

(2010) 01 DEL CK 0330

In the Delhi High Court

Case No : Writ Petition (C.) No. 582 of 2010

Sh. Navendra Kumar

APPELLANT

Vs

M.T.N.L.

RESPONDENT

Date of Decision : 29-01-2010

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 37A, 37A(24), 9

Constitution of India, 1950 — Article 226

Mahanagar Telephone Nigam Limited (Conduct, Discipline and Appeal) Rules, 1998 — Rule 5(43)

Citation : (2010) 01 DEL CK 0330

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : D.S. Chaudhary, for the Appellant; Ravi Sikri, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner is aggrieved by the order dated 29th October, 2009 passed in T.A No.228/2009 titled Sh. Navendra Kumar v. M/s.Mahanagar Telephone Nigam Limited (MTNL) declining the claim of the petitioner for grant of full pension and gratuity during the pendency of the departmental proceedings, however, directing respondent to release other post retirement benefit other than gratuity and pension to the petitioner within two months from the date of the receipt of the copy of the order dated 29th October, 2009.

2. The petitioner approached the Central Administrative Tribunal, Principal Bench, New Delhi after his retirement from Mahanagar Telephone Nigam Limited (MTNL) on 28th February, 2006 claiming full and final pension instead of provisional pension contending inter-alia that he was permanently absorbed in MTNL on 1st October, 2000 and, therefore, he had retired from the Government on 1st October, 2000 and in the circumstances the memorandum of charge could not be issued against him for his alleged misconduct when he was with the Government. The petitioner also re-agitated that the disciplinary proceedings could not be

initiated against him by the MTNL for the alleged misconduct committed when he was in the Government service.

3. These pleas of the petitioner were repelled by the Tribunal on the basis of the decision of the High Court in LPA No.1971/2006 decided on 1st October, 2007 holding that MTNL/respondent was justified in initiating disciplinary action against the petitioner under

4. Rule 5(43) of MTNL (Conduct, Discipline & Appeal) Rules, 1998. Rule 5(43) of MTNL (Conduct, Discipline & Appeal) Rules, 1998 is as under:

43. Any misconduct committed by an employee in previous organization and if the organization refers the case of MTNL, it will be taken cognizance of and disciplinary action will be taken in spite of the clearance given by that organization at the time of his/her resignation or relieving. It may also be ensured that the previous organization where an employee has committed the misconduct, lends all cooperation to MTNL in this regard.

While repelling the contention of the petitioner it was also noticed that the entire contract of service in relation to the petitioner was taken over by the MTNL respondent on the date of his absorption on 1st October, 2000.

5. The learned counsel for the petitioner has contended that the disciplinary proceedings could not be initiated against the petitioner as the misconduct had been committed four years prior to his retirement. The said plea has already been repelled on the ground that the respondent retired from the service much after the chargesheet was issued to him and consequently the disciplinary proceedings could continue against the petitioner. No cogent ground has been raised by the learned counsel for the petitioner to differ with the findings of the Tribunal

6. The emphasis of the learned counsel for the petitioner is also that CCS Pension Rules, 1972 do not apply to the employees of respondent MTNL. The plea of the petitioner is not sustainable as the respondent MTNL has categorically asserted in the counter affidavit that CCS (Pension) Rules, 1972 had been adopted by MTNL. Even before the Tribunal the counsel had conceded that under CCS (Commutation of Pension) Rules, 1981 petitioner is not entitled for commutation of pension on account of pendency of departmental proceedings. Therefore, even on this ground the order of the Tribunal impugned before us cannot be faulted.

7. Next, the learned counsel for the petitioner has relied on Rule 37A sub Rule 24(c) of CCS Pension Rules. Perusal of the said rule reveals that it is not applicable in the case of petitioner as it contemplates the misconduct after absorption in an autonomous body. Admittedly the departmental proceedings pending against the petitioner for the misconduct is prior to his absorption on 1st October, 2000. The relevant rule 37A(24)(c) is as under:

(c) the dismissal or removal from service of the Public Sector Undertaking or Autonomous Body of any employee after his absorption in such undertaking or

body for any subsequent misconduct shall not amount to forfeiture of the retirement benefits for the service rendered under the Government and in the event of his dismissal or removal or retirement, the decisions of the undertaking or body shall be subject to confirmation by the Ministry Administratively concerned with the undertaking or body.

8. It is apparent that a part of the pension and the gratuity of the petitioner has been withheld not on account of any misconduct attributable to the petitioner after his absorption on 1st October, 2000 and consequently on the basis of the said rule petitioner is not entitled for release of his full pension and the gratuity.

9. The learned counsel for the petitioner has not been able to canvass successfully that CCS (Pension) Rules are not applicable to the petitioner despite adoption of the said rules by MTNL. If the rules are applicable then under Rule 9 the power is with the authorities to withhold pension and gratuity, if an employee is found guilty of grave misconduct or negligence in the departmental and judicial proceedings, during the period of service and thus the respondents are justified in withholding the pension and gratuity of the petitioner till the decision of the departmental proceedings. Consequently, in the facts and circumstances there are no grounds to interfere with the order of the Tribunal. There is no irregularity or illegality which will entail interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition is, therefore, without any merit and it is dismissed.