

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

% Date of decision: May 9, 2023

+ W.P.(C) 6022/2023, CM APPLs. 23623/2023, 23624/2023 &
23789/2023

JANAK RAJ

..... Petitioner

Through: Mr. Rajesh Tyagi, Adv.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Ms. Bharathi Raju and
Ms. Deepa Malik, Advs. for UOI

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

CM APPLs. 23624/2023 & 23789/2023 (for exemption)

Exemption allowed subject to all just exceptions.

Applications are disposed of.

W.P.(C) 6022/2023, CM APPL. 23623/2023

1. The challenge in this writ petition is to an order dated March 10, 2023, passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', in short) in Original Application No.347/2017 whereby the Tribunal has dismissed the OA filed by the petitioner.

2. The OA was filed by the petitioner challenging the order dated November 23, 2016 whereby the respondents have forfeited the pension and

Gratuity as payable to the petitioner. The order dated November 23, 2016, reads as under:

“18. WHEREAS after taking into account the submission of Shri Janak Raj, advice of DOP&T and full facts of the case, it may be observed that conviction of Shri Janak Raj, Ex. Asstt. Drug Controller of India, DGHS, New Delhi has not so far been set aside or stayed by the High Court and he has also not brought out any new facts which could have a bearing on the tentative decision of the Competent Authority for imposing penalty of 100% cut in pension and 100% cut in gratuity as admissible to him.

19. Now THEREFORE, the President being the Disciplinary Authority in the case after careful consideration of all the documents placed on record, facts and circumstances of the case, submission/representation of Shri Shri Janak Raj, the then Assistant Drug Controller of India, DGHS, New Dell dated 15/4/2015, advice of UPSC dated 21/4/2016, representation of Shri Janak Raj dated 13/5/2016 on the advice of UPSC made available to him vide memorandum dated 25/5/2016 and circumstances of the case in entirety has, come to the conclusion that ends of justice in the case would be met, if a penalty of 100% (one hundred percent) cut in pension and also 100%(one hundred percent) cut in gratuity, admissible to Shri Janak Raj, ADCT) (Retd) on a permanent basis be imposed with immediate effect.”

3. The Tribunal has upheld the order of the respondents referred to above, i.e., November 23, 2016 by relying upon the judgment of the Supreme Court in the case of ***K.C. Sareen v. C.B.I., Chandigarh, (2001) 6 SCC 584*** wherein the Supreme Court in paragraphs 7, 8 and 9 stated as under:

“7. Shri Vikram Chaudhari, learned counsel for the appellant repeated before us those grounds and further submitted that as a trial can logically reach its final end only when the appellate court decides the matter the conviction passed by the trial court cannot be treated as having become absolute. He made an endeavour to draw support for the said proposition from the following observations made by this Court in Akhtari Bi v. State of M.P. [(2001) 4 SCC 355 : 2001 SCC (Cri) 714] : (SCC p. 357, para 5)

“Appeal being a statutory right, the trial court's verdict does not attain finality during pendency of the appeal and for that purpose his trial is deemed to be continuing despite conviction.”

8. By the said observation this Court did not mean that the conviction and sentence passed by the trial court would remain in limbo automatically when they are challenged in appeal. The said observation was made in a different context altogether when notice of the executive government was drawn to the need to appoint requisite number of Judges to cope up with the increased pressure on the existing judicial apparatus, and for highlighting the consequences of non-filling existing vacancies of Judges in the High Courts. We are unable to appreciate how the said observation can be culled out of the said context for the purpose of using it in a different context altogether such as this where the convicted accused is seeking to have an order of conviction suspended during the pendency of the appeal.

9. Section 389(1) of the Code of Criminal Procedure (for short “the Code”) deals with the powers of the appellate court regarding suspension of execution of the “sentence or order appealed against” during the pendency of the appeal. It must be remembered that the same powers are invocable by the revisional court also during the pendency of the revision (vide Section 401 of the Code). That is obviously not

a reason for holding that the trial of the case could reach its culmination only when the revisional proceedings end.”

4. The submission of Mr. Rajesh Tyagi, learned counsel appearing for the petitioner primarily is that, no doubt the petitioner has been convicted by the Criminal Court but the fact remains that the petitioner has challenged the order of Criminal Court before this Court, which is pending consideration.

5. According to him, the appeal being a continuance of the criminal proceedings initiated against the petitioner and in view of the Rule 69(1)(b) of the CCS Pension Rules which stipulates as under, till such time the appellate proceedings are decided, the petitioner is entitled to the provisional pension as was being paid to the petitioner.

“The provisional pension shall be authorized during the period commencing from the date of retirement upto and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.”

