

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI.

T.A.No. 498 of 2009

[Arising out of WP(C)No. 7405 of 2007 of Delhi High Court]

Maj. Gen. Anand Kumar Gupta (Retd.) ...Petitioner

Versus

Union of India ...Respondent

For the Petitioner : Sh. Anil Mittal, Advocate

For the Respondents: Col. (Retd.) R. Balasubramaniam, Advocate

C O R A M:

HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON

HON'BLE LT.GEN. M.L.NAIDU, MEMBER (A)

**JUDGMENT**

1. Petitioner by this Writ Petition has prayed that the order dated 12<sup>th</sup> September, 2007 may be quashed and respondent may be directed to release all the arrears of pension, with interest, to the petitioner.

2. Brief facts which are necessary for disposal of this petition are that petitioner joined the Army, after completing training at National Defence Academy and Indian Military Academy, as a 2<sup>nd</sup> Lieutenant in June, 1955. Petitioner was promoted from time to time and ultimately he became Major General in December, 1985. He passed the Staff College at Wellington and National Defence College at New Delhi.
3. After his retirement on 31<sup>st</sup> March, 1990, on superannuation, petitioner submitted his papers for post-retiral benefits viz. gratuity, pension, leave encashment etc. The petitioner opted for commutation of 43% of his retirement pension, amounting to Rs.1,440/- per month and proper authorisation was issued.
4. Petitioner became victim of conspiracy in which he was accused of financial irregularities and false cases were started against him in order to shelter the real culprits. It is alleged that a mock inquiry was held against the petitioner in breach of principles of natural justice and

fair play. It is alleged that petitioner was placed with criminal prosecution and he was convicted by the Magistrate, Nandlur (A.P.). Thereafter, filed a Criminal Appeal No. 104/1992 in the court of the Hon'ble Sessions Judge, Cuddapah. However, because of mala fide action, the Provisional Pension Payment Order was amended vide CORR PPO No. M/Corr/509/90, withholding payment of retirement gratuity and commuted value of pension. However, the petitioner continued to draw the full pension. It is pointed out that the provisions of the payment of Provisional Pension is governed by regulation 3-B of the Pension Regulations for the Army Part-I, 1961, which reads as under:

“3-B(a)

- (i) A service personnel (including a Commissioned Officer) against whom any departmental or judicial proceedings are pending or instituted after retirement in respect of an event which took place not more than 4 years before such institution may on his retirement on attaining the age of compulsory retirement or otherwise be authorised a payment of provisional pension not exceeding the maximum pension which would have been

admissible to him on the basis of the qualifying service upto the date of retirement or if he was under suspension on the date of retirement upto the date immediately proceeding the date on which he was placed under suspension.

- (ii) The provisional pension may be authorised during the period commencing from the date of retirement to the date on which, upon conclusion of the departmental or judicial proceedings, final orders are passed by the competent authority.
  - (iii) No gratuity (including death-cum-retirement gratuity), shall be authorised until the conclusion of such proceedings and issue of final orders thereon.
  - (iv) No commutation of the provisional pension shall be permitted.
- (b) Payment of provisional pension as mentioned in sub-clause (a) (i) above shall be adjusted against the final retirement benefits 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.
- (c) Nothing contained in this Regulation shall prejudice the operation of Regulation 3 when final pension and/or gratuity (including death-cum-retirement gratuity) is sanctioned upon the conclusion of the departmental or judicial proceedings.

Note: A show cause notice is not required to be given on the individual even if the amount of provisional pension is less than the maximum.”

5. Petitioner, from 1990 to 1992, made various representations for release of his retirement benefits, gratuity and other post-retiral benefits. Thereafter, petitioner was issued a show cause notice on 14<sup>th</sup> July, 1992 to discontinue his pension on the ground of alleged escaping from army custody. Petitioner, on 14<sup>th</sup> August, 1992, replied to the show cause notice that it is premature, misconceived and untenable, but he did not receive any communication after submission of his reply. Therefore, he thought that this must have been withdrawn.
6. On 2<sup>nd</sup> September, 1992 the petitioner's appeal before Additional Sessions Judge, Cuddapah (A.P.) was allowed and he was acquitted of all the criminal charges.
7. Then, again, between 1992 to 1994 petitioner keep on requesting for release of his pension, but, without result. Thereafter, petitioner filed a Writ Petition in Delhi High Court [W.P.(C) No. 5119 of 1994] for seeking his post-retiral benefits.

