

\$~18

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

+ **W.P.(C) 7678/2018 & CM29422/2018 (Stay)**

BHUDATT SINGH

..... Petitioner

Through: Mr. Ajay Vikaram Singh and Ms.
Priyanka Singh, Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Rajesh Kumar and Ms. Santwana,
Advocates.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

%

05.02.2020

1. The Petitioner has filed this petition under Article 226/227 of the Constitution of India for issuing appropriate writ, order and direction to the Respondents praying for the following reliefs:

(a) Issue an appropriate writ, order and direction of like nature, to the respondents to grant promotional benefits to the petitioner and pay gratuity commutation, Leave Encashment and provisional pension and promotion, advancement of pay, MACP Benefits and correct fixation of pay under 7th Pay Commission w.e.f. 30.11.2016 which has been denied to the petitioner on account a wrongful and unjustified suspension.

(b) Grant the consequential benefits as a result of relief(s) being given like pay, pension re-fixation, due increments with arrears etc.

(c) The suspension period for first six months salary has been paid only @50% and rest of the period has been paid @75%. It is prayed to this Hon'ble Court to issue directions to the respondents to pay remaining 25% of the salary for last 6.5 years and 50% of salary for first six months.

(d) It is also prayed to this Hon'ble Court that regularization of suspension period from 08.2.2001 to 11.6.2007 should be done accordingly and also grant arrears of pay with pendent-lite interest and cost of this present litigation.”

2. In brief the case of the Petitioner is that he was appointed as Sub-Inspector (G.D.) in the Indo-Tibetan Border Police (ITBP) on 16th February, 1989. In 1994, he was promoted as Inspector and while posted at Leh-Laddakh in April, 1997 he was asked to perform the job of Junior Quarter Master at Battalion Head Quarter. On 17th November, 1997 Probrang Service Co-operative Society Limited raised a bill using three challans. The Petitioner on 6th January, 1998 recommended stoppage of payment of the bills pertaining to three disputed challans. On 7th April, 1998 the department requested the Civil Police to lodge an FIR in this regard. On 10th July, 1999, the Civil Police involved the Petitioner and one Sh. Rajender Pal Inspector.

3. On 27th January, 2001 Petitioner was transferred to Delhi, but he was called by the ITBP officials at Leh to appear before the Investigating Officer (IO). The Petitioner accordingly appeared before the Investigating Officer and submitted the details of the happenings. On 8th February, 2001 the Petitioner was arrested by Civil Police at Leh and he was suspended. The Petitioner filed Writ Petition No.3685/2004 challenging his suspension

subsequent to his arrest. The following order was passed on 4th April, 2006 in the said petition:

"The petitioner is now attached with a Battalion, namely 20th Bn, ITBP and is now posted at Arunachal Pradesh. Therefore, we are of the considered opinion that the respondent should consider as to whether or not the petitioner should still be continued to be under suspension or he should be re-instated in service. While doing so, they will consider whether any useful purpose is being serviced by continuing him under suspension. However, discretion is absolutely vested no the disciplinary authority to consider about the feasibility and necessity of continuation of suspension order. Therefore, we leave it to the disciplinary authority to consider and review the matter pertaining to continuation or the order of suspension against the petitioner. We however, direct that the matter shall be reviewed within a period of two months from today and appropriate order regarding continuation or otherwise of suspension order against the petitioner should be passed. In terms of the order, this Writ Petition stand disposed. It is also made clear that since the petitioner is now attached with 20th Bn of ITBP and it is agreed to by the parties including the respondents, he shall continue to be attached with the said Battalion in future also for all practical purpose."

4. A Suspension Review Committee was constituted by Respondents and a recommendation was made by it on 11th June, 2007 for revoking the suspension of the Petitioner with immediate effect. This was done by an order dated 6th September, 2007. The immediate junior of the Petitioner viz., Sh. Ramesh Chand Bhatia was promoted as Assistant Commandant (AC) in March, 2004 and in 2010 he was further promoted as Deputy Commandant (DC), followed by his promotion as Second-in-Command (2IC) in 2013, whereas Petitioner was promoted only to the post of AC in the year 2009 and he superannuated from said post in the year 2016.

5. From April, 2014, Petitioner was commissioned to perform duties of Officiating Commandant in addition to his own duties. From July 2014 he was performing the duties of Camp Commander and from August 2014 he was again asked to perform duties of Officiating Commandant. The suspension period of the Petitioner is still undecided by the Respondents and he has suffered irreparable loss of seven years without being involved in any criminal case. The period has not been regularized by the Respondent till date nor full payment has been made to the Petitioner. The FIR No. 07/1998 at P.S. Nyoma, Distt. Leh Laddakh, has been termed as false and frivolous FIR by the Petitioner.

