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

+ W.P.(C) 6048/2017 AND CM APPL. 25145/2017

GOVERNMENT OF NCT OF DELHI & ANR Petitioner
Through Mr. Satyakam, ASC with Mr. Mohit
Kumar, Adv.

versus

OM PRAKASH Respondent
Through Mr. P.P. Relhan and Ms. Padma
Kumar S., Advs.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER
22.11.2018

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1. We have heard the learned counsel for the parties. The petitioner has preferred the present petition to assail the order dated 19.12.2016 passed by Central Administrative Tribunal (CAT) in Original Application (OA) no. 1104 of 2016. The respondent had preferred the said OA to seek a direction to the petitioners herein to pay him provisional pension under Rule 69 of CCS (Pension) Rules, 1972 from 01.06.2008 i.e. the date of his superannuation till the criminal appeal is heard and decided by the Supreme Court or the President of India withholding or withdrawing the provisional pension purported to be sanctioned. He also sought release of arrears of pension with interest @ 9% p.a.

2. The Tribunal has directed the petitioner to pay provisional pension to respondent from the date of his superannuation i.e. 01.06.2008 till taking of final decision by the competent authority regarding his pensionary benefits i.e. 20.06.2017. We may observe that on 20.06.2017, the competent authority passed an order whereby, the respondent's entire pension has been forfeited.

3. While in service as a Constable of Delhi Police, the respondent was convicted by the learned ASJ on 03.02.1993 under Section 302 IPC. He was placed under suspension from 24.05.93. Against his conviction he preferred a Criminal Appeal no. 33/1993. The respondent was dismissed from service by invoking clause (a) of the 2nd proviso to Article 311 of the Constitution of India on 04.01.2007. He challenged his dismissal by filing OA no. 1755/2007. The Tribunal allowed the said OA and reinstated the respondent in service. The WP(C) no. 7101/2008 preferred by the petitioner before this Court was dismissed on 04.12.2008. He was reinstated in service on 27.03.2009. The Criminal Appeal of the respondent preferred before this Court was dismissed on 06.03.2009 and his conviction and order on sentence was upheld. On 27.08.2015, a memorandum was issued withholding full pension and gratuity of the respondent permanently. The aforesaid memorandum was served upon the respondent on 21.09.2015. Further, Criminal Appeal preferred by the respondent before the Supreme Court also came to be dismissed on 16.12.2015. The aforesaid OA no. 1104/2016 was preferred by the respondent in March, 2016. As aforesaid, OA no. 1104/2016 has been allowed by the Tribunal.

4. At the outset, we may observe that the Tribunal has proceeded on the basis that the criminal appeal preferred by the respondent before Supreme

Court was pending, however, that is not the factual position. The Criminal Appeal, as noticed above, had been dismissed by the Supreme Court on 16.12.2015, whereas, the impugned order was passed on 19.12.2016 i.e. little over a year, later. Despite dismissal of his Criminal Appeal, the respondent suppressed the fact from the Tribunal and preferred the OA.

5. Mr. Satyakam submits that the impugned order cannot be sustained in view of the fact that the Tribunal has proceeded on wrong presumption of facts. It is submitted that the respondent was not entitled to any relief from the Tribunal in view of the conduct of suppressing the fact that his Criminal Appeal had already been dismissed by the Supreme Court on 16.12.2015. On the other hand, the submission of the learned counsel for the respondent is that the relief granted to the respondent is premised on a reading of Rule 9 and Rule 69 of the CCS Pensions Rules. The submission is that the respondent was entitled to provisional pension under Sub-Rule (4) of Rule 9 equivalent to the maximum pension that was admissible to the respondent on the basis of qualifying service upto the date of retirement since the respondent completed his service till the date of his superannuation. He submits that the provisional pension once paid cannot be recovered under Rule 69(2).

6. In the present case, firstly, the respondent was not paid the provisional pension. Therefore, the question of its recovery does not arise. The issue is whether in the facts and circumstances of the case, the Tribunal could grant the relief to the respondent, particularly, in the face of his conviction under Section 302 IPC, which was upheld right upto the Supreme Court and on account of suppression of the fact of the dismissal of his appeal before the Supreme Court by the respondent. It is argued by the learned counsel for the

respondent that his Review Application was pending before the Supreme Court. The respondent did not inform the Tribunal that his Appeal has been dismissed by the Supreme Court and merely his Review Application was pending. We are informed that even that Review Application was dismissed on circulation. It shocks the conscience of this Court that the respondent, who stands convicted under Section 302 IPC, should receive arrears of provisional pension equivalent to full pension from 01.06.2008 to 20.06.2017 i.e. period of over nine years. We therefore, allow this petition and set aside the impugned order.

VIPIN SANGHI, J

A. K. CHAWLA, J

NOVEMBER 22, 2018

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