

2

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 555/1989. DATE OF DECISION: September 28, 1990

Smt. Krishna Nagi Applicant.
Shri G.N. Oberoi Advocate for the
Applicant.
V/s.
Union of India & Ors. Respondents.
Shri M.L. Verma Advocate for the
Respondents.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

- 1) Whether Reporters of local papers may be allowed to see the judgment? *yes*.
- 2) To be referred to the Reporter or not? *No*.
- 3) Whether their lordships wish to see the fair copy of the judgment? *No*.
- 4) To be circulated to all Benches of the Tribunal? *No*.

J.P. Sharma
(J.P. Sharma)
Member (J)

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

S

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 555/ 1989.
~~555/1989~~

DATE OF DECISION September 18, 1990

Smt. KRISHNA NAGI Applicant (s)

Shri G.N. Oberoi Advocate for the Applicant (s)

Union of India & Ors. Respondent (s)
Versus

Shri M.L. Verma Advocat for the Respondent (s)

▼ CORAM :

The Hon'ble Mr. P.C. Jain, Member (A).
The Hon'ble Mr. J.P. Sharma, Member (J).

~~THE HON'BLE MR.~~

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

This application under Section 19 of the Administrative Tribunals Act, 1985, has been filed by the widow of Shri R.N. Nagi, who retired as Barrack Store Officer on 31.5.78 from the office of Garrison Engineer West, Delhi Cantt., on reaching the age of superannuation, and later on died on 2.1.1982, praying for a direction to the respondents for final payments of retirement benefits, viz., unpaid Death-cum-Retirement Gratuity, unpaid Leave Encashment, arrears of pension, arrears of family pension, commutation of pension while the applicant's husband was alive, missing credits in GPF, Group Insurance, and other unpaid dues, namely, arrears of pay and allowances for the period March 1977 to August 1977 and September 1977 to May 1978. arrears of annual increments, pay and allowances for the suspension period, refund of excess recovery of income-tax amounting to Rs.589/-, TA/DA claims CDS and any other dues still pending.

2. Relevant facts, in brief, are that the husband of the applicant retired on superannuation on 31.5.78 and died on

Ce

2.1.1982. The Government quarter allotted to him was vacated by the family on 31.5.83. The husband before his death and his wife/applicant thereafter have been representing to various authorities for settlement of various dues. By the impugned letter dated 19.3.88 (Annexure A-1 to the application), the applicant was informed that her case is being investigated and that she will be informed regarding the progress of the case in due course of time. The respondents' case, in brief, is that the application is barred under Sections 20 and 21 of the Administrative Tribunals Act, 1985 and that market rate of rent of the quarter with effect from August 1978 to May 1988 amounting to Rs.61,727.90 is due from the applicant in the account of her deceased husband. D.C.R. gratuity is admittedly unpaid allegedly on account of non-payment of market rent for the above period. Amount of leave encashment, pay and allowances upto May, 1978, arrears of increments, which accrued on 1.4.77 and 1.4.78 are stated to have already been passed and adjusted against the outstanding amount. These payments are shown to have amounted to Rs.19,570.60 and the net amount recoverable from the officer is shown as Rs.42,157. It is also stated that the officer was suspended on 26.2.1977 and was reinstated vide Ministry of Defence Order issued on 5.2.1982, and that during the suspension period, the officer superannuated from service on 31.5.78 and placed on pension establishment. Provisional pension of Rs.396/- per month is stated to have been granted with effect from 1.6.78 as departmental / judicial proceedings were pending against the officer. On this account, the DCR gratuity was not released in accordance with the provisions of Rule 69(1)(c) of the C.C.S. (Pension) Rules, 1972. Family pension to the applicant at the rate of Rs.288/- per month with effect from the date following the date of the death of her husband, is also said to have been sanctioned. As regards the commutation of pension, it is stated that as per rule 4 of Appendix 38 of CSR Vol. I, the applicant's husband was not entitled to any

commutation of pension till the proceedings against him were pending. An amount of Rs.388/- on account of missing credits in the G.P.F. is stated to have been credited in the SBI Account No.19231 of the officer vide JCDA (F) Meerut No.GP/Misc/IL-1/26128, dated 30.8.79. About refund of excess income-tax, it is stated that the applicant should claim it directly from the I.T.O., Meerut (Salary Circle). No TA/DA claim is stated to be outstanding as the officer had not submitted any such claim. About the Insurance Scheme, it is stated that the officer having retired before the Group Insurance Scheme came into existence in 1982, no payment is due to be made on this account. Similarly, no claim of CDS etc. is stated to be outstanding with any accounts office. Para 6 of the reply of the respondents states that the departmental / judicial proceedings are still to be finalised against the officer.

