

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1952/2001

New Delhi, this the 13th day of May, 2002

Hon'ble Shri Govindan S. Tampi, Member (A)

Sh. R.P. Gupta
S/o Late Shri Kashi Ram
Aged about 65 years,
R/o C-151 A, Gali No.5,
Near Dr. Mittal's Clinic,
Pehla Pushta, New Osmanpur,
Delhi- 110053.

...Applicant

(By Advocate Shri S.C. Luthra)

V E R S U S

UNION OF INDIA : THROUGH

1. The Secretary
Ministry of Communication
Department of Telecom
Sanchar Bhawan,
20, Ashoka Road,
New Delhi-110 001.

2. The Member (Finance)
Telecom Commission
Department of Telecom
Sanchar Bhawan
20, Ashoka Road,
New Delhi-110 001.

3. The Chief General Manager,
M.P. Telecom Circle,
(D.O.T. Cell)
Bhopal (M.P.).

...Respondents

(By Advocate Shri R.P. Aggarwal)

O R D E R

By Hon'ble Shri Govindan S. Tampi,

Applicant in this case seeks the release of his leave encashment with 18% interest and the release of the gratuity and commutation value of pension, subject to execution of a bond.

2. Heard S/Shri S.C. Luthra and R.P. Aggarwal, learned counsel respectively for the applicant and the respondents respectively.

3. On the basis of a charge-sheet issued to him while he was still in service, continued under

Rule 9 of the CCS (Pension) Rules, entire gratuity and commuted value of pension have been withheld and not released till date though more than seven years have gone by since his date of retirement. Proceedings initiated are a sequel to CBI's action in respect of some alleged misdemeanour of 1987, for which he had been challaned in 1994, with no chargesheet issued as yet, with no indication as to whom it would be done ; Leave encashment also has been withheld. Rule 39(2)(a) of the CCS Pension Rules directs the payment of leave encashment. In the Deptt. proceedings, he had been exonerated on 29.05.2000. Nothing thereafter has happened, inspite of applicant's repeated representations.

4. In view of the hardship in which he has been placed, the applicant a retiree who is 65 years old, seeks release of his gratuity, if need be. On execution of a bond, as has been ordered in the cases of Jeet Singh Virdi Vs. VOI & Anr. by the Tribunal [(1992) 21.ATC.620] Prakash Chandra Vs. UOI (OA No. 1978/92 decided on 12.10.1994), R.K. Mishra Vs. UOI (OA No. 06/2000 decided on 22.03.2001) and Suresh Chandra Singh v. UOI (OA No. 817/1995 decided on 31.05.1996). According to him the respondents are acting as if the applicant has already been convicted and delaying the release of his gratuity and commutation, invoking Rule 69 of the CCS (Pension) Rules, as if the rule permits and authorises any amount of delay. In the circumstances of the case, where the criminal proceedings have been inordinately delayed, with no sign of completion in the near future, the applicant seeks the intervention of the Tribunal to render him justice. The above pleas were

forcefully reiterated by Sh. Luthra, learned counsel for the applicant.

5. Respondents in their reply, though Sh. R.P. Aggarwal, learned Sr. Counsel points out that cases have been registered against by CBI against the applicant since 1988, which were still pending at the time of his retirement in 1999 and therefore, in terms of Rule 69 of the CCS(Pension) Rules, only provision could be released to him, which has been done. DCRG and leave encashment have been correctly withheld. Though he has been exonerated in the disciplinary proceedings, three criminal cases are pending before the Court of Special Judge, Anti Corruption, UP(East), Dehradun, in which charges are to be framed and in a fourth case is pending trial. Till the proceedings are over the amounts would have to be withheld. Rule 35(2) of the CCS(Pension) Rules, relating to leave encashment relied upon by the applicant has been deleted w.e.f. 23.06.1987. Sh. Aggarwal points out that once the proceedings are over and if the applicant is exonerated, the above amounts would be released to him and the applicant has to wait for the same.

6. I have carefully considered the matter. Admittedly the applicant's gratuity and leave encashment have been withheld since November, 1994, when he retired on superannuation on the ground of prosecution cases pending against him. Only provisional pension has been released to him, in terms of Rule 69 of the CCS (Pension) Rules. Respondents do not deny that the disciplinary proceedings have ended in his exoneration in 1995 itself but the criminal cases are pending since 1994, it is seen no

chargesheet has been framed, that it was to have been done in June, 2001. One does not know how much time it would take. A retired Govt. servant cannot be permitted to languish in penury by holding back his dues, for the delay or inaction of the Investigating Agency, who are yet to have the charges framed by the Court of Law. The applicant has waited for too long and he has to be granted some relief. And my view is fully fortified by the decision of the Tribunal in the cases of Jeet Singh Virdi, Prakash Chandra, R.K. Mishra and Suresh Chandra Singh (supra) relied upon by the applicant. This would only be just and fair. However, no relief would be called for as far as commuted value of pension is concerned, as he is drawn provisional pension.

7. In the result the OA succeeds substantially and is accordingly disposed of. The respondents shall within three months from the date of receipt of a copy of this order, release the applicant his full leave encashment and 75% of DCRG, subject to his executing a bond with appropriate surety, undertaking to refund the amount in the event of his conviction, in the criminal proceedings. He would be entitled for interest @ 12% on the above amounts from the dates when the above payments became due to the date of their actual release in the event of only in the event of his being acquitted, in the cases. No costs.

GOVINDAN S. TAMPI
MEMBER (A)