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

Reserved on: 28th January, 2020
Pronounced on: 31st January, 2020

\+ **W.P.(C) 9690/2017 and CM Appl. 39449/2017**

UNION OF INDIA AND ANR. .... Petitioners

Through: Mr. Ruchir Mishra, Mr. Sanjiv Kr. Saxena, Mr. Mukesh Kr. Tiwari, Mr. Abhishek Rana and Mr. Ramneek Mishra, Advocates.

versus

P.C. MISHRA ..... Respondent

Through: Respondent in person.

CORAM: JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

<u>J U D G M E N T</u>

<u>Dr. S. Muralidhar, J.</u>:

1. The Union of India through the Ministry of Home Affairs (MHA) as well as the Director, Agricultural Marketing, Government of NCT of Delhi (GNCTD) have filed this petition challenging an order dated 23rd May, 2017 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('CAT') in OA No. 4076/2016.

2. By the impugned order, the CAT while allowing the aforementioned OA by the Respondent directed the Petitioners to release to the Respondent provisional pension for the period from 2nd February, 2012 till 19th January, 2016 within three months. The Respondent was held not entitled to any interest on the said amount.

3. While directing notice to be issued in the present petition on 2nd November, 2017 this Court stayed the operation of the impugned order of the CAT.

4. This Court has heard the submissions of Mr. Ruchir Mishra, learned counsel appearing for the Petitioners and the Respondent who appears in person.

5. The background facts are that the Respondent joined the Delhi, Andaman & Nicobar Islands Civil Services (DANICS) in 1974 as Entry Grade Officer. He superannuated on 30th June, 2010 as a Selection Grade Officer of DANICS.

6. On 29th February, 1996 the Central Bureau of Investigation ('CBI') registered a case against the Respondent under the Prevention of Corruption Act, 1988 ('PC Act') on the allegation that while working as Assistant Commissioner, Sales Tax Department he had demanded a bribe. Consequent upon the CBI submitting a charge sheet in the said criminal case on 20th May 1998, the Respondent was placed under suspension on 18th August, 1998. This continued till 3rd October, 2006 when an order was passed by the CAT in OA No. 1608/2006 revoking his suspension.

7. As regards the departmental proceedings against the Respondent, the Central Vigilance Commission (CVC) on 13th May, 1999 tendered an advice that it should be kept in abeyance till the criminal case was decided.

8. The Special Judge, CBI by a judgment dated 24th May, 2010 held the Respondent guilty under Sections 7 and 13 (1) (d) of the PC Act and sentenced him to one year's rigorous imprisonment (RI) for the offence under Section 7 PC Act and one year's RI for the offence under Section 13(1) (d) read with 13 (2) of the PC Act.

9. Consequent upon the above order and sentence of the CBI Court, the Petitioner was placed under suspension and a show cause notice (SCN) dated 18th June, 2010 was issued to him asking him to explain why he should not be dismissed from service under Rule 19 of the CCS (CCA) Rules. As already noticed, soon thereafter on 30th June, 2010 the Respondent superannuated.

10. The Petitioner's Criminal Appeal No. 692/2010 challenging the order of the CBI Court convicting and sentencing him as above is pending in this Court. While the sentence awarded to the Respondent has been suspended by this Court, the conviction has not.

11. By a communication dated 14th December, 2010 the MHA informed the GNCTD, on the advice of the Department of Pension and Pensioner's Welfare ('DP & PW') that the Respondent would be entitled to provisional pension under Rule 9 (4) read with Rule 69 (1) of the CCS (Pension) Rules. The advice was that he would however not be entitled to gratuity in terms of Rule 69 (1) (c) of the CCS (Pension) Rules till the conclusion of the departmental or judicial proceedings. On the basis of the above advice the Pension Payment Order (PPO) dated 9th March, 2011 was issued for grant of

provisional pension to the Respondent under Rule 9 (4) read with Rule 69 (1) (a) of the CCS (Pension) Rules.

12. On 21st July, 2011 another SCN was issued to the Respondent asking him to explain why 100% of his pension should not be withheld and the entire gratuity be forfeited. The Respondent replied to the SCN on 12th August, 2011.