6. Mr. Rajesh Tyagi in support of his submissions has relied upon the judgment of the Karnataka High Court in the case of ***N.K. Suparna v. Union of India & Ors., W.P.(C) 5938/2004***, decided on September 23, 2004 and this Court in the case of ***Lakhminder Singh Brar v. Union of India & Ors., W.P.(C) 13191/2009***, decided on September 16, 2010. We are not in agreement with the submissions made by Mr. Rajesh Tyagi.

7. Similar submissions were made by the petitioner before the respondents. Reliance was placed by the petitioner on the judgment in the case of ***N.K. Suparna (supra)***, wherein the respondents in paragraphs 12 to 17 of the order dated November 23, 2016 have stated as under:

“12. WHEREAS Shri Janak Raj, ADC(I) was convicted by CBI Court vide judgement dated 29/8/2013 for acquiring assets disproportionate to his known sources of income to the tune of Rs.9,89,022/- which comes to approximately 40.55% of disproportionate assets against total income of Rs.24,38,607/- and savings of Rs.4,02,025/- which could not be satisfactorily explained by Shri Janak Raj. Further, vide order dated 31-8-2013, Shri Janak Raj was sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.2,00,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of four-months.

13. WHEREAS as per DOP&T O.M No.371/23/92-AVD-III dated 4-3-1994, the disciplinary authority may proceed with the disciplinary proceedings including imposition of penalty as prescribed in the relevant disciplinary rules on the basis of conviction imposed on a public servant by a criminal court, notwithstanding the fact that a higher court on an appeal filed by the public servant concerned may order suspension of the sentenced passed by the trial court till the final disposal of the appeal.

14. WHEREAS as per judgement in N.K. Suparna Vs. UoI in the WP No.5938 of 2004 by Karnataka High Court the pending of appeal in court is a judicial proceedings and final order under Rule-9(1) of the Rules in terms of Clause (b) of sub Rule-(1) of Rule 69 is required to be passed by President of India only after conclusion of judicial proceedings.

15. WHEREAS the case file was referred to DOP&T for clarification as to whether the Disciplinary Authority can decide on the quantum of penalty in the disciplinary proceeding when the conviction of the Govt. servant has

been suspended by High Court or wait till the completion of judicial proceedings including appeal in Apex Court for finalization of the "disciplinary proceeding as in respect of the judgement in Shri N.K. Suparna Vs. UoI in the WP No.5938 of 2004 by Karnataka High Court.

16. WHEREAS DOP&T advised to take a decision in the light of their O.M. dated 21/07/2016. DOP&T vide their O.M. F.No.11012/6/2007-Estt.(A-III) dated 21/07/2016 inter-alia states that when a public servant was found guilty of corruption after a judicial adjudicatory process conducted by a court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior court. The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction it is public interest which suffers and sometimes even irreparably. When a public servant who is convicted of corruption is allowed to continue to hold public office, it impairs the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction the fall out would be one of shaking the system itself.

17. WHEREAS DOP&T O.M. F.No.11012/6/2007-Estt.(A-III) dated 21/07/2016 further states that thus action against a convicted Government servant should be taken straight away under Rule 19(1). An appeal against the conviction or even a stay on the sentence will have no effect unless the conviction itself is stayed.”

8. We agree with the reasoning given by the respondents in their impugned order. Additionally, Article 311 of the Constitution of India states as under:

“311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.—
(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

[(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

[Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply—]

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.]”

9. Even Rule 9(6)(b)(i) of the CCS Pension Rules, 1972 contemplates that the judicial proceedings are said to be instituted on the date on which the complaint or the report of a Police Officer of which the Magistrate take cognizance is made. Article 311 contemplates that a government servant can be terminated upon his conviction. There is no denial to the fact that with the order of Criminal Court, the petitioner stood convicted and in appeal it is only the sentence which has been suspended not the conviction. So in that sense, the conviction against the petitioner stands.

10. The interpretation sought to be given by Mr. Rajesh Tyagi to the Rule 69(1)(b) of the Pension Rules is misplaced. It has to be necessarily interpreted to mean that the conviction which has been arrived at by the Criminal Court is sufficient to attract Rule 69(1)(b). This is also indicative from the fact that the Rule 9(6)(b)(i) contemplates the institution of judicial proceedings when the complaint / report is taken cognizance by the Magistrate. Surely, such judicial proceedings culminate when the final order in the case is passed by the Magistrate concerned. In this case, on the

passing of final order by the Criminal Court he is said to have been convicted and in terms of Rule 69(1)(b), the petitioner shall not entitled to the provisional pension.

