

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00847/2014

Reserved on : 12.12.2018
Date of Order : 17.01.2019

C O R A M

HON'BLE MR. JAYESH V. BHAIKARIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

T.N. Gupta, son of Late J.N. Gupta, Ex-Sub Divisional Engineer, Department of Telecommunication, Office of the Principal General Manager, Telecom District, Patna-800001, Resident of Sipara, Indrapuri, Post-Dhelwa, District- Patna-800020.

..... Applicant.

- By Advocate : Shri M.P.Dixit

-Versus-

1. The Union of India through the Secretary, Ministry of Communication, Department of Telecommunication, Government of India, Sanchar Bhawan, New Delhi-110001.
2. The Deputy Secretary (VB), Ministry of communication, Department of Telecommunication, Government of India, Sanchar Bhawan, 20 Ashoka Road, New Delhi-110001.
3. The Chief General Manager Telecom, (BSNL), Bihar, Telecom Circle, Patna-800001.
4. The Controller of Communication Accounts, Office of CCA, Bihar Telecom Circle, 2nd Floor, CTO Annexe Building, Patna-800001.
5. The Chief Accounts Officer (Pension) Bihar Telecom Circle, Sanchar Bhawan, Budha Marg, Patna-800001.

..... Respondents.

By Advocate :- By Advocate :- Shri H.P. Singh, Id. Sr. SC for resp. 1,2 & 4.
Shri K.P. Narayan, for resp. 3 & 5.

O R D E R

Per Mr. J.V. Bhairavia, J.M.:-

The applicant is a retired employee, superannuated on 30.06.2004. Before superannuation, on 07.05.2004, a

complain was lodged against the applicant before the CBI that the applicant demanding illegal gratification of Rs. 2000/- in connection with WLL (fixed) connection. On the basis of which, a case was registered vide Spl. Case no. 23 of 2004 before the CBI Court. In the said case, the applicant was convicted by the Court of CBI on 13.08.2010 and against which, one Criminal appeal No. 895 of 2010 was filed by the applicant before Hon'ble Patna High Court and the Hon'ble Court had stayed the order passed by the CBI Court on 14.09.2010. Thereafter, vide order dated 31.08.2012 [Annexure A/1] and 01.11.2012 [Annexure A/2], the provisional pension which was paid to the applicant from the date of superannuation was stopped w.e.f. 01.10.2012. The applicant represented against the said order on 21.11.2012 and the said representation was rejected by the respondents vide order dated 18.07.2013 [Annexure A/4]. Aggrieved by the said order, the applicant has filed this OA with a prayer to quash and set aside the order dated 18.07.2013, 31.08.2012 and 01.11.2012.

2. Respondent no. 1,2 & 4 have filed their written statement separately in which they have stated that applicant had illegally demanded gratification of Rs. 2,000/- for which SP, CBI/ACB Patna registered a criminal case No. RC-18(A)/2004/PAT on 13.09.2004 under section 7 & 13(2) r/w 13 (1) (d) of P.C. Act, 1988. The CBI Special Court vide its order dated 13.08.2010 convicted and sentenced the applicant to undergo R.I. for three years with a fine of Rs. 5,000/-. Being retired employee, the respondents have given an opportunity to the applicant to represent through a show cause notice and proceeded under Rule 9 of CCS (Pension) Rules, 1972 and after consultation with UPSC, penalty of withholding of full monthly

pension on permanent basis as well as forfeiture of the entire gratuity otherwise admissible was imposed on the applicant vide order dated 31.08.2012. The statutory appeal was also rejected by the Reviewing Authority vide its order dated 18.07.2013.

3. Respondent no. 3,4 and 5 have also filed their written statement and reiterated the submission as submitted by respondent no. 1,2 and 4 in their written statement.

4. Learned counsel for the applicant submitted that against the order of CBI Court, the applicant has filed Criminal Appeal No. 895/2010 which has been admitted by the Hon'ble High Court and stayed the order of CBI Court.

5. Learned counsel for the respondents submits that mere filing of an appeal or stay of execution of sentence do not take away the effect of conviction, unless the appeal is allowed and the conviction of the charged officer is set aside by the appellate Court.

6. Learned counsel for the applicant submits that entire action of the respondents is discriminatory and against the judicial pronouncement which clearly speaks that if the Criminal Appeal has been filed against the order of conviction, the employee cannot be treated as convicted unless such appeal is being decided against that person. He further submits that in the similarly situated person Shri S.S. Bhagat, this Tribunal has passed order in favour of the applicant and which has been upheld up to the Hon'ble Supreme Court. He, therefore, prayed for extension of the benefit of that case.

