

# SUPREME COURT OF INDIA

B.S.N.L

Vs

Rajesh Kumar Saxena

Appeal (civil) 1980 of 2008

(Tarun Chatterjee and Harjit Singh Bedi, JJ.)

13.03.2008

## JUDGMENT

### **Harjit Singh Bedi, J.**

1. Leave granted.
2. This appeal by way of special leave is based on the following facts.
3. The respondent Rajesh Kumar Saxena was placed under suspension vide order dated 26th June, 2004 under sub-rule(1) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules 1965 on the allegation that while working as an Officiating Chief Accounts Officer in Moradabad in the year 2003, he had failed to maintain absolute integrity and shown lack of devotion to duty. The appellant however attained the age of superannuation during his suspension and was retired provisionally on 31st July, 2004 as per order Annexure P-2, with the stipulation that as per the Central Civil Services Rules (Pension Rules) 1972 the payments due to him would be made on finalization of the disciplinary proceedings. The order dated 26th June, 2004 was challenged before the Allahabad High Court by way of a Writ Petition. The Division Bench of the High Court in its order dated 23rd November, 2006 held that as the charge sheet had been served on the appellant more than one year after his retirement, the proceedings against him were nonest and that as suspension itself was not a punishment and that in any case, it would 'evaporate' on his superannuation, there was no justification in withholding the retirement benefits such as pension, provident fund, leave salary, group insurance, CDS amount etc. and a direction was issued to make all payments within a period of two months from the date of communication of the order. It is in this circumstance, the present appeal is before us by way of special leave at the instance of the department.
4. Several arguments have been raised by the learned counsel for the appellant during the course of the hearing and reference has been made to various rules. Special reference has however been laid on the fact that very serious allegations of misconduct on the part of the

respondent and 30 other departmental officers who too had been suspended had been revealed during investigation.

5. The learned counsel for the respondents has however pointed out that the question as to whether initiation of proceedings could or could not be made after the retirement of the respondent and as to whether the chargesheet had been served within the requisite period had been raised in this appeal and which needed to be answered before a reversal of the High Court's judgment. We are however of the opinion that at this stage we are not called upon to go through these issues as to do so could have the effect of damaging the cause of one or the other party in the departmental proceedings that are presently going on and in particular, those amongst the suspended officials who are not before us in this matter. We are accordingly of the opinion that as per the rules, the respondent would be entitled to the payment of provisional pension and to the release of his provident fund alone and he would have to await the decision on the enquiry before the release of the other retiral benefits. We also make it clear that as we have not dealt with the basic legal issues raised by the parties, they would be at liberty to raise them at any subsequent stage should the need so arises. We allow the appeal to the above extent. The order of the High Court shall be deemed to be modified in the above terms.