

(2020) 01 CAT CK 0035

In the Central Administrative Tribunal

Case No : Original Application No. 1537 Of 2019

R.S. Bisht

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 22-01-2020

Acts Referred:

Indian Penal Code, 1860 — Section 354, 506, 509
Central Civil Services (Pension) Rules, 1972 — Rule 9(4), 9(6)(b)(i)

Citation : (2020) 01 CAT CK 0035

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

Bench : Single Bench

Advocate : Ajesh Luthra, Rajeev Kumar

Final Decision : Allowed

Judgement

1. The applicant joined the respondent organisation-Intelligence Bureau as Security Assistant on 08.02.1977 and he superannuated on 28.02.2019 as Assistant Central Intelligence Officer. FIR No. 543 dated 16.04.2016 under Section 354/509/506 of I.P.C was filed against him by his daughter in law in P.S Shakarpur East Delhi while he was still in service, which is still pending trial in the Court. He was also arrested in this case and released on bail. He hid the factum of his arrest from his employer for which he was awarded the minor penalty of censure considering his impending superannuation. He superannuated on 28.02.2019 while the criminal case was still ongoing. Till date the case is still pending trial.

2. It is the contention of the applicant that the criminal case is an off shoot of marital discord and has nothing to do with the discharge of duties. He has cited O.A No. 2411/2007, titled Jogeshwar Mahanta Vs. UOI wherein the charge sheet was quashed on account of marital discord with his wife on the ground that the charge memo did not concerns his official duty. He has also cited O.A No.2353/2010 in Dharamvir Singh Vs. The Commissioner of Police & Ors., wherein this Tribunal directed to release the pensionary benefits which had been

withheld on account of pending criminal case, holding that the criminal proceedings were of a personal nature. Similar orders were also passed in O.A No. 2193/2012 in Ram Chander Vs. Commissioner of Police and Ors and Tej Pal Singh Tuli Vs. Union of India & Ors. in O.A No. 3312/2009. In O.A No. 2578/2017 in Ranjit Singh Vs. Commissioner of Police, this Tribunal relied on the cases of Dharamvir Singh (supra), Retd. S.I Yad Ram Vs. Deputy Commissioner of Police and Ors., Mam Chand Vs. Union of India & Ors. in O.A No. 1605/2005 and Jogeshwar Mahanta Vs. Union of India in O.A No. 2411/2017. In the said O.A No. 2578/2017, this Tribunal held the following :-

Hence, withholding of the gratuity and retiral benefits of the applicant on ground of a family dispute pending in the criminal proceeding is not sustainable in the eye of law. Accordingly, impugned order dated 25.05.2017 is set aside and the respondents are directed to release the funds, gratuity, commuted pension and other retirement benefits within a period of 90 days from the date of receipt of a copy of this order."

3. The applicant has prayed that impugned orders dated 25.02.2019 and 12.04.2019 sanctioning only provisional pension and withholding his gratuity till the conclusion of judicial proceedings, be struck down and respondents be directed to release all the retiral benefits of the applicant along with interest.

4. Respondents have denied the claim of the applicant. They have stated that case under FIR 543 dated 16.04.2016 under Section 354/509/506 of IPC filed against the applicant by his daughter in law is still pending trial. He has also been arrested and released on bail. Departmental inquiries were held against him for hiding his arrest for which he was awarded minor penalty of Censure. They have cited Rule 9 (4) of CCS (Pension) Rules, which reads as follows :-

"(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. They have further stated that Rule 9 (6) (b) (i) of CCS (Pension) Rules stated as follows :-

"(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"

6. Therefore, as per their contention, judicial proceedings are ongoing against the applicant till the completion of which he is entitled to provisional pension which has already been sanctioned to him.

7. They have further stated that he has already been paid the due amount of GPF to his credit, Leave Encashment and IB Relief Fund. Only retirement gratuity had

been withheld in terms of Rule 9(4) and Rule 69 which prohibits the payment of gratuity till the finalisation of judicial proceedings/departmental proceedings. Provisional pension has also been sanctioned.

8. Heard Mr. Ajesh Luthra, learned counsel for applicant and Mr. Rajeev Kumar, learned counsel for respondents.

9. Respondents have admitted that the departmental inquiries held against the applicant for hiding his arrest have been completed and he has already been awarded the minor penalty of Censure. Further, in light of the various rulings cited in para 2 by the applicant pertaining to cases identical to the present one, it is held that withholding the pension and gratuity of the applicant on the ground of family disputes for which criminal proceedings are pending, is not sustainable in the eyes of law. Accordingly, the impugned orders dated 25.02.2019 and 12.04.2019 are set aside.

10. The respondents are directed to release the pension and gratuity to the applicant within a period of three months from the date of receipt of a certified copy of this order. No interest will be payable for the same.

11. The O.A is allowed. No order as to costs.