7. Learned counsel for the respondents submits that the case of S.S. Bhagat cannot be equated with this case as the every case have their own merits.

8. Heard the parties and perused the record and citations filed by both the parties.

9. It is noticed that the applicant was retired on 30.06.2004. After his retirement, vide order dated 13.08.2010, the learned Spl. Judge, CBI, Patna convicted the applicant and sentenced him to undergo RI for three years and awarded fine of Rs. 5,000/- for the offence punishable under section 7 of P.C. Act, 1988 as also further sentence to undergo RI for three years and awarded to pay a fine of Rs. 5,000/- under section 13(2) r/w 13(1)(d) of P.C. Act, 1988. On receipt of the said conviction order, the respondents had initiated proceedings against the applicant under the provision of Rule 69 of CCS (CCA) Rules, 1965. The President, in exercise of powers conferred by Rule 9 (1) of CCS (Pension) rules, 1972, proposed to impose an appropriate punishment on the applicant taking into the gravity of the criminal charges proved against him. The President had come to a tentative conclusion that the gravity of charge is such that it warrants the imposition of the penalty of withholding of pension on permanent basis as well as forfeiture of gratuity otherwise admissible to the applicant. The applicant was given an opportunity on the proposal to impose on him the penalty vide memorandum dated 28.09.2011. In response to it, the applicant failed to submit his representation in stipulated time. Thereafter, he was granted final opportunity to submit his representation within seven

days from the date of receipt of letter dated 12.04.2012. However, the applicant did not submit any representation.

10. It is further noticed that reference was made to UPSC for their advice on the quantum of penalty to be imposed on the applicant, the UPSC vide their letter dated 13.08.2012 conveyed in their advice that the charges established against the CO constitute grave misconduct on his part and that the ends of justice would be met in the case of the applicant if a penalty of withholding of entire retirement benefits (i.e. full pension and gratuity) on permanent basis as admissible to the applicant is imposed. After considering the advice tendered by the UPSC, the President, the competent disciplinary authority, ordered the imposition of aforesaid penalty vide order dated 31.08.2012. Against the said penalty order, the applicant had submitted his representation dated 21.11.2012 for redressal of his grievance. The said representation was treated by the respondents as Review Petition under Rule 29-A of CCS (CCA) Rules, 1965 as there is no provision of appeal lies against any order passed by the President under the provision of Rule 22 of CCS (CCA) Rules, 1965. The said review petition was considered and rejected by the respondents by assigning reason for their conclusion.

11. The counsel for the applicant mainly contended that the benefit of order and judgment passed in the case of Shri S.S. Bhagat vs. UOI & ors in OA 61/2009 dated 05.01.2010 and subsequent judgment and order passed by the Hon'ble High Court, Patna in CWJC No. 9509 of 2010 and the order passed by Hon'ble Apex Court in SLP No. 1470 of 2016 and he has

also placed reliance the order passed by Karnataka High Court in the case of N.K. Suparna vs. UOI & ors. Reported in 2005 (1) ATJ, 420 may be extended to the applicant as the applicant is also similarly situated employee. We have examined the aforesaid judgment. So far the judgment passed in the case of Shri S.S. Bhagat vs. UOI & Ors. in OA 61/2009 referred by the applicant is concerned, it is noticed that after conviction of Shri S.S. Bhagat, the respondents had issued show cause as to why he should not be removed from service due to his conviction in the criminal case. In response to it, the said delinquent submitted his response/representation and thereafter, the Department has not passed any order for imposing any punishment in exercise of power under Rule 19 of CCS (Pension) Rules and he was granted provisional pension only. Subsequently, he was denied the retiral benefit on the ground of pendency of criminal appeal. Under the said circumstances, this Tribunal held that since the Department had not passed any order under provision of Rule 9 nor any punishment has been imposed in departmental proceedings, the applicant, therefore, entitled to receive retiral dues and directed to release his DCRG which was withheld by the Department. In the present case, undisputedly, the Special Judge CBI vide judgment dated 13.08.2010 convicted the applicant and sentenced him. Considering the same as also the grave misconduct of the applicant the President has exercised his power confirmed under Rule 9 of CCS (CCA) Rules, and after following due procedure, the penalty of withholding of full monthly pension on permanent basis as well as forfeiture of entire gratuity as admissible was imposed vide order dated 31.08.2012 resulting the stoppage of provisional pension which was granted to the applicant at the

time of his retirement. Therefore, the said orders and judgment passed in the case of Shri S.S. Bhagat is not applicable in the present case.

