

(2019) 07 CAT CK 0067

In the Central Administrative Tribunal

Case No : Original Application No. 314, 315 Of 2018

Mahal Singh

APPELLANT

Vs

Union Of India Through And Anr.

RESPONDENT

Date of Decision : 31-07-2019

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 7, 13, 13(1)(d), 13(2)
Delhi Police (Punishment And Appeal) Rules, 1980 — Rule 11(1)
Central Civil Services (Pension) Rules, 1972 — Rule 9, 69
Constitution Of India, 1950 — Article 311(2)(a)

Citation : (2019) 07 CAT CK 0067

Hon'ble Judges : Aradhana Johri, Member (A)

Bench : Single Bench

Advocate : S.K. Mishra, Harvinder Oberoi

Final Decision : Partly Allowed

Judgement

1. The applicant Mahal Singh, while working as ASI was trapped by Anti Corruption Branch, FIR was lodged under Section 7/13 Prevention of Corruption Act (POCA) and he was placed under suspension. The trial court vide its judgment dated 29.09.2000 convicted and sentenced him to undergo rigorous imprisonment for one year. The applicant filed Criminal Appeal No.618/2000 before the Hon'ble High Court of Delhi, which is still pending. The applicant was dismissed under Article 311(2)(a) of the Constitution of India read with Rule 11(1) of the Delhi Police (Punishment & Appeal) Rules, 1980 vide order No.10198-238/HAP/East (P-III) dated 10.08.2006.

2. The applicant filed OA in this Tribunal, which was decided vide order dated 30.07.2007 in favour of the applicant. The respondents filed CWP No.5799/2008 against the aforesaid order of the Tribunal, which was dismissed by the Hon'ble High Court of Delhi. Accordingly, the applicant was re-instated in service from the date of dismissal vide order No.2511-90/HAP(P-I) dated 17.03.2009. He was, however, kept under suspension. He retired on superannuation on 30.06.2009

from the post of ASI (Exe.) after attaining the age of 60 years. Since the applicant was convicted by the trial court of Special Judge, Delhi vide judgment dated 29.09.2000, as per rules he was sanctioned provisional pension w.e.f. w.e.f. 01.07.2009 till the finalization of the appeal pending in the High Court of Delhi. In accordance with Rule 69 of CCS (Pension) Rules, 1972, gratuity of the applicant has been withheld till the finalization of the criminal appeal and other retiral benefits were also withheld.

3. The applicant has prayed for release of gratuity with interest and leave encashment of leave due along with interest.

4. The facts of this case are identical to that of OA No.314/2018, but for the sake of clarity the same are being mentioned.

5. The applicant Ishwari Dutt, while working as ASI was trapped by Anti Corruption Branch and FIR No.51/93 was lodged under POC Act and was placed under suspension vide order dated 11.11.1993. The trial court vide its judgment dated 16.02.2004 convicted and sentenced him to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/- for the offence punishable u/s 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. The applicant filed Criminal Appeal No.128/2004 before the Hon'ble High Court of Delhi, which is still pending. The applicant was dismissed under Article 311(2)(a) of the Constitution of India read with Rule 11(1) of the Delhi Police (Punishment & Appeal) Rules, 1980 vide order No.10239-279/HAP/East(P-III) dated 10.08.2006. Aggrieved, the applicant filed OA in this Tribunal, which was decided vide order dated 09.03.2007 in favour of the applicant. The respondents filed CWP No.4099/2008 against the aforesaid order of the Tribunal, which was dismissed by the Hon'ble High Court of Delhi vide order dated 04.12.2008. Accordingly, the applicant was re-instated in service from the date of dismissal vide order No.2429-2510/HAP(P-I) dated 17.03.2009. He was, however, kept under suspension. He retired on superannuation on 29.02.2008 from the post of ASI (Exe.) after attaining the age of 60 years. Since the applicant was convicted by the trial court of Special Judge, Delhi vide judgment dated 16.02.2004, as per rules he was sanctioned provisional pension w.e.f. 01.03.2008 till the finalization of the appeal pending in the High Court of Delhi. In accordance with Rule 69 of CCS (Pension) Rules, 1972, gratuity of the applicant has been withheld till the finalization of the criminal appeal and other retiral benefits were also withheld.

6. The applicants have prayed for release of gratuity with interest and leave encashment of leave due along with interest.

7. Sh. S.K. Mishra, learned counsel for the applicants and Mrs. Harvinder Oberoi, learned counsel for the respondents.

8. It has been argued that both these OAs are covered matters which are similar to the decision in Ram Naresh Tiwari vs. Union of India & Anr. [OA No.276/2018 decided on 12.07.2019]. By the said order various rules were examined and it was held as under:-

"9. The applicant is being granted provisional pension. His gratuity and earned leave encashment has been withheld by the respondents. During the arguments and also in the counter reply filed by the respondents, it has not been made clear as to why and under what rule his earned leave encashment has been withheld. Rule 9 of CCS (Pension) Rules has been quoted for withholding gratuity and for releasing only provisional pension till completion of judicial proceedings. The order dated 30.06.2010 (Annexure A-4), by which the respondents have authorized provisional pension to the applicant does not indicate withholding of gratuity and earned leave encashment. In view of the above mentioned, it is evident that the respondents have rightly withheld the gratuity and provided only provisional pension to the applicant in view of the ongoing judicial proceedings. However, withholding of earned leave encashment amount has not been justified under any rule by the respondents.

10. The OA is partly allowed with the direction to the respondents to release the earned leave encashment amount to the applicant as due to him within a period of three months from the date of receipt of certified copy of this order. However, no interest shall be paid on this amount. His provisional pension and gratuity shall continue to be governed in terms of extant rules. There shall be no order as to costs."

9. The relevant circumstances of these cases are also similar to that of the cited Ram Naresh Tiwari case (supra) and are treated covered by the same. Therefore, it is held that no gratuity needs to be paid to the applicants at this stage as the same would be governed in terms of the extant rules on the subject. The respondents are directed to pay the leave encashment amount due to the applicants without interest thereon, within a period of three month from the date of receipt of certified copy of this order.

10. In view of the above directions, both these OAs stand partly allowed. There shall be no order as to costs.