6. It has been submitted that he has an unblemished record of 27 years. No charge-sheet has been filed in the said FIR till date. A legal notice dated 28th February, 2018 was served on the Respondents. At the time of superannuation of the Petitioner, he was not paid his gratuity as well as the commutation amount of the pension which has been terms as an arbitrary act on behalf of the Respondents.

7. The Respondents have filed counter affidavit mentioning therein that case FIR No. 07/1998 under Sections 420/468/471/409 IPC was registered at Nyoma (Leh) Laddakh against the Petitioner who was serving as Inspector at that time. Later on, the investigation was transferred to District Police Special Branch for investigation and Petitioner was arrested by Civil Police on 8th February, 2001 and accordingly he was suspended with effect from the said date vide order dated 5th March, 2001.

8. The Petitioner could not be nominated for Senior Inspector Refresher Course as he had remained under suspension from 8th February, 2001 to 10th June, 2007. He was nominated for the said course after revocation of the suspension order and he attended the said course from 7th January, 2008 to 12th March, 2008. He could have been appointed as AC (GD) only after completion of the said course and accordingly on 1st January, 2009 he was found eligible for promotion to the rank of AC (GD) and his name was considered by the DPC held on 24th March, 2009 and accordingly he was promoted vide order dated 9th April, 2009.

9. It has been further submitted in para-wise reply that Petitioner was retained as officiating Commandant except for financial matters in addition to his charge due to shortage of officials in 53rd Bn. ITBP and he was given charge of Officiating Commandant/ Camp Commander while Commandant was out of Admn/ OPS duty. It has been further submitted that criminal case is still pending with J&K State Police and prosecution was launched against the Petitioner after obtaining government sanction. While passing the order for revocation of the suspension it was ordered that question of regularization of suspension period from 8th February, 2001 to 11th June, 2007 and admissibility of pay and allowances for the said period will be decided on the basis of decision in the aforesaid criminal case registered against the Petitioner.

10. The Respondents have relied upon Rule 69 of CCS (Pension) Rules, 1972, for granting provisional pension since 1st December, 2016 to the Petitioner. Their stand is that the remaining retiral dues will be finalized

after the criminal proceedings comes to an end and period of suspension is regularized. The complete benefits cannot be released till the criminal case comes to an end. Moreover, no gratuity can be paid to the Petitioner till conclusion of departmental or judicial proceedings. It has been submitted that as per the latest reply received from the Additional Superintendent of J & K Police, a team of District Police (Leh), consisting of senior officers has been constituted to investigate the matter and a report from the said team is still pending. Under these circumstances, it has been prayed that the writ petition be dismissed with exemplary costs.

11. We have heard arguments. The Petitioner was suspended on 8th February, 2001, i.e., three years after registration of FIR bearing No. 07/1998 at P.S. Nyoma, Distt. Leh, Laddakh under Sections 420/468/471/409 IPC which pertains to three challans bearing Nos. 602, 607 and 608 of challan book No. 04 having total amount of Rs.31,787/- issued during the year 1997-98 when he was posted as an Inspector at Leh.

12. About 22 years have already passed but no final report/charge-sheet has been filed in this case. The Petitioner remained under suspension for a period of about six years and four months and ultimately a Suspension Review Committee revoked his suspension in view of the orders passed by this Court on 4th April, 2006 in W.P.(C) No.3685/2004. The promotion of the Petitioner was delayed as he could not attend the requisite course i.e. Senior Inspector Refresher Course as he was under suspension and that resulted in him attending the said course only from January to March, 2008 after revocation of his suspension. It has not been denied, that a junior of the

Petitioner being Sh. Ramesh Chand Bhatia was promoted as Assistant Commandant in 2004, thereafter as Deputy Commandant in 2010 and Second-in-Commandant in 2013 whereas the Petitioner could get only one promotion as Assistant Commandant in the year 2009 before his retirement in 2016.

13. While revoking the suspension of the Petitioner the following order was passed:

ORDER

No. 890020438 Inspector/GD Bhudatt Singh, while posted in 12th Bn ITBPF Tigri Camp, PO: Madangiri, New Delhi-110062 was placed under suspension w.e.f. 08.2.2001 (FN) vide Commandant, 12th Bn ITBPF order No.....2001-3283-93. Dated 5.3.2001 consequent upon his arrest by J&K Police on 08.2.2001 in a criminal case lodged in Police Station Nyoma, Leh (Ladakh) vide FIR No.07/98 u/s 420, 468, 471, 409 IPC.