11. In fact, the issue in hand stands covered by the judgment of the Division Bench of this Court in the case of ***P.C. Misra, Danics / Joint Director (Retd.) v. Union of India and Ors., 2018 SCC OnLine Del 13199***, wherein the Court was concerned with an identical issue as is clear from paragraphs 1, 8, 9 and 18 of the judgment which we reproduce as under:

“1. The petitioner has preferred the present writ petition to assail the order dated 15.10.2018 passed by the Central Administrative Tribunal (CAT/Tribunal) in O.A. No. 100/712/2016. The tribunal has rejected the said O.A. of the petitioner. The petitioner had preferred the said O.A. to, inter alia, assail the disciplinary proceedings undertaken against him vide memorandum/show-cause notice dated 21.07.2011; the order dated 19.01.2016 passed by the Govt. of India, Ministry of Home Affairs, whereby the President imposed the penalty of withholding 100% monthly pension otherwise admissible to the petitioner, as well as forfeiting his full gratuity on permanent basis. He also sought a declaration that the O.M. dated 04.03.1994 issued by the DOPT, Govt. of India is invalid and inapplicable to cases of pensioners under Rule 9(1) of the CCS (Pension) Rules, 1972 (Pension Rules for short) on the ground that it violates Rule 69 read with Rule 9(4) of the Pension Rules and Article 300A of the Constitution of India, and on the ground that Rule 9(1) of the Pension Rules is violative of the welfare principle of State policy. He sought a declaration that his regular pension and gratuity be sanctioned, and he be allowed commutation of pension in accordance with the Rules. In the alternative, he sought a direction that provisional pension under Rule 9(4) read with

Rule 69 of the Pension Rules be continued in accordance with PPO dated 09.03.2011.

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8. The further submission of the petitioner is that his provisional pension had been sanctioned under Rule 9(4) read with Rule 69 of the Pension Rules, in view of the fact that the petitioners appeal against his conviction and sentence was pending before this Court. The petitioner vehemently submits that an appeal is a continuation of the original proceedings, and unless and until the conviction of the petitioner is upheld by the appellate court, it cannot be said that the said conviction and sentence has attained finality.

9. The petitioner further submits that Rule 69(1)(b) of the Pension Rules states that provisional pension shall commence from the date of retirement up to, and including, the date on which “after the conclusion of the departmental or judicial proceedings, final orders are passed by the competent authority”. The submission is that in view of the pendency of the criminal appeal, it cannot be said that the judicial proceedings stand concluded.

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18. The thrust of the petitioner's submission is that since his criminal appeal is pending before the High Court against his conviction and sentence, and as the sentence has been suspended by the appellate court, his conviction has not attained finality since appeal is a continuation of the original proceedings. He also relies upon Rule 69(1)(b), which provides that the provisional pension shall be authorized during the period commencing from the date of retirement upto and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed

by the competent authority. The submission is that the judicial proceedings cannot be said to have attained conclusion in view of the pendency of the criminal appeal.”

12. This Court finally has in paragraphs 26, 29, 30, 31, 33 and 34 while dismissing the writ petition has held as under:

“26. In our view, the State is not obliged to financially support a government servant who has been found guilty in a case of corruption by the criminal court-either provisionally (during pendency of this criminal appeal), or otherwise. Such a government servant, who stands convicted in a corruption case, ought to be considered as a parasite and a burden, not only on the government, but on the society at large. There is no reason why public money should be doled out to him, only to await the decision of the appellate court, which is pending at his behest against his conviction and sentence. Of course, the situation could change if, and when, the criminal appeal of the convicted Government Servant is allowed. If the exoneration is on merits, he may be entitled to claim revocation of the Order Under Rule 19(i) of the CCS (CCA) Rules or Rule 9 of the Pension Rules-as the case may be. However, if the exoneration is on purely technical grounds, whereas the findings of fact which constitute grave misconduct remain undisturbed, he may not even be entitled to derive benefit of his exoneration. That would have to be examined by the Government in each case, on the facts of that case.

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29. In N.K. Suparna (supra), the petitioner retired on attaining the age of superannuation while being prosecuted before the Special CBI Court in a corruption case. The petitioner stood convicted and sentenced on the corruption charge on 31.12.2001 i.e. one month before attaining the age

of superannuation. The petitioner's appeal before the High Court against the conviction and sentence was preferred and was pending, wherein the sentence awarded to her was suspended. The President of India invoked his power under Rule 9(1) of the Pension Rules and forfeited the pension and gratuity payable to her. The petitioner N.K. Suparna raised a similar plea, that since the criminal appeal was pending, the judicial proceedings have not come to an end and the criminal appeal was a continuation of the trial. The Karnataka High Court interpreted clause (b) of Rule 69(1) of the CCS Pension Rules to mean that a delinquent employee would be entitled to provisional pension from the date of retirement upto and including the date on which the final order may be made by the competent authority after conclusion of departmental or judicial proceedings. The words "after conclusion of departmental or judicial proceedings" were interpreted as conclusion of the appellate proceedings and not the original proceedings on the premise that an appeal is a continuation of the original proceedings. The Division Bench held that the final order envisaged under Rule 9(1) of the CCS Pension Rules - in terms of clause (b) of sub rule (1) of Rule 69, would require to be passed by the President only after the conclusion of the departmental or judicial proceedings. The Division Bench observed:

