
(2019) 03 CAT CK 0047
In the Central Administrative Tribunal
Case No : Application No. 3910 Of 2016

Syed Sagar Ali

APPELLANT

Vs

Govt. Of India, Through Secretary

RESPONDENT

Date of Decision : 08-03-2019

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 5(2), 13(1)(d)
Indian Penal Code, 1860 — Section 120B, 498A
Payment Of Gratuity Act, 1972 — Section 1, 4, 6
Code Of Criminal Procedure, 1973 — Section 302
Central Civil Service (Pension) Rules, 1972 — Rule 9, 9(2)(b)(ii), 39, 69
Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 16

Citation : (2019) 03 CAT CK 0047

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Advocate : Pragnya Routray, Shamsuddin Khan

Final Decision : Dismissed

Judgement

1. The applicant was serving as a Binder in one of the Government Presses at Aligarh under the Ministry of Urban Development. He was detained by the Police under a criminal case on 19.01.2009. Thereafter he was put under police custody and a case under Section 302 Cr. PC was filed against him wherein he was convicted by the trial court vide orders dated 20.06.2011. While under custody, he was treated to be deemed suspended w.e.f. 16.02.2009. His normal date of superannuation was 31.12.2010 and accordingly he superannuated while still being under deemed suspension and while still being under custody.

2. The said conviction by the trial court has since been challenged by the applicant in the Hon'ble High Court of Allahabad (Criminal Appeal No.3989/2011). The Hon'ble High Court was pleased to grant him bail vide orders dated 14.02.2012.

3. The applicant pleaded that no departmental charge-sheet was ever issued to

him. At the time of his superannuation GPF dues, Group Insurance and provisional pension have been paid. However, the gratuity, leave encashment and commutation of pension have not been allowed. The applicant made representation vide his letter dated 27.11.2013. It was replied by the respondents vide their letter dated 11.12.2013 and he was advised that the gratuity, commutation and other benefits have been withheld as per Rule 69 (c) of the CCS (Pension) Rules, 1972 due to the pendency of the criminal proceedings. He made another representation on 19.05.2015. It was again advised that the same are held up due to court case under Rule 69 of the CCS (CCA) Rules, 1972 and payment would be possible after the court judgment only.

4. Feeling aggrieved, the instant OA has been filed seeking relief in the form of direction to release full pension, commutation, leave encashment and gratuity along with interest. No interim relief was sought.

5. The applicant relied upon a judgment by the Tribunal in OA No.4441/2013 which was decided on 15.10.2014. In this case a similar question has arisen for adjudication and relief was allowed. The Tribunal had, in turn, relied upon a judgment by the Hon'ble High Court of Delhi in *Tulsi Ram Arya v. Chairman, DVB*, W.P. (C) No.618/2001, which was decided on 31.01.2013 (please see para 6 (vi) below).

6. The question under adjudication with the Tribunal and the decision thereupon are reproduced below:

"4. The short question raised in this OA is that whether the judicial proceedings referred in Rules 9 and 69 of the CCS (Pension) Rules, 1972 and Rule 39 of the CCS (Leave) Rules, 1972 pendency of which empowers the employer to withhold the Pension, Gratuity and Leave Encashment of a retired employee, are of any judicial proceedings pending against the employee or should be, in the event of ending in holding the employee guilty cause pecuniary loss to the Government and cause to hold the employee guilty of grave misconduct or negligence during the course of his service.

xxx xxx xxx

15. In view of the categorical finding by the Hon'ble High Court of Delhi, the contention of the respondents that they are empowered under the rules to withhold the retiral benefits of the applicant though the judicial proceedings pending against him are unconnected with the performance of his duties as an employee, is untenable and accordingly rejected. Further, it is also not the case of the respondents that if the applicant is found guilty in the judicial proceedings pending against him that any pecuniary loss would be caused to the government or that it will cause them to punish the applicant for a grave misconduct or negligence. For this reason also, the impugned action is unsustainable.

