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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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W.P.(C) 2316/2015

Reserved on : 10th May, 2016

Date of decision: 5th August, 2016

UNION OF INDIA & ORS

..... Petitioner

Through: Dr. Vikrant Naryan Vasudev,
Advocate.

Versus

RAJ BAHADUR

.... Respondent

In person.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J.:

The Union of India by this writ petition, impugns the order dated 21st August, 2014, passed by the Principal Bench of the Central Administrative Tribunal, New Delhi, whereby OA No.3815/2013 filed by Raj Bahadur, the respondent herein, has been partly allowed with the direction that the period of suspension of the respondent from 25th August, 2010 to 31st March, 2012, when the respondent retired, would be treated as spent on duty and would thus regulate consequential and terminal benefits payable to the respondent.

2. The respondent, an Income Tax Officer, was placed under deemed suspension by order dated 30th August, 2010 with effect from 25th August, 2010, passed in terms of sub-rule (2) to Rule 10 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 (Rules, for short). It is an

accepted position that the respondent was arrested and detained for a period of more than 48 hours by the Central Bureau of Investigation (CBI) and is facing prosecution in a trap case under the provisions of Prevention of Corruption Act, 1988. The respondent is also facing prosecution under Section 25 of the Arms Act, 1959 in Criminal Case No.197/2010. The two prosecutions are pending and have not been decided. The suspension of the respondent was extended by subsequent orders dated 18th November, 2010, 31st May, 2011, 18th August, 2011 and 23rd November, 2011, till the respondent had superannuated on 31st March, 2012. On retirement, the respondent is being paid provisional pension.

3. The respondent had filed appeals under Rule 23(i) of the Rules for revocation of his suspension, which were dismissed vide order dated 4th October, 2012.

4. Aggrieved, the respondent filed the aforesaid OA praying for the following reliefs:-

“8. RELIEFS SOUGHT

In view of the facts mentioned in para 4 above and also in view of the Grounds mentioned in para 5 above, the Applicant prays for the following Reliefs (s):-

- I. To quash the Appellate Order dated 04.10.2012 passed by the Appellate Authority vide its endorsement No. F.No.C-14011/23/2007-V&L dated 04.10.2012, which is impugned here in with this O.A. by making it as its Annexure No.A-1. In this connection it is mainly prayed that the Deemed Suspension or Suspension order may be declared as Non-est or Lapsed/Disappeared on account of the retirement of the applicant respectfully, on his superannuation, as per provisions of the law of land.

- II. To quash the Order F.No.CIT/DDN/CON./ Complaint/2010-11 [sic.] dated 30.08.2010 passed by the Commissioner of Income Tax, Dehradun to place the applicant under Deemed Suspension w.e.f. from 25.08.2010, which has been impugned through this O.A. by making its Annexure No.A-2. After quashing the aforesaid both Orders, the respondents may kindly be directed to Award/or to Grant all the Consequential Benefits to the applicant by Treating the applicant as on Duty during the period of his suspension i.e. during the period w.e.f. from 25.08.2010 to 31.03.2012.
- III. To Quash the Order F.No.CIT/DDN/Acctt.- 2(21)/2011-12, dated 31.03.2012 passed the Commissioner of Income Tax Dehradun, retiring the Applicant under the state of suspension from 31.3.2012 i.e. from the date of the applicant's superannuation and the respondents may kindly be directed or the Decree for declaration be made in this applicant's favour declaring him to be continued in Government's service and that he be entitled to monthly payment of subsistence allowance instead of the Provisional Pension, beyond the 31st of March, 2012 i.e. from the date on which (sic) the applicant was retired from Govt. service under the state of suspension, on attaining the age of superannuation.
- IV. To issue a writ in the nature of mandamus to the respondents to treat the period of suspension of the petitioner from 25.08.2010 to 31.03.2012 as on duty and regulate his Consequential and other terminal benefits accordingly.
- V. To issue an order or direction as this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the present case.
- VI. To Award the cost of the present Original Application to the applicant."

