

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8327 of 2008

=====

Nand Kishore Tewary, VSM, Ex I.G.P., C.R.P.F., son of late Shri K. N. Tewary,
resident of 6-H/64, Bahadurpur Housing Colony, Bhoothnath Road, Patna 26

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Home Affairs, Govt. of India, North Road, Block New Delhi-110001.
2. The Secretary, Ministry of Home Affairs, Govt. of India, North Road, Block New Delhi-110001.
3. The Joint Secretary (P), Ministry of Home Affairs, Govt. of India, North Road, Block New Delhi-110001.
4. The Director General, C.R.P.F., Block No. 1, CGO's Complex, Lodhi Road, New Delhi-3
5. The D.I.G. (Pers) Block No. 1, CGO's Complex, Lodhi Road, New Delhi-3
6. The Addl. D.I.G. (Pers-I), Block No. 1, CGO's Complex, Lodhi Road, New Delhi-3
7. The Assistant Director (Pension), Pay and Accounts Office, Central Reserve Police Force, Mahavir Nagar, Tilak Nagar, New Delhi-18
8. The Accounts Officer, Central Pension Accounting Office, GOI (MOF), Government of India, Ministry of Finance.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Prabhakar Dwivedi, Advocate
For the UOI : Mr. Anjani Kr. Sharan, A.S.G.

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 12-07-2018

Heard learned counsel for the petitioner and respondents.

2. The petitioner has moved the Court for the following
reliefs:



“1. That this application is being filed for issuance of a writ in the nature of Certiorari quashing order No. CRPF/97/592/SP/PA-11 dated the 10.4.08 issued by The Assistant Director (Pension), Directorate General, Pay and Account Office, CRPF, Mahavir Nagar, Tilak Nagar, New Delhi-110018 to Respondent No. 8 withdrawing the superannuation pension authorized in favour of the petitioner and stopping the payment of his pension with immediate effect.

1/A That the petitioner further prays for issuance of a writ in the nature of Mandamus Commanding the Respondent No. 7 to release the payment of pension in respect of the petitioner with immediate effect.

1/B That the petitioner also prays for issuance of an appropriate writ/order/direction to the Respondent Authorities to stay the operation of above said order dated 10.4.08 till the adjudication of this case.

1/C That the petitioner further prays for issuance of any other appropriate writ/order/direction for which they may be found entitled to.”

3. In sum and substance, the impugned order tries to reverse what the respondents had already done in the case of the petitioner with regard to grant of his pensionary benefits. At the relevant time, when the petitioner was in service and holding the rank of I.G. in the C.R.P.F, on certain charges he was suspended and



thereafter attained the age of superannuation in the year 1997. Both departmental and criminal proceedings were instituted. The criminal proceeding is pending till date. However, with regard to the departmental proceeding, in the enquiry the petitioner was exonerated and accepting the enquiry report, the Competent Authority has also passed final orders by which the departmental proceeding has been concluded regularizing the period of suspension as duty for all purpose and payment of full pay and allowances. Further, the Competent Authority, exercising powers under Rule 88 of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as the 'Rules'), relaxing the provisions of Rule 69 of the Rules, sanctioned payment of all pensionary benefits to the petitioner. These orders were passed on 31st October, 2003 and 4th October, 2004. The petitioner, accordingly, received payments of his retiral benefits without any hitch. The controversy started when he made a representation on 22.06.2006 seeking interest on delayed payment of gratuity. In pursuance thereof, the impugned order has been passed directing for stopping of payment of pension with immediate effect. The same was followed by order of recovery dated 29.10.2008 directing the petitioner to refund Rs. 7,26,194/-. By an interim order, in the present proceeding, such direction has been stayed.

4. Learned counsel for the petitioner submitted that all



orders in his favour have been passed by the authorities in which he had no say or role and, thus, the benefit which has been received by him in terms of those orders, cannot be taken away without following the due procedure of law, which, in the least, requires opportunity of hearing to the petitioner by issuance of a show cause to satisfy the requirement of principles of natural justice. Learned counsel submitted that formalities which were required to be completed by the authorities not having been done, the petitioner cannot be saddled with the penal consequences, that too, when he is advanced in age and suffering from cancer and has utilized whatever money he had received on his livelihood and treatment. Learned counsel further submitted that as of now, in view of the recommendations of the 6th and 7th Pay Revision Commission, the provisional pension to which he is entitled should accordingly be revised, which has not been done.

