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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.No 2068/2002

Date of Decision 24.10.2002

R. S. Sagar ... Applicant
Shri G.K. Aggarwal ... Advocate for the Applicant

VERSUS

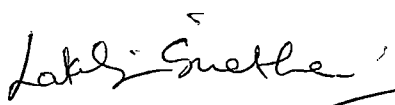
UOI & Ors ... Respondents

Shri H.K. Gangwani ... Advocates for the Respondents

Coram:-

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri V.K. Majotra, Member (A)

1. To be referred to the Reporter or not ? Yes
2. Whether it needs to be circulated to other
Benches of the Tribunal? No


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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Central Administrative Tribunal
Principal Bench

OA No.2068/2002

New Delhi this the 24th day of October, 2002.

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri V.K. Majotra, Member (A)

R.S. Sagar,
A- 775/19, Noida (UP)

-Applicant

(By Advocate: Shri G.K. Aggarwal)

Versus

1. Union of India through Secretary
Ministry of Urban Development &
Poverty Alleviation,
Nirman Bhawan,
New Delhi-110011

2. Central Vigilance Commissioner
Jamnagar House, Shahjehan Road,
New Delhi-110011.

-Respondents

(By Advocate: Shri H.K. Gangwani)

ORDER (Oral)

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)

We have heard Shri G.K. Aggarwal, learned counsel for applicant and Shri H.K. Gangwani, learned counsel for respondents and perused the documents on record.

2. Further, to our order dated 11.10.2002, right at the outset, Shri G.K. Aggarwal, learned counsel has submitted that the gratuity amount due to the applicant has been paid to him by respondents by cheque, although he submits that a lesser amount has been paid than what is correctly due to him. Respondents are directed to re-check the amount due to the applicant by way of gratuity and if any amount is outstanding that shall be arranged to be paid within two weeks from today. Learned counsel for applicant has also submitted

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that leave encashment due to the applicant on his retirement has yet not been paid by the respondents.

3. In this OA, admittedly the respondents have issued memorandum of charges under Rule-16 of CCS(CCA) Rules, 1965 on 31.7.2002 and the applicant has retired from service with effect from the same date. Therefore, in terms of the proviso to Rule-69(1) (c) of CCS (Pension) Rules, 1972, the gratuity amount as due to the applicant should have been authorised to be paid to the applicant by the respondents, which in the facts and circumstances of the case ~~will~~^{is} become due from 31.7.2002. Accordingly, the respondents are directed to pay the interest due on this amount, in accordance with the Rules, which shall be paid to him within one month from the date of receipt of a copy of this order. If the interest amount on the gratuity due to the applicant is not paid within this period, the respondents shall pay simple interest @ 15% per annum thereafter, till the date of payment.

4. The other main question raised by the learned counsel for the applicant was that since the memorandum of charges was issued under Rule 16 of the CCS (CCA) Rules, 1965 against the applicant, the same cannot be continued after his retirement. Rule-9(1) of the Pension Rules empowers the President to withhold the pension or gratuity or both, either in full or in part or withdraw pension in full or in part, whether permanently or for a specified period and of ordering recovery from pension or gratuity of the whole or part

of any pecuniary loss caused to the Government, if in any departmental or judicial proceedings the pensioner is found "guilty of grave misconduct or negligence" during the period of service. Learned counsel has submitted that having regard to the provisions of Rule-9(1) and Rule-69(1) (c), of the Pension Rules the departmental proceedings cannot be continued under Rule-16 of the CCS (CCA) Rules, 1965. He has submitted that the matter may be otherwise, if a major penalty charge sheet had been issued under Rule-14 of the CCS (CCA) Rules, 1965, which is not the position in the present case. He has submitted that until and unless a finding of "grave misconduct or negligence" is found, no penalty can be imposed as provided under Rule-9(1) of the Rules, which cannot be the situation in a case where only minor penalty proceedings have been initiated in terms of Rule (i), (ii), & (iv) of Rule 11 of the CCS (CCA) Rules read with Rule-69 (1) (c) of CCS (Pension) Rules, 1972.