13. The Union Public Service Commission (UPSC) tendered an advice on 6th January 2012, on the request of the MHA, that 100% of the monthly pension of the Respondent should be withheld and that his entire gratuity should be forfeited on permanent basis. Accordingly, on 2nd February, 2012 an order to the above effect was issued in the name of the President of India.

14. Subsequent thereto upon the representation by the Respondent, the MHA issued an Office Memorandum ('OM') dated 5th May, 2015 providing to the Respondent the copy of the advice dated 6th January, 2012 of the UPSC. The Petitioner's request for a personal hearing was rejected on 29th May, 2015.

15. The penalty order was passed on 19th January, 2016 by the MHA withholding 100% of the monthly pension as well as forfeiture of the full gratuity on permanent basis. The said order dated 19th January, 2016 was issued "in supersession of the order of even number dated 2nd February, 2012".

16. The Respondent then filed OA No.712/2016 before the CAT on 16th

February, 2016 challenging the aforementioned penalty order dated 19th January, 2016 as well as the earlier SCN dated 21st July, 2011. The alternative prayer was for a direction to the GNCTD to continue paying him provisional pension under Rule 9 (4) read with Rule 69 of the CCS (Pension) Rules consistent with the PPO dated 9th March, 2011.

17. It may be noted here that there was no challenge by the Respondent to the penalty order dated 2nd February 2012, which continued till it was superseded by the order dated 19th January, 2016.

18. The Respondent made a representation on 8th February, 2016 seeking payment of provisional pension from February, 2012 to January, 2016 with interest. Following this, he filed OA No.2683/2016 on 4th August, 2016 before the CAT praying for the same relief together with interest at 25% p.a. till the date of actual payment.

19. OA No. 2683/2016 was disposed of by the CAT on 9th August, 2016 directing the Petitioners to consider the Respondent's representation dated 8th February, 2016 and to pass a reasoned order within three months.

20. Consequent upon the above direction issued by the CAT, the MHA passed an order dated 24th November, 2016 where *inter-alia* it was observed as under:

> "9. And whereas, the above facts reveal that the order dated 19.01.2016 was issued on supersession of order dated 02.02.2012. the order dated 2.02.2012 was not revoked but after considering the same facts/documents in the changed

scenario arise due to the Hon'ble Supreme Court's Judgments in S.K. Kapoor's case and subsequent DOPT OM dated 06.01.2014, the order dated 19.01.2016 was issued.

10. And therefore, the effect of this order is w.e.f. 02.02.2012, and therefore, the request of Shri Mishra for release of the provisional pension for the periods February, 2012—January 2016 is not acceded to;"

21. The Respondent then filed OA No. 4076/2016 of the CAT challenging the aforementioned order dated 24th November, 2016 praying for the following reliefs:

"(a) set aside communication dated 24.11.2016 of MHA;

(b) declare that the order dated 02.02.2012 is deemed to be revoked/set -aside being superseded;

(c) declare that penalty order dated 19.01.2016 cannot have retrospective effect;

(d) direction to respondents to release provisional pension for the period from February 2012 to January 2016;"

22. During this time OA No.712/2016 was pending before the CAT. In reply to the notice issued in OA No.4076/2016 the Petitioners filed a counter affidavit *inter-alia* "submitting that the penalty order dated 02.02.2012 never revoked or withdrawn, therefore, the applicant was not entitled to provisional pension due to operation of penalty order dated 02.02.2012 till it was superseded by penalty order dated 19.01.2016."

23. By the impugned order dated 23rd May, 2017 the CAT allowed OA No.4076/2016 filed by the Respondent holding *inter-alia* that the earlier

penalty order dated 2nd February, 2012 was issued without taking into consideration the law declared by the Supreme Court in ***Union of India v. S. K. Kapoor (2011) 4 SCC 589*** and that a penalty order imposed on a charged Officer without providing such officer a copy of the advice of the UPSC would be bad in law.

24. According to the CAT after the judgment in ***S. K. Kapoor*** *(supra)* the Petitioners realised that the earlier penalty order dated 2nd February, 2012 would not stand legal scrutiny and therefore issued a fresh penalty order dated 19th January, 2016. Since the penalty of withholding of 100% monthly pension and forfeiture of the full gratuity came into effect only on 19th January, 2016, the CAT was of the view that the Respondent be entitled to provisional pension from 2nd February, 2012 till 19th January, 2016.

