



2024:DHC:9182-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 15943/2024, CM APPLs. 67013/2024 & 67014/2024****CHIEF ELECTORAL OFFICER AND ORS.Petitioners****Through: Mr. Yeeshu Jain, ASC with Ms.
Jyoti Tyagi and Mr. Hitanshu Mishra, Advs.****versus****RAKESH CHAUDHARYRespondent****Through: Mr. Samarth Luthra, Adv.****CORAM:****HON'BLE MR. JUSTICE C. HARI SHANKAR****HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA****JUDGMENT (ORAL)****%
19.11.2024****C. HARI SHANKAR, J**

1. The respondent was appointed to Grade-II of the Delhi Administration Subordinate Service¹ on 14 August 1986. He was thereafter promoted to Grade-I of the DASS and was appointed *ad hoc* to the DANICS² w.e.f.³ 28 February 1995 and 20 May 2015.

2. While in service, FIR No. 58/2006 was registered against the respondent by the Anti Corruption Bureau⁴, Delhi, under Section 13(1)(d) of the Prevention of Corruption Act, 1988 read with Section

¹ DASS

² Delhi, Andaman & Nicobar Islands, Lakshadweep, Dadra & Nagar Haveli, Daman & Diu Civil Service

³ with effect from

⁴ "ACB" hereinafter



120B of the Indian Penal Code, 1860.

3. The respondent was compulsorily retired under FR 56(j)⁵ on 25 November 2019. It is not in dispute that the FIR was still pending before the competent Tribunal Court at the time of compulsory retirement of the respondent.

4. The ACB submitted a closure report on 2 December 2020 before the learned Special Judge (PC Act), ACB-II, Rouse Avenue Court. *Vide* order dated 18 December 2021, the learned Special Judge rejected the closure report and directed the matter to be investigated further by the ACB.

5. Consequent on his compulsory retirement, the respondent sought release of his pensionary benefits. The GPF and GEIGS⁶ were released to the respondent and provisional pension was paid to him. However, final pension, gratuity, commuted pension and leave encashment had not been paid to the respondent. Repeated representations by the respondent having failed to elicit any favourable response from the petitioner, the respondent moved the Central Administrative Tribunal⁷ by way of OA 506/2023, seeking

⁵ (j) Notwithstanding anything contained in this rule, the Appropriate Authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of less than three months in writing or three months' pay and allowances in lieu of such notice:

(i) If he is, in Group 'A' or Group 'B' service or post in a substantive, quasi-permanent or temporary capacity and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years;

(ii) in any other case after he has attained the age of fifty-five years;

⁶ Government Employees' Group Insurance Scheme

⁷ "the Tribunal" hereinafter



release of the retiral benefits due to him.

6. The said OA stands disposed of by the Tribunal by way of the impugned order dated 18 January 2024.

7. Before the Tribunal, two issues arose. The first was with respect to withholding of the respondent's pensionary benefits and the second was with respect to withholding of leave encashment due to the respondent.

8. Insofar as the withholding of pensionary benefits is concerned, the Tribunal observed that, by virtue of Rule 9(6)(b)(i)⁸ of Central Civil Services (Pension) Rules, 1972⁹, pension would be withheld only if cognizance have been taken by the competent criminal court in the proceedings against the official concerned. Inasmuch as no cognizance have been taken by the Special Court, the Tribunal directed release, to the respondent, of his pensionary benefits.

9. Apropos leave encashment, the Tribunal noted that withholding of leave encashment had to abide by Rule 39(3)¹⁰ of Central Civil

⁸ (6) For the purpose of this rule, -

(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;”

⁹ “the Pension Rules” hereinafter

¹⁰ (3) The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any.



Services (Leave) Rules 1972¹¹. The said Rule applies only where there was a decision by the authority withholding the leave encashment that there was a possibility of money becoming recoverable from the official on conclusion of the proceedings against him. Inasmuch as there was no such decision taken by the petitioner, the Tribunal held that leave encashment could also not be withheld.

10. We have recently decided a similar issue in *Govt. of NCT of Delhi v. Anang Pal Singh*¹², apropos Rule 39(3) of Central Civil Services (Leave) Rules, 1972 itself in which we have taken the view that, in the absence of a specific decision by the authority withholding leave encashment that, in the event of the proceedings against the official culminating, there was a possibility of money being recovered from him, leave encashment could not be withheld. Admittedly, no such decision is forthcoming on the record in the present case. The withholding of the leave encashment was clearly illegal.

