

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No. 896/2018

Reserved On: 13.08.2019

Pronounced On: 22.08.2019

Hon'ble Ms. Nita Chowdhury, Member (A)

Yogendra Singh Verma
Aged 64 years
Son of Shri Late PDS Verma
Rtd. Sr. Intelligence Officer, Group 'B'
Directorate of Revenue Intelligence,
Resident of C-4, 2nd Floor, Ashoka Enclave-II,
Sector-37,
Faridabad (Haryana)-121003.

.... Applicant
(By Advocate: Shri P.S. Khare)

Versus

1. Union of India through
The Secretary,
Ministry of Finance,
South Block,
New Delhi-110001.
2. The Director General,
Directorate of Revenue Intelligence,
7th Floor, D-Block,
I.P. Bhawan,
I.P. Estate,
New Delhi-110002.

.... Respondents
(By Advocate : Shri M.S. Reen)

O R D E R

The applicant has filed this Original Application (OA) seeking the following reliefs:-

“8.1 Allow the present OA and quash and set aside the impugned orders dated 27.06.2017 and 12/15.01.2018 (Annexures A-1 & A-2); and consequently

8.2 Direct the respondents to release all the service benefits of his service life viz. seniority, promotion,

treatment of suspension period as Duty, increments, revision of all retirement dues such as pension, gratuity, leave encashment etc. and arrears thereon with interest @18% p.a. compounded yearly, from 01.03.2013 till the date of actual payment; and

8.3 To grant any other or further appropriate relief as deemed just and proper by this Hon'ble Tribunal in the facts and circumstances of the case besides cost of present litigation, to the extent of Rs.55,000/-.

2. The material facts in this OA are that while the applicant was working as Senior Intelligence Officer (in short SIT) in the Directorate of Revenue Intelligence, New Delhi, he was falsely implicated in a demand and accepted illegal gratification in case FIR/RC No.4(A)/2005/CBI/ACU-VI/New Delhi under Section 120B IPC read with Sections 7 & 13 (1)(d) & 13 (2) of Prevention of Corruption Act (in short PC Act), 1988 on 18.09.2005 along with one Mahender Kumar. The applicant retired from service on 28.02.2013 on his normal superannuation but was granted and continued only with provisional pension. After facing turmoil of criminal proceedings for more than a decade wherein as many as 20 witnesses were examined on behalf of the prosecution, applicant was honourably acquitted in the said criminal case by the Hon'ble Special Judge, CBI (PC Act), Ms. Anju Grover Baliga, Dwarka Courts, New Delhi, vide its judgment dated 23.12.2016 (Annexure A-3). The operative part of the said judgment reads as under:-

“68. In view of the detailed discussion hereinabove, this Court is of the considered opinion that the application filed by the prosecution under Section 319Cr.PC at the fag end of the trial has no

merit and that the prosecution has absolutely failed to establish the guilt of the accused persons and therefore this court dismisses the said application and hereby acquits both the accused persons of the offences for which they have faced trial in CC No.17/11 and CC No.01/13. It is hereby directed that Ahlmad should placed a copy of this judgment in both the said CCs".

Thereafter, applicant vide his application dated 06.01.2017 (Annexure A-4) submitted the copy of the judgment to the department and requested to finalize the case and regularise his pension thereupon. Further, the respondents vide their letter No. DRI-F No.C-1402/04/2012-Confl.(Pt.II) dated 17.03.2017 (Annexure A-5), informed the applicant that his request has been considered and the case is in process.

2.1 The applicant has further submitted that after waiting for a considerable time and hearing nothing from the respondents, he submitted detailed applications dated 06.07.2017 (Annexure A-6) and 02.08.2017 (Annexure A-7) respectively but in vain. Ultimately, he submitted a representation on 31.08.2017 (Annexure A-8) requesting for release of his retirement dues. Thereafter, the respondents issued letter dated 12/15.01.2018 (Annexure A-2) which reads as under:-

"Sub: Retirement and other benefits as a result of judgment of Hon'ble CBI Court- reg.