5. Learned counsel for the respondents submitted that for exercise of powers under Rule 88 of the Rules of relaxing the conditions of Rule 69 of the Rules specifically required that no such order shall be made except with the concurrence of the Department of Personnel and Administrative Reforms. It was submitted that in the present case, from the records it would be established that no such permission was ever accorded by the Department of Personnel and Administrative Reforms and, thus, the Department (Ministry of Home



Affairs, Government of India) could not have exercised such power of relaxation of the conditions of Rule 69 of the Rules, and, thus, the petitioner has wrongly derived such benefit. It was further submitted that the question of complying with the principles of natural justice, in the present case, is not of much relevance for the reason that a fact has been taken note of, i.e., there being no concurrence from the Department of Personnel and Administrative Reforms, in which the petitioner having no role could not have taken any stand, muchless, satisfying that such procedure was followed. Moreover, on the issue of recovery/refund, learned counsel submitted that the money came from public exchequer and, thus, if it is found to have been wrongly given to the petitioner, he is liable to return the same. On the issue of revision of pension, learned counsel very fairly submitted that the Government has already approved such revision and has also issued circular from the Department of Expenditure, Ministry of Finance, I.D. No. 61/E.B./2013 dated 4th January, 2013 and No. 214/E.B./2013 dated 16th January, 2013 and whatever is due and payable as per such revision, the same shall be paid to the petitioner.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the respondents cannot be faulted for having stopped the pension on the ground that the procedure adopted for such payment



was not in accordance with the requirement of the Rules. The stand of the respondents that the concurrence of the Department of Personnel and Administrative Reforms not having been obtained, has not been controverted by the petitioner and, thus, if this is a fact, the Court has no hesitation to hold that the exercise of authority under Rule 88 of the Rules for relaxing the conditions of Rule 69 of the Rules could not have been done without such concurrence. Thus, the same not having been done, the petitioner was not entitled to such payment. At this stage, the Court would also deal with the contention of the petitioner that the principles of natural justice have been violated. There cannot be any two opinions on such principle, that before any order having penal consequences is passed against the person, he is required to be given notice, but in the facts and circumstances of the present case, when the Court has heard the matter and given opportunity to the petitioner, the order impugned is not required to be interfered with only on this mere technical ground; moreso, for the reason that the petitioner could not have shown any cause as the stand of the respondents was nothing against him but rather a clarification of a factual position which disclosed that the concurrence required of the Department of Personnel and Administrative Reforms not having been taken, no order under Rule 88 of the Rules relaxing the provision of Rule 69 of the Rules by any Department could have been passed.



Thus, in the present matter based purely on a fact which is proved from the records and is unrebutted and in which the petitioner has no say, strict and technical adherence to the principles of natural justice not having been complied with would not prove fatal for the final order. Moreover, at the cost of repetition, the petitioner has been given full opportunity and hearing by the Court on all aspects of the issue and the fact of there being no concurrence has not been denied. Thus, the order impugned directing to stop payment of pension cannot *per se* said to be bad. However, there could not have been stoppage of entire pension for even under Rule 69 of the Rules, the petitioner is entitled to provisional pension. Thus, the Court, in principle, upholds the contention of the respondents that without getting concurrence of the Department of Personnel and Administrative Reforms, the order for payment of pensionary benefits to the petitioner could not have been passed. However, having said that, the Court would clarify that the respondents are required to pay provisional pension to the petitioner.

7. Coming to the issue of recovery/refund of what has already been paid, though the petitioner cannot be held entitled to such payment, but considering the position of the petitioner, more so his age and physical condition as also the fact that in the departmental proceeding, both in the enquiry and the final order, there is complete



exoneration from the charges, the Court is inclined to interfere on the ground that recovery at this stage from the petitioner shall be iniquitous. The Court is fortified in its view that based on the judgment of the Hon’ble Supreme Court in the case of **State of Punjab v. Rafiq Masih** reported as **(2015) 4 SCC 334**, where it has been left to the discretion of the Court to decide in cases whether it is found that recovery would be iniquitous. Thus, in the present case also, the Court having found such recovery/refund to be iniquitous, the same stands set aside.

8. Accordingly, the writ petition stands disposed off in the aforementioned terms with the observation that as has been submitted by learned counsel for the respondents that whatever revision of provisional pension is due and permissible and has also been allowed as a matter of policy by the authorities, shall be paid to the petitioner. If the provisional pension has not been paid to the petitioner, the same shall be paid in the revised scales as and when applicable. The exercise be completed within two months from the date of production of a copy of this order before the respondent no. 5.

(Ahsanuddin Amanullah, J)

Anjani/-

AFR/NAFR	AFR
U	

