

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Dated the Thursday 14th day of March Two Thousand And Nineteen

PRESENT:
THE HON'BLE MR. R. RAMANUJAM, MEMBER (A)

O.A. 310/1410/2018
&
O.A. 310/1579/2017

S.X. Jayaraj,
S/o. Late K.S. Selvanayagam,
Superintendent of Central Excise (Retd.),
Tiruchirappalli.

....Applicant in both the OAs

(By Advocate: Mr.M. Ravi)

Versus

Union of India Rep. by the
Under Secretary to Government of India,
Ministry of Finance,
Department of Revenue,
O/o. the Chief Vigilance Officer,
Central Board of Excise and Customs,
6th Floor, C-Wing,
HUDCO Vishala building,
Bhikaji Cama Place,
New Delhi.

...Respondent in both the OAs

(By Advocate: Ms. R. Hemalatha)

ORAL ORDER

[Pronounced by Hon'ble Mr. R. Ramanujam, Member (A)]

Heard. The two OAs are taken up together as they arise from the same sequence of events. Whereas OA1579/2017 challenges the show cause notice issued to the applicant, OA1410/2018 seeks to assail the penalty imposed in pursuance thereof.

2. Applicant has filed the second OA seeking the following relief:-

"to call for the records of the Respondent Order No. 03/2018 (F.No.C-14012/06/2016-Ad.V/1613) dated 05.03.2018 in issue by the Respondent and to quash the same and to issue consequential directions to await the outcome of Criminal Appeal (MD) No. 140/2015, on the file of the Madurai Bench of the Hon'ble High Court, Madras and keep all proceedings in abeyance pending outcome of the aforesaid Criminal Appeal and then proceed further in accordance with law and pass such further or other orders as this Hon'ble Tribunal deems fit and thus render justice."

3. The applicant is aggrieved by Annexure A/6 impugned order dated 05.03.2018, by which he was imposed with a penalty of "withholding of 100% (hundred percent) monthly pension otherwise admissible on a permanent basis and withholding of the entire gratuity due to him permanently." The case of the applicant is that although he was convicted in a criminal case, he was enlarged on bail in the appeal filed before the Madurai Bench of Hon'ble Madras High Court and the sentence of imprisonment was suspended. Accordingly, there was no provocation for

withholding of 100% pension and gratuity as proposed as his conviction had not attained finality.

4. Learned counsel for the respondents would, however, submit that it was not correct to say that the applicant's conviction had not attained finality as only the sentence had been suspended. Unless and until he is acquitted of the offence by the Hon'ble High Court, the respondents were bound to follow the rules, according to which the delinquent employee must be removed/dismissed if serving and the pension and gratuity withheld in respect of a retired employee. The respondents have passed a detailed reasoned order which could not be assailed by the applicant before securing acquittal, it is contended.

5. The applicant seeks to rely on the order passed by the Tribunal in OA. 1013/2014 dated 06.04.2016 in an allegedly similar case wherein it was observed that not retaining a person in service pending appeal in the Criminal case is not the same as withholding 100% of pension to a pensioner as the latter deprived the person of his livelihood at an old age. A mere restoration of pension in the event of an honourable acquittal in the appeal case may not undo the damage done to the pensioner during the interregnum. Under the circumstances, this Tribunal was of the view that the impugned order could be kept in abeyance till the Hon'ble High Court finally disposed of the Criminal appeal filed by the applicant. The respondents were directed accordingly.

6. Learned counsel for the respondent would however, submit that they were not aware of the order of the Tribunal in the above case and it would need to be ascertained if the order was implemented or taken up before the Hon'ble Madras High Court in a Writ Petition. In the event of the latter, it would also need to be seen whether the appeal had been disposed of or the order of the Tribunal stayed pending final decision of the case by the Hon'ble High Court.

7. Keeping in view the above submissions, I deem it appropriate Q dispose of the two OAs with a direction to the respondents to ascertain whether the order of this Tribunal OA 1013/2014 dated 6.4.2016 was in a similar case and, if so, whether such order was complied with or appealed against. In the event that the order was complied with, the respondents may consider the case of the applicant also in the light of such order. On the other hand, if the order of this Tribunal had been stayed or set aside by the Hon'ble High Court in a writ petition, the impugned order shall stand.

8. The two OAs are disposed of with the above observations. No costs.