

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT  
NEW DELHI**

O.A. No. 583/2010

Maj. Gen. A.K. Kapur

.....Applicant

Versus

Union of India & Others

.....Respondents

For applicant: Sh. Viraj R. Datar with Sh. Krishanu Adhikary &  
Sh. Shaharyar Mohd. Afzal, Advocates.

For respondents: Sh. Anil Gautam with Sh. Ankur Chibber,  
Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.  
HON'BLE LT. GEN. M.L. NAIDU, MEMBER.**

**ORDER  
29.09.2010**

1. Applicant has challenged the Disciplinary Vigilance (DV) Ban on the release of full pension and other retiral benefits. In this connection, learned counsel for applicant has invited our attention to policy decision issued by Addl. Dte. Gen. Discipline and Vigilance (AG/DV-I) on Provisional DV Ban : Officers.

2. Applicant is facing a prosecution under the Prevention of Corruption Act launched by CBI and the matter is pending before the competent court. Therefore, applicant was not released his pension. The relevant provision of the aforesaid policy which is emphasised by applicant is Clause (a) reads as under :-

*"(a) SPE/CBI Cases (Type 'C') : When the competent authority accords approval for prosecution of the officer by CBI in the Civil Court, the officer will be put under Provisional DV Ban type 'C'. When the CBI recommends departmental action, the officer will be put under Provisional DV Ban type 'D'/'A'/'T' as the case may be only after a competent authority has taken cognizance of the offence and directs action against the officer."*

Then there will be Type 'C' Ban with regard to pension. Type 'C' has been described in Clause 11 (d) in the said policy which reads as under :-

*"11 (d) Provisional DV Ban may involve non-sanction of pensionary/terminal benefits once subjection of the officer to the Army Act continues after he superannuates while under Provisional DV Ban. These will be processed separately by Personnel Service Directorate"*

Now along with these when applicant made a representation to the Authorities, they replied it on 10<sup>th</sup> June, 2010 and clearly informed applicant that as per policy, DV Ban Type 'C' is invoked

when the criminal prosecution is pending against him. In that they pointed out that as per the Rule 3-B (b) of the Pension Regulations for the Army, 1961, he is not entitled to post retiral benefits i.e. pension anything because of the provisional ban.

Sub-clause (b) of Clause 3-B reads as under :-

*"3-B.(b) Payment of provisional pension as mentioned in sub-clause (a) (i) above shall be adjusted against the final retirement benefits that may be sanctioned to such service personnel upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or where final pension is reduced or withheld either permanently or for a specified period."*

As per this provision, all his retiral benefits will be paid to applicant after adjudication of that criminal case, be it in favour or against. Sub-clause (b) of Clause 3-B further says that payment of provisional pension as mentioned in sub-clause (a) (i) above shall be adjusted against the final retirement benefits that may be sanctioned to such service personnel upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or where final pension is reduced or withheld either permanently or for a specified period. That means all his benefits will be paid be it



service pension or be it leave encashment or be it gratuity after adjudication of criminal prosecution.

3. Learned counsel for applicant submitted that as per the policy of the DV Ban, the relation with the Army has ceased to exist with effect from the date applicant has retired, therefore, the matter should be dealt under the Section 123 of Army Act. But that does not make any difference for simple reason that as per the policy incumbent who is facing criminal prosecution by the CBI and as per Type 'C' Ban, all his retiral benefits has to be determined after decision of the criminal trial and it has been fully covered by Sub-clause 3 (b) of Clause 3-B of Pension Regulations for the Army.

4. Learned counsel for applicant further submitted that his leave encashment should have been released. But we regret to say that it cannot be done as we have already mentioned above sub-clause (b) of Clause 3-B which clearly mentions that all his post retiral benefits will be adjusted at the end of the criminal prosecution. Consequently, he is not also entitled to leave encashment because it will only be given after decision of the

criminal prosecution whether he is guilty or not. Petition is dismissed. No order as to costs.

**A.K. MATHUR**  
(Chairperson)

**M.L. NAIDU**  
(Member)

**New Delhi**  
**September 29, 2010.**