(2019) 02 CAT CK 0140

In the Central Administrative Tribunal

Case No : Original Application No. 245 Of 2018

Randhir Singh APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 14-02-2019

Acts Referred:

Prevention of Corruption Act, 1988 — Section 7, 13(2), 13(1)(d), 13(2)(d)
Central Civil Service (Pension) Rules, 1972 — Rule 69, 69(c), 69(1)(c)
Central Civil Services (Leave) Rules, 1972 — Rule 39(3)
Constitution Of India, 1950 — Article 311(2)(a)

Citation : (2019) 02 CAT CK 0140

Hon'ble Judges : Sh. Mohd. Jamshed, J

Bench : Single Bench

Advocate : S.K. Mishra, Haider Ali, Harvinder Oberoi

Final Decision : Disposed Off

Judgement

Mohd. Jamshed, J

1. This OA has been filed seeking primarily the following reliefs:-

(i) To issue directions to the respondent to forthwith pay the applicant the due amount payable to the Applicant on account of gratuity as per the rules, for the entire period of services, i.e., for a tenure of 35 years along with interest @ 18% for the delayed period; and/or

(ii) To issue directions to the Respondents to pay to the applicant the amount due and payment on account of leave encashment, which is for a period of 300 days along with interest @ 18% from the date of retirement i.e. 31.08.2015, and/ or

The facts of the case stated in the OA are as under:-

The applicant has been appointed as Constable with Delhi Police on 01.09.1972. The applicant was placed under suspension by the respondents vide order dated

16.11.1995 w.e.f. 09.11.1995. Later on, the suspension was revoked vide order dated 28.03.2000 by the respondents. Further the revocation has been without contemplating any condition for reinstatement.

2. The applicant was convicted by the trial court vide order and judgment dated 02.08.2001 and thereafter immediately preferred an appeal before the Hon'ble High Court of Delhi against the impugned order of his conviction.

3. The applicant superannuated on 31.12.2012. In all, the applicant worked for about 35 years. The retiral benefits of the applicant, consisting primarily of pensionary benefits, i.e., gratuity and leave encashment were due, out of which, the department has authorised provisional pension to the applicant vide order dated 23. 10.2013. The applicant has not been paid gratuity and leave encashment.

4. On 15.02.2017, the applicant having failed to get redressal of his grievances made a representation for payment of his retiral benefit, i.e., gratuity and earned leave encashment. Further, till date no action has been taken on behalf of the department and retiral benefits of the applicant are still outstanding and payable by the respondents.

5. Aggrieved by non payment of his superannuation benefits, i.e., gratuity and earned leave encashment, without any justified reasons by the respondents, the applicant approached the Hon'ble Tribunal, through this O.A.

6. The respondents in their counter reply have indicated the following:-

(i) The present OA has been filed by the applicant after a lapse of five years from the date of his dismissal from service, i.e., 23.03.2012.

(ii) The applicant was appointed in Delhi Police on 01.09.1972 as Constable. During his posting in East District, he was placed under suspension w.e.f. 28.08.1995, due to his arrest in criminal case RC No. 76-A/95 under section 7 POC Act 1988, 13 to R.W. 13. I.D. of CBI, by Anti Corruption Branch. On 14.12.1999, the Hon'ble Court of Special Judge, Delhi, convicted the applicant and on 17.12.1999 sentenced him to undergo two years imprisonment under section 13(2)(d) of the Prevention of Corruption Act, 1988.

7. The applicant filed criminal appeal in the Hon'ble High Court of Delhi against the conviction. On his conviction he was also dismissed from Delhi Police vide order dated 10.08.2006 and his suspension period from 28.08.1995 to 10.08.2006 was also rejected vide order dated 15.05.2007. Further in pursuance of judgment dated 04.12.2008 delivered by Hon'ble High Court of Delhi, a punishment of dismissal was awarded to the applicant under article 311(2)(a) of the Constitution of India.

8. The dismissal was set aside by the court vide order dated 17.03.2009. The applicant was reinstated into service but remained under suspension w.e.f. 28.08.1995 as he was earlier placed under suspension w.e.f. 28. 08.1995. The

departmental enquiry which was initiated against the applicant in 1995 and held in abeyance was re-started. This enquiry was finalised and the applicant was dismissed from service w.e.f. 10. 06.2011 and the suspension period from 28.08.1995 to 10.06.2011 was decided as period 'not spent on duty' for all intents and purposes.

9. His appeal against the order dated 10.06.2011 was dismissed. Further, the applicant filed the OA no. 1498/2012 in the Hon'ble CAT against the dismissal order dated 10.06.2011 and 23.03.2012.

10. The Hon'ble Tribunal quashed and set aside the orders of the applicant's dismissal, period of suspension as 'not spent on duty' and the decision of the appellate authority rejecting his appeal dated 23.03.2012. Thus, the applicant was once again reinstated into service from 10.06.2011 but deemed to have continued under suspension from the same day upto 31.12.2012, which was the date of his actual retirement. He was entitled for Subsistence Allowance from 16.06.2011 to 31.12.2012. He is also entitled and drawing provisional pension from 01.01.2013 onwards as per the rule 69 of CCS (Pension) Rules, awaiting the decision in first appeal filed by the applicant before Hon'ble High Court.