3. We have carefully gone through the pleadings of the case and have heard the learned counsel for the parties.

4. The narration of facts in para 2 above shows that the departmental / judicial proceedings have not yet been finalised; final pension order was not passed till the death of the applicant's husband; the amount of DCR gratuity is yet to be paid; and commutation of pension, if applied for by the applicant's husband before his death, has not yet been sanctioned. The admission in the impugned letter dated 19.3.1988 to the effect that the case is being investigated, and in the written statement of the respondents that the departmental / judicial proceedings against the applicant's husband have not so far been concluded and as such action about commutation of pension, payment of DCR gratuity, and making the provisional pension order final for the period from the date of retirement till the date of death of the applicant's husband, has not been finalised so far, establish beyond any doubt that the application cannot be treated as time-barred. The applicant's husband, before his death and the applicant thereafter, have been representing to the

Cen

authorities in regard to the matters which are the subject-matters of this application and it cannot, therefore, be said that the application is barred by Section 20 of the Administrative Tribunals Act, 1985. The preliminary objection of the respondents, therefore, is not legally tenable.

5. Neither party has disclosed the nature of departmental judicial proceedings initiated against the applicant's husband before his retirement. The learned counsel for the applicant stated at the bar that there was a criminal case against him. In any case, the departmental proceedings or the judicial proceedings would have abated on the death of the applicant's husband so far as he is concerned. It is, therefore, very surprising that the respondents state that these are still to be concluded. Delay in finalisation of the claims of the applicant's husband on this account is, therefore, totally unjustified.

6. Full adjustment of the dues payable to the officer on account of leave encashment, arrears of pay and allowances, arrears of annual increments, pay and allowances for the suspension period etc., towards recovery of market rent for the alleged unauthorised occupation of the quarter is legally not tenable. Government dues which remain outstanding till the date of retirement of the Government servant can be adjusted against the amount of Death-cum-Retirement Gratuity in accordance with Rule 71(2) of the CCS (Pension) Rules, 1972. Government dues, as defined in these rules, include dues pertaining to Government accommodation including arrears of licence fee, if any, till the date of retirement and other dues such as balance of house building or conveyance or any other advance, overpayment of pay and allowances or leave salary and arrears of income tax deductible at source. In this case, the Government dues are claimed to be entirely on account of market rent for the alleged unauthorised retention of Government accommodation after retirement.

Cm

For this purpose, Rule 72 of the Rules *ibid* is relevant. Sub-rule (6) of Rule 72 clearly states that the recovery of licence fee for the occupation of the Government accommodation beyond the permissible period of two months after the date of retirement of allottee shall be the responsibility of the Directorate of Estates. Sub-rule (4) of Rule 72 provides that the Directorate of Estates shall inform the Head of Office the amount of licence fee for the retention of Government accommodation for the permissible period of two months beyond the date of retirement of the allottee and the Head of Office shall adjust the amount of that licence fee from the amount of the gratuity together with the unrecovered licence fee, if any, mentioned in sub-rule (3). Sub-rule (3) refers to licence fee recoverable in respect of the period prior to eight months of the retirement of the officer. Sub-rule (5) provides that if in any particular case, it is not possible for the Directorate of Estates to determine the outstanding licence fee, that Directorate shall inform the Head of Office that ten per cent of the gratuity or one thousand rupees, whichever is less, may be withheld pending receipt of further information. In substance, therefore, the Head of Office of the applicant's husband had no authority under the rules to adjust the amount payable to the applicant's husband towards the claim of the Estate Office for market rent for the alleged unauthorised occupation of the period of accommodation in so far as it relates to the period after two months from the date of retirement.

