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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.132/94

NEW DELHI, THIS THE 18TH DAY OF AUGUST, 1994.

HON'BLE SHRI A.V. HARIDASAN, MEMBER (J)

Dr O.P. Jain,
S/o Late Shri H.S. Jain,
R/o Flat No.6,
Swasthya Vihar Apartments,
Delhi-110 092.

... Applicant

By Advocate : Shri A.K. Behra

VERSUS

1. Chief Secretary,
National Capital Territory of Delhi
5, Sham Nath Marg,
Delhi-110 054.

2. Director,
Directorate of Health Services,
Delhi Administration,
E-Block, Sarswati Bhavan,
Connaught place, New Delhi.

... Respondents

By Advocate : Shri O.N. Tirshal

JUDGEMENT (ORAL)

Hon'ble Shri A.V. Haridasan, Member (J)

The short question that falls for ~~the~~ consideration in this case filed under section 19 of the Administrative Tribunals Act, 1985 is whether the government has power to withhold Pension and gratuity of a retired government servant on the ground that an investigation by the anti-corruption in a case registered against him is pending though no chargesheet has been filed in any court of law.


1. The facts in this case are as follows :-

The applicant who was working as Chief Medical Officer in Delhi Administration retired on superannuation on 30.06.1992. Prior to his retirement he had furnished necessary papers for processing this pension; but when pension and ^{other} retirement

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benefits were not made available to him for a long time the applicant approached this Tribunal by filing O.A.2089/92 for direction to the respondents to give him the due retiral benefits. This application was disposed at the admission stage itself on 30.08.92 with a direction to the respondents to dispose of the representation dated 11.08.92 submitted by the applicant in regard to the retiral benefits as also with a further direction to grant provisional pension to the applicant, if there was any difficulty in granting him full pension and other retiral benefits. The applicant was, therefore, given provident fund, leave encashment, insurance amount and also provisional pension but commuted value of Pension and the DCRG was not given to him. It is aggrieved by this that the applicant has filed this application. The applicant has alleged that as there are no departmental proceedings or judicial proceedings pending against him, there is no provision in CCS Pension Rules or in any other rules applicable to him which enables the respondents to put off payment of retiral benefits to the applicant. The applicant, therefore, prayed that the respondents be directed to pay the gratuity and commutation of pension with interest @ 12% per annum.

2. The respondents resist the application. Their contention is that as the Anti-corruption department has registered a case against the applicant as case No.35/90 and as the same is under investigation, the applicant is not entitled to get final pension and gratuity till the culmination of the proceedings.



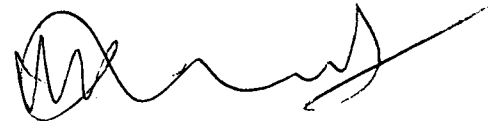
3. I have heard Shri A.K. Behra, counsel for the applicant and Shri O.N. Tirshal, learned counsel for the respondents and have carefully gone through the pleadings and the documents on record. The learned counsel for the applicant argued that as admitted decision, there is no departmental proceedings or judicial proceedings pending against the applicant, there is no provision in law which enables the government to put off the payment of his pension and other retirement benefits. The learned counsel for the respondents on the other hand vehemently argued that as the anti-corruption department has registered a case against the applicant though no chargesheet has been filed in any court of law, there is pendency of investigation of criminal proceedings and therefore the provision of rule 9 (2)(b) and rule 69 of the sub rule (2) of CCS rule would apply and, therefore, the act of the respondents in not granting the applicant and withholding of gratuity and commutation amount of pension is perfectly in order.

4. A reading of rule 9 (2) and rule 69 of CCS Pension rule would make it clear that the pension and gratuity of a retired government employee can be withheld by the President only if a departmental proceedings or judicial proceedings is pending against him. After the unequivocal declaration by the Hon'ble Supreme Court that a criminal proceedings can be said to be pending after a chargesheet has been filed in a Criminal Court, it cannot be contended _____ the pending of investigation would amount to pending of criminal proceeding. As admitted, in this case

no chargesheet has been laid before any Court of law and what is pending is a criminal investigation. Hence, it cannot be said that a judicial or criminal proceedings against the applicant is pending. The grant of provisional pension while with-holding the pension and gratuity under rule 69 of CCS Pension Rules can be resorted to only in a case where a departmental or judicial proceeding is pending against the retired government employee. As no judicial or departmental proceeding can be said to be pending against the applicant, the contention of the respondent that final pension and gratuity cannot be released to the applicant for the mere reason that investigation by anti corruption department is pending is absolutely untenable.

6. In the light of what is discussed above, I allow this application and direct the respondents to release the final pension of the applicant, to grant him the commutation value thereof and to pay him the gratuity with interest @ 12% per annum from that date 3 months after the date of his retirement till the date of payment.

The above direction should be complied with within a period of 2 months from the date of receipt of a copy of this order.



(A.V. HARIDASAN)
MEMBER (J)