8. Thereafter, petitioner received his revised pension with effect from 1<sup>st</sup> January, 1996 confirming that the show cause notice has been withdrawn. Thereafter, petitioner received a summons from Principal Special Judge (CBI Cases), Chennai to appear on 1<sup>st</sup> December, 2000 in CC No. 5 of 2000. Petitioner appeared before the CBI Court and charges were framed on 18<sup>th</sup> February, 2003.
9. Meanwhile, petitioner's family pension was further revised with effect from 1<sup>st</sup> January, 1996. The case was pending before the CBI Court, Chennai and out of list of 26 witnesses only 3 witnesses were examined.
10. Thereafter, petitioner made an application on 27<sup>th</sup> July, 2006 to the Ministry of Defence, under Right to Information Act, for certain documents. It is submitted that petitioner's legitimate request for documents resulted in vindictive action and the respondent by an order dated 14<sup>th</sup> August, 2006 suspended petitioner's provisional pension, which he had been receiving for the last 16 years. It was mentioned that

petitioner absconded since 9<sup>th</sup> June, 1990 and thereby evading prosecution. It is alleged that petitioner is residing in his residence at the address given in this writ petition and he has been receiving all the correspondence at this address. Therefore, petitioner challenged the order dated 14<sup>th</sup> August, 2006 before Delhi High Court.

11. The respondent (Union of India) on 13<sup>th</sup> September, 2006 withdrew the order dated 14<sup>th</sup> August, 2006 without prejudice to its rights. In view of the withdrawal of the order, the Division Bench of Hon'ble Court dismissed the said Writ Petition as infructuous.
12. When the respondent did not restart the payment of the pension, despite the Court order dated 13<sup>th</sup> September, 2006, then, petitioner filed a Contempt Petition. However, the respondent again restarted the provisional pension of petitioner. In view of this, the contempt petition was discharged.

13. The respondent issued a show cause notice on 13<sup>th</sup> December, 2006 under regulation 4 and 5 of the Pension Regulations of the Army, Part-I, 1961. In which it was stated that the petitioner was being tried by Court Martial for alleged financial irregularities and was placed under close arrest with effect from 30<sup>th</sup> March, 1990 and was being taken to Ahmed Nagar from Madras on 9<sup>th</sup> June, 1990, he escaped from Army custody and that criminal case was filed by the CBI against the petitioner, which was pending in the court at Chennai. Petitioner was called upon to file a reply within 30 days why his pension and other pensionary benefits may not be withheld and discontinued. Regulation 4 and 5 of the Pension Regulations of the Army, Part-I, 1961 reads as under :-

**Grant of Pension is subject to future good conduct**

**4.** Further good conduct shall be an implied condition of every grant of a pension or allowance and its continuance under these regulations.

Note :- (1) The competent authority may, by order in writing, withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, if the pension is convicted of a serious crime or is found guilty of grave misconduct

Provided that where a part of pension is withheld or withdrawn the amount of such pension shall be reduced below the amount of rupees three hundred and seventy five per month.

(2) Where a pensioner is convicted of a serious crime by a court of law, or is found guilty of grave misconduct, action under (1) above shall be taken in the light of the judgement of the court relating to such conviction.

(3) In cases falling under (2) above, as well as other cases where the competent authority consider that the pensioner is prima facie guilty of grave misconduct, the competent authority before passing an order under (1) above shall,

(a) serve upon the pensioner a notice specifying the action proposed to be taken against him and the ground on which it is proposed to be taken against him and calling upon him to submit, within fifteen days of the receipt of the notice or such further time not exceeding fifteen days as may be allowed by the competent authority, such representation as he may wish to make against the proposal, and

(b) take into account consideration of the representation, if any submitted by the pensioner under clause (a).

(c) An appeal against an order under (1) above, passed by any authority other than the President, shall lie to the President and the President shall pass such orders on the appeal as he deems fit.

EXPLANATION : (a) the expression 'serious crime' or offence means a crime or an offence under the Indian Penal Code or Official Secrets Act or any other law for the time being in force in the country for which the maximum punishment prescribed under the law is imprisonment for a period of three years or more with or without a fine [Min No. 12 (17)/86/D (Pen/Ser) dated 29/8/88].

(b) the expression 'grave misconduct' includes the communication or disclosure of any secret official code or password or any sketch, plan, model, article, note, document or information, such as mentioned in section 5 of the Official Secrets Act 1923 (19 of 1923) (which was obtained while holding office under the Government) so as to prejudicially affect the interest of the general public or the security of the State.

(c) The term "Pension" shall mean any type of pension admissible under these rules.