16. In the circumstances, the OA is allowed, and the respondents are directed to release all the retiral benefits of the applicant within eight weeks from the date of

receipt of this order. The applicant is also entitled for interest on the arrears of retiral benefits at the GPF rates of interest. In the circumstances, with effect from 18.12.2013, i.e., the date of filing of the present OA, till the date of actual payment of the same to the applicant. No order as to costs"

6. The applicant also relied upon a catena of other judgments as under:

i) Anil Kumar Sharma v. Chairman & Managing Director, National Fertilizers Limited, [2011 X AD (DELHI) 139]. In this case the Hon'ble High Court has held that the retiral dues or any withholding thereof is to be governed as a result of departmental enquiry and not on account of criminal proceedings. The relevant part of this judgment is reproduced below:

"9. The Courts are time and again faced with the cases where they have to judge that whether the departmental enquiry should be stayed while the criminal proceedings on the same charges are in progress and the settled position is that the two can go on simultaneously and there can be no straitjacket formula for determining as to in which cases the departmental enquiry should be stayed and hence depends on facts and circumstances of each case. It is also a settled legal position that the result of the criminal trial is not binding on the departmental enquiry and the decision in the two have to be according to its own procedure. There are cases where the Apex Court has held that acquittal in a criminal trial would not lead to immediate reinstatement and it is the departmental proceedings on which the decision regarding to the reinstatement, etc would depend. (State vs. G.Prem Raj (2010)1SCC398). Hence it is quite manifest that the outcome of the departmental enquiry would govern the conditions of employment. The conditions of service and retiral benefits are dependant upon the findings of the enquiry conducted by the department and not by the criminal proceedings. It has also been held time and again that the retiral benefits like pension, gratuity or leave encashment are not bounty or grace but are earned by the employee through the years of service of a company. They are an employee's security after retirement and is something he can fall back on after his permanent source of income has ceased to exist and they cannot be withheld if he has come clean in any enquiry conducted against him. Hence, in the facts of the present case, the exoneration in departmental proceedings is reason enough for the respondent to release the dues of the employee. As far as the criminal proceedings are concerned, it is not only that the petitioner is facing the same but the proceedings are against the respondent corporation and a lot of other employees of the corporation and the fate of the case on merits would be decided by the concerned criminal court and the respondent cannot be heard to say that till the time of pendency of the criminal case, the retiral benefits cannot be released."

ii) GNCTD of Delhi & Anr. v. K. Srivatsan, [2012 LAB.I.C. 3069]. In this case also the applicant was not paid the retiral dues. There was no departmental charge-sheet issued. Accordingly, the Hon'ble High Court had observed that since the departmental charge-sheet has not been issued, it is to be taken that there has

been no departmental proceedings pending. Further, since a long time has already elapsed, no departmental proceedings can now be initiated either. Accordingly, the Hon'ble High Court has held that the retiral dues are required to be released. The relevant part of the judgment is reproduced below:

"8. In the present case, we are not concerned with the first instance inasmuch as there is an order of suspension. In the other two eventualities, we find that the common feature is that there must be a statement of charges which is issued to the Government servant or pensioner. Unless and until the statement of charges is issued, the deeming provision that the departmental proceedings shall be deemed to have been instituted on the date on which the Government servant had been placed under suspension on the date prior to the date of the issuance of the statement of charges would not at all be invoked. In the present case, we find that no statement of charges has been issued to the respondent till date. We may also point out that, as more than four years have elapsed since the date on which the event took place, there cannot now be any institution of departmental proceedings itself. This is because of the provisions of Rule 9(2)(b)(ii) of the said Rules mentioned above."

iii) Y.K. Singla v. Punjab National Bank and Others, [(2013) 3 SCC 472]. This was a case wherein it was alleged that a bank employee had entered into a conspiracy with another bank employee. As a result of this conspiracy certain fraud took place and he was charged under Section 120-B IPC and under Section 5 (2) read with Section 13 (1) (d) of Prevention of Corruption Act. During the trial of this case in the criminal court, bank employee had superannuated. The gratuity was not paid at the time of superannuation pending culmination of criminal trial. Eventually, the said employee was acquitted by the court of law. It was held that the interest shall have to be paid on the amount of gratuity which was released after delay.

iv) Tulsi Ram Arya (para-5 supra). This is the judgment that has been relied upon by the Tribunal while deciding OA No.4441/2013 (para-5 supra). In this case the retiral benefits were withheld pending a criminal case. This criminal case was under Section 498-A of IPC. The Hon'ble High Court held that the case has nothing to do with the departmental discharge of his duties. Accordingly, it was ordered that the retiral benefits be released. Once learned Single Judge Bench had delivered this judgment, the department had filed LPA with the Division Bench. The Division Bench had considered the matter and upheld the decision by the learned Single Judge. The relevant parts of this judgment are reproduced below:

