



2025:DHC:902-DB



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

+ **W.P.(C) 14630/2021 & CM APPL. 46103/2021**

DELHI DEVELOPMENT AUTHORITYPetitioner
Through: Ms. Sriparna Chatterjee and
Mr. Manish, Advs.

versus

SUSHIL KUMAR SHARMA AND ANR.Respondents
Through: Mr. Ajay Kr. Sharma and Ms.
Rupali Sharma, Advs. for R-1.
Mr. Vikrant N. Goyal, Mr. Aditya Shukla,
Ms. Shivani Yadav and Mr. Nishu, Advs. for
R-2.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

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28.01.2025

C. HARI SHANKAR, J.

1. The respondent, who was working as Deputy Chief Accounts Officer in the Delhi Development Authority¹, was placed under suspension on 26 June 2020, four days prior to his scheduled retirement on 30 June 2020, on the ground that disciplinary proceedings were contemplated against him. He was, therefore, released only provisional pension, on his superannuation.

2. OA 313/2021 was instituted by the respondent before the



Central Administrative Tribunal², challenging his suspension and also seeking a mandamus to the DDA to release, to him, his gratuity, leave encashment, and commutation of pension.

3. The OA has been disposed of, by the Tribunal, *vide* order dated 18 June 2021, with a direction to the DDA to issue a charge-sheet to the respondent within four weeks of the order, failing which the petitioner has been directed to release, to the respondent, gratuity, leave encashment and commutation of pension, without prejudice to the right of the petitioners to take further steps in accordance with law.

4. Aggrieved thereby, the DDA has petitioned this Court, under Article 226 of the Constitution of India.

5. We have heard Ms Sriparna Chatterjee for the DDA, Mr Ajay Kumar Sharma for Respondent 1 and Mr Vikrant Goyal for the Ministry of Housing and Urban Affairs.

Analysis

6. The order of the Tribunal is somewhat strange and, in a sense, contradictory. Para 6 of the order reads thus:

“6. The applicant did not challenge the order of suspension, obviously because it has no effect once he retired from service. Unless the order of suspension is set aside, there is no way the applicant can get the benefits referred to above. At the same time, the respondents cannot continue the uncertainty for a long time.”



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Following these observations, the Tribunal, as already noted, concludes, in para 7, with a direction to the petitioners to serve a charge-sheet to the respondent within four weeks, failing which they have been directed to release, to the respondent, his pension, gratuity and leave encashment.

7. At a bare glance, the observations in para 6 cannot live in peace with the directions in para 7. The Tribunal could not, simultaneously, have held that till the suspension is set aside, the respondent could not claim pension, gratuity or leave encashment and, simultaneously, directed the petitioners, in the event of their not issuing a charge-sheet to the respondent within a fixed period of time, to release the retiral dues to the respondent.

8. Reverting to the OA, Respondent 1 challenged, therein, the suspension order and also sought disbursal of retiral benefits to him, by praying thus:

“a) issue appropriate direction/orders thereby directing the Respondents to release gratuity, leave encashment and commutation of pension alongwith interest to the applicant;

b) Pass any other further order/orders, as this Hon’ble Court may deem fit and proper, in favour of the Applicant and against the respondents;

c) Set aside the order of suspension and allow all the benefits/back wages/full salary, etc for unauthorized period of suspension.

d) Award the cost of this OA.”

9. In their reply to the OA as well as in the present writ petition, the DDA set out the sequence of events which transpired prior to the

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issuance of charge sheet to Respondent 1 thus:

25.02.2022	Vide a communication dated 25.02.2022, the first stage advice was received from the CVC with the recommendation to initiate major penalty proceedings against the Respondent No.1.
21.07.2022	The main investigation file was returned from the O/o Hon'ble LG on 21.07.2022 with a view to initiate the proceedings against Shri Sushil Kumar Sharma, the then Dy. FA(H)
24.08.2022	Major Penalty Chargesheet was issued to Shri Sushil Sharma on 24.08.2022.
02.11.2022	Inquiry Officer (I.O.) and Presenting Officer (P.O.) were appointed vide order No.1 10/Vig./2022/4822 dated 02.11.2022. Since then, the disciplinary proceedings are going on in the matter
30.10.2022	Vide letter dated 30.10.2022 the P.O. Sh. Manjeet Ranga informed that Charged officials (CO) have requested to get the documents authenticated from the original file. However, the original file was in the custody of CBI Court. So the P.O. requested Vigilance department (AVO-IV) and Dy. Director (CE) to obtain the original file from the CBI. Again he requested through letters dt. 09.01.2023, 10.04.2023. In response to these letters Vigilance deptt. had sent letters dt. 24.01.2023, 02.05.2023 to Commercial Estate branch to take up the matter with investigating officer, CBI and to call back original file / records.
24.01.2023, 28.02.2023 & 27.03.2023	Letters dt. 24.01.2023 & 28.02.2023 were sent by Commercial Estate branch to CBI to handover the original file. Sh. Lakshya Uppal, JSA was authorized on 27.03.2023 to collect the original files from Sh. Umesh Kaushik. SI/CBI, ACB.
16.05.2023, 16.10.2023 & 01.11.2023	Vide letter dated 16.05.2023 and 16.10.2023 I.O. Sh. Sudhir Kakkar informed that Charged officer Sh. Sushil Kumar Sharma has requested for inspection of documents/file enclosed alongwith the chargesheet issued to him and that PO apprised him that the original file/documents could not be given at that time because the file had been submitted to CBI Court. He further requested to obtain the original document/case file from CBI. Accordingly, a letter dt. 01.11.2023 was written to Director (CE) to call the original document/case file from CBI.
03.04.2024 & 15.04.2024	Dy. Director (CE) vide letter dated 03.04.2024 informed that the file has been received from CBI Court. This was informed to I.O. & PO vide letter dated 15.04.2024 and it was requested to obtain certified copies from Commercial Estate Branch.
	Presently the disciplinary proceedings are going on with I.O.

