

O.A. No.1514/89.

4.12.1989.

Applicant through counsel Ms.S.Janani.

On behalf of the respondents Shri P.P.Khurana, counsel is present.

Ms.S.Janani appearing for the applicant stated that she was not ready with the matter today. Shri P.P. Khurana appearing for the respondents pointed out that another O.A. between the same party had been decided on 24.5.1989. We wanted to have listed this case before us on 6.12.1989 but the learned counsel for the applicant has stated that she would prefer a date in January, 1990. We are not inclined to grant an adjournment until January, 1990 as we think that the matter is a short one and can be taken up. Learned counsel then stated that the matter may come up next week. As one of us (Chairman) will not be available in Delhi next week, the matter may now be placed before Court No.II on 11.12.1989 for final hearing immediately after Part Heard.

(L)
(P.C.Jain)
Member (A)

4.12.1989.

(AB)
(Amitav Banerji)
Chairman
4.12.1989.

SKS

13-12-89

Applicant through Ms.S.Janani, Counsel and Shri P.P.Khurana, Respondent present.

Heard both the parties. Argument concluded.

Order reserved.

B.O.

V.K.S.

13/12/89
J.C.O.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN.NO. OA 1514/89

Date of decision: 8-6-90

Shri S. P. Sehgal

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Applicant

Vs.

Union of India & anr.

.....

Respondents

CORAM: HON'BLE MR. P. K. KARTHA, VICE CHAIRMAN(J)
HON'BLE MR. D. K. CHAKRAVORTY, MEMBER(A)

For the Applicant

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Ms. S. Janani, Counsel

For the Respondents

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Sh. R. P. Khurana, Counsel

1. Whether reporters of local papers may be allowed to see the judgement? *Y*
2. To be referred to the Reporters or not? *Y*

(Judgement of the Bench delivered by Hon'ble
Mr. D. K. Chakravorty, Member(A))

The applicant, who had worked as Under Secretary in the Ministry of Surface Transport, filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying that the respondents be directed to release the amount of death-cum-retirement gratuity due to him and to allow commutation of admissible portion of pension on the date of his retirement and to sanction regular pension as payable to a pensioner. He has further prayed that he may be permitted to continue in Government Quarter No.601, Laxmibai Nagar, New Delhi till such time as the amounts due to him legally being his DCR gratuity etc. are released and thereafter reasonable time for arranging alternative accommodation be granted to him

2. The applicant has also prayed, by way of interim relief, that he may not be dispossessed from the Government accommodation, presently occupied by him, pending final decision on the Original Application.

3. This Tribunal, after hearing the learned counsel of both parties, admitted the application on 3-10-1989 and by way of interim relief directed the respondents not to dispossess the applicant from the Government quarter in his possession which is continuing since then.

4. The brief facts of the case are that the applicant joined the service of the Central Government in 1950 and the last post held by him since 15-12-1982 was that of Under Secretary. He had ^{an} excellent record of service for over 37 years and he superseded about 120 officers senior to him for selection as Under Secretary. He was suspended on 29.1.1987 under sub-rule (1) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 with immediate effect. This order was received by the applicant just about two months before the date of his retirement on attaining the age of superannuation on 31-3-87. However, no chargesheet was communicated to him till the date of his retirement. He submitted a Review Petition on 6-2-1987 to the respondents for revoking the suspension order which remains pending till date in spite of various reminders. He was sanctioned only provisional pension just on the basis of suspension. No other retirement benefits, such as, death-cum-retirement gratuity amounting to about Rs.61,000 and commutation of 1/3rd pension amounting to about Rs.78,000 to which he would have been otherwise entitled, was paid to him. No departmental proceedings have been started against him so far. It is stated in the application that the suspension order does not automatically stand revoked on his retirement unless and until an order to that effect is issued. The applicant had raised this point in his earlier OA No.849/89 which was disposed of by the Tribunal vide its order dated 24-5-1989 rejecting the reliefs prayed

for by the applicant. It was also observed therein that the applicant will not be entitled to retain the Government accommodation allotted to him beyond the normal period which is allowed to a retired Government servant under the relevant rules. Consequently, interim order passed in that case was also vacated.