1. By this writ petition, the petitioner who is a retired employee of the Delhi Vidyut Board, seeks release of the part of the terminal benefits which were not paid to the petitioner on account of a criminal case under Section 498A of Indian Penal Code, 1860 (IPC) pending against the petitioner. The petitioner also prays that besides the terminal benefits which have to be released to him, the petitioner be also paid all terminal benefit amounts which have been retained.

xxx xxx xxx

"4. When we read sub Rule 1 of Rule 9 it becomes clear that entitlement to withhold pensionary benefits or other terminal benefits as stated in Rule 9 only arises if "pecuniary loss is caused to the Government", and that too on account of "the pensioner is found guilty of grave misconduct or negligence during the period of service". A reading of this sub-Rule 1 of Rule 9 makes it clear that object of withholding of pensionary benefit is for adjusting the pecuniary loss caused to the employer on account of grave misconduct or negligence of the employee while performing his service. Therefore, the departmental proceedings or judicial proceedings which are talked of under Rules 9 and 69 are such departmental proceedings or judicial proceedings wherein after adjudication against the employee, if he is found guilty of grave misconduct or negligence which causes pecuniary loss to the employer, only then the employer would be entitled to adjust the same from the pensionary benefits to the employee.

5. Admittedly in the present case, there is no charge of misconduct or negligence of the petitioner in the performance of his service with the employer. The criminal case which is pending against the petitioner is under Section 498A IPC and therefore nothing to do with any misconduct of the petitioner performing service as an employee of the employer. Therefore, there does not arise any issue of pecuniary loss to the employer/DVB/BYPL on account of the judicial proceedings/criminal case going on against the petitioner.

xxx xxx xxx

8. In view of the above, writ petition is allowed. The respondent No.3 is directed to release all the service dues of the petitioner including dues towards terminal benefits payable to the petitioner. Service benefits to the petitioner including the pensionary benefits will include necessary amounts which would be payable to the petitioner in accordance with law and the petitioner would be entitled to any enhancement in scale of pay or enhancement on account of promotions or any other consequential service benefits due to the services rendered by the petitioner with the erstwhile DVB. The petitioner will also be entitled to interest at the rate of 9% per annum simple from the date of filing of this petition till the entire monetary benefits in terms of today's judgment are paid to the petitioner."

v) Sushil Kumar Gupta v. Chairman, ECPF and Gratuity Trusts & Anr., [2014 (144) DRJ 237]. In this case, certain allegations of losses were raised against an employee but the same were not carried forward by way of issuing a departmental charge-sheet. It was held by the Hon'ble High Court that unless the departmental charge-sheet is issued, the retiral dues cannot be withheld. The relevant parts of this judgment are reproduced below:

"6.4 Clearly, in the instant case, neither was the petitioner terminated from service nor, has the petitioner been found to have committed any wilful act of omission or negligence causing loss or damage or even destruction of property belonging to the society. There were only allegations of loss made at the time of

suspension of the petitioner, which were not carried forward by way of departmental proceedings. The fact that, criminal proceedings are taken out will not enable respondents to withhold gratuity, at least, at this stage. In addition Rule 11(b) requires quantification of damage or/ loss or extent of damage caused before forfeiture can be undertaken.

xxx xxx xxx

7. This brings me to the relief sought for by the petitioner with regard to the payment of interest on the employer's contribution to CPF and gratuity. In my view, interest with effect from the date of superannuation i.e., 28.02.2009 should be paid to the petitioner at the rate of 9% p.a. (simple). It is ordered accordingly.

7.1 As to the last relief, which is for, payment of interest on employee's contribution to CPF. In my view, interest at the rate of 9% p.a. (simple) should suffice on the principle of parity for the actual period during which payment was delayed. It is ordered accordingly.

8. With the aforesaid directions in place, the captioned petition is disposed of. Parties will, however, bear their own costs."

vi) National Fertilizers Ltd. v. Ashok Kumar Ahluwalia, [222 (2015) DLT 542 (DB)]. In this case certain criminal charges were laid against an employee. Thereafter, a criminal case as well as departmental case was initiated. Later on, the departmental proceedings were dropped. Meanwhile, the said employee superannuated. On account of pending criminal case, the gratuity and leave encashment was not released. This matter was agitated before the Hon'ble High Court. The Hon'ble High Court decided that gratuity needs to be released. This decision was challenged by the department before a Division Bench. The Division Bench upheld the decision by the learned Single Bench. The relevant parts of this judgment are reproduced below:

"2. While in service the respondent was served with a charge sheet in June, 2004 but proceedings thereto were dropped by the Competent Authority on May 04, 2006. It appears that the reason was that the respondent was facing a criminal prosecution concerning the same acts of omission and commission alleged against him in respect of which departmental proceedings were initiated.