Please refer to this earlier office letter of even no.dated 27.06.2017

It is to inform that in view of the pending appeal of the CBI before the Hon'ble High Court, which is a judicial proceeding, you are entitled for provisional pension only, as per

Provisions of Rule 69(1)(b) of CCS (Pension) Rules, 1972".

2.2. Being aggrieved by the aforesaid action of the respondents, the applicant has filed this OA seeking the reliefs, as quoted above.

4. During the course of hearing, learned counsel has placed upon the following judgments of the different High Courts in support of the applicant's claim:-

- (i) Writ A.No.66930/2013 titled as **Rajeev Sharma Vs. State of U.P. & Others** decided on 08.08.2014 by the Hon'ble High Court of Judicature at Allahabad.
- (ii) W.P. No.18949/2014 titled as **S. Rajagopal Vs. The Registrar, Central Administrative Tribunal, Chennai Bench and Others** decided on 27.08.2015 by the Hon'ble High Court of Judicature at Madras.
- (iii) S.B. Civil Writ Petition No.11990/2012 titled as **Bakhtawar Singh VS. State of Rajasthan and Others** decided on 08.02.2016 by the Hon'ble High Court of Judicature for Rajasthan at Jodhpur.

6. On the other hand, counsel for the respondents by referring to their counter affidavit pleaded that applicant was arrested by CBI under Section 7 of PC Act on 18.09.2005 on the basis of a complaint dated 17.09.2005 filed by Shri

Ahswani Kumar Aggarwal against applicant and one Shri M.M. Tiwari, the then DD, DRI Headquarters, New Delhi alleging that Shri Tiwari had demanded a bribe of Rs.50 lakhs through applicant, SIO. Applicant was caught red handed by the CBI and Rs.5 lakhs was recovered from him and was arrested on 18.09.2005. Thereafter, he was placed under deemed suspension w.e.f. 18.09.2005 and was released on bail on 28.10.2005 vide Court's order dated 28.09.2005. That on the basis of prosecution sanction given by DRI on 29.12.2006, criminal complaint was filed against the applicant by CBI. Thereafter applicant's suspension was periodically reviewed and ultimately, he filed an OA bearing No.269/2010 before the Principal Bench in January, 2010. The said OA was disposed of on 01.09.2010 with a direction to the respondents to reinstate the applicant on the ground that his suspension was reviewed after 182 days w.e.f. 06.06.2006 to 05.12.2006 whereas, under Rule 10(6) of the CCS (CCA) Rules, 1965, the review should have been done within 180 days of the previous review. Dissatisfied with the order passed by the Tribunal, the respondents filed a petition before the Hon'ble High Court and the order passed by the Tribunal on 01.09.2010 was stayed. However, the Division Bench of the Hon'ble High Court was not inclined to allow the petition as there was no new point/fact to argue the writ jurisdiction. Consequently, the Writ Petition No.6905/2010 was dismissed as withdrawn on 27.07.2011. Thereafter, a Review Petition was filed in the Hon'ble Tribunal on

24.05.2011 and the same was dismissed on 14.11.2011 on the ground that the suspension of the applicant was reviewed after 182 days from 06.06.2006 to 05.12.2006 under Rule 10 (6) of the CCS (CCA) Rules, 1965. Further, in pursuance of the order dated 14.11.2011, the applicant was reinstated with effect from 04.12.2006 vide order dated 23.01.2011 with full pay and allowances from the same date, i.e., 18.09.2005 to 03.12.2006 and the same would be treated as per the outcome of the pending CBI case against him.

