

(2021) 01 RAJ CK 0182
In the Rajasthan High Court
Case No : Civil Writ Petition No. 393 Of 2021

Preetam Singh

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 21-01-2021

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 7, 13(1)(d), 13(2)
Central Civil Services (Pension) Rules, 1972 — Rule 69
Central Civil Service (Leave) Rules, 1972 — Rule 39(3)

Citation : (2021) 01 RAJ CK 0182

Hon'ble Judges : Sangeet Lodha, J;Rameshwar Vyas, J

Bench : Division Bench

Advocate : I.S.Pareek, Surya Prakash Arora

Final Decision : Dismissed

Judgement

1. By way of this writ petition, the petitioner has questioned legality of order dated 16.10.19 passed by the Central Administrative Tribunal, Jodhpur

Bench, Jodhpur ('the Tribunal'), whereby original application preferred by the petitioner challenging the action of the respondents in denying provisional

pension, leave encashment, Death-cum-Retirement Gratuity (DCRG), has been dismissed.

2. The facts relevant are that while working on the post of Superintendent of Post Office, Churu, a complaint was submitted before the Central

Bureau of Investigation (CBI) against the petitioner for demanding bribe and on that basis, a trap was laid by the CBI and the petitioner was allegedly

caught red handed. After investigation, the CBI filed the charge sheet in the Court of Special Judge, CBI Cases, Jodhpur. After trial, the petitioner

was convicted for offence under Section 7 read with Section 13(1)(d) and 13(2) of Prevention of Corruption Act, vide judgment dated 18.1.03.

Aggrieved thereby, the appeal preferred by the petitioner before this Court, has been admitted and the sentence awarded has been suspended vide order dated 27.1.03. Pursuant to the conviction of the petitioner as aforesaid, the respondent-employer imposed penalty of dismissal from service on the petitioner vide order dated 6.6.04. The original application preferred by the petitioner challenging the dismissal order was dismissed by the Tribunal vide order dated 25.10.10. The petitioner challenged the order passed by the Tribunal by way of D.B.C.Writ Petition No.6029/15, which also stood dismissed by this Court vide order dated 9.1.17.

3. The petitioner preferred an application before the respondent no.3 for grant of provisional pension and other retiral benefits. The respondent no.3 vide order dated 20.12.16 sanctioned a sum of Rs.25,598/- to the petitioner on account of payment of CGEIS-80 and the said amount has been paid to the petitioner. That apart, a sum of Rs.26,829/- was paid to the petitioner towards GPF vide sanction dated 12.7.16, which has also been received by the petitioner. However, the claim of the petitioner for provisional pension, leave encashment and DCRG stands rejected by the respondents.

4. Precisely, the case set out by the petitioner before the Tribunal was that against the judgment dated 18.1.03 passed by the criminal Court of competent jurisdiction, the appeal preferred by the petitioner has been admitted and the sentence stands suspended, thus, the judicial proceeding is still pending adjudication and therefore, the petitioner is entitled for provisional pension and other benefits like gratuity, leave encashment etc.

5. The respondents contended that the dismissal order of the petitioner has attained finality and thus, the claim of the petitioner for provisional pension, payment of leave encashment and DCRG has rightly been denied as a consequence thereof and thus, the original application preferred by the petitioner for the relief claimed is not maintainable.

6. Learned counsel appearing for the petitioner reiterating the contentions raised before the Tribunal submitted that since criminal proceedings are pending in appeal before this Court, as per Rule 69 of Central Civil Services (Pension) Rules, 1972 ('the Pension Rules'), the petitioner is entitled for provisional pension and other retiral benefits. Learned counsel submitted that Rule 39(3) of Central Civil Service (Leave) Rules, 1972 ('the Leave Rules') lays down that the authority competent to grant leave may withhold

whole or part of the cash equivalent of earned leave in case of

Government servant who retires from service on attaining the age of retirement while under suspension or while the disciplinary authority of criminal

proceedings are pending against him, if in the lieu of such authority, there is possibility of some money becoming recoverable from him on account of

conclusion of the proceedings against him. But on conclusion of the proceedings, he becomes eligible to the amount of leave encashment after

adjustment of the government dues if any and thus, the amount of leave encashment has wrongly been withheld by the respondents. Learned counsel

submitted that the view taken by the Tribunal that the payment of provisional pension, leave encashment and DCRG are consequential relief of the

dismissal order, which has already attained finality, is ex facie erroneous.

7. We have considered the submissions of the learned counsel and perused the material on record.

8. Indisputably, in the instant case, the petitioner is seeking the relief as aforesaid on the ground that the appeal preferred by him against the conviction

by the criminal Court of jurisdiction is pending consideration before this Court and therefore, the provisional pension and other retiral benefits cannot

be denied to him. It is well settled that the admission of the appeal or the suspension of sentence does not take away the effect of conviction and the

same remain operative during the pendency of the appeal. Moreover, in the instant case, after the conviction for the offence under Section 7 read with

13(1)(d) and 13(2) of the Prevention of Corruption Act, the petitioner was dismissed from service and the dismissal order has attained finality and

therefore, the question of the grant of provisional pension to the petitioner in terms of Rule 69 of the Pension Rules, does not arise. For the parity of

reasons, the petitioner is also not entitled for payment of leave encashment and DCRG. The pendency of the appeal in no manner could be considered

to be a pending judicial proceeding in terms of Rule 69 of the Pension Rules so as to make the petitioner entitled for provisional pension when after the

conviction of the petitioner, he has already been dismissed from service. In this view of the matter, we are in agreement with the conclusions arrived

at by the Tribunal.

9. No case for interference by us in exercise of the writ jurisdiction is made out.

10. The writ petition is therefore, dismissed.