**Pension may be withheld, suspended or discontinued or paid to wife or other dependants.**

5. In special circumstances specified hereunder, the competent authority may withhold, suspend or discontinue in full or in part the pension (including commuted value thereof which has not been paid), children's allowance or gratuity (including Retirement Gratuity) to be granted or granted to an individual. In exceptional cases payment of part of whole of the pension, allowance or gratuity withheld or suspended may by order of the President be made to the wife or dependent (s) of the pensioner.

**Notes:** This Regulation may be invoked under the following circumstances—

(i) Offences against the State as listed in Chapter VI of the Indian Penal Code, as amended from time to time.

[(ii) Other serious crimes under I.P.C. Official Secrets Act or any other special Law of the Land and grave misconduct;

(iii) To recover the whole or part of any pecuniary loss caused to the Government in cases where in any departmental or judicial proceedings, the pensionary/individual is found guilty of misconduct or negligence committed during the period of service including

service rendered on re-employment after retirement/discharge, leading to the said losses;

(iv) Unauthorised continuing to occupy the residential accommodation including hired one provided by the Government;

(v) When a report is received after sanctioning the pension, that departmental or judicial proceedings (for the offences committed while in service or during the period of re-employment) are in progress against the individual;

(vi) When an individual obtains re-employment after retirement without obtaining prior permission of the competent authority as prescribed from time to time;

(vii) Any other circumstances considered special by the President].

(c) In applying the provisions of this Regulation the procedure laid down in Chapter IV-A of Part II of these Regulations shall be followed.

*Explanation :- The word pension as used in this Regulation means Retiring/Service, disability, invalid or family pension as the case may be.*

14. It is alleged that issuance of show cause notice in 1990 was illegal and similarly this show cause notice was also absolutely illegal. It is submitted that no new facts were brought so as to warrant the change over again.
15. Then, petitioner again filed a Writ Petition challenging the order dated 12<sup>th</sup> September, 2007, suspending his provisional

pension, before Delhi High Court, same was transferred to this Court after formation of this Tribunal.

16. A reply was filed by the respondent in that it was pointed that since the petitioner has been avoiding the service and criminal prosecution, therefore, in exercise of the power under Regulation 5 of Pension Regulations of the Army, Part-I, 1961 suspended the Provisional Pension of the Petitioner. It is pointed out that Court of Inquiry was conducted and in which the petitioner was found committed financial irregularities during operation in Sri Lanka. Court Martial proceedings were initiated, but, he escaped from the Army custody and a case was filed against him and he was convicted by the Magistrate Court and the appeal is pending before the Sessions Court. It is pointed out that petitioner is facing a charge sheet under Section 120-b read with 420 of Indian Penal Code and Section 5(2)(i)(c) of Prevention of Corruption Act.
17. Learned counsel for the petitioner has submitted that there is no provision to suspend the Provisional Pension of the

petitioner. It is submitted that pension is neither bounty nor a matter of charity. It is a right of the petitioner, therefore, it cannot be suspended, except for sufficient and good reasons.

18. As against this, learned counsel for the respondent urged before us that the payment of pension depends upon the good conduct and he referred to regulation 4 of Pension Regulations that the government reserves the right to suspend the provisional pension because one has to have a good behavior to earn the pension and Rule 5 gives sufficient power to the respondent to suspend withhold or completely defer the pension.
19. In order to appreciate the controversy involved in the matter, it will be relevant to discuss the scope of Regulations 3-B, 4 and 5 of Pension Regulations for the Army, 1961 reproduced above.

***Regulation 3-B*** *contemplates Provisional Pension.* It says that in case of departmental or judicial proceedings are pending or instituted after retirement in respect of an event

which took place not more than 4 years before such institution may on his retirement on attaining the age of compulsory retirement or otherwise be authorized a payment of Provisional Pension not exceeding the maximum pension which would have been admissible to him on the basis of qualifying service upto the date of retirement or if he was under suspension on the date of retirement upto the date immediately preceding the date on which he was placed under suspension. Similarly, gratuity and commutation also, but, this is subject to final outcome of the enquiry. It further says that on conclusion of such proceedings no recovery shall be made and where the pension is less than the Provisional Pension or where final pension is reduced or withheld either permanently or for a specified period.

Therefore, Rule 3-B contemplates the payment of Provisional Pension during the departmental enquiry or judicial proceedings and payment thereof will depend upon the outcome of the result of the departmental enquiry or the

judicial proceedings. Rule 3-B nowhere empowers the respondent to suspend such Provisional Pension.