2. The suspension of Inspector/GD Bhudatt Singh was reviewed on 11.6.2007 by duly constituted Review Committee in accordance with the provisions- of-GOI, Ministry of PG & Pension (DOP&T) O.M. No. 11012/4/2003- Esstt-A-dated 23.12.2003 and dated 07.1.2004. The Review Committee after due consideration was, of the view that no useful purpose would be served by keeping him under suspension further for a long period and recommended for 'revocation of suspension of No.89002043 8 Inspector/GD Bhudatt Singh, 20th Bn with immediate effect.

3. The undersigned, exercising powers conferred by "rule 40 (4) of ITBPF Rules,' 1994, hereby revokes the suspension of No. 890020438 Inspector/. GD Bhudatt. Singh, 20th Bn w.e.f. 11.6.2007 on the recommendation of Review Committee."

4. The regularization of suspension period with effect from 08.02.2001 to 11.06.2007 and the admissibility of pay and allowances for the said period will be decided based on the decision in the above said criminal case registered against him vide FIR No. 07/98 u/s 420/468/471/409 IPC.

5. This supersedes the office order No.....-2/2—7-6676-86 dated 25.07.2007 issued by Commandant 20th Bn. ITBPF.

14. As far as the grant of pension and other retiral duties are concerned, the Respondents have relied upon Rule 69 of CCS (Pension Rules) and the said Rule is reproduced hereunder:

“Rule 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.”

15. It is to be noticed that reference in sub-rule 1(a) of Rule 69 has been made to sub-Rule 4 and sub-Rule 6 of Rule 9, which are reproduced hereunder:

“(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.

xxx

(6) For the purpose of this rule, -

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted –

(i) 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]

(ii) in the case of civil proceedings, on the date the plaint is presented in the court”.

16. It is admitted case of both the parties that there are no departmental proceedings pending against the Petitioner. Throughout the counter affidavit, stand of the Respondent is that the retiral benefits were not released to the Petitioner as an FIR registered in 1998 against the Petitioner is still pending investigation.

17. The word “judicial proceedings” used in Sub-rule 4 of Rule 9 of CCS (Pension Rules) as well as in Section 69(1) (c) has been interpreted by this Court in the matter of *V. P. Singh v. GNCTD* W.P.(C) No. 2953/2010 decided on 15th July, 2010 as under:

“7. It is apparent that as per Rule 9(6)(b) judicial proceedings are deemed to be instituted when a report is presented by the police officer to a Magistrate. In the instant case no such report was filed and hence the question of the same being pending when the petitioner retired does not arise.”

18. Admittedly, no charge-sheet has been filed against the Petitioner till date hence, the judicial proceedings are not deemed to be initiated or pending against the Petitioner on the date of his retirement or even till date in any Court.

19. In view of the above, the Petitioner is entitled for release of his retiral dues including the gratuity, full pension, leave encashment and provident

fund etc. For the purpose of calculation of pension at this stage, provisionally the period of suspension of the Petitioner be treated to be on duty and amount of pension be calculated accordingly.

20. As far as the question of payment of full pay during the period of suspension and other consequential benefits like promotion, advancement of pay and MACP as well as correction of fixation of salary are concerned, the outcome of the FIR bearing No. 07/1998 registered at Nyamo (Leh) under Sections 420/468/471/409 IPC be awaited. The Respondents are directed to remind the SSP/Senior Police Officials, Distt. Leh, Laddakh to expedite the investigation in the said matter.

21. After conclusion of the investigation and final report of the police, the Respondents shall take the decision regarding the suspension period and the consequential benefits, if any, within twelve weeks thereafter and same be communicated to the Petitioner within four weeks from the date of taking the said decision. If aggrieved, the Petitioner may take recourse to any proceedings as per law.

22. As far as the release of the retiral benefits is concerned, steps be taken by the Respondents within eight weeks from today and the amount be credited to the account of the Petitioner within four weeks thereafter, failing which simple interest @ 6% per annum is to be paid to Petitioner by the Respondents on the amount due for the period of delay.

23. The writ petition and pending application are disposed of in the above terms.

S. MURALIDHAR, J.

TALWANT SINGH, J.

FEBRUARY 05, 2020

mr