

PETITIONER:
SITA RAM YADAVA

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT 13/11/1995

BENCH:
KULDIP SINGH (J)
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KULDIP SINGH (J)
HANSARIA B.L. (J)

CITATION:
1996 AIR 920 1995 SCC Supl. (4) 618
1995 SCALE (6) 335

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

This appeal is directed against the judgment of the Central Administrative Tribunal, Allahabad (the tribunal) dated July 18, 1990 upholding the order of the president of India under Rule 9 of the Central Civil Service (Pension) Rules, 1972 (the Pension Rules) withholding the entire monthly pension admissible to the appellant and also denying the death-cum-retirement gratuity to which the appellant may be entitled under the rules.

The appellant, Sita Ram Yadava, was working as a Sorter in the Railway Mail Service at Kanpur. He was absent from duty from October 11, 1973 to July 30, 1974. In the night between October 20/21, 1973, 70 gms of illicit opium was recovered from Sita Ram Yadava who at that time stated that he was the son of Bhagwati Prasad. He was arrested by the Excise Inspector under the Opium Act. According to the respondents the arrested person was none other than the appellant who according to the railway record is son of Jhullan Prasad. Sita Ram Yadava was convicted under Section 9 of the Opium Act and was sentenced to undergo rigorous imprisonment for three months. Appeal filed by him was dismissed by the Sessions Judge. Criminal Revision filed by Yadava was dismissed by the Jabalpur Bench of the Madhya Pradesh High Court on February 28, 1975.

Disciplinary proceedings were initiated against the appellant and as a consequence he was dismissed from service by the order dated December 21, 1974 under Rule 19(i) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (the Rules). The appellant preferred appeal which was allowed with a direction to the disciplinary authority to hold an inquiry under Rule 19 of the Rules. Since the case of the appellant before the disciplinary authority was that Sita Ram Yadava who was convicted under the Opium Act was a different person than the appellant, the appellate authority further directed that the disciplinary

authority should properly investigate into the identity of the petitioner/convict and thereafter pass final order in the matter. The disciplinary authority as a result of the inquiry passed the order dated June 11, 1984 dismissing the appellant from service. A finding was recorded that the appellant was the same person who had been convicted by the criminal court under the Opium Act.

The appellant preferred appeal against the order dated June 11, 1984 and once again the appellate authority allowed the appeal and directed the disciplinary authority to give further hearing to the appellant. It was also directed that opportunity to cross-examine the hand-writing expert should also be given. Before the departmental inquiry could be completed, the appellant retired from service on March 31, 1985. The inquiry was, thereafter, converted into one under the Pension Rules. The disciplinary authority finally recorded the finding that it was the appellant who was convicted under the Opium Act. The proceedings were forwarded to the President of India for final orders. The President proposed the provisional punishment of withholding the petitioner's pension permanently and not disbursing death-cum-retirement gratuity to him. Accordingly, a show cause notice dated August 23, 1985 was issued to the appellant and he submitted his reply. The Union public Service Commission was consulted which approved the proposed punishment. Finally the President passed the order of punishment on May 5, 1987.

The Tribunal in the impugned judgment held as under:-

"We do not think, therefore, that there is any doubt in the authenticity of the court papers whose negatives were made over to its Expert. So far as the photographs from the Service Book and taking of specimen signatures and thumb impressions by the Expert himself on 19.1.1984 is concerned, there is no reason to doubt their genuineness. All these papers, according to the report of the Expert, were obtained from the office of the Senior Superintendent of Post Offices/the disciplinary authority. The papers, therefore, came from a proper custody There is no reason, therefore, to hold that the materials which were examined by the Expert were not reliable or appropriate materials for the purposes of determining the identity of the petitioner with the convict of the criminal case."

In the penultimate para of the judgment the Tribunal finally observed as under:

"These are all the points which have arisen in this case. We notice that not only the disciplinary authority appears to have considered all the relevant materials, but the case was also considered by the Union Public Service Commission, who submitted their recommendations dated 19.3.1987 (Annexure-14). A perusal of this document shows that the Commission considered at length the disciplinary proceedings including the appellate order requiring the investigation to be

made to fix the petitioner's identity. After the Inquiring officer's report dated 25.9.1985, the reply dated 13-9-85 given by the petitioner is also the Commission. In para 5 of Annexure-14 it is said that the Commission have examined the records of the case carefully and saw no reason to differ from the findings of the Inquiring Officer arrived at on the basis of the totality of the evidence examined during the enquiry and confirmed the view of the Inquiring Officer that the petitioner is the same person, who was convicted in the criminal case. Apparently the Commission has bestowed its attention to the controversy it is not a case of non-application of mind."

We see no ground to interfere with the findings of fact reached by the departmental authorities and upheld by the Tribunal. We agree with the reasoning and the conclusions reached by the Tribunal.

This Court, while granting special leave, passed the following order :

"Special leave granted. By the Presidential order dated 5.5.1987, both pension and DCRG have been withheld. Counsel for the petitioner submitted that so far as gratuity is concerned, the matter stands covered by this Court's decision in D.V. Kapur V. Union of India, 1990 (4) SCC 314. That case turned on the interpretation of Rule 9 of the Civil Services Conduct Rules, 1972. In paragraph 10 of the judgment after referring to the Rule, this Court pointed out that the right to gratuity being a statutory right could be taken away by a valid Rule only and since Rule 9 did not empower the withholding of gratuity and no other rule was pointed out which permitted the withholding of gratuity, the order withholding gratuity could not be sustained. We enquired of Mr. Tulsi, learned ASG, if he was in a position to point out any Rule which entitled the President to withhold DCRG. He was not able to do so. It, therefore, prima facie appears that the contention urged by counsel in regard to gratuity is well founded.

We, therefore, by this interim order direct the release of DCRG to the petitioner on the petitioner giving an undertaking to this Court to refund the same in the event this Court so directs."

It is not necessary for us to go into the question whether death-cum-retirement, gratuity can be withheld under the Pension Rules. Since the said gratuity has already been paid to the appellant, we are of the view that it would be in the interest of justice to permit the appellant to retain the same. He shall, however, not be entitled to the pension.

The appeal is disposed of accordingly. No costs.

JUDIS