

(2010) 09 DEL CK 0431

Delhi High Court

Case No: Writ Petition (C) 13191 of 2009

Lakhminder Singh Brar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Sept. 16, 2010

Acts Referred:

- Central Civil Services (Classification, Control and Appeal) Rules, 1965 - Rule 11, 16
- Central Civil Services (Pension) Rules, 1972 - Rule 69, 69(1), 69(2), 9, 9(1)
- Constitution of India, 1950 - Article 226
- Penal Code, 1860 (IPC) - Section 420, 468, 471

Citation: (2010) 173 DLT 421 : (2010) 127 FLR 1077

Hon'ble Judges: Pradeep Nandrajog, J; Mool Chand Garg, J

Bench: Division Bench

Advocate: Jasvinder Kaur, for the Appellant; Rattan Lal, for R-2 and 3, for the Respondent

Final Decision: Dismissed

Judgement

Mool Chand Garg, J.

The short point involved in this matter which the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "the Tribunal") was confronted with in O.A. No. 1991/2007 was: "whether the respondents were right in granting only the provisional pension to the petitioner instead of regular pension on account of the pendency of Criminal Appeal against his acquittal." The Tribunal has answered this question against the petitioner and that is why the petitioner is before this Court.

2. To appreciate the controversy, we may pen down a few facts. The petitioner superannuated from service on 30.09.2007 as Assistant Commissioner of Police. Instead of fixing his regular pension after his retirement, the respondent sanctioned only provisional pension vide order dated 18.10.2007. Even though, no departmental inquiry was pending against him. It is however relevant to note that

the petitioner was summoned by the Economic Offences Wing of Delhi in FIR 190/2002 under Sections 420, 468, 471 IPC, PS New Friends Colony, pertaining to possession and ownership of some land. He was arrested and was released on bail by the learned Metropolitan Magistrate on 09.4.2004 by a speaking order. The applicant resumed duty immediately after grant of bail and was transferred to 5th Battalion. He was placed under suspension. The petitioner faced full-fledged trial and was ultimately acquitted by the learned Metropolitan Magistrate. Despite being acquitted, the respondent issued order dated 05.04.2006 for continuation of suspension on the ground that a Criminal Misc. Appeal was preferred against the order of acquittal.

3. The petitioner assailed the aforesaid order in OA No. 1037/2006 before this Tribunal which was allowed vide order dated 28.09.2006 wherein the respondent had stated that they were not contemplating any departmental enquiry against the petitioner after acquittal of the petitioner in the criminal case. After quashing of the impugned suspension order, the petitioner was reinstated in service. However, the period of the suspension was not regularized. The grievance of the petitioner is that since there was no departmental enquiry initiated by the respondents against the applicant, his period of suspension should have been regularized and regular pension should have been sanctioned instead of the provisional pension as has been sanctioned in this case.

4. According to the petitioner, the order passed by the Tribunal is contrary to law inasmuch as, there is no Rule or Regulation whereunder the respondents could have withheld retirement benefits including fixation of regular pension of the petitioner on account of pendency of criminal appeal against his acquittal. In this regard he relied upon a decision of the co-ordinate bench of the Tribunal delivered in O.A. No. 1037/2006 in the matter of Lakhminder Singh Brar v. Union of India and Ors. where, after acquittal of the petitioner in a criminal case, taking into consideration the contemplation which the respondents were considering with regard to filing of a revision/appeal against the order of acquittal the Tribunal in its order dated 28.09.2006 observed:

12. Respondents may feel that they have a good case to file revision or appeal against the said order but merely because they think the order passed by the learned Metropolitan Magistrate is bad in law, it does not make the order passed by the Trial Court bad in law unless it is reversed or some other contrary orders are passed by the Hon"ble High Court of Delhi. Similarly, merely filing of an appeal would not wipe out the order passed by the learned Metropolitan Magistrate.

5. The petitioner also made similar submissions relying upon a decision given in W.P.(C). 13415/2006 before this Court where the issue was of denying permission to the petitioner to go abroad in spite of acquittal in the criminal case and on account of filing of an appeal against acquittal where the impugned action was held to be bad in law and the application of the petitioner to go abroad was allowed. It has

been strongly contended by the petitioner that the order of acquittal is final unless it is reversed in appeal and in support of this proposition, the learned Counsel relied upon the case of [Narayana Prabhu Venkateswara Prabhu Vs. Narayana Prabhu Krishna Prabhu \(Dead\) by L. Rs.](#), wherein it has, inter alia, been observed that:

Grant of certificate of fitness to appeal against the decree does not take away the finality of the decision.

6. However, as far as the respondents are concerned, they have opposed the prayers made by the petitioner relying upon a full bench judgment of the Allahabad High Court delivered in the case of [Shyam Sunder Lal Vs. Shagun Chand](#), where relying upon a Supreme Court judgment delivered in the case of [Garikapatti Veeraya Vs. N. Subbiah Choudhury](#), it was observed that even pendency of a criminal appeal is a pendency of a judicial proceedings during which the petitioner is only entitled to provisional pension in view of Rule 69 of the CCS (Pension) Rules (for short "Pension Rules") and the question of grant of regular pension would arise only after conclusion of criminal proceedings against the petitioner.

7. It would be appropriate to take note of Rule 69 of the Pension Rules which reads as under:

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.

8. At this juncture it would also be relevant to take note of Rule 9(1) and 9(4) of the Pension Rules which read as under:

9. Right of President to withhold or withdraw pension:

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement.

(2) & (3). xxxxx

(4) In 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.

9. It is not in dispute that provisional pension has been granted to the petitioner inasmuch as a criminal appeal filed by the respondents against the order of acquittal is pending.

10. As regards the gratuity Rule 69(c) of the Pension Rules provides that:

(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.

11. Moreover, Rule 69(2) of the Pension Rules reads as under:

(2) Payment of provisional pension made under Sub-rule (1) shall be adjusted against final retirement benefits 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.

12. Taking note of the aforesaid provisions, the Tribunal rightly observed that in a case where any departmental or judicial proceedings are pending against a Government servant, he would be entitled to provisional pension only to be adjusted under Sub-rule (2) of the Rule 69. The competent authority is required to pass order for regular pension only upon conclusion of these proceedings. It is, no doubt, true that the order of acquittal is final unless it is reversed in appeal. Nevertheless, an appeal against the order of acquittal would be in continuation of the judicial proceedings pending against the Government servant within the contemplation of Rule 9 of Pension Rules. It cannot be said that the pendency of the criminal appeal against the order of acquittal of the petitioner would not amount to judicial proceeding under Rule 69 read with Rule 9 of Pension Rules, notwithstanding the fact that an order of acquittal is effective and final until it is reversed in appeal. The consideration that matter in the case of suspension are

different from those that may be relevant in the matter of grant of pension, be it provisional or a regular one. Grant of pension is regulated by relevant rules. As such, the cases relating to suspension as are relied upon by the petitioner's counsel are distinguishable and are not of any help in so far grant of pension is concerned.

13. Accordingly, the Tribunal dismissed the Original Application filed by the petitioner. We find that the order passed by the Tribunal is in accordance with law and does not call for any interference by us in these proceedings under Article 226 of the Constitution of India.

14. Accordingly, the writ is dismissed with no orders as to costs.