7. Counsel further submitted that the Directorate General of Vigilance vide its letter dated 05.11.2012 forwarded the request of CBI, New Delhi for fresh prosecution sanction for filing the fresh charge sheet against the applicant, as the previous one granted by the officer vide its letter dated 29.12.2006 was technically incorrect. The fresh sanction in matter was given by the concerned authorities vide its letter dated 20.12.2012. Ultimately, the applicant got retired from Govt. service on 28.02.2013. Thereafter, applicant vide his letter dated 06.02.2017 informed that the Hon'ble High Court, vide its judgment dated 23.12.2016 has acquitted him of the offences for which he faced the trial CC No.17/11 and requested to regularise the suspension period from 18.09.2005 to 03.12.2006. Thereafter, the CBI filed an appeal against the acquittal of the applicant but no stay was granted. Accordingly, the respondents have prayed for dismissal of the OA and submitted that he is entitled only for provisional pension under Rule 69(1)(b) of CCS (Pension)

Ruled, 1972 as the appeal is pending before the Hon'ble High Court.

8. Heard the learned counsel for the respondents and perused the pleadings on record.

9. The short issue involved in this OA is whether applicant is entitled to retiral benefits upon his Hon'ble acquittal by the Trial Court vide order dated 23.12.2016 (Annexure A-3) and the fact that no stay has been granted by the Hon'ble Court in an appeal filed by the respondents against the aforesaid order of the Trial Court?

10. It is to be noted that the same very issue has been considered by the various High Courts. In Writ A.No.66930/2013 titled as ***Rajeev Sharma Vs. State of U.P. & Others*** decided on 08.08.2014 by the Hon'ble High Court of Judicature at Allahabad. The relevant paragraphs of the said judgment are as under:-

“Pursuant thereto, no disciplinary proceedings was initiated against the petitioner. In the trial petitioner was acquitted on 14.3.2005.

Aggrieved, Government Appeal No. 2602 of 2002 (State of U.P versus Rajeev Sharma) was filed which was admitted.

On superannuation on 30.4.2009 the petitioner approached the respondent authorities for retiral benefits including pension, when no decision was taken , the petitioner approached the court by filing writ petition no. 55327 of 2011 (Rajiv Sharma versus State of U.P and others) which was disposed of by order dated 26.9.2011 directing

the authorities to decide the petitioner's representation.

By the impugned order dated 22.11.2012 passed, pursuant to the order of the Court, the Chief Engineer (Jal Vidyut), U.P Power corporation Ltd., respondent no. 3 rejected the claim of the petitioner solely for the reason that Criminal Appeal, against acquittal is pending, the retiral dues shall, thus, be paid after decision in the Criminal Appeal No.2602 of 2002.

The submission of the learned counsel for the petitioner is that the petitioner was acquitted in the criminal case, during the pendency of the trial or appeal, the respondent authorities did not initiate any disciplinary proceedings under the rules, the petitioner having since retired, on attaining the age of superannuation, there being no provision under the rules to withhold the petitioner's post retiral benefits pending criminal appeal, thus, the petitioner is entitled to the post retiral dues.

In support of his submission, the learned counsel for the petitioner has relied upon State of Jharkhand and others versus Jitendra Kumar Srivastava and another (2013) 3 UPLBEC 2369 and decision dated 1.8.2014 rendered in Writ Petition No.19693 of 2012 (Amir Lal versus Chief Election Officer and others).

xxx xxx xxx

In a recent judgement rendered by Hon'ble Supreme Court in D.D Tewari (D) Thr.Lrs. versus Uttar Haryana Bijli Vitran Nigam Ltd. & Others in Civil Appeal No.7113 of 2014 decided on 1st August 2014. The Supreme Court made the following observation in paragraph 4 & 6:

4. It is an undisputed fact that the appellant retired from service on attaining the age of superannuation on 31.10.2006 and the order of the learned single Judge after advertizing to the relevant facts and the legal position has given a direction to the employer-respondent to pay the erroneously withheld pensionary benefits and the

gratuity amount to the legal representatives of the deceased employee without awarding interest for which the appellant is legally entitled, therefore, this Court has to exercise its appellate jurisdiction as there is a miscarriage of justice in denying the interest to be paid or payable by the employer from the date of the entitlement of the deceased employee till the date of payment as per the aforesaid legal principle laid down by this Court in the judgement referred to supra. We have to award interest at the rate of 9% per annum both on the amount of pension due and the gratuity amount which are to be paid by the respondent.