5. The Tribunal, for partly allowing the aforesaid OA, has relied upon Rules 23, 69, 49(2)(a) and 34 of the CCS (Pension) Rules, 1972 and Fundamental Rule 54-B(1) and held as under:-

“21. The aforesaid judgments equally apply to the present case wherein the Applicant while under suspension has been, allowed to retire by the Respondents on attaining the age of superannuation without any objection and, therefore, the earlier period of suspension automatically stands revoked and after the relationship of master and servant has ceased to exist, the Respondents have no jurisdiction to pass any further order. Consequently, while the order No.CIT/DDN.ACCTT.-2(21)/2011-12 dated 31.03.2012 passed by the Commissioner of Income Tax Dehradun, retiring the Applicant under the state of suspension from 31.03.2012, i.e., from the date of his superannuation, cannot be faulted and cannot pass any order in his favour declaring him to be continuing in service and that he be entitled to monthly payment or subsistence allowance instead of the provisional pension beyond the said date, as prayed for him, we direct that the Respondents to treat the period of suspension of the Applicant from 25.08.2010 to 31.03.2012 as on duty and regulate his consequential and terminal benefits accordingly.”

6. It is difficult to accept the reasoning given by the Tribunal, which we observe is contradictory. In the immediately preceding paragraph, the Tribunal had referred to the decision of the Karnataka High Court in **R.S. Naik Vs. State of Karnataka and Ors.**, 1982 (1) Karnataka Law Journal 156 and a single Bench decision of this Court in **S.P. Jain Vs. Punjab National Bank and Anr.**, 1993 (25) DRJ 40 to hold that when a government servant under suspension retires on attaining the age of superannuation without any objection, the period of suspension stands automatically revoked and after the cessation of the relationship of master

and servant, the government as an employer has no jurisdiction to pass any further order.

7. This Bench had an occasion to deal with a similar issue in W.P.(C) No.11860/2015, *Union of India & Anr. Vs. S.K. Gupta* and the decision in the case of *R.S. Naik* (supra) was differentiated for it was a pronouncement prior to the coming into force of Rule 4 of the CCS (Commutation of Pension) Rules, 1981. The said case related to an officer of Karnataka Judicial Service, alleged to have been involved in a drunken brawl while travelling in a passenger bus. Pursuant to a complaint, the respondent was placed under suspension. Before his retirement, the State government had accepted the High Court's recommendation that the officer's application for voluntary retirement should be accepted. Thereafter, question arose whether the period during which the officer had remained under suspension could be counted as 'regular service'. The issue related to interpretation of Rule 101 of Karnataka Civil Services Rules, for the said Rule had stipulated that a government servant facing prosecution would not be allowed to retire from service. Albeit, in the said case, the officer had been permitted to retire. The Division Bench of the Karnataka High Court observed that Rule 101 did not contemplate a situation where a government servant was permitted to retire from service in accordance with the law during pendency of a criminal case. In the aforesaid exceptional circumstances, the Division Bench held that there was no alternative but to treat the period of suspension as period spent on duty. Thus, what had weighed with the Court was the applicable rule position and the fact that permission had been granted by the authorities enabling the officer to retire voluntarily.

8. In *S.P. Jain* (supra), the bank officer was charge sheeted vide two separate charge sheets and placed under suspension. Criminal prosecution was also initiated. The officer had thereupon moved the High Court for WP(C) No.2316/2015

