of Rule-10 of CCS (CCA) Rules, 1965. Nextly it is submitted that the Tribunal in OA No. 595/2007 set aside the suspension order on the ground that the same was not reviewed even after expiry of 90 days and accordingly passed an order dated 17.10.2007 setting aside the suspension order. The Tribunal however observed that, 'it does not debar the respondents from keeping the applicant under suspension afresh in exercise of their powers under Rule-10(1)(b) as the criminal case is still under investigation, inquiry or trial'. In view of the said observation, the competent authority issued suspension order against the applicant on 25.02.2008 afresh and he same was being reviewed from time to time till the retirement of the applicant. Lastly it is submitted that since the Criminal Case ie CC No.289/2006 is pending in the Court of VI Addl.MM, Warangal

District, the retiral benefits of the applicant could not be released and the issue of releasing the retiral benefits will be initiated only after the outcome of the pending WP No. 271/2010 and the criminal case CC No. 289/2006. Contending as above, the Respondents sought to dismiss the OA.

6. I have heard Mr. K. Sudhakar Reddy, learned counsel for the applicant and Mrs. K. Rajitha, learned Sr Central Govt., Standing Counsel for Respondents. The learned counsel appearing for the applicant would contend that merely because a Criminal Case is pending against the applicant which is not connected with the discharge of his duties, the Respondents are not empowered to stop all the retiral benefits without paying them to the applicant. The learned counsel would further submit that the Calander Case No.449/2009 on the file of VI Addl Judicial Magistrate of First Class, Warangal was disposed of acquitting the applicant by the judgment dated 31.10.2014 and the Respondents are under obligation to release all the retiral benefits to the applicant.

7. On the other hand, Mrs. K. Rajitha, learned Sr Central Govt., Standing Counsel appearing for the Respondents would submit that since the applicant was kept under suspension for a considerable length of time, even though he was acquitted of the Criminal Offence, the Competent Authority has to take a decision regarding the retiral benefits to be paid to the applicant.

8. Before taking a decision on the issue involved in the present case, it is necessary to refer to Rule-9 of CCS (Pension) Rules. Rule-9(1) of CCS

(Pension) Rules lays down as under :

“ 9. Right of President to withhold or withdraw pension

[(1) The President reserves himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, or of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, 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 retirement:

9. In the instant case the applicant was not found guilty in a departmental or judicial proceedings. He was kept under suspension for a long time on the ground that a Criminal Case was pending against him. The said case ended in acquittal on 31.10.2014. Therefore as on date the said Criminal Case is not pending against the applicant. Moreover the said case does not relate to discharge of the duties of the applicant in the Respondents department. Therefore, despite pending of the said case, the Respondents ought not to have withheld the retiral benefits of the applicant after his superannuation on 30.04.2010. As already stated, no Departmental Proceeding is pending against the applicant. In view of the acquittal of the applicant in CC No.449 of 2009, there is no legal impediment to the Respondents to pay the pensionary benefits to the applicant. His suspension earlier was on limited ground that the Criminal Case was pending against him and since he was arrested in connection with the said Criminal Case when it was under investigation. The suspension ceases to have any effect since the applicant retired from service on attaining superannuation more particularly as he was acquitted in the Criminal Case.

10. The Original Application therefore succeeds. The Respondents are directed to compute the retiral benefits due to the applicant as per rules and release the said benefits to him within a period of eight weeks from the date of receipt of a copy of this order.

11. The Original Application is allowed. No order as to costs.

(R.KANTHA RAO)
JUDICIAL MEMBER

Dated : 16th July, 2018.
Dictated in Open Court.

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