6. For the reasons stated above, we award interest at the rate of 9% on the delayed payment of pension and gratuity amount from the date of entitlement till the date of the actual payment. If this amount is not paid within six weeks from the date of receipt of a copy of this order, the same shall carry interest at the rate of 18% per annum from the date of amount falls due to the deceased employee. With the above directions, this appeal is allowed.

Applying the law on the facts of the case in hand, petitioner was falsely implicated in a criminal case for taking bribe of Rs.500 on 22.7.1991, was enlarged on bail on the same day, thereafter placed under suspension on 27.8.1991 and on 16.11.1992, the petitioner was reinstated in service but no departmental proceedings was ever initiated against the petitioner. The petitioner was acquitted in the criminal case on 14.3.2005, even after acquittal no departmental proceedings was initiated. On 30.4.2009, the petitioner retired. Thus mere pendency of Criminal Appeal would not entitle the respondents to withhold the post retiral benefits as the petitioner was acquitted and no proceedings was initiated by the respondents, further petitioner through out the trial continued in service until retirement.

Civil Service Regulation is applicable upon the employees of the power corporation, regulation 351 AA and

regulation 919 A(3), prohibits payment of death-cum-retirement gratuity until the conclusion of departmental or judicial proceeding. Division Bench in **Jai Prakash (Supra)** has held "judicial proceedings" would necessarily include pendency of criminal case. The question to be answered is as to whether pendency of criminal appeal, against acquittal, will include "pending judicial proceeding" In **Amrit Lal (Supra)**, Division Bench observed pendency of criminal appeal against acquittal is not a ground for withholding the retiral dues. After acquittal there is nothing against the employee, more so, in the facts of the case, the respondents did not choose to initiate any disciplinary proceedings after acquittal nor did they examine the judgement of the trial court to find out, as to whether petitioner was acquitted 'honourably', once failing to exercise their powers under the rule to initiate any proceedings, it is not open for the respondents to withhold retiral dues, merely on pendency of criminal appeal.

The impugned order dated 22.11.2012 passed by Chief Engineer (Jal Vidyut), respondent no. 3 and order dated 6.6.2013 passed by Executive Engineer, Electricity Distribution Division, Pilibheet, respondent no.4 is quashed. The respondents are directed to release arrears of salary for the suspension period, retiral dues and terminal benefits of the petitioner within three months from the date of service of this order before the competent authority. Interest @ 9% is awarded on delayed payment of pension and gratuity from the date of entitlement to the date of actual payment, failing which same shall carry interest @ 18% per annum from the date the amount falls due.

With the above directions, the writ petition is allowed".

[Emphasis added]

10. Similarly, in W.P. No.18949/2014 in the case of **S. Rajagopal Vs. The Registrar, Central Administrative Tribunal, Chennai Bench and Others** decided on 27.08.2015, the Hon'ble High Court of Madras has held as under:-

“21. If the appeal is not in continuation of original criminal proceedings, the order of acquittal is a final order within the ambit of Rule 52 of the Pension Rules, referred to above. After the orders of acquittal passed by the criminal court, as already stated above, there is no power for the Government to withhold pension or retirement benefits. The said benefits, therefore, are liable to be paid immediately after acquittal order.