**Regulation 4** lays down that one should have good conduct that is the implied condition for grant of pension. It further says that the respondent has a right to withhold or withdraw any amount of pension, if the pensioner is convicted of serious crime or is found guilty of grave misconduct. However, it further says that before ensuring such action the authorities shall give a show cause notice.

**Regulation 5** permits withholding, suspending or discontinuance of pension on certain conditions viz. offences under Chapter VI of the Indian Penal Code, other serious crimes under Indian Penal Code, offences under Official Secrets Act, any other special Law of the land and grave misconduct or any pecuniary loss caused to the Government where any departmental or judicial proceedings, the individual is found guilty of misconduct or negligence, unauthorised continuing to occupy the residential accommodation, pendency of certain judicial or departmental proceedings,

individual obtains reemployment after retirement without prior permission of the competent authority and any other circumstances considered special by the President.

20. Composite reading of these provisions spells out that primarily if an incumbent is facing a departmental enquiry or judicial proceedings, then, President reserves the right to suspend the pension and grant Provisional Pension for the survival of the incumbent. Regulation 3-B contemplates grant of Provisional Pension and there is no provision for suspension of such a Provisional Pension. After long years of service and at the fag end career if certain enquiry or judicial proceeding is pending, then, authorities reserves the right to not to grant him the full pension but grant him Provisional Pension. So far as withholding, discontinuing or fully suspending the pension, as contemplated in Regulations 4 & 5, is dependent on certain contingencies viz. if the incumbent has been convicted of a grave misconduct or any of the offences mentioned under the Indian Penal Code, then, in that case it is open for the respondent to suspend the pension, but, to suspend

pensionary benefits will not amount to reducing the incumbent to the total penury and starving the incumbent. It is true that Regulation 5(vii) says that the President has the power to suspend in a special case. Whether one is a special case and not that will depend upon each case. That should be rarest of rare cases when President could invoke such a special power for a peculiar circumstance, otherwise, in normal course, the Provisional Pension is issued during the pendency of departmental proceedings or for a criminal case pending in judicial court, the incumbent may not be granted full pension and he may be granted Provisional Pension to survive.

21. In Regulation 5 the total suspension of the pension is depend on certain contingencies i.e. in case if he is found guilty of grave misconduct or he has been convicted for any of the serious offences under Indian Penal Code, in that contingencies the respondent has the full power to suspend the pension, but, in normal course there is no power to withdraw the Provisional Pension like one in the present case.

22. In the present case the incumbent having Provisional Pension for the last 16 years and one of the reasons given for withholding this Provisional Pension in the show cause notice was he escaped himself from army custody when he was facing a court martial. That notice was given earlier and the present one also same notice has been given, for which a criminal offence was launched against him and trial court convicted him and the appellate court acquitted him. Therefore, that situation doesn't survive in the present case.
23. The present notice is identical one as was given earlier. Reasons have been given in the present show cause notice that he was facing Court Martial and he was carried to Ahmednagar from Madras, but, he escaped from the railway station and second reason was that a criminal case, filed by CBI, is pending against him at Chennai.
24. So far as first reason given in the order that he escaped enroute from the army custody, no more exist as he has been acquitted by Sessions Judge, Cuddapah. So far as pendency

of the case before the CBI at Chennai, if he is not appearing, then criminal court is not powerless they can always issue a warrant of arrest and secure his presence.

25. In the final order, which has been passed on 12<sup>th</sup> September, 2007, only reason survives is he is facing a criminal trial in a CBI case, therefore, his Provisional Pension has been suspended. This order, in our opinion, cannot be sustained. This is not such a special circumstance, as contemplated in Regulation 5(vii) of Pension Regulations of the Army, Part-I, 1961, simply because he is facing criminal case, for which he has not been paid full pensionary benefits. This Provisional Pension cannot be suspended in case petitioner is avoiding appearing before the criminal court. The criminal court is not powerless they can always issue a warrant of arrest to enforce his attendance. But, suspension of the Provisional Pension cannot be justified in the present case.
26. As a result of above discussion we are of the opinion that the suspension of the Provisional Pension dated 12<sup>th</sup> September,

2007, in the facts and circumstances of the present case cannot be sustained and the same is set aside. The petitioner shall be released the Provisional Pension and the arrears within three months time with 12% interest. Petition is allowed. No order as to costs.

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[Justice A.K. Mathur]  
Chairperson

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[Lt. Genl. ML Naidu]  
Member (A)

New Delhi  
26<sup>th</sup> February, 2010