stay of the departmental proceedings, which prayer was initially rejected, but later accepted in the Letters Patent Appeal. As a result, the departmental proceedings were directed to be kept in abeyance till the disposal of the criminal case. The departmental proceedings had remained suspended and could not be completed. In the meanwhile, the officer retired on attaining the age of superannuation. Subsequently, the officer was “honourably” acquitted by the Magistrate in the criminal prosecution. Dispute arose with regard to retirement/pension benefits. The officer then filed a civil suit which was dismissed by the Sub-Judge. However, in appeal, the District Judge held that the officer would be entitled to full retirement benefits comprising of provident fund and gratuity. With regard to the period of suspension, it was held that the competent authority should pass an order in terms of Regulation 15.2 of the Punjab National Bank Officer Employees (Discipline and Appeal) Regulations, 1977. Pension, provident fund, gratuity etc. were duly paid. Regarding treatment of the period of suspension under Regulation 15.2, the contention of the employee was that he having been honourably acquitted, Regulation 15.1 and not 15.2 would be applicable. A single judge of this Court considered the decision in *R.S. Naik* (supra), which we have already distinguished above, and referred to *H.L. Mehra vs. Union of India* AIR 1974 SC 1281, to hold that an officer having been allowed to retire on attaining the age of superannuation without any objection, the earlier order of suspension should be treated as automatically revoked. We have reservations on the said ratio. In *H.L. Mehra* (supra), the officer was facing criminal prosecution as well as departmental proceedings. However, the departmental proceedings had proceeded rather desultorily without much progress being made. In the criminal prosecution, the officer had succeeded in appeal before the Supreme Court and his conviction was set aside. Earlier, the officer had been dismissed from service on the ground

that he had been convicted and his further retention in public service was undesirable. This order of dismissal could not be sustained as the officer's conviction had been set aside by the Supreme Court. In the meanwhile, the departmental proceedings were partly revived. In this factual background, question had arisen whether the original suspension order passed before the order of dismissal from service, would stand revived. The Supreme Court observed that the officer had given up his challenge to the continuation of departmental proceedings, and to this extent, the order of the High Court was upheld. Referring to the rule position, it was observed that when the order of dismissal was passed, the order of suspension had ceased to exist and it would not get revived automatically by the subsequent setting aside of the order of dismissal. In the factual matrix, the Supreme Court observed that the inquiry instituted after the acquittal of the officer, related to other issues which were not the subject matter of the earlier inquiry that formed the basis of the original order of dismissal. The second charge sheet related to other subject matters and did not pertain to the earlier allegations. In these circumstances, it was held that Rule 10 (4) would not help to assist the government. We fail to understand how the said ratio and reasoning was applicable.

9. At this stage, we would like to reproduce our reasoning given in ***S.K. Gupta*** (supra) to the following effect:-

9. Sub-Rule (4) to Rule 9 of the Central Civil Services (Pension), Rules, 1972 (hereinafter referred to as '1972 Rules'), 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.”

Sub-rule (6)(b) to Rule 9 of the 1972 Rules, stipulates that “judicial proceedings shall be deemed to be instituted”, for the purpose of this Rule, when:-

*“ 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
(i) in the case of civil proceedings, on the date the plaint is presented in the Court.”*

10. A reading of the aforesaid sub-rule would show that on the date of superannuation the respondent was facing judicial proceedings, which was instituted and pending. It is not the case of the respondent that the Court had not taken cognizance of the report filed by the police officer. In terms of the mandate of sub-rule (4) to Rule 9, we have to make reference to Rule 69 of the 1972 Rules, which reads:-

“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 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.”

11. Rule 69 specifically stipulates that the Accounts Officer shall authorize provisional pension equal to the maximum pension which would be admissible on the basis of qualifying service up to the date of retirement or, in case, the person was under suspension on the date of retirement, up-to the date immediately preceding the date on which he was placed under suspension. The Rule, therefore, states that if a person was under suspension on the date of retirement, the suspension period would not be included in the qualifying service. Clause (c) to sub-rule (1) of Rule 69 states that no gratuity will be payable to the government servant until conclusion of the departmental or judicial proceedings and issue of final orders. Under sub-rule (2), payment of provisional pension is subject to adjustment against final retirement benefits to be sanctioned upon conclusion of proceedings, but no recovery can be made where the pension initially sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

12. On the said aspect, we would also like to refer to Rule 23 on the question of counting of suspension period and determination of pension based upon emoluments. The said Rule reads as under:-

“...23. Counting of periods of suspension

Time passed by a Government Servant under suspension pending inquiry into conduct shall count as qualifying service where, on conclusion of such inquiry, he has been fully exonerated or the suspension is held to be wholly unjustified; in other case, the period of suspension shall not count unless the authority competent to pass orders under the rule governing such cases expressly declares at the time it shall count to such extent as the Competent Authority may declare...”