“22. **If the appeal or revision proceedings are in continuation of the criminal proceedings, there will be no end for the litigation and the employees, who have been acquitted honourably, shall not get retirement benefits till conclusion of all appeals, revisions, special leave petitions etc. Appeal against acquittal, not being continuation of original criminal proceedings, Rule 52 as above, will not be available to Government for withholding retirement benefits.**

At Paragraph 24, the Hon'ble Division Bench has referred to a decision made in W.P.No.8000 of 2009 and batch, dated 17.11.2009, wherein, the Hon'ble Division Bench held that,

"when a Government employee suffers conviction and he is dismissed from service under Rule 25 of the State and Subordinate Service Rules, 1996, mere pendency of the criminal appeal and suspension of sentence does not enable such convicted Government employee to seek either reinstatement or payment of retirement benefits. The same analogy applies in the instant cases of acquittal as well and once the Government employee is acquitted of the criminal charge, merely because the State preferred an appeal, the Government

cannot withhold retirement benefits of the Government employees, on account of pendency of the appeals against acquittal."

xxx xxx xxxx

20. While that be the clear finding recorded in the judgment, acquitting the petitioner, under the premise of appeal, being filed and pending, against the order of acquittal, the petitioner cannot be deprived of the regularisation of the suspension period, endlessly. Disposal of the appeal may take a long time. The petitioner is stated to have retired from service. There is no certainty that the State would be satisfied, even if the appeal in the High Court fails. If the State chooses to prefer a further appeal to the Hon'ble Supreme Court, the Department may again contend that the appeal is pending before the Apex Court. Thus, if the arguments of the respondents 2 and 3 have to be accepted, then there is no finality to the judgment of acquittal. In the light of the discussion and decisions considered, the further contention of the learned counsel that Vigilance has not given a clearance, cannot be countenanced.

21. **Though by placing reliance on a decision of the Hon'ble Apex Court in Garikapti Veeraya v. N.Subbiah Choudhry reported in AIR 1957 SC 540, learned counsel for respondents 2 and 3 contended that appeal is a continuation of the proceedings and that Vigilance has not given a clearance to the case of the petitioner, this Court is not inclined to accept the same. In the light of the discussion and decisions, stated supra, merely because the appeal is pending, it is not open to the respondents 2 and 3, not to regularise the period as duty. It has to be regularised.**

22. **Hence, the Writ Petition is allowed. Respondents 2 and 3 are directed to regularise the period of suspension, from 15.07.2004 to 14.02.2005, as duty, with all consequential benefits, including promotions, on par with his immediate juniors, within a period of two months, from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is also closed".**

[Emphasis added]

11. The very same issue, as involved in the present OA was considered by the S.B. Civil Writ Petition No.11990/2012 in ***Bakhtawar Singh VS. State of Rajasthan and Others*** decided on 08.02.2016 by the Hon'ble High Court of Judicature for Rajasthan at Jodhpur. The relevant para of the said order reads as under:-

“4.In our view, simply because the appeal against the order of acquittal is pending before the appellate court, the respondent cannot be deprived for the retiral benefits.

xxx xxxx xxx

In view of above, I deem it appropriate to allow this writ petition with direction to the respondents to release gratuity and leave encashment to the petitioner with an interest @ 9% per annum in consonance with Rule 89 of the Rules of 1996 from the date same became due within a period of 2 months from today”.

[Emphasis added]

12. In the above backdrop, we are of the considered view that the applicant's case is fully covered by the aforesaid decisions of the Hon'ble High Courts, as the only plea taken by the respondents to withhold the retiral dues is the pendency of appeal in the instant case and hence, the applicant is entitled to all the retiral benefits, as if he has retired on a normal superannuation.

13. Accordingly, the OA is allowed and respondents are directed to pay all the retiral dues within three months from the date of receipt of a certified copy of this order.

14. Counsel for the respondents submitted that while giving payment of retiral dues, they may be permitted to take an undertaking from the applicant that the same are being paid subject to final decision in the pending appeal to protect the interest of the State. Permission is granted. No costs.

(NITA CHOWDHURY)
Member (A)

/ravi/