3. As on the date of his superannuation the criminal proceedings were pending against the respondent.

4. Leave encashment and gratuity payable by the appellant to the respondent became a bone of contention resulting in the respondent filing W.P.(C) No.337/2014 which has been allowed by the learned Single Judge vide impugned judgment dated April 24, 2014.

5. As regards leave encashment, the view taken by the learned Single Judge is that unless a rule exists to withhold leave encashment pending trial of an employee of the appellant before a criminal court, the leave encashment cannot

be denied. No rule being shown, direction issued is that the appellant should encash the leave lying to the credit of the respondent on the date of superannuation and pay the money equivalent.

6. The appellant does not challenge said part of the impugned order.

xxx xxx xxx

11. As per sub-Section 1 of Section 4 of the Payment of Gratuity Act, 1972, gratuity is payable to an employee on termination of his employment if continuous service for not less than 5 years is rendered on superannuation, retirement or resignation or death or disablement due to accident or disease. Sub-Section 6 of Section 4 reads as under:-

"4(6) Notwithstanding anything contained in sub-Section (1) -

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer? shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee may be wholly or partially forfeited -

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him the course of his employment."

12. The learned Single Judge is therefore right in adopting the reasoning that unless sub-Section 6 of Section 4 comes into play, gratuity has to be paid.

13. A perusal of sub-Section 6 of Section 4 would evince that termination of the service is a sine qua non to withhold gratuity. Further, the termination has to be for any act, wilful omission or negligence causing damage or loss or destruction of property belonging to the appellant or on account of riotous, disorderly conduct, violence or an act of moral turpitude.

14. Thus, the act does not permit withholding of gratuity if an employee superannuates, and it is irrelevant whether on said date criminal proceedings are pending. We leave the question open as to what would be the legal position if an employee superannuates from service but prior thereto has been held guilty by a criminal court and the guilt relates to an act of omission or commission causing loss to the employer."

7. In view of the foregoing, the applicant pleaded that in his case, no departmental charge-sheet was ever issued. Moreover, the criminal case in question does not relate to his official duties. In this connection, the applicant brought out that while he was posted at Aligarh, he used to reside in his private accommodation. It was an incident with his neighbour, totally unconnected with

the departmental discharge of duties, which had led to the said criminal case under Section 302 Cr. PC. The relevant CCS (Pension) Rules, 1972, which govern the release of retiral dues, are also in the context that if department has to make certain recoveries, the same may be adjusted out of the retiral dues. In the instant case, there is no such recovery ever to be made as a result of the said criminal case and especially since the department has not issued him any departmental charge-sheet.

8. The respondents opposed the OA. It was brought out that the retiral dues are governed by Rule 69 of the CCS (Pension) Rules, 1972. The relevant parts are reproduced below: "69. Provisional pension where departmental or judicial proceedings may be pending

(1) (a) In respect of a Government servant referred to in Sub-Rule(4) of Rule 9, the Accounts Officer shall authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant, or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorized by the Accounts Officer during the period commencing from the date of retirement up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the Competent Authority.

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon:

Provided that where departmental proceedings have been instituted under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, for imposing any of the penalties specified in Clauses (i), (ii) and (iv) of Rule 11 of the said rules, the payment of gratuity shall be authorized to be paid to the Government servant.

(2) Payment of provisional pension made under Sub-Rule (1) shall be adjusted against final retirement benefit sanctioned to such Government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period."

8.1 In respect of leave encashment, the instant Rules were quoted:

"3. When an employee retires on superannuation while under suspension or while disciplinary or criminal proceedings are pending against him, the whole or part of cash equivalent of leave salary may be withheld to meet recoveries from him possibly arising on conclusion of the proceedings. On conclusion of the proceedings, payment may be released after adjustment of Government dues, if any;"

(Reference Swamy's Hand Book, 2009)

8.2 In respect of commutation of pension, the following rules were quoted:

"4. Restriction on commutation of pension No Government servant against whom departmental or judicial proceedings, as referred to in Rule 9 of the Pension Rules, have been instituted before the date of his retirement, or the pensioner against whom such proceedings are instituted after the date of his retirement, shall be eligible to commute a percentage of his provisional pension authorised under Rule 69 of the Pension Rules or the pension, as the case may be, during the pendency of such proceedings.