11. This appeal was also finalised by the Hon'ble High Court on 21.09.2015 modifying the sentence. The Hon'ble High Court modified the Sentence and ordered that the applicant shall undergo RI for a period of one year with fine of Rs. 5000/- for offense punishable under section 7 of the PC Act. He was also sentenced to undergo RI for one year with fine of Rs. 5000/- for the offences punishable under Section 13(2) read with Section 13(1)(d) of the PC Act and in default of payment of fine, he shall undergo SI for a period of three months. The respondents have also stated that, keeping in view, the facts and circumstances, the payment of his superannuation benefits, i.e., gratuity and earned leave encashment has been withheld under Rule-69 (1) (c) of CCS (pension) Rules, 1972 and Rule 39(3) of CCS (Leave) Rule, 1972.

12. The respondents have denied the various contentions made out in the OA by the applicant and reiterated their stand. It has also been submitted by the respondent that in their counter reply that final decision in regard to withholding or releasing the retiral benefits is to be decided by the President of India as per Rule - 69 (c), CCS (Pension)-Rules 1972.

13. The learned counsel for the applicant argued that the present petition has been filed within the period of limitation and that there is no justification for withholding superannuation and retiral benefits like, gratuity & earned leave encashment, by the respondents. It is also mentioned that Rule - 69 (c), CCS (Pension)-Rules 1972 and Rule 39 (3) of CCS (Leave) Rules, 1972 no where provides that after an employee is convicted for any offense, the Department is entitled to withhold the superannuation benefits of the delinquent employee.

14. It is also indicated that Rule - 69 (c), CCS (Pension)-Rules 1972 is applicable if departmental proceedings are pending against the employee. In present case,

no such proceedings are pending against the applicant and, if there is no departmental proceeding pending against the employee, at the time of his superannuation, the relevant rules of Delhi Police are not applicable.

15. Learned counsel for the respondents during arguments reiterated their stand taken in the counter by stating that in this case, the applicant has been convicted by a special court and thereafter by the Hon'ble High Court. In the departmental enquiry also he has been squarely held responsible and appropriate action has been taken, not once but twice and he has been dismissed from service and at the same time he has also been convicted by the court of law. The provisional pension has also been released in his favour and only leave encashment and gratuity have been withheld seeking approval of the Competent Authority, as per the rules.

16. Heard the Learned Counsel for both sides and perused the records.

17. It is evident that in this case the applicant was arrested/charged in a criminal case by CBI, Anti Corruption Branch on 28.08.1995. He was accordingly suspended and was further convicted by the Hon'ble Court of Special Judge, Delhi on 17.12.1999. Thereafter, on his conviction he was dismissed from Delhi Police. He further sought relief from High Court and was reinstated. He continued to remain under suspension and the disciplinary enquiry was conducted. The Disciplinary Authority imposed upon him the punishment of dismissal which was upheld by the appellate authority. He approached the Hon'ble Tribunal which decided to set aside the orders of dismissal and orders of disciplinary and appellate authority.

18. He continued to remain under suspension during the time of his dismissal on 10.06.2011 to 31.12.2012, which is the date of his retirement on superannuation. He was paid Subsistence Allowance and has been drawing provisional pension from 01.01.2013. On 21.09.2015 criminal appeal No. 15/2000 has been finalized by Hon'ble High Court of Delhi modifying the sentence and ordered that applicant shall undergo rigorous imprisonment. Keeping in view this development, the payment of his superannuation benefits, i.e., gratuity & leave encashment have been withheld under Rule - 69 (c), CCS (Pension)-Rules 1972.

19. Further Rule 39 (3) of CCS (Leave) Rules, 1972 provides "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. On conclusion of the proceedings, he will become eligible to the amount so withheld after judgment of Government dues, if any."

20. It is, thus evident that the applicant has also been convicted and the punishment has also been imposed by the Hon'ble High Court and that at this point of time there are no disciplinary proceedings against him.

21. Learned counsel for the respondents submitted copy of the letter from Deputy Commissioner of Police to Deputy Commissioner of Police (Vigilance) dated 04.10.2018 giving details of the applicant's case. Vide this letter it has been requested that necessary action may be taken at the earliest and in view of the final judgment of the Hon'ble High Court dated 21.09.2015, the case of the applicant should be decided regarding his provisional pension. It has also been submitted by the respondents that necessary action under Rule - 69 (c), CCS (Pension)-Rules 1972 for withholding his pensionary benefit permanently has been sent to President of India by the respondents.

22. In view of the above mentioned, it is obvious that there is significant delay in finalizing the case of due payment of gratuity and leave encashment of the applicant. The final orders of the Hon'ble High Court have been received on 21.09.2015 and thus from then onwards there is neither any departmental proceedings pending against the applicant nor any criminal case in the court of law.

23. It has also been indicated by the respondents in their counter reply that a decision on these aspects shall be taken under Rule - 69 (c), CCS (Pension)-Rules 1972 by the President of India.

24. In view of the above mentioned, this OA is disposed of with directions to Respondents to consider & decide grant of his due pensionary benefits, i.e., release of gratuity and leave encashment, within a period of three months from the date of receipt of a certified copy of this order. No order as to cost.