5. Another ground taken by the learned counsel for applicant is that the statement of imputation of misconduct or misbehaviour contained in the impugned Memorandum dated 31.7.2002, related to events during the period of 1984 to 1989 and is vitiated by inordinate and unexplained delay. He has relied on the judgment of the Hon'ble Supreme Court in **State of Andhra Pradesh Vs. N. Radhakishan** JT 1998 (3) SC 123. He has contended that there has been inordinate delay in instituting the departmental proceedings against the applicant without any satisfactory explanation given by the respondents as to why they have taken nearly 12 years to institute

the minor penalty proceedings for events that occurred in 1984 to 1989. As the delay in instituting the departmental proceedings will be prejudicial to the applicant, therefore, on this ground also the learned counsel has prayed that the impugned order dated 31.7.2002 may be quashed and set aside.

6. As mentioned above, under Rule-9(1) of the CCS(Pension) Rules, 1972, the President has the power to withhold pension or gratuity or withdraw either in full or in part and order recovery from pension or gratuity of the whole or part of loss in the circumstances mentioned therein. However, the proviso to Rule-69(1)(c) of the Pension Rules clearly directs payment of the entire gratuity due to the Government servant when departmental proceedings have been instituted under Rule-16 of the CCS(CCA) Rules, 1965. Obviously, the penalty of withholding or withdrawing a pension or gratuity in full or in part thereafter, that is after such departmental proceedings are complete, would not arise. It is relevant to note that the proceedings instituted by the respondents against the applicant are not major penalty proceedings under Rule 14 of the CCS (CCA) Rules, 1965 but ^{for} minor penalty proceedings, i.e., under Rules 11 and 16 of the CCS (CCA) Rules. We, therefore, find force in the submissions made by Shri G.K. Aggarwal, learned counsel for the applicant. Accordingly, reading Rule-9(1) of the CCS (Pension) Rules harmoniously with the proviso to Rule-69(1) (c) of the same Rules, it appears that the intention of the Rules is that the payment of gratuity is to be made and it cannot be with-held or withdrawn in part or in whole

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from the Government servant against whom departmental proceedings under Rule-16 of the CCS(CCA) Rules, 1965 are instituted and he has retired later. When the proceedings have been instituted only in respect of penalties which could be imposed under Rule-11 (i), (ii) & (iv) of the CCS (CCA) Rules, 1965, these cannot be termed as penalties where the delinquent official can be found guilty of "grave misconduct or negligence during the period of service". The Circular issued by the DOPT dated 31.7.1987 relied upon by the learned counsel for the respondents cannot surpass the provisions of the Pension Rules ^{which have been} made under the proviso to Article-309 of the Constitution. In this view of the matter, the Ministry of Personnel, Public Grievances and Pension DORR Circular dated 31.7.1987 being ultra vires the Pension Rules is quashed and set aside.


7. Having regard to the facts and circumstances of the case and the decision of the Hon'ble Supreme Court in N. Radhakishan's case (supra), there is also unexplained and inordinate delay on the part of the respondents in initiating the disciplinary proceedings by the impugned memorandum dated 31.7.2002. The charges relate to the period when the applicant had worked as Superintending Engineer (CC-VI), DDA during the period from 12.8.1984 to 4.7.1989 and the applicant has retired from service w.e.f. 31.7.2002. No satisfactory explanation has been given by the respondents as to why they could not have issued the charge sheet for any alleged misconduct within a reasonable time of the occurrence of those incidences and why they have waited for over 12 years to do so and that ^{too} on the date when he


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was to superannuate from service. It is also relevant to note the submissions of the learned counsel that the applicant had put in service of over 39 years before his superannuation in July, 2002. In the facts and circumstances of the case we also find that the unexplained delay will cause prejudice to the applicant, especially since he has retired from service. In the facts and circumstances of the case, the impugned order instituting the departmental proceedings is liable to be quashed also on the ground of inordinate and unexplained delay.

8. In the result for the reasons given above, the application succeeds and is allowed. The impugned order instituting the departmental proceedings dated 31.7.2002 is quashed and set aside. The respondents shall arrange to pay the applicant all amounts due to him, including gratuity, leave encashment and provident fund, in accordance with the rules, within a period of one month from the date of receipt of a copy of this order. They shall also keep in view the directions given in paragraphs 2 and 3 above.

No order as to costs.


(V.K. Majotra)
Member (A)


(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)

cc.