5. It is averred in the application that the action of respondents in withholding the retirement benefits of the applicant is violative of Articles 14 & 16 of the Constitution. Respondents were wrong in withholding the retirement benefits by applying the provisions of Rule 69 of the C.C.S(Pension)Rules, 1972. According to the applicant, who is a pensioner, the departmental proceedings would be deemed to have been instituted from the date of the chargesheet i.e. 25-6-1987 which was actually served on him only on 3-7-87. Sub-rule (4) of Rule 9 and Rule 69 of the Pension Rules do not apply to the instant case and that he is entitled to a regular pension and other retirement benefits. The only penalty that can be imposed on him is that of withholding or withdrawing of a pension or a part thereof whether permanently or for a specified period or ordering recovery from the pension of the whole or part of any pecuniary loss caused to the Government. Therefore, there is no legal ground to withhold the other retirement benefits.

6. The respondents have filed their counter-affidavit rebutting the claim of the applicant. The allegations of the applicant that no departmental proceedings have started so far or no date of hearing has been communicated to the applicant is denied in the counter-affidavit.

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An enquiry officer was appointed on 31.8.88 by the Government and he issued summons to the applicant to appear before him for preliminary hearing on 3.11.88. The documents including the additional documents as requested by him on 5.7.89. The departmental proceedings are in progress and that the final decision will be taken as and when enquiry report is received. The claim of the applicant for retention of Government accommodation No.601, Laxmibai Nagar, New Delhi has already been dismissed by the Tribunal in the earlier OA filed by the applicant. No new points have been raised in this application and all the points raised herein have already been dealt with. The payment of gratuity and other pensionary benefits have not been allowed to the applicant because of the pendency of the disciplinary proceedings. His representations dated 15.7.88 and 20.8.88 were examined and replied to. The applicant has already been informed that the order of suspension would be deemed to have been revoked by the order of the Government retiring him from service on attaining the age of superannuation. As per Rule 69 of the Pension Rules, a retiring Government servant against whom departmental proceedings are pending is to be paid only provisional pension and no gratuity is to be paid to him till the proceedings are completed. The case of the applicant is covered under Rules 9(2), 9(4) and 69 of the Pension Rules 1972. Rule 69 of the said rules provides for authorisation of provisional pension in such cases. Rule 69(1) of the Central Civil Services (Pension) Rules, 1972 stipulates that no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings. Since the applicant is no more in service with effect from 1.4.1987 his request for retention of Government accommodation is not tenable. The contentions of the applicant that he should be paid full pension and retirement benefits are also not tenable.

7. We have heard the learned counsel of both parties and have gone through the records of the case carefully.

8. Under Rule 9(1) of the Central Civil Services (Pension) Rules, 1972 the President has the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pension 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 his service. For the purpose of this rule, departmental proceedings are deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date. In the present case the applicant was placed under suspension on 29.1.87, which was prior to his retirement on superannuation on 31-3-87. The statement of charges was served on him after his retirement on 25-6-87. Accordingly, in the instant case, the departmental proceedings are deemed to have been instituted from the earlier of the two dates, namely 29.1.87 when the applicant was placed under suspension before his retirement. The case of the applicant, therefore, comes under the ambit of Rule 9(4) of the Pension Rules against whom departmental proceedings have been continued in terms of sub-rule(2) of Rule 9. In such a situation/^{under Rule 69} of the Pension Rules only provisional pension can be authorised. The provisional pension has been sanctioned to the applicant who is continuing to

draw the same from the date of his retirement. He will be entitled to draw the provisional pension till the final orders are passed by the competent authority after conclusion of the departmental proceedings.

In terms of Rule 69(c) no gratuity can be paid to the Government servant until the conclusion of the departmental proceedings and issue of final Under orders thereon. / Rule 4 of the Central Civil Services (Commutation of Pension) Rules, 1981, no Government servant against whom departmental proceedings have been instituted before the date of his retirement, is eligible to commute a fraction of his provisional pension authorised under Rule 69 of the Pension Rules. The applicant is, therefore not entitled to commute any portion of his pension during the pendency of the disciplinary proceedings.

9. In the circumstances of the case we see no merit in the present application. The applicant is not entitled to any of the reliefs prayed for by him. However, in the interest of justice and fair play, we direct the respondents to finalise the departmental proceedings pending against the applicant as expeditiously as possible but in any event not later than six months from today's date. Respondents are further directed to allow the applicant to continue in the Government accommodation for a period of one month from today's date. The interim order already passed regarding the continuance of the applicant automatically in the Government accommodation will/stand vacated after one month from today.

10. The application stands disposed of with the above directions. The parties to bear their respective costs.

D.K.Chakravorty
(D.K.CHAKRAVORTY)
MEMBER
876/090

Alvin
8/6/90
(P.K.KARTHA)
VICE CHAIRMAN