

CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

O.A.NO.060/01367/2018

Decided on: 16.10.2019

CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

Sucha Ram

son of Late Sh. Mehanga Ram,

aged 59 years,

Senior Assistant (Retd.),

Group 'B',

O/o Estate Officer, U.T. Chandigarh,

resident of #R/o #46 (Old) 548 (New)

Kesho Ram Colony, Village Burail,

U.T. Chandigarh-160045.

Applicant

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-160009.
3. Estate Officer, U.T. Chandigarh, Estate office Building, Sector 17, Chandigarh-160017.

.... Respondents

**BY: MR. J.R.SYAL, ADVOCATE, FOR THE APPLICANT.
MR. VINAY GUPTA, ADVOCATE, FOR RESPONDENTS.**

ORDER (oral)
(BY HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J):

The applicant lays challenge to an order dated 24.9.2019 (Annexure A-9), whereby the respondents have rejected his prayer for release of Death-cum-Retirement Gratuity (DCRG) on the ground of pendency of judicial proceedings in criminal case, and to direct the respondents to release him 100% provisional pension and DCRG etc.

2. Largely the facts are not in dispute. The applicant, who was working in the respondent department as Senior Assistant, was involved in a Criminal case for which an FIR No. 8 dated 4.12.2003 under sections 420, 467, 468, 471, 120-B IPC read with Sections 13(1)(d) & 13(2) of Prevention of Corruption Act, 1988, at P.S. Vigilance, U.T. Chandigarh. Simultaneously, the respondents had also initiated departmental proceedings against the applicant under PCS (Punishment & Appeal) Rules, 1970, and he was placed under suspension. He retired from service w.e.f. 30.4.2010 on attaining the age of superannuation. The respondents released provisional pension to the extent of 90%, ignoring provisions of rule 2.2 (c) of the Punjab CSR volume II, Part-I, as under this rule, retiral dues can be withheld only if a person is found guilty of grave misconduct or negligence, in a departmental / judicial proceedings. The trial is still going in District Court. The claim of applicant is that Special Judge, Chandigarh summoned one R.K. Rao, the then Assistant Estate Officer, U.T. Chandigarh as an additional accused in exercise of powers under section 319 Cr.P.C., in regard to irregularity in auction of a commercial plot. He challenged that summoning order in CRR No. 465 of 2014 in Hon'ble Punjab and Haryana High Court, which was dismissed on 6.12.2016. This order was challenged in SLP in which in 9.3.2017, the Hon'ble Apex Court has ordered that there shall be stay of all further proceedings "**in so far as the petitioner**" in that SLP is concerned.

3. The learned counsel for the applicant argued that since there is stay on further proceedings, as ordered by Hon'ble Apex Court in identical case, so it be taken that no proceedings can be taken against the applicant also and he is entitled to release of full retiral dues.

4. The respondents have filed a short reply. They submit that since the criminal proceedings against the applicant are pending in Court of competent jurisdiction, so they have rightly granted only provisional pension to the applicant and he is not entitled to full pension and other retiral dues.

5. I have heard learned counsel for the parties at length and examined the pleadings on file.

6. The learned counsel for the parties do agree that the indicated criminal proceedings against the applicant are pending in the Court. Just because of the stay has been granted in another case by Hon'ble Apex Court, making it clear that same applies to that named person only, so, it cannot be deemed that criminal proceedings are not in existence against the applicant. There is no stay in his case, at all.

7. Rule 2.2(c)(1) of the Punjab Civil Services Rules, provides as under :-

"Where any departmental or judicial proceeding is instituted under Clause (b) of Rule 2.2. or where a departmental proceeding is continued under Clause (i) of the proviso thereto against an officer who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceedings, final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service up to the date of retirement or if he was under suspension on the date of retirement upto date immediately preceding to the date on which he was placed under suspension; but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceedings and of final orders thereon.

The gratuity, if allowed to be drawn by the competent authority on the conclusion of the proceedings will be

deemed to have fallen due on the date of issue of final orders by the competent authority.

Provided that where Departmental proceedings have been instituted under Rule 10 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 for imposing any of the penalties specified in Clauses (i), (ii) and (iv) of Rule 5 of the said rules, the payment of gratuity or death-cum-retirement gratuity, as the case may be, shall not be withheld.

(2) Payment of provisional pension made under Sub-clause (1) shall be adjusted against the final retirement benefits sanctioned to such officer upon conclusion of the aforesaid proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

8. A perusal of the aforementioned Rules would show that the Government is well within its power and authority to withhold or withdraw a pension or any part of it and the right of ordering the recovery from a pension of the whole or a part of any pecuniary loss caused to the Government, if the pensioner is found to be guilty of grave mis-conduct or negligence in a departmental or judicial proceeding initiated during the period of his service before the retirement of the pensioner which were continued after his retirement. If such proceedings are initiated after his retirement then it cannot be instituted without the sanction of the Government nor it can be in respect of any event which had taken place more than four years before the institution of such proceedings. It has farther been clarified by the explanation that the departmental proceedings are deemed to be instituted on the date on which the statement of charges is issued to the officer/pensioner.

9. There is also no dispute that as per Rule 9.14 (c) of the Punjab Civil Services Rules, Volume II, no gratuity is to be paid to the Govt. employee till the conclusion of the departmental or judicial proceedings and issue of final orders thereon. Admittedly, in this case, the criminal case is still pending against the applicant in the district court, and the applicant has

already been released 90% pension and as such court does not find any flaw in the impugned order passed by the respondents.

10. In the wake of aforesaid discussion, this O.A. turns out to be devoid of any merit and is dismissed as such, leaving the parties to bear their own costs.

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

**PLACE: CHANDIGARH
DATED: 16.10.2019**

HC*