12. So far the applicability of the case of N.K. Suparna vs. UOI & ors. Reported in 2005 (1) ATJ, 420 judgment passed by Hon'ble High Court of Karnataka (supra) is concerned, it is apt to note that while dealing with identical issue, the Hon'ble Principal Bench in OA 1175 of 2012 decided on 13.04.2013 has considered the said judgment of Hon'ble Karnataka High Court as also the other judgment and Hon'ble CAT Principal Bench, pleased to held as under :-

Para 14. We feel that the principles enunciated in Tulsi Rams case (supra) still constitutes the base for examination of Article 311 and has not either been set aside or overruled by other decisions. In any case, the question for examination under this issue is very limited that whether the argument of the applicant is sustainable that the right of the President is not an unmitigated right but is rather a restricted one. Notwithstanding the admission of appeal, which we will deal with in context of other issues, it is clearly held that there is no restriction imposed upon the rights of the President under Rule 9 (1) of the CCS (Pension) Rules, 1972.

Para 18. Reverting to the principal case of N.K. Suparana Versus Union of India and Others (supra), wherein the petitioner while serving as Accounts Officer in Telecom Department retired on 31.01.2002. In 1993, the petitioner was trapped in a criminal case and was sentenced to undergo R.I. for three years vide judgment dated 31.12.2001 against which he filed a criminal appeal before the Honble High Court and the sentence was suspended. The Honble High Court of Karnataka went into the question whether the entitlement of the petitioner to receive provisional pension in terms of Rule 69 of the Rules was 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. In this regard, having considered the matter, the Honble High Court of Karnataka has held as under:-

"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.”

“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.”

Para 19. As opposed to this, the respondents have relied upon the case of S.S. Chaudhary versus M.C.D. (supra) in which the petitioners were convicted under Section 7 and 13 (1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and was sentenced to under RI and fine. They filed appeals against the sentence which had been suspended during the pendency of the respective appeals. The petitioners claimed for quashing of the dismissal order and for their reinstatement with all consequential benefits. The Honble High Court has gone into the question that what are the consequences of suspension of the sentence. The Honble High Court relied upon the decision of the Honble Supreme Court in the matter of Union of India and Others versus Ramesh Kumar [(1997) 7 SCC 514] wherein it was held as under:-

“7. The order dismissing the respondent from service on the ground of misconduct leading to his conviction by a competent Court of law has not lost its string merely because a criminal appeal was filed by the respondent against his conviction and the Appellate Court has suspended the execution of sentence and enlarged the respondent on bail. This matter may be examined from another angle. Under Section 389 of the Code of Criminal Procedure, the appellate Court has power to suspend the execution of sentence and to release an accused on bail. When the appellate Court suspends the execution of sentence, and grants bail to an accused the effect of the order is that sentence based on conviction is for the time being postponed, or kept in abeyance during the pendency of the appeal. In other words, by suspension of execution of sentence under Section 389 Cr.P.C. an accused avoids undergoing sentence pending criminal appeal.

However, the conviction continues and is not obliterated and if the conviction is not obliterated, any action taken against a Govt. servant on a misconduct which led to his conviction by the Court of law does not lose its efficacy merely because Appellate Court has suspended the execution of sentence. Such being the position of law, the Administrative Tribunal fell in error in holding that by suspension of execution of sentence by the appellate Court, the order of dismissal passed against the respondent was liable to be quashed and the respondent is to be treated under suspension till the disposal of Criminal Appeal by the High Court. The Honble High Court further considered the decision of State of Maharashtra versus Chandrabhan Tale and found that it was not applicable to the facts of the case. In the case of Union of India versus V.K. Bhaskar [(1997) 11 SCC 383] wherein the Honble Supreme Court held that the pendency of an appeal against conviction did not operate as part to the passing of the order of dismissal on grounds of employees conviction on a criminal case which was further reaffirmed in the case of K.C. Sareen Versus CBI [(2001) 6 SCC 584]. The Honble Supreme Court in this case turned down the plea that suspension of sentence did not mean that the conviction and sentence passed by the trial court would remain in limbo automatically till the point they attained finality. The observations in the case of Akhtari Bi versus State of M.P. [(2001) 4 SCC 355] had been made altogether in a different context. In this very case, the Honble Supreme Court had held as under:-

