

(2021) 01 CAT CK 0038

In the Central Administrative Tribunal

Case No : Original Application No. 1961 Of 2020

Yashwant Singh

APPELLANT

Vs

Mahanagar Telephone Nigam Limited

RESPONDENT

Date of Decision : 13-01-2021

Acts Referred:

Indian Penal Code, 1860 — Section 34, 406, 498A
Central Civil Services (Pension). Rules, 1972 — Rule 9(4)
Bihar Pension Rules, 1950 — Rule 43(b)

Citation : (2021) 01 CAT CK 0038

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

Bench : Single Bench

Advocate : Kunal Malik

Final Decision : Dismissed

Judgement

Aradhana Johri, Member (A)

1. The applicant was Phone Mechanic (PM-1829), who retired provisionally w.e.f. 30.09.2018. At that time criminal proceedings under Section

406/498A/34 were pending against him.

2. The applicant has filed this case for release of retirement benefits to him. He has cited two decisions of the Hon'ble Supreme Court in the case

of S.K. Dua vs. State of Haryana and Anr. [2008 (3) SCC 44] dated 09.01.2008 and Hira Lal vs. The State of Bihar [Civil Appeal No.1677-1678

of 2020 decided on 18.02.2020].

3. The pendency of criminal proceedings is an admitted fact. Due to this he is covered under Rule 9(4) of CCS (Pension) Rules, 1972, which clearly

states the following:-

â??(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 is provided in Rule 69 shall be sanctioned.â??

4. In the case of S.K. Dua vs. State of Haryana and Anr. (supra), the Honâ??ble Apex Court did not give a final decision but remitted the matter

to the Honâ??ble High Court to consider it on merits and pass an appropriate order in accordance with law. The applicant has not filed any

subsequent orders of the Honâ??ble High Court in this matter, therefore, no benefit can be extended to him from this decision which simply directs

the Honâ??ble High Court to consider the matter.

5. The second case, that of Hira Lal vs. The State of Bihar (supra) pertains to the Bihar Pension Rules 1950, which are different to the CCS

(Pension) Rules, 1972. Since Rule 43 (b) of the Bihar Pension Rules provided that the State Government was empowered to withhold or withdraw the

whole or part of the amount of pension, permanently or for a specified period, if the pensioner was found to be guilty of grave misconduct in any

departmental or judicial proceeding, or to have caused pecuniary loss to Government by misconduct or negligence, during the tenure of his service.

The Honâ??ble Apex Court held that by executive orders the applicant had been deprived of pension whereas the rules had provided that only in the

case of being found guilty could the pension be withheld. This is clearly not applicable in this case since the CCS (Pension) Rules speak of the

institution or continuance of judicial or departmental proceedings. This has also been noted in the order of the respondent dated 09.09.2019

(Annexure A-9) by which the retirement dues have been withheld.

6. In light of the clear position of the rules which are squarely attracted in this case, the OA is without merit and is dismissed at the admission stage

itself. There shall be no order as to costs.