

ORDER SHEET
West Bengal Administrative Tribunal

Present.-
The Hon'ble Justice Ranjit Kumar Bag
&
The Hon'ble Dr. Subesh Kumar Das

Case No. **OA-129 of 2017**

Kali Sankar Paul

Versus

The State of West Bengal & Ors.

Serial No. and date of order	Order of the Tribunal with signature	Office action with date and dated signature of parties when necessary.
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10 <hr/> 18/04/2019	<p>For the Applicant : Mr. A.K. Neogi, Ld. Advocate.</p> <p>For the State Respondent : Mr. B.P. Roy, Ld. Advocate.</p> <p>The applicant has prayed for direction upon the respondents for grant of pension to the applicant w.e.f. the date of his superannuation on January 31, 2015.</p> <p>It appears from the materials on record that the applicant joined as Constable of Police on January 01, 1977 and retired from service on January 31, 2015. A criminal case was started against the applicant U/s 304, Part – II of Indian Penal Code and U/s 30 of the Arms Act vide Jagacha P.S. Case No. 22 of 1980 dated January 30, 1980. On April 30, 2013, Learned Additional Sessions Judge 2nd Court, Howrah convicted the applicant for the offence U/s 304, Part – II of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for five years and to pay fine of ₹ 5000/-, in default to suffer simple imprisonment for one more year. The applicant challenged the order of conviction and sentence passed by Learned Additional Sessions Judge by preferring an appeal being CRA 405 of 2013 before the</p>	

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	<p>Hon'ble High Court, Calcutta. On June 30, 2013 Learned Single Judge of the Hon'ble High Court granted bail to the applicant on suspension of sentence during pendency of the hearing of the criminal appeal. The admitted position is that the criminal appeal being CRA 405 of 2013 is still pending for adjudication before the Hon'ble High Court at Calcutta.</p> <p>With the above factual matrix, Mr. A.K. Neogi, Learned Counsel for the applicant contends that the respondents have reduced the amount of pension of the applicant by grant of only interim allowance in terms of the provisions of Rule 14 of the West Bengal Services (death-cum-retirement benefits) Rules, 1971 (in short, the D.C.R.B. Rules, 1971). He further submits that interim allowance was granted to the applicant without giving the applicant any opportunity of hearing and thereby the principles of natural justice have been violated by the respondents. Mr. Neogi has urged this Bench to consider that the order of granting interim allowance must be construed as punishment as the applicant is deprived of his pension which he earned by rendering requisite years of qualifying service under the Government of West Bengal. On the other hand, Mr. D. Koley, Learned Counsel representing the state respondents submits</p>	

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	<p>that the applicant is not entitled to get anything more than interim allowance for pendency of the criminal case against him till date in terms of the provisions of Rule 14 of the D.C.R.B. Rules, 1971.</p> <p>Having heard Learned Counsel representing both parties, we would like to quote the provisions of Rule 14 of the D.C.R.B. Rules, 1971, which is as follows:</p> <p>R. 14. Criminal proceedings-“A Government servant who retires from service but against whom criminal proceedings involving moral turpitude are pending in a court of law, shall not be sanctioned any pension until the termination of the criminal proceedings. An interim allowance not exceeding two-thirds of the pension that would have been admissible but for the criminal proceedings may be granted during the pendency of such proceedings in cases of hardship. If he is convicted on a criminal charge involving moral turpitude he shall not be entitled to any pension; compassionate allowance may be granted subject to the same terms and conditions as laid down in rule 12.”</p> <p>On consideration of the above provisions of Rule 14 of the D.C.R.B. Rules, 1971 we find that a government employee who retires from service and</p>	

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	<p>against whom a criminal proceeding involving moral turpitude is pending in a court of law shall not be sanctioned any pension till the closure of the said criminal proceeding. The pension sanctioning authority can only grant an interim allowance not exceeding two thirds of the pension that would have been admissible, had the criminal proceeding not been instituted only when hardship is caused to the said government employee. In the instant case, the applicant is convicted for commission of the offence of culpable homicide not amounting to murder, which by no stretch of imagination can fall beyond the ambit of moral turpitude as contended on behalf of the applicant. It is well settled that appeal is considered as continuation of the main proceeding. Since the criminal appeal is still pending against the applicant before the Hon'ble High Court, we can safely hold that the criminal proceeding is still pending against the applicant and thereby the applicant is not entitled to get pension in terms of provisions of Rule 14 of the D.C.R.B. Rules, 1971. We do not find any merit in the submission made by Mr. Neogi that payment of interim allowance to the applicant during pendency of the criminal proceeding should be construed as punishment, as in our view payment of interim allowance can never be construed as punishment</p>	

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Csm	<p>under any provisions of the rules by which the applicant is governed. The order for grant of interim allowance to the applicant during pendency of the criminal proceeding in terms of the provisions of Rule 14 of the D.C.R.B. Rules, 1971 can never be branded as invalid or illegal for not giving any opportunity of hearing to the applicant before granting order of interim allowance, because, first, there is no provision for giving an opportunity of hearing to the applicant before grant of interim allowance and secondly, the act of not giving any opportunity of hearing to the applicant has not caused any prejudice to the applicant. As a result, we do not find any merit in the submission that the principles of natural justice have been violated for grant of interim allowance to the applicant.</p> <p>In view of our above observation, we do not find any merit in the present application and as such the original application stands dismissed.</p> <p>Let a Plain Copy of the order be supplied to both parties.</p> <p>S. K. DAS MEMBER(A)</p> <p>R. K. BAG MEMBER(J)</p>	