10. From the table, it is clear that, on the date when the suspension

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order was issued, the file regarding Respondent 1's disciplinary proceedings was pending before the Hon'ble Lieutenant Governor.

11. As such, the disciplinary proceedings were clearly contemplated on the date when the suspension order was issued.

12. Thus, the suspension order was issued on a valid ground and, therefore, a challenge to the suspension order does not have any leg to stand on.

13. Mr. Sharma, learned Counsel for Respondent 1, however, sought to submit that, against other co-delinquents, such action was not taken. The issuance of the suspension order to Respondent 1 cannot be challenged on that ground. However, we reserve it liberty with Respondent 1 to take up the aspect of discrimination before the Inquiry Officer and if it is taken up, the Inquiry Officer would take a call thereon. We do not express any view on that aspect.

14. Insofar as the release of retiral dues are concerned, in view of Rule 9(6)(a)³ of the CCS⁴ (Pension) Rules, 1972, as and when disciplinary proceedings would be initiated against the respondent, they would be deemed to have been initiated against Respondent 1 while in service, from the date on which he was placed under suspension. Accordingly, he could not be released his pension, but

³ (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 servant has been placed under suspension from an earlier date, on such date;

⁴ Central Civil Services



would only be entitled to provisional pension, under Rule 9(4)⁵ read with Rule 69(1)(a)⁶ of the CCS (Pension) Rules.

15. By operation of Rule 69(1)(a) read with Rule 69(1)(c) of the CCS (Pension) Rules, Respondent 1 would also not be entitled to be released his gratuity. Rule 69(1)(a) covers two situations; where the Government servant is covered by Rule 9(4), and where the Government servant was under suspension on the date of his retirement. Respondent 1, undisputedly, falls within the second category of employees. Rule 69(1)(c)⁷, which does not distinguish between the two categories of employees covered by Rule 69(1)(a), proscribes payment of gratuity to the Government servant until conclusion of the departmental and judicial proceedings.

16. The position that results, therefore, is that a Government servant who, on the date of his retirement, has disciplinary or judicial proceedings pending against him, *or who is under suspension*, would be entitled only to provisional pension, and would not be entitled either to regular pension (and, therefore, to commutation of pension) or to gratuity, unless either the disciplinary or judicial proceedings, or the suspension, come to an end.

⁵ (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.

⁶ **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.

⁷ (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



17. Respondent 1 is, admittedly, receiving provisional pension.
18. The direction, in the impugned order of the Tribunal, to release all retiral dues of Respondent 1 if no charge-sheet is issued to him within four weeks of the order is, therefore, unsustainable in law.
19. However, so far as leave encashment is concerned, Rule 39(3)⁸ of the CCS (Leave) Rules, 1972, permits withholding of leave encashment only if there is a finding by the authority that, on the conclusion of proceedings, there is a possibility of recovery from Respondent 1. While withholding leave encashment, it does not appear that any finding was recorded by the petitioner to the effect that, on conclusion of the proceedings any amount would become recoverable from Respondent 1. Thus, withholding of leave encashment could not be justified and leave encashment would have to be released to Respondent 1.
20. As such, the impugned order is set aside, with the sole caveat that Respondent 1 would be entitled to release of the leave encashment to which he was due on the date of his superannuated in term of Rule 39 of the CCS (Leave) Rules.
21. The disciplinary proceedings are stated to have, thereafter, been initiated against Respondent 1 in August 2022. Inasmuch as

the Government servant.

⁸ (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

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Respondent 1 has retired from service, the petitioner is directed to conclude the disciplinary proceedings as expeditiously as possible. We are also informed that the inquiry is almost over. We, therefore, direct the Disciplinary Authority to conclude the disciplinary proceedings within a period of six months from today.

22. In the event that the leave encashment is not released within a period of three weeks from today, it would carry interest at GPF rate from the date of his superannuation.

23. This writ petition stands disposed of in the aforesaid terms with no orders as to costs.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

JANUARY 28, 2025/aky

Click here to check corrigendum, if any

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withheld after adjustment of Government dues, if any.

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