

(2006) 05 AHC CK 0117

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 55257 of 2004

Dukhan Prasad Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-05-2006

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 16
Central Civil Services (Pension) Rules, 1972 — Rule 69, 8, 9, 9(4), 9(5)
Constitution of India, 1950 — Article 12, 226, 227

Citation : (2006) 4 AWC 3210

Hon'ble Judges : Sanjay Misra, J; R.K. Agrawal, J

Bench : Division Bench

Advocate : Amit Saxena, P.N. Saxena and D.K. Singh, for the Appellant; K.C. Sinha, Asst. S.G. and S.S.C., for the Respondent

Final Decision : Allowed

Judgement

R.K. Agrawal, J.—By means of the present petition filed under Article 226 of the Constitution of India, the petitioner Dhukhan Prasad Singh, seeks the following reliefs:

(a) issue a Writ, Order or Direction in the nature of Certiorari quashing the Judgment and Order dated 23.7.2004 passed by the Respondent No. 5 (Annexure No. 10) and also the order dated 1.5.2003 (Annexure No. 3) passed by the Respondent No. 2.

(b) issue a Writ, Order or Direction in the nature of Mandamus commanding the Respondent No. 2 to release the full pension of the petitioner along with the arrears and also release all the retiral benefits including gratuity.

(c) issue any other or further Writ, Order or Direction, which the Court may deem fit and proper in favour of the petitioner.

(d) award the cost of the petition.

2. Briefly stated the facts giving rise to the present petition are as follows:

According to the petitioner, he was appointed on 6th July, 1959 in the Railway Mail Service on the post of Mail Man in Gaya Division. He was retired on 31st July, 2000 from the post of HSG-II SA from the office of HRO, RMS "C" Division, Gaya. After his retirement the petitioner was not granted full pension nor he was given his post retiral benefits including gratuity and other entitlements. The Senior Superintendent, RMS "C" Division, Gaya, respondent No. 3, however, vide order dated 5.9.2000 granted provisional pension to the petitioner w.e.f. 01.8.2000. It is alleged by the petitioner that at the time of his retirement no departmental proceedings, whatsoever, were pending nor any disciplinary proceedings have been initiated against him after his retirement. The petitioner made several representations for the release of the full amount of retiral benefits, however, no action was taken on them whereafter the petitioner filed Original Application No. 1417 of 2002 before the Central Administrative Tribunal, Allahabad, hereinafter referred to as "the Tribunal", which vide order dated 5th December, 2002 directed the authorities concerned to take a final decision on the representations made by the petitioner within two months from the date of receipt of the copy of the order and to pay his retiral benefits in case there was no impediment under law. Pursuant to the directions given by the Tribunal, the Director of Accounts(Postal), Patna-1, respondent No. 2, vide order dated 1st May, 2003 had rejected the representation of the petitioner on the ground that he was facing trial in Case No. 932 of 1992, which is related to his services during his employment with the respondent authorities. The aforesaid case relates to the period when the petitioner was in service and was working at Hazari Bagh Road RMS, when certain insured articles were lost from the custody of the RMS Hazari Bagh for which a First Information Report was lodged at police station Bagapur against six persons including the petitioner. According to the petitioner, pursuant to the aforesaid F.I.R. he was issued a memorandum of charge for imposition of minor penalties under Rule 16 of CCS(CCA) Rules, 1965 along with a statement of imputation to which he submitted his reply in which he had stated that he was not even on duty when the articles were allegedly lost. After a full fledged enquiry, the disciplinary authority came to the conclusion that the petitioner could not be held guilty of any misconduct and vide orders dated 13.8.1998 he was exonerated of all the charges levelled against him. However, a charge sheet was submitted by the police authorities on 30.11.1994. The trial is still going on, After the rejection of the petitioner's representation vide order dated 1st May, 2003, the petitioner challenged the same by filing Original Application No. 757 of 2003 before the Tribunal, which was allowed vide judgment and order dated 5th September, 2003. The Tribunal had quashed the orders dated 1st May, 2003 and directed the respondents to release the full pension of the petitioner and also to make payment regarding commutation of pension and gratuity payable to the petitioner along with interest at the rate of 10 per cent per annum. The order of the Tribunal dated 5th September 2003 was challenged by the respondent-authorities by means of Writ Petition No.268 of

