

(2019) 09 CAT CK 0010

In the Central Administrative Tribunal

Case No : Original Application No. 3564 Of 2018

Ashok Raj Arora

APPELLANT

Vs

Union Of India Through And Ors

RESPONDENT

Date of Decision : 02-09-2019

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 170, 384, 419, 420, 511
Central Civil Service (Conduct) Rules, 1964 — Rule 3(i), 3(ii), 3(iii)
Central Civil Services (Leave) Rules, 1972 — Rule 39(3)
Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 11(i), 11(ii), 11(iv), 16
Central Civil Services (Pension) Rules, 1972 — Rule 9(4)

Citation : (2019) 09 CAT CK 0010

Hon'ble Judges : Pradeep Kumar, Member (A)

Bench : Single Bench

Advocate : Hanu Bhaskar, Sahib Gurdeep Singh, D.S. Mahendru

Final Decision : Dismissed

Judgement

1. The applicant herein was working as Senior Scientific Officer Grade-I in Central Forensic Science Laboratory under Central Bureau of Investigation (CBI). He retired on 31.10.2016 after attaining the age of superannuation.

2. While in service, he was charged in a criminal case and was arrested. Thereafter, was suspended on 06.05.2012 and a departmental enquiry was also initiated. Feeling aggrieved, he filed OA No.50/2014. This was decided vide orders dated 18.02.2015. The operative part reads as follows:

"4. In the present case, the applicant was placed under suspension w.e.f. 06.05.2012 and admittedly on 06.08.2012 i.e. when three months from the said date expired, he was in custody. Nevertheless, the period of three months from the date of his release could expire on 28.11.2012. Though a stand has been taken by respondents that in the present case the period of 90 days should be counted from the date the Legal Notice dated 14.12.2013 was served upon the

respondent, but admittedly, the respondents themselves had reviewed the suspension of the applicant on 11.12.2013 i.e. before the date of legal notice itself. Thus, it is difficult to accept the contention of the respondents that they could acquire knowledge about the release of the applicant only after service of notice on 14.12.2013.

5. In the circumstances, the OA is disposed of with direction to respondents to verify that on which date the appointing authority acquired knowledge about the release of the applicant from detention and if the suspension order was not found reviewed within 90 days from the date of intimation, the order would be deemed as revoked w.e.f. 28.11.2012 and the applicant would be entitled to reinstatement in service forthwith. OA stands disposed of. No costs."

3. In compliance thereof, the suspension was revoked. Subsequently, he superannuated on 31.10.2016. Applicant has not been paid the leave encashment and gratuity at the time of his superannuation. Feeling aggrieved, instant OA has been filed seeking relief in the form of release of leave encashment and gratuity along with interest. Certain other reliefs have also been sought.

4. On a specific query from the Bench, applicant advised that the criminal charges have been laid against him vide orders dated 06.01.2015 by the Court of ACMM-II, New Delhi in RC No.3/2012 ACU-VI/CBI and read as under:

"I, Gaurav Rao, ACMM-II, do hereby charge you Ashok Raj Arora s/o Late Sh. Durga Dass as under:

That during the month of February and March 2012 you along with co-accused persons namely Ashok Kaushik, Manish Sharma and Parveen Kaushik (since deceased) hatched a conspiracy, the object of which was to cheat/threaten and extort money from Akhilesh Chauhan and thus thereby you committed an offence punishable u/s 120B IPC r/w section 419/420/384 IPC and within my cognizance.

Secondly in furtherance of the aforesaid conspiracy you impersonated yourself as Additional Deputy Director, CBI and made telephonic calls to Akhilesh Chauhan claiming that a complaint was pending with you regarding a National Commission for Schedule Caste case with allegations of threat to Mr. Satish and use of unlawful means for settling the case, against him and unless he comes and meets you a case shall be registered against him and thus thereby you committed an offence punishable u/s 419 IPC and within my cognizance.

Thirdly, the telephonic calls were made by you with the intention of cheating the complainant and thus thereby you committed an offence punishable u/s 420 IPC r/w section 511 IPC and within my cognizance and in the alternate telephonic calls were made to extort money from him and thus thereby committed and offence punishable u/s 384 IPC r/w section 511 IPC and within my cognizance.

Fourthly, in furtherance of the aforesaid conspiracy you had impersonated

yourself as Additional Deputy Director, CBI while you were posted as Senior Scientific Officer, CFSL, New Delhi and therefore you pretended to hold the position as Additional Deputy Director, CBI and thus thereby committed an offence punishable u/s 170 IPC and within my cognizance.

And I hereby direct that you to be tried for the aforesaid offences."

5. The charges in departmental enquiry as per report dated 07.03.2018, read as follows:

"(i) Sh. Ashok Raj Arora, telephonically contracted one Sh. Akhilesh Chauhan, a small time builder, impersonating himself as Addl. Deputy Director of CBI and falsely informed him that he (Ashok Raj Arora) has handling a Complaint filed by one Sh. Satish with National Commission for Schedule caste, with the motive to extort money from said Sh. Akhilesh Chauhan in Collusion with Sh. Manish Sharma. Sh. Ashok Raj Arora further threatened Sh. Akhilesh Chauhan that FIR would be registered if he failed to contact him.