11. On the aspect of withholding of pension, we have heard Mr. Yeeshu Jain for some time. Mr. Jain has placed reliance on the judgment of the Supreme Court in *Tula Ram v Kishore Singh*¹³. He has specifically emphasized the following passages from the decision:

“7. The question as to what is meant by taking cognizance is no longer *res integra* as it has been decided by several decisions of this Court. As far back as 1951 this Court in the case of *R.R. Chari*

¹¹ “the Leave Rules” hereinafter

¹² 2024 SCC OnLine Del 7704

¹³ (1977) 4 SCC 459



*v State of Uttar Pradesh*¹⁴ observed as follows:

‘Taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate as such applies his mind to the suspected commission of an offence.

While considering the question in greater detail this Court endorsed the observations of Justice Das Gupta in the case of *Superintendent and Remembrancer of Legal Affairs, West Bengal v. Abani Kumar Banerjee*¹⁵ which was to the following effect:

“It seems to me clear however that before it can be said that any Magistrate has taken cognizance of any offence under Section 190(1)(a), Criminal Procedure Code, he must not only have applied his mind to the contents of the petition but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter-proceeding under Section 200 and thereafter sending it for inquiry and report under Section 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind, e.g. ordering investigation under Section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence.”

11. Mr. Mukherjee however submitted that the moment the Magistrate directed investigation he must be deemed to have taken cognizance, and, therefore, he could not have taken any of the steps excepting summoning the accused straight-away or directing re-investigation. We have already pointed out that Chapter 12 and Chapter 14 subserve two different purposes: One pre-cognizance action and the other post cognizance action. That fact was recognised by a recent decision of this Court in the case of *Devarpalli Lakshminaryana Reddy and Ors. v. V. Narayana*

¹⁴ AIR 1951 SC 207

¹⁵ AIR 1950 Cal 347



Reddy and Ors.¹⁶ where the Court observed as follows :

The power to order police investigation under Section 156(3) is different from the power to direct investigation conferred by Section 202(1). The two operates in a distinct spheres at different stages. The first is exercisable at the pre-cognizance stage, the second at the post cognizance stage when the Magistrate is in seisin of the case. That is to say in the case of a complaint regarding the commission of a cognizance offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Section 156(3).

12. In the case of **Gopal Das Sindhi and Drs. v. State of Assam and Anr**¹⁷ this Court while approving the observations of Justice Das Gupta in the case referred to above, observed as follows:

It would be clear from the observations of Mr. Justice Das Gupta that when a Magistrate applies his mind not for the purpose of proceeding under the various sections of Chapter XVI but for taking action of some other kind, e.g. ordering investigation under Section 156(3) or issuing a search warrant for the purpose of investigation, he cannot be said to have taken cognizance of any offence.

15. In these circumstances we are satisfied that the action taken by the Magistrate was fully supportable in law and he did not commit any error in recording the statement of the complainant and the witnesses and thereafter issuing process against the appellants. The High Court has discussed the points involved thread-bare and has also cited number of decisions and we entirely agree with the view taken by the High Court. Thus on a careful consideration of the facts and circumstances of the case the following legal propositions emerge:

1. That a Magistrate can order investigation under Section 156 (3) only at the pre-cognizance stage, that is to

¹⁶ [1976] Supp SCR 524

¹⁷ AIR 1961 SC 986



say, before taking cognizance under Sections 190, 200 and 204 and where a Magistrate decides to take cognizance under the provisions of Chapter 14 he is not entitled in law to order any investigation under Section 156(3) though in cases not falling within the proviso to Section 202 he can order an investigation by the police which would be in the nature of an enquiry as contemplated by Section 202 of the Code.

2. Where a Magistrate chooses to take cognizance he can adopt any of the following alternatives:

(a) He can pursue that complaint and if satisfied that there are sufficient grounds for proceeding he can straightaway issue process to the accused but before he does so he must comply with the requirements of Section 200 and record the evidence of the complainant or his witnesses.

(b) The Magistrate can postpone the issue of process and direct an enquiry by himself.

(c) The Magistrate can postpone the issue of process and direct an enquiry by any other person or an investigation by the police.