2004 before this Court and this Court vide judgment and order dated 8th January, 2004 had allowed the writ petition on the ground that the petitioner therein had not been given proper opportunity to file counter affidavit and consequently order dated 5th September, 2003 was set aside and the matter was remanded. After the exchange of the pleadings, the Tribunal vide its judgment and order dated 23rd July, 2004 had dismissed the Original Application filed by the petitioner, which order is under challenge in the present writ petition. The Tribunal vide impugned order has rejected the claim made by the petitioner on the following ground:

...Perusal of Rule-9 of CCS (Pension) Rules, 1972 shows that President has the right of withholding a pension of gratuity or both either in full or in part, whether permanently or for specified period and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the government if, in any departmental or judicial proceedings, pensioners is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement. This rule makes it clear that if in the judicial proceedings any pensioner is found to be guilty of grave misconduct or negligence during the period of service, President has right to withhold the pension or gratuity or both. He can even order recovery of the amount of pecuniary loss caused to the Government. Therefore, the contention of applicant's counsel that even if applicant is ultimately convicted in the criminal case, department cannot pass any orders against the applicant is not valid, the same is accordingly, rejected.

3. The Tribunal was further of the view that Sub-rule (4) of Rule 9 nowhere says that the departmental or judicial proceedings should be instituted after the retirement as is being read by the counsel for the petitioner.

4. We have heard Sri P.N. Saxena, learned Senior Counsel, on behalf of the petitioner and Sri K.C. Sinha, learned Assistant Solicitor General of India appearing on behalf of the respondents.

5. Sri Saxena, learned Senior Counsel, submitted that once the department has exonerated the petitioner, it is no longer open to the authorities to stop or withhold the retiral benefits. He further submitted that from the perusal of Sub-rule (4) of Rule 9 of the Pension Rules, hereinafter referred to as the Pension Rules, it is absolutely clear that in order to justify sanctioning of provisional pension judicial proceedings should be instituted after the retirement of the Government servant. Further, it does not apply to a case where the judicial proceedings are pending or continued from before the date of retirement of a Government servant as the words "judicial proceeding" are missing in the second para of Sub-rule (4) of Rule 9 of the Pension Rules.

6. Sri K.C. Sinha, however, submitted that even if the petitioner has been exonerated in the departmental proceedings that would not entitle him to claim full retiral benefits in view of the specific provisions of Sub-rule (4) of Rule 9 of

the Pension Rules. According to him, as per Sub-rule (4) of Rule 9 of the Pension Rules, the Government servant is entitled for only provisional pension where the judicial proceedings are instituted or after his retirement the same are continued. According to him, the Tribunal had given good reasons for rejecting the claim of the petitioner and it does not call for any interference under Article 226/227 of the Constitution of India.

7. Having given our anxious consideration to the various pleas raised by the learned Counsel for the parties, we find that it is not in dispute that the petitioner has been exonerated in the departmental proceedings. He has been found by the authorities to be not on the duty on the date on which the alleged incident of loss of insured articles from Hazari Bagh Road RMS. It is also an admitted fact that the petitioner is facing trial in Criminal Case No. 932/92 which is related to his services during his employment with the respondent-authorities. The question is as to whether when the petitioner has been exonerated in the departmental proceedings, merely because a criminal case is pending against him, he can be deprived of his full retiral benefits including full pension or not. The grant of pension is governed by the Pension Rules. Rule 9 of the aforesaid Rules empowers the President to withdraw or withhold the pension. For a ready reference Rule 9 is reproduced below:

9. Right of President to withhold or withdraw pension.

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement.

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pensions shall not be reduced below the amount of rupees One thousand two hundred and seventy-five per mensem.

(2)(a) The departmental proceedings referred to in Sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) The departmental proceedings if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment.-

(i) shall not be instituted save with the sanction of the President,

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and in such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) Deleted.

(4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under Sub-rule (2), a provisional pension as provided in Rule 69 shall be sanctioned.