(ii) Sh. Ashok Raj Arora also gave a loan of Rs.10 Lacs to one Sh. Inder Pal Singh on interest @ 3% and another loan of Rs.10 Lacs to said Sh. Inder Pal Singh on interest @ 2% without intimating the department. Thereby Sh. Ashok Raj violated Rule Violated Rule 3 (i) (ii) & (iii) of the Central Civil Service (Conduct) Rules 1964."

6. The criminal case as well as departmental enquiry are still not finalised.

7. Applicant pleaded that as per the last pay certificate issued on 15.12.2016, which was prepared by the respondents, there is no departmental recovery due against him. In respect of non-release of leave encashment, applicant pleaded that Rule 39 (3) of CCS (Leave) Rules is applicable and this reads as under:

"(3) The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any."

Accordingly, it is pleaded that once there is no departmental recovery due against him, leave encashment is required to be released. No competent authority has so far passed any order not to release leave encashment.

8. In respect of gratuity also, it was pleaded that since no departmental recovery is due, gratuity should also be released.

9. Applicant has relied upon a judgment of Hon"ble Supreme Court in National Fertilizers Ltd. vs. A.K.Maitra, LPA No.792/2011 decided on 21.12.2011 wherein directions were given that the gratuity and leave encashment amount be

released. Applicant pleaded that in the ratio of this judgment, the applicant in the instant OA is also required to be released the leave encashment and gratuity.

10. Per contra, the respondents opposed the OA. It was pleaded that the applicant is governed by CCS (Pension) Rules, 1972 and not the rules under payment of Gratuity Act. Clause 69 (1) and (2) of CCS (Pensions) Rules, 1972, specifically prohibit release of gratuity when departmental and criminal proceedings are continuing. This rule reads as follows:

"(1) (a) In respect of a Government servant referred to in sub-rule (4) of Rule 9, the Accounts Officer shall authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant, or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorized by the Accounts Officer during the period commencing from the date of retirement up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon:

Provided that where departmental proceedings have been instituted under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, for imposing any of the penalties specified in Clauses (i), (ii) and (iv) of Rule 11 of the said rules, the payment of gratuity shall be authorized to be paid to the Government servant.

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such 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."

It was further pleaded that release of leave encashment is governed by Rule 39 (3) of CCS (Leave) Rules (para 7 supra).

11. In the instant case, since the criminal case as well as departmental enquiry are still not finalised, it is not permissible under these rules that leave encashment and gratuity be released.

12. It was further pleaded that the departmental enquiry has since been completed and the charges have been proved which have been accepted also by the competent authority. A copy has been supplied to the applicant also and the matter has already been forwarded to UPSC for their opinion.

13. The respondents also pleaded that in terms of specific DOP&T OM dated 05.10.1999, specific provision has been made that no interest is to be given on

retiral dues if departmental enquiry and criminal case are continuing. In view of the foregoing, instant OA is not maintainable and the same is required to be dismissed.

14. The applicant pleaded that the retiral dues can be kept on hold only if certain departmental recoveries are due. In the instant case, there is no such possibility that on conclusion of departmental enquiry and criminal case, there can be any chance for departmental recovery. Accordingly, it was pleaded that dues be released.

15. Matter has been heard at length. Sh. Sahib Gurdeep Singh and Sh. D.S.Mahendru, learned counsel represented the applicant and Sh. Hanu Bhaskar, learned counsel represented the respondents.

16. Facts of the case are not in doubt. The applicant was a Senior Scientific Officer in CFSL under CBI, and certain charges have been laid against him. The nature of these charges as brought out in para 4 and 5 above, speak for themselves about the conduct of the applicant and seriousness of the charge. It is noted that while criminal case is still going on, the departmental enquiry is at advanced stage wherein charges were proved and matter has been sent to UPSC for their opinion.

In the instant case, it is the CCS (Pension) Rules, under Clause 69 that are attracted. Sub-Clause (c) of these rules has a specific clause that gratuity is not to be released, if departmental enquiry and criminal case are still pending. Similarly, in respect of leave encashment also, Rule 39 (3) of CCS (Leave) Rules is also very clear that leave encashment is not to be released.

17. Whether certain departmental charges are to be recovered or not, is to be decided as a result of finalisation of the departmental proceedings when the competent authority takes a decision. It will be hasty to prejudge, what that decision would be.

18. As regards the relied upon case of Hon"ble High Court of Delhi in A.K.Maitra (para 9 supra), it is noted that the petitioners therein were employees of National Fertiliser Limited. It was payment of Gratuity Act, 1972 which was applicable upon them. Once gratuity was not released, the employees approached the controlling authority under payment of Gratuity Act 1972, who ordered for release of gratuity.

In respect of non-release of leave encashment, it was noted by Hon"ble High Court that the departmental enquiry was actually dropped. It was under these circumstances that leave encashment was also released.

Per contra in the instant case, the departmental enquiry is still not finalised and as per the status, the charges were held to be proved. Further, it is the CCS (Pension) rules, which is applicable here and not the Payment of Gratuity Act. The circumstances in the instant OA are, therefore, distinguishable with respect to those of this relied upon case by the applicant. The ratio of that case is,

therefore, of no help to the applicant.

19. In view of the foregoing, the pleas put forth by the applicant are not finding acceptability. The provisions in the rules are very clear which are being followed by respondents. This cannot be faulted. Under these circumstances, OA is without merit and is accordingly dismissed. No costs.

20. The counter reply and rejoinder were already filed but were not on record and were kept in "C" part as certain cost was yet to be paid. Respondents are directed to pay the remaining part of cost within a time period of two weeks of this order.