13. A reading of Rule 23 would show that the suspension period can be counted as qualifying period where the government servant is fully exonerated on conclusion of inquiry or the suspension is held to be wholly unjustified. In other cases, the period of suspension shall not be counted unless and to the extent as the competent authority may declare.

14. When we harmoniously read the aforesaid provisions, it is crystal clear that the suspension period does not evaporate and is not erased when the government servant retires as in the present case. The respondent was facing criminal prosecution. The judicial proceedings stood instituted on or before the date of retirement. On the date of retirement, they were pending. In such circumstances, Rule 9(4) of the 1972 Rules would apply with full vigor and force. It will also mean that the period of suspension in terms of Rule 23 will not be counted unless the competent authority passes an order and declares the suspension period that shall be counted.

15. Retirement does put to an end the order of suspension for the reason that employer and employee relationship ceases and comes to an end. Once there is termination of the said relationship because the employee has attained the age of superannuation, the suspension order cannot continue, for suspension itself postulates existence of employer and employee relationship. Retirement would not affect the earlier order of suspension and the suspension order does not terminate the said employer-employee relationship (See, Section 16 of General Clauses Act, 1897). Reliance placed on Rule 49(2) (a) and Rule 34 is inconsequential and not relevant for the purpose present adjudication, for what is payable and paid is provisional pension and not pension. Provisional pension/gratuity is provided in Rule 64 of the 1972 Rules. Payments have to be made as per Rule 69 read with Rule 64 of the 1972 Rules.

16. Fundamental Rule 54-B(1) makes a provision for the competent authority to pass orders on pay and allowance to a government servant for the period of suspension, upon being reinstated and not otherwise. Such reinstatement, when post-retirement, would also mandate an order under FR 54-B(1). It would equally apply to cases of reinstatement after premature retirement. In such cases, the competent authority should pass an order as to whether or not the suspension period shall be treated as a period spent on duty. The said rule reads as under:

“... FR 54-B(1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement (including premature retirement) while under suspension, the authority competent to order reinstatement shall consider and make a specific order –

- (a) Regarding the pay and allowance to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement (including premature retirement), as the case may be; and
- (b) Whether or not the said period shall be treated as period spent on duty....”

17. This Rule would not have any application as the respondent has not been reinstated in service. The respondent, while on suspension, attained the age of superannuation. He was still facing judicial proceedings. Retirement does not result in reinstatement; this is not the dicta of the Rule. The Tribunal has erroneously opined that since the present petitioner had allowed the respondent employee to retire on attaining the age of superannuation, their relationship of master and servant ceased to exist and that the Tribunal would resultantly have no jurisdiction to pass any consequent order. We have referred to the Rule position under the 1972, Rules.”

10. In light of the above, we allow the present writ petition and set aside the impugned order to the extent that the tribunal has given directions that the period during which the respondent had remained under suspension, should be treated as period spent on duty. The respondent, appearing in person, had drawn our attention to the counter affidavit filed by him in which he pointed out that his provisional pension was increased by Rs.390/- (i.e. from Rs.12,855/- to Rs.13,245/-), as a result of the order passed by the tribunal. The petitioner has accepted that no additional retirement benefits have been paid to the respondent, pursuant to the order of the tribunal. In these circumstances, we are not issuing any direction for the recovery of ‘excess payment’ of Rs. 390/- per month, made by the petitioner. Relevant orders may be passed after the criminal prosecution is

complete and the decision is made. At that time, this aspect can be examined and in case it is held that excess payment has been made, appropriate orders can be passed.

11. The respondent's submission that the 'blot' of suspension stands washed away giving the respondent great solace, does not merit acceptance. The issue and question relating to the suspension period would be examined depending upon and post the decision in the criminal prosecution and not at this stage.

12. With the aforesaid observations and directions, the writ petition is allowed to the extent indicated above.

(SANJIV KHANNA)
JUDGE

(NAJMI WAZIRI)
JUDGE

AUGUST 5th, 2016
NA/ssn