"8. ... In the instant case, since the judicial proceedings, we mean the launching of the prosecution against the petitioner have not been concluded so far in terms of finality, the President of India invoking the power conferred upon him under sub-rule (1) of Rule 9 would not arise. Therefore, the impugned order passed by the President of India in the purported exercise of power under Rule 9(1) of the Rules should be condemned as one without

authority of law inasmuch as the necessary condition to invoke that power did not exist as on the date of the impugned order nor does it exist as on today also”.

*30. The decision in **N.K. Suparna** (supra) was assailed before the Supreme Court. The SLP was, however, withdrawn by the petitioner on 20.08.2008. Thus, the issue decided by the Karnataka High Court in **N.K. Suparna** (supra) has not received the seal of approval of the Supreme Court.*

*31. Having given our anxious consideration to the matter, we cannot persuade ourselves to agree with the view taken by the Karnataka High Court in **N.K. Suparna** (supra). Under clause (b) of Rule 69(1), the relevant expression used is “from the date of retirement upto and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority”. Pertinently, while making the said rule by resort to proviso to Article 309 of the Constitution of India, the President uses the expression “final” only once i.e. in relation to orders which are passed by the competent authority. However, no such word or expression is used before the word “conclusion of departmental or judicial proceedings”. If the intendment of the President - while framing the said rule was to release provisional pension to the government servant upto the date of “final” conclusion of departmental or judicial proceedings, the President would have used the said expression “final” before the words “conclusion of departmental or judicial proceedings”, just as he used the expression “final” in respect of the orders to be passed by the competent authority. Thus, the plain grammatical and literal interpretation of clause (b) of Rule 69(1) does not support the interpretation that the conclusion*

of departmental or judicial proceedings means the “final” conclusion of departmental or judicial proceedings.

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33. The decision in the appeal may not come for years for myriad reasons. Firstly, the heavy pendency of criminal appeals would come in the way of disposal of the appeal on an early date. Secondly, even the Government servant/appellant may seek adjournments to delay the disposal of the appeal. Is it to be accepted that a government servant - who stands convicted of a corruption charge before a criminal Court, should continue to receive provisional pension, just as good as the full pension, only on account of pendency of his criminal appeal? In our view, the answer to this question has to be an emphatic “No”.

34. If the interpretation of the petitioner were to be accepted, the conviction would not attain finality even for purposes of Rule 19 of the CCS (CCA) Rules, or Rule 9 of the Pension Rules even after dismissal of the Criminal Appeal, because the petitioner would still have a right to prefer a Special Leave Petition under Article 136 of the Constitution of India before the Supreme Court. There would be no end to this process as the petitioner could file one petition after another and seek review, recall, or even file a curative petition. Pertinently, the conviction of the petitioner has not been stayed by the appellate court and only his sentence has been suspended. Therefore, for all purposes, he is a convict. To permit such a convict to draw provisional pension - which in most cases would be equal to the full pension, would be to make a mockery of the law. The same would mean that despite his conviction by the criminal court involving a serious and grave case of misconduct, he would get away without any adversity, and would continue to remain a

burden on the State. Thus, in our view, 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.”

13. Insofar as the judgment of the Division Bench of this Court in the case of **Lakhminder Singh Brar (supra)** is concerned, the issue in the said judgment is opposite to the issue which arose for consideration in **P.C. Mishra (supra)**, inasmuch as there the petitioner, who has retired during the pendency of the criminal case was acquitted. During the pendency of the criminal case, he was granted the provisional pension. His claim was that he should be given the regular pension in view of the acquittal. It may also be stated that against the acquittal, the State had filed appeal before this Court. This Court, interpreting the provisions of Section 69(1)(b) has held that the petitioner therein is not entitled to grant of regular pension during the pendency of the appeal.

14. Suffice to state, the Judgment is distinguishable on facts. Even otherwise, in view of the judgment of the Division Bench in **P.C. Mishra (supra)** placing reliance on the judgment of the Supreme Court in **K.C. Sareen (supra)** (which was not considered by this Court in **Lakhminder Singh Brar**), we agree with the conclusion arrived at by the Division Bench of this Court and hold that the Tribunal was justified in rejecting the OA. In the facts of this case, we are of the view that the impugned order needs no

interference. The writ petition and connected applications are dismissed.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

MAY 09, 2023/aky