(5) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule.-

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted-

(i) in the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognizance, is made, and

(ii) in the case of civil proceedings, on the date the plaint is presented in the Court.

8. From the reading of the aforesaid Rule, we find that under Sub-rule (1) the President has reserved to himself the following rights where any any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement:

(1) Right to withhold the pension or gratuity, or both, either in full or in part;

(2) Right to withdraw a pension in full or in part, whether permanently or for a specified period; and

(3) Right to order recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government.

9. However, under the first proviso, before any final orders are passed, the Union Public Service Commission has to be consulted. The second proviso provides that where a part of pension is withheld or withdrawn, the amount of such pensions shall not be reduced below the amount of Rupees one thousand two hundred seventy five.

10. Sub-clause (a) of Sub-rule (2) provides for continuance of departmental proceedings instituted against the Government servant while in service by treating the same as if the Government servant had continued in service and by fiction it has been treated as proceedings under Rule 9.

11. Clause (b) of Sub-rule (2) deals with the cases, where the departmental proceedings have not been instituted before the retirement of a Government servant. It provides that it cannot be instituted without the sanction of the President and it shall not be in respect of any event which took place more than four years before such institution and shall be conducted by such authority and in such place as the President may direct in accordance with the procedure applicable to departmental proceedings relating to the Government servant has been made applicable.

12. Sub-rule (4) provides for sanction of a provisional pension as provided in Rule 69 in the following circumstances:

(1) where any departmental proceedings are instituted against the Government servant, who has retired on attaining the age of superannuation or otherwise;

(2) where any judicial proceedings are instituted against the Government servant, who has retired on attaining the age of superannuation; or

(3) where the departmental proceedings are continued under Sub-rule (2) against the Government servant who has retired on attaining the age of superannuation or otherwise.

13. However, under the proviso the findings recorded by the authorities be reported to the President.

14. Sub-rule (5) of Rule 9 provides for the amount of pension for which recovery can be ordered where the pension has not been withheld or withdrawn. It provides that the recovery should not exceed one-third of the pension admissible on the date of retirement of the Government servant.

15. Sub-rule (6) of Rule 9 provides for the point of time when the department proceedings or the judicial proceedings shall be deemed to have been instituted.

16. Having analyzed the various provisions of Rule 9 of the Pension Rules, we find that under Sub-rule (4) of Rule 9 of the Pension Rules, provisional pension

as provided under Rule 69 has to be sanctioned only in cases where the departmental proceedings are instituted, after the Government servant has retired on attaining the age of superannuation or where the judicial proceeding are instituted against the Government servant, who has retired on attaining the age of superannuation or otherwise. The words "judicial proceedings are instituted" do not speak of judicial proceedings being continued it has not been specifically mentioned whereas in the case of departmental proceedings it has been specifically provided.

17. A Constitution Bench of the Apex Court in the case of Deokinandan Prasad Vs. The State of Bihar and Others, while agreeing with the view of majority in the Full Bench decision of the Punjab and Haryana High Court in K.R. Erry v. The State of Punjab ILR 1967 Punj. & Har 278, has held that the pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a Government servant.

18. In the case of D.S. Nakara and Others Vs. Union of India (UOI), another Constitution Bench of the Apex Court had occasion to consider the nature of the pension. In paragraph 22 of the reports the Apex Court had held as follows:

22. In the course of transformation of society from feudal to welfare and as socialistic thinking acquired respectability, State obligation to provide security in old age, an escape from undeserved want was recognised and as a first step pension was treated not only as a reward for past service but with a view to helping the employee to avoid destitution in old age. The quid pro quo was that when the employee was physically and mentally alert, he rendered unto master the best, expecting him to look after him in the fall of life. A retirement system therefore exists solely for the purpose of providing benefits. In most of the plans of retirement benefits, everyone who qualifies for normal retirement receives the same amount.

19. While summing up the Apex Court in paragraph 29 of the reports held as follows:

Summing up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give you best in the heyday of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service of or a surrender of rights or emolument to one retired from service. Thus the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service

rendered...

