



\$~10

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

Date of decision: 21.03.2024

+ W.P.(C) 520/2017 & CM APPL. 2384/2017 -Stay.

GOVT OF NCT OF DELHI

..... Petitioner

Through: Mr. Naushad Ahmed Khan, Ms.
Supriya Malik and Mr. Akshit Tyagi,
Advocates.

versus

RATAN KUMAR MALHOTRA

..... Respondent

Through: Mr. Maria Mugesh Khannan,
Advocate.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

REKHA PALLI, J (ORAL)

1. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 11.07.2016 passed by the learned Central Administrative Tribunal in O. A. No. 108/2015. Vide the impugned order, the learned Tribunal has allowed the original application preferred by the respondent/applicant and has directed the petitioner to release all terminal benefits to him.

2. The respondent who had joined as LDC in the Flood Control Wing under the Delhi Administration was after being promoted from time to time, transferred as Inspector in the Department of Trade and Taxes. On 08.10.2013, the CBI registered an FIR no. RC/DAI-2018-



A-0029 against him and various other employees. Since no chargesheet/final report was filed in the Court at that stage, the respondent was on 12.03.2014 promoted as Superintendent Grade - I in the Directorate of Education from where he superannuated on 31.03.2014.

3. However, since despite the respondent having submitted all his pension papers within time, his terminal dues were not released; he made various representations which turned out to be futile. Being aggrieved, the respondent approached the learned Tribunal seeking release of his pension and other terminal dues. Vide the impugned order, the learned Tribunal has allowed the original application filed by the respondent by noticing the fact that the date on which the respondent superannuated from service, neither any departmental proceedings nor any criminal proceedings were pending against him.

4. It is in these circumstances that the present petition has been filed by the Govt. of NCT Delhi. In support of the petition, learned counsel for the petitioner submits that the impugned order is wholly perverse as the learned Tribunal failed to appreciate that even though no chargesheet had been filed against the respondent when he superannuated on 31.03.2014, his misconduct was already under investigation by the CBI at that stage. He, therefore, contends that in view of the serious corruption charges levelled against him in the FIR filed by the CBI, the petitioner was justified in not releasing his terminal dues without vigilance clearance which could not be granted to him due to the ongoing investigation against him. He further seeks



to place reliance on the decision of this Court dated 03.06.2016 in W. P. (C) No. 11860/2015 titled ***Union of India v. S. K. Gupta***. Furthermore, the learned Tribunal also failed to appreciate that as per Rule 69(c) of the CCS (Pension) Rules 1972, gratuity cannot be released to a Government servant till the conclusion of the departmental or judicial proceedings against him. He, therefore, prays that the impugned order be set aside.

5. On the other hand, learned counsel for the respondent supports the impugned order and submits that the petitioner is erroneously presuming that a mere registration of an FIR against the respondent would amount to pendency of judicial proceedings against him. He submits that the learned Tribunal has correctly appreciated that till chargesheet/final report was filed before the Court, it could not be said that any judicial proceedings were pending against him. The learned Tribunal was justified in directing that all his terminal dues be released. He, therefore, prays that the petition be dismissed.

6. Before dealing with the rival submissions of the parties, it may be apposite to note hereinbelow the findings of the learned Tribunal as contained in para 7 to 9 of the impugned order:-

“7. The respondents neither in their counter filed on 15.04.2015 nor at the time of hearing of this case, have stated that the final report, after completing the investigation, is filed in the case registered against the applicant and that cognizance is taken by the Magistrate. Hence, as per the settled principles of law and as affirmed in the aforesaid decision, on which the learned counsel for the applicant placed reliance, no Judicial proceedings have said to have been instituted against the applicant, till date, as no final report or charge sheet is filed-against the applicant as on the date of his retirement.



8. In **Daya Nand Sharma** (*supra*), in identical circumstances, when pension and other pensionary benefits of the applicant therein were withheld, this Tribunal after examining the various provisions of the CCS (Pension) Rules, 1972 etc. held that the applicant therein was entitled for all the benefits except regular pension. The relevant paragraph read as under:-

“10. From above it is clear that the report to be filed by a Police Officer referred to in Rule 173 is when the officer in charge of Police Station or in the instant case CBI files the final report after completing its investigation and the cognizance is taken by the Magistrate only after the said report is filed and if in the opinion of Magistrate, he is satisfied that, there is sufficient ground for not get covered under Rule 9(6)(b) because it specifically states that judicial proceedings shall be deemed to be institute in the case of criminal proceedings shall be deemed to be instituted in the case of criminal proceedings on the date when report of a Police Officer is made of which the Magistrate takes cognizance.....”

9. In the Circumstances and for the aforesaid reasons, the OA is allowed and the respondents are directed to release all the retiral benefits, other than regular pension, to the applicant within 90 days from the date of receipt of a copy of this order, failing which they are also liable to pay interest at 8% per annum from the date of retirement to the date of actual payment. No costs.”

7. From a perusal of the aforesaid, it emerges that the learned Tribunal has, upon noticing that no final report or charge sheet had been filed against the respondent till the date of his retirement, opined that it could not be said that any criminal proceedings were pending against him when he superannuated and has consequently, directed the petitioner to release all his terminal benefits. For this purpose, the learned Tribunal has relied on its decision in OA 1522/2017 dated 08.01.2008 titled **Daya Nand Sharma, Retired DANIC Officer under GNCTD v. GNCTD** wherein it was held that mere registration of an FIR against an accused person would not be treated as



commencement of criminal proceedings against him. It is only when the learned Magistrate takes cognizance of the final report filed by the police officer or the CBI as the case may be, that the criminal proceedings can be stated to have been commenced against the accused.

8. We have also considered the petitioner's plea that as per Rule 69 of the CCS (Pension) Rules, when a departmental or judicial proceedings are pending in respect of a government servant, he would be granted only provisional pension and no gratuity will be paid to them. It would, therefore, be apposite to note Rule 69 (1) of the CCS (Pension) Rules, which reads as under-

“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."

9. From the aforesaid, it is evident that Rule 69 (1) deals with a situation where departmental proceedings or judicial proceedings are pending against a government servant on the date of his superannuation. In the present case, it is an admitted position that no chargesheet was filed against the respondent till the date of his superannuation when the right to receive terminal dues accrued in his favour. It is, therefore, evident that when the respondent superannuated, since no chargesheet had been filed by the CBI, no cognizance had been taken by the learned Magistrate and, therefore, it cannot be said that any judicial proceedings were pending against him on the date of his retirement. In these circumstances, we fail to appreciate as to how Rule 69 will come in the way of respondent receiving his terminal dues.

10. We have also considered the decision in *S. K. Gupta (supra)*, relied upon by the petitioner but find that the same is not applicable to the facts of the present case. In the said decision, the Court was dealing with a situation where the concerned government servant had been suspended before his superannuation but was on attaining the age of superannuation permitted to retire without any objection from the government. The Court opined that merely because he was permitted to retire without any objection, would not imply that his suspension automatically stood revoked. This decision which deals with an entirely different factual matrix, therefore, does not forward the case of the petitioner.



11. For the aforesaid reasons, we find no infirmity in the impugned order. The petition being meritless is, accordingly, dismissed alongwith the pending application.

12. As prayed for, the petitioner is granted six weeks' time to implement the impugned order.

(REKHA PALLI)
JUDGE

(RAJNISH BHATNAGAR)
JUDGE

MARCH 21, 2024

P