3. In case the Magistrate after considering the statement of the complainant and the witnesses or as a result of the investigation and the enquiry ordered is not satisfied that there are sufficient grounds for proceeding he can dismiss the complaint.

4. Where a Magistrate orders investigation by the police before taking cognizance under Section 156(3) of the Code and receives the report thereupon he can act on the report and discharge the accused or straightaway issue process against the accused or apply his mind to the complaint filed before him and take action under Section 190 as described above.”

Mr. Jain’s contention is that, therefore, it could not be said that the learned Special Judge has not taken cognizance of the alleged offence against the respondent.



12. On when a criminal court takes cognizance, the law is no longer *res integra*. In *State of West Bengal v Mohd Khalid*¹⁸, the Supreme Court held, on the aspect of taking of cognizance by the Magistrate, thus:

“43. Similarly, when Section 20-A(2) of TADA makes sanction necessary for taking cognizance — it is only to prevent abuse of power by authorities concerned. It requires to be noted that this provision of Section 20-A came to be inserted by Act 43 of 1993. Then, the question is as to the meaning of taking cognizance. Section 190 of the Code talks of cognizance of offences by Magistrates. This expression has not been defined in the Code. In its broad and literal sense, it means taking notice of an offence. This would include the intention of initiating judicial proceedings against the offender in respect of that offence or taking steps to see whether there is any basis for initiating judicial proceedings or for other purposes. *The word ‘cognizance’ indicates the point when a Magistrate or a Judge first takes judicial notice of an offence. It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons.*

44. Cognizance is defined in Wharton's Law Lexicon 14th Edn., at page 209. It reads:

“Cognizance (Judicial), knowledge upon which a judge is bound to act without having it proved in evidence: as the public statutes of the realm, the ancient history of the realm, the order and course of proceedings in Parliament, the privileges of the House of Commons, the existence of war with a foreign State, the several seals of the King, the Supreme Court and its jurisdiction, and many other things. A judge is not bound to take cognizance of current events, however notorious, nor of the law of other countries.”

It has, thus, reference to the hearing and determination of the case in connection with an offence. By the impugned judgment the High Court has quashed the orders of sanction and the Designated Court taking cognizance in the matter.”

¹⁸ (1995) 1 SCC 684



(Emphasis supplied)

13. Paras 10 and 13 of *State of Karnataka v Pastor P Raju*¹⁹ are even more instructive:

“10. Several provisions in Chapter XIV of the Code of Criminal Procedure use the word “cognizance”. The very first section in the said Chapter viz. Section 190 lays down how cognizance of offences will be taken by a Magistrate. However, the word “cognizance” has not been defined in the Code of Criminal Procedure. The dictionary meaning of the word “cognizance” is — “judicial hearing of a matter”. The meaning of the word has been explained by judicial pronouncements and it has acquired a definite connotation. The earliest decision of this Court on the point is *R.R. Chari v State of U.P.* wherein it was held:

“... ‘taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate as such applies his mind to the suspected commission of an offence’.”

13. It is necessary to mention here that taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage *when the Magistrate applies his judicial mind* to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the court decides to proceed against the offenders against whom a *prima facie* case is made out.”

(Emphasis supplied)

14. Thus, prior to the Magistrate, or Judge, applying his judicial mind to the facts before him to arrive at a conclusion, even if *prima facie*, as to whether the alleged offence has, or has not, been committed, cognizance cannot be said to have been taken.

¹⁹ (2006) 6 SCC 728



2024:DHC:9182-DB



15. In the present case, the matter is still at the stage of investigation. No charge sheet has been filed. There is no evidence of application of judicial mind, by the learned Special Judge, of the facts of the case before him.

16. The passages from *Tula Ram* on which Mr. Jain places reliance do not in any way indicate that the learned Special Judge in the present case has taken cognizance. It is an admitted position that chargesheet is yet to be filed in the proceedings. As such, there can be no question of the learned Special Judge having taken cognizance in the case against the respondent.

17. In that view of the matter, applying Rule 9(6)(b)(i) of the CCS (Pension) Rules, we find no fault with the decision of the learned Tribunal to the effect that the pensionary benefits of the respondent could not have been withheld.

18. Accordingly, there is no cause for us to interfere with the present petition. The petition is dismissed in *limine*.

C.HARI SHANKAR, J.

ANOOP KUMAR MENDIRATTA, J.

NOVEMBER 19, 2024

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Click here to check corrigendum, if any