5. Limit on commutation of pension

(1) A Government servant shall be entitled to commute for a lump sum payment of an amount not exceeding forty percent of his pension.

(2) In an application for commutation in Form 1 or Form 1-A or Form 2, as the case may be, an applicant shall indicate the fraction of pension which he desires to commute and may either indicate the maximum limit of forty percent of pension or such lower limit as he may desire to commute.

(3) If percentage of pension to be commuted results in fraction of a rupee, such fraction of a rupee shall be ignored for the purpose of commutation.

(Reference Swamy's Hand Book, 2009)

8.3 It was pleaded that the applicant has been convicted under Section 302 of Cr. PC by the trial court. Even though Hon'ble High Court has granted bail but the conviction has not been suspended and the case is at present sub-judice in the Hon'ble High Court. In view of specific provisions in respect of gratuity and pension, since judicial proceedings are still pending, the same cannot be released. Similar pleadings were made in respect of leave encashment also.

9. It was further pleaded that the case relied upon by the applicant in Tulsi Ram Arya (para 6 (iv) supra), which was relied upon by the Tribunal in OA No.4441/2013 (para-5 supra) was in the context of a criminal case under Section 498-A whereas in the instant case the judicial case pending is under Section 302 Cr. PC which is a much more serious offence.

10. Accordingly, it was pleaded that the OA is not maintainable and the same is required to be dismissed.

11. The matter has been heard at length. Ms. Pragnya Routray, learned counsel represented the applicant and Ch. Shamsuddin Khan, learned counsel represented the respondents.

12. The facts of this case are not in doubt. The applicant was taken into custody by the police under Section 302 Cr. PC. Thereafter, he was deemed suspended and superannuated on 31.12.2010 while still being suspended and in custody. The respondents confirmed in the hearing on 20th February, 2019 that neither

the suspension has been revoked nor a departmental charge-sheet has been issued so far. It was during such period of custody and deemed suspension that the applicant superannuated on 31.12.2010. Gratuity and leave encashment were withheld and he has been sanctioned provisional pension only.

13. It is also admitted that the criminal case is not in relation to the discharge of his official duties. As such, his eventual conviction or otherwise, is not going to lead to a situation where the department has to make any recoveries to make good the losses suffered by the department due to certain malfeasance in discharge of his official duties on the part of the applicant. The relevant rules in respect of leave encashment make it very clear that payment may be released after adjustment of government dues (para 8.1 supra). The proviso under Rule 69 (c) of the CCS (Pension) Rules, 1972, which deals with the payment in respect of gratuity, also clearly specify that gratuity can be withheld in cases where the departmental proceedings have been instituted and the nature of the departmental proceeding is such where any of the penalties specified in clauses (i) (ii) & (iv) of Rule 11 of the said Rules is likely (para 8 supra). These punishments are censure, withholding of his promotion and withholding of increments of pay. In the instant case, a charge-sheet has not been issued so far. A time period of more than 08 years has also elapsed from applicant's superannuation.

14. In view of the conspectus of this case, various judicial pronouncements (para- 5&6 supra) and the context of CCS (Pension) Rules, 1972, which govern retiral dues, withholding of these dues is permissible only if certain action on the part of the employee has caused certain losses to the department and the department is intending to make good such losses by way of recovery from gratuity and leave encashment. However, for recovering these losses, a departmental charge-sheet is required to be issued.

15. In the instant case, neither such a departmental charge-sheet has been issued nor has the department brought out that they had suffered any loss due to any action on the part of applicant in his official duties. The pending criminal case is in his personal capacity which has nothing to do with the departmental discharge of his duties.

16. In view of the foregoing, the plea of the applicant is finding acceptability. Accordingly, the respondents are directed to release the gratuity, leave encashment, full pension as well as commutation of pension as requested by (OA No.3910/2016) him, as these dues are already sanctioned but are withheld due to ongoing criminal case, within a period of three months. In case, these retiral dues are not paid in this time, the same shall also carry interest at GPF rates, from the date of applicant's superannuation till the same are paid. The OA is allowed, as above.

There shall be no order as to costs.