“12. ... When a public servant is found guilty of corruption after a judicial adjudicatory process conducted by a court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior court. The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction, it is public interest which suffers and sometimes, even irreparably. When a public servant who is convicted of corruption is allowed to continue to hold public office, it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralizing the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction, the fallout would be one of shaking the system itself. Hence it is necessary that the court should not aid the public servant who stands convicted for corruption charges to hold only (sic) public office until he is exonerated after conducting judicial adjudication at the appellate or revisional level. It is a different matter if a corrupt public officer could continue to hold such public office even without the help of a court order suspending the conviction.”

Para 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.

Para 26. It is to be kept in mind that Rule 19 (i) is invoked where any penalty is imposed on the ground of conduct which led to conviction on a criminal charge. The criminal charges do not die or lapse with passage of time. On the other hand, in the case of departmental charges, there is time limit of four years as has been provided under Rule 9(2)(b)(ii) of the Rules. Rule 9(2)(a) of the Pension Rules is in respect of departmental proceedings which if instituted while the government servant was in service shall be deemed to be proceedings under this rule and shall be continued and concluded by the authorities by which they were commenced in the same manner as if the government servant had continued to be in service. This has to be read in consonance with sub rule (4) of Rule 9 which provides for provisional pension under Rule 69 the Rules where a government servant has retired on superannuation or otherwise and against whom any departmental or judicial proceedings had been instituted and are continued. This makes no distinction between proceedings initiated under Rule 19 of the CCS (CCA) Rules, 1965 and under Rule 14 and/or 16 of the same Rule and Rule 9(2) (a) read with Rule 9(4) of the CCS (Pension) Rules, 1972. Therefore, like any other departmental proceedings, there is no bar in proceeding under Rule 19. To the contrary, it is very much provided under the rules without naming Rule 19 in particular and the said issue has been discussed. This has been held in Union of India versus Tulsi Ram Patels case (supra) as under:-

“It is not necessary that a situation which makes the holding of an inquiry not reasonably practicable should exist before the disciplinary inquiry is initiated against a government servant. Such a situation can also come into existence subsequently during the course of an inquiry, for instance, after the service of a charge-sheet upon the government servant or after he has filed his written statement thereto or even after evidence has been led in part. In such a case also the disciplinary authority would be entitled to apply clause (b) of the second proviso because the word “inquiry” in that clause includes part of an inquiry. This question is accordingly answered.”

Para 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.

13. In the present case, the observation in aforesaid order passed by the Hon'ble CAT Principal Bench is squarely applicable in the facts and circumstances of the present case. Therefore, the judgment relied upon by the applicant is not helpful to him.

14. It is noticed that as per the dicta of *Tulsi Ram's case (supra)*, there is no restriction imposed upon the right of the President under Rule 9 (1) of the CCS (Pension) Rules, 1972. Therefore, in the present case, the punishment imposed by the President vide order dated 31.08.2012 in exercise of powers conferred under Rule 9 (1) of CCS (Pension) Rules cannot be said to be suffered from any infirmity. There is no other material on record which can be said to be supportive to the submission of applicant to establish his case for grant of continued provisional pension. The review petition under the provision of rule 29 (A) of CCS (Pension) Rules has been decided and rejected by assigning cogent reason vide order dated 18.07.2013 and we do not find any illegality or any violation of principle of natural justice in deciding the same. Therefore, there is no infirmity in the action of the respondents in taking departmental action and imposition

of punishment under the provision of CCS (Pension) rules. The impugned orders dated 01.11.2012 (Annexure A/2), order dated 31.08.2012 (Annexure A/1) and order dated 18.07.2013 has been passed after following due procedure of law, after granting ample opportunity to the applicant before passing of the said impugned orders and on receipt of advice of UPSC, the President by exercising the power under Rule 9(1) punishment has been imposed on the applicant. Hence, the said impugned order cannot to be said suffering from any infirmities.

15. As discussed herein above and considering the factual matrix of the case the OA failed. Accordingly, the OA stands dismissed with no order as to costs.

[Dinesh Sharma]
Administrative Member

[Jayesh V. Bhairavia]
Judicial Member

Pkl/