25. A development that has taken place subsequent to the impugned order of the CAT is that the earlier OA No.712/2016 filed by the Respondent came to be dismissed by the CAT on 15th October, 2018. The CAT negatived the present Respondent's challenge to the order dated 19th January, 2016.

26. The above order dated 15th October, 2018 passed by the CAT dismissing OA No.712/2016 was challenged by the Respondent in this Court by filing WP(C) No.12470/2018. This Court dismissed the writ petition on 26th November, 2018 holding *inter-alia* that "for purposes of Rules 9 (1) and 69 (1) (b) of the Pension Rules, the judicial proceedings have attained conclusion upon the conviction of the petitioner by the trial Court, and the competent authority is entitled to pass final orders for withdrawing the

whole or part of the pension permanently or for a specified period; for forfeiture of the Gratuity, and; for ordering recovery of the pecuniary loss caused to the government due to the grave misconduct established in the judicial proceedings."

27. It was further held as under:

> "The submission of Mr. Mishra that the withholding of 100% monthly pension and forfeiture of gratuity is unconstitutional has no merit. There is no absolute right in a government servant to receive either pension or gratuity. Under a duly framed law, the same can be withheld and withdrawn. Rule 9 of the Pension Rules, having been framed by the President in exercise of his constitutional power contained in proviso to Article 309 of the Constitution, the same has statutory force in terms of the said Article of the Constitution."

28. It was however clarified that "in the eventuality of the petitioner's criminal appeal succeeding, his claim for pension and other retiral dues, which have been denied to him by virtue of the order dated 19.01.2016, would need reconsideration in the aforesaid light."

29. It requires to be noticed that the Respondent has not further challenged the order dated 26th November, 2018 of this Court till date.

30. The upshot of the above discussion is that the Respondent never challenged the order dated 2nd February, 2012 which already withheld 100% of his pension and forfeited the full gratuity. That order was superseded by the subsequent order dated 19th January, 2016 passed by the MHA. The challenge to the order dated 19th January, 2016 has been negatived by the

CAT by its order dated 15th October, 2018. That order of the CAT has been affirmed by this Court by dismissing the Respondent's Writ Petition (C) No. 12470/2018 by the decision dated 26th November, 2018. As of date therefore the order dated 19th January, 2016 stands affirmed.

31. As far as OA No.4076/2016 is concerned, it was a challenge to the aforementioned orders dated 24th November, 2016, which merely reiterated the order dated 19th January, 2016. While the CAT may not have had the benefit of the subsequent order passed by another Bench of the CAT on 15th October, 2018 dismissing OA No.712/2016, the fact remained that even the order dated 24th November, 2016 was only a reiteration of the earlier orders dated 2nd February, 2012 and 19th January, 2016. Once it is clear that the order dated 19th January, 2016 was replacing the earlier order dated 2nd February, 2012 (which is why the word 'in supersession' is used) it had to relate back to the same date i.e. 2nd February, 2012. Therefore, the penalty of withholding of 100% of monthly pension and forfeiture of gratuity would relate back to that date itself.

32. With the Petitioner not having further challenged the order dated 26th November, 2018 of this Court upholding the order dated 19th January, 2016 of the MHA, the said order has attained finality. Therefore, viewed from any angle the challenge to the order dated 19th January, 2016 should fail. Correspondingly, the challenge to the subsequent order dated 24th November, 2016 had also to fail.

33. Consequently, this Court holds that the CAT was in error in directing the

Petitioners to pay the Respondent provisional pension for the period between 2nd February, 2012 upto 19th January, 2016. The impugned order therefore is unsustainable in law and is hereby set aside.

34. The sum of Rs.18,14,910/- deposited by the Petitioners in this Court pursuant to the order dated 13th December, 2018 shall be forthwith returned by the Registry to the Petitioners through an authorised representative, upon proper verification, together with the interest accrued thereon, not later than two weeks from today.

35. The petition is allowed in the above terms with no order as to costs. The pending application is also disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JANUARY 31, 2020
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