20. It had further held that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to the rules.

21. In the case Poonamal and Others Vs. Union of India and Others, the Apex Court has held that pension is a right not a bounty or gratuitous payment. The payment of pension does not depend upon the discretion of the Government but is governed by the relevant rules and anyone entitled to the pension under the rules can claim it as a matter of right.

22. In the case of State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, the Apex Court has held that though pension is not a bounty but it is a right earned by the government servant on the basis of length of service, nonetheless grant of full pension depends on the approval of service rendered by the employee.

23. In the case of All India Reserve Bank Retired Officers Association and others Vs. Union of India and others, the Apex Court has held that the pension is not a charity or bounty nor is it gratuitous payment solely dependent on the whim or sweet will of the employer. It is earned for rendering long service and is often described as deferred portion of compensation for past service. It is in fact in the nature of social security plan to provide for the December of life of superannuated employee. Such social security plans are consistent with socio-economic requirements of the Constitution when the employer is a State within the meaning of Article 12 of the Constitution.

24. In the case of Vasant Gangaramsa Chandan Vs. State of Maharashtra and Others, the Apex Court has held that the pension is not a bounty of the State. It is earned by the employee for the service rendered to fall back, after retirement. It is a right attached to the office and cannot be arbitrarily decided.

25. In the case of Subrata Sen and Others Vs. Union of India and Others, the Apex Court has held as follows:

...Payment of pension does not depend upon pension fund. It is the liability undertaken by the Company under the Rules and whenever becomes due and payable is to be paid. As observed in D.S. Nakara and Others Vs. Union of India (UOI), pension is neither a bounty, nor a matter of grace depending upon the sweet will of the employer nor an ex gratia payment. It is a payment for the past services rendered. It is social welfare measure rendering socio-economic justice to those who in the hey-dey of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in the lurch...

26. Thus, it is well settled by the Apex Court that the pension is not a bounty. It is a legal entitlement which can only be curtailed by an express provision of law and not otherwise. Non-mention of the word "continued" in respect of the judicial proceeding in Sub-rule (4) of Rule 9 of the Pension Rules is significant. As

Sub-rule (4) of Rule 9 of the Pension Rules does not contemplate a situation where judicial proceedings have been instituted prior to the superannuation of the Government servant and are continued after his superannuation, we are of the considered opinion that the order of provisional pension as provided in Rule 69 of the Rules could not have been passed and instead the regular pension ought to have been given. It may be mentioned here that under Rule 8 of the Pension Rules future good conduct is an implied condition of every grant of pension and its continuance and if the pensioner is convicted of a serious crime or is found guilty of grave misconduct, the appointing authority may, by order in writing withhold or withdraw a pension or a part thereof, whether permanently or for a specified period. Thus, the authorities have been given sufficient powers to withhold or withdraw the pension either in full or in part, permanently or for a specified period in case of conviction of a pensioner in a serious crime or he being found guilty of grave misconduct.

27. The question still arises as to whether the petitioner should be compensated by award of interest for wrongful withholding of the pension. In the case of O.P. Gupta Vs. Union of India (UOI) and Others, the Apex Court has held as follows:

Normally, this Court, as a settled practice, has been making direction for payment of interest at 12 per cent on delayed payment of pension. There is no reason for us to depart from that practice in the facts of the present case.

28. We do not find any good ground for not compensating the petitioner for withholding the payment of full pension for a period of about five and a half years, we, therefore, hold that the petitioner is entitled for the interest at the rate of 10% per annum on the difference amount after 30 days as and when it became due and till the date of its actual payment.

29. In view of the foregoing discussion, we are of the considered opinion that the orders dated 1.5.2003, filed as Annexure No. 3 to the writ petition and passed by the Senior Superintendent RMS "C" Division Gaya, respondent No. 3 and the orders dated 23rd July, 2004 passed by the Tribunal, filed as Annexure No. 10 to the writ petition, cannot be sustained and are set aside.

30. The writ petition succeeds and is allowed. A writ of mandamus is issued directing the Director of Accounts(Postal) Patna-1, respondent No. 2, to release full pension of the petitioner including arrears along with interest as mentioned above within three months from the date a certified copy of this order is filed before the said respondent No. 2. However, the parties shall bear their own costs.