

\$~R-37

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

+ W.P.(C) 6015/2002

UNION OF INDIA & ORS.

..... Petitioners

Through

Mr. Ripu Daman Bhardwaj, CGSC with

Mr. T.P. Singh, Advocate

versus

H.R.K. BHATNAGAR & ANR

..... Respondents

Through None

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE VINOD GOEL

ORDER

%

07.03.2017

Rule DB was issued in this matter on 23.09.2002.

Challenge in this writ petition is to the order passed by the Central Administrative Tribunal dated 24.04.2002. The respondent no.1 herein had approached the Tribunal seeking a direction to the respondents(petitioners herein) to release his retiral dues, gratuity, leave encashment and computed value of pension.

The necessary facts to be noticed for disposal of the writ petition as noticed by the Central Administrative Tribunal are that the respondent no.1 retired as Superintendent of Central Excise on attaining the age of superannuation w.e.f. 31.03.1991. Prior to his retirement, the respondent no.1 was facing prosecution as well as departmental proceedings for allowing fraudulent export under Duty Drawback at Foreign Post Office, New Delhi. As both the proceedings were pending, he was, therefore, sanctioned provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service upto the date of retirement under Rule 69 of the CCS(Pension) Rules, 1972 w.e.f. 01.04.1991. The same was revised w.e.f.

01.01.1996 on the recommendation of the 5th Central Pay Commission. However, other retiral benefits such as gratuity, commutation of pension and leave encashment have not been released to the respondent no.1. Aggrieved by this, the respondent no.1 filed the OA claiming the aforesaid relief.

The petitioners herein (respondents before the Tribunal) had opposed the OA on the ground that no gratuity can be paid to the applicant respondent no.1 in view of sub-rule(c) of Rule 69 of the CCS(Pension) Rules, 1972. The Department also took up a stand that the amount of commutation of pension is to be withheld during the pendency of departmental proceedings as provided under Rule 4 of the CCS(Commutation of Pension) Rules, 1981. A similar stand was taken with regard to the prayer made by the respondent no.1 with regard to earned leave. The Department relied upon Rule 39 sub-rule(3) of CCS(Leave) Rules, 1972 which provides that the authority competent to grant leave may withhold whole or part of cash equivalent of earned leave if criminal or departmental proceedings are pending against the Government Servant at the time of his retirement. The learned Tribunal was persuaded to allow the OA based on a judgment of a Coordinate Bench of the Tribunal dated 06.04.1999. The Tribunal also held that it was difficult to ascertain as to when the criminal proceedings would be concluded.

The learned counsel for the petitioners has reiterated his submission as made before the Tribunal to the effect that in view of sub-rule(c) of Rule 69 of the CCS(Pension) Rules, 1972, the amount of commutation of pension can be withheld as the same is not payable during the pendency of the departmental proceedings as provided under Rule 4 of the CCS(Commutation of Pension) Rules, 1981. Reliance is placed on Rule 39(3) of CCS(Leave) Rules, 1972. Learned counsel for the petitioners has handed over in Court a communication dated 03.03.2017, as per which upon conclusion of the inquiry, the President has imposed a penalty of withholding of 100% monthly pension otherwise

admissible on permanent basis and withholding of full gratuity. The learned counsel for the petitioners submits that the Special Judge, CBI has also convicted the respondent and sentenced him to three years rigorous imprisonment with a fine of Rs.20,000/- under Section 120B read with Section 419, 420, 467 and 471 IPC read with Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act.

We have heard the learned counsel for the petitioner. The learned Tribunal has relied upon a decision of a Coordinate Bench of the Tribunal, however, the Tribunal has failed to address the submissions made by the Department before the Tribunal. The Tribunal while allowing the OA had directed the Department to consider release of leave encashment dues and DCRG on production of two sureties by respondent no.1. At this stage, these directions of the Tribunal have been rendered infructuous as submitted by the learned counsel for the petitioner as the respondent no.1 stands convicted by the Criminal Court and on conclusion of the inquiry, the President has imposed a penalty of withholding of 100% monthly pension otherwise admissible on permanent basis and withholding of full gratuity. Resultantly, the writ petition is dismissed as infructuous. The question of law raised is kept open.

G.S.SISTANI, J

VINOD GOEL, J

MARCH 07, 2017

pst
W.P.(C) 6015/2002