7. Rule 69 (1)(a) of the CCS (Pension) Rules, 1972 provides for sanction of only provisional pension but equal to the maximum pension which would have been admissible on the basis of qualifying service upto the date of retirement of the Government servant in the facts and circumstances of this case as the applicant had been placed under suspension and departmental / judicial proceedings are

Cm

stated to have been pending. Similarly, Rule 69(1)(c) provides that no gratuity shall be paid to the Government servant until the conclusion of the departmental / judicial proceedings and issue of final order thereon. Respondents were, therefore, well within their rights to withhold sanction of DCR gratuity on the retirement of the applicant's husband, but as stated earlier, the departmental / judicial proceedings would have abated on the death of the applicant's husband and a formal final order should have been passed immediately thereafter so that the DCR gratuity payable otherwise to him could have been paid. Normally, this should not have taken more than two months to finalise the action and thus, in all fairness the DCR gratuity should have been paid to the officer's nominee sometime in March, 1982. It is also supported by the Government of India decision No.2 under Rule 68 of the CCS (Pension) Rules, 1972. This decision is reproduced below: -

"(2) Interest rate for delayed payment of D.C.R. Gratuity.- It has been decided that where the payment of D.C.R.G. has been delayed, the rate of interest will be as follows: -

- (i) beyond 3 months and up to one year ..7% per annum
- (ii) beyond one year 10% per annum

2. As already provided the Administrative Ministries are requested to ensure that in all cases where interest has to be paid, action should be taken to fix responsibility for the delay and disciplinary action should be taken against the officer responsible for it.

3. These orders take effect from the date of issue.

4. The cases of those Government servants who retired/died while in service before the date of issue of this O.M. would also be covered if Death-cum-Retirement Gratuity has not been paid as on this date and there has been delay in its payment beyond three months of the date of their retirement/death for which interest is payable in accordance with the existing orders. In such cases the interest would be worked out at the rates mentioned in

Qe.

14

Rule 68 (1)(i.e., 5 per cent per annum) upto the date preceding the date of issue of this O.M. and thereafter at the rates indicated above.

5. Formal amendment to Rule 68 of the C.C.S. (Pension) Rules, 1972 will be issued separately. (G.I., Dept. of Personnel & A.R. O.M. No. 7/3/84- Pension Unit, dated the 28th July, 1984.) "

Government of India, decision No.1 under Rule 68 provides that if on the conclusion of the proceedings, the Government servant is fully exonerated, the gratuity will be deemed to have fallen due on the date following the date of retirement for the purpose of payment of interest on delayed payment of gratuity; but this benefit will not be available to such of the Government servants who die during the pendency of judicial/disciplinary proceedings against them and against whom proceedings are subsequently dropped. This only shows that in cases like this, interest will not be payable with reference to the date of retirement, but there is nothing in these instructions to indicate that interest on delayed payment will not be admissible after final orders on the judicial proceedings are passed or after proceedings are dropped due to the death of the officer concerned.

8. In view of the above discussion, respondents are directed as below: -

(1) The amount due to the applicant's husband on account of leave encashment, pay and allowances upto May, 1978, arrears of increments which accrued on 1.4.77 and 1.4.78 and which have already been passed but illegally adjusted against the claim of dues for alleged unauthorised occupation of the Government quarter, will be paid to the deceased officer's heirs or his nominee, as the case may be.

(2) A formal final order for conclusion of departmental / judicial proceedings should be passed and the amount of ~~Death-cum-Retirement~~ Gratuity admissible to the officer should be paid to his heirs or his nominee as the case may be, after adjustment of normal

Qe.

licence fee for the permissible period of retention of Government accommodation after the date of retirement, if it has not already been paid, with simple interest @ 12% per annum from 1.4.82 till the date of payment.

- (3) A final Pension Order for the period from 1.6.78 till the date of the death of the applicant's husband shall be passed and if there are any arrears to be paid on this account, these shall be paid to the officer's heirs or his nominee, as the case may be.
- (4) If as a result of the recalculation of pension, any increase in the Family Pension granted to the applicant becomes payable, a revised formal pension order shall be passed and arrears on this account, if any, shall be paid to the applicant.
- (5) Action as per these directions shall be finalised within three months from the date of the receipt of this judgement by the respondents. The applicant shall also be furnished with a detailed statement of calculations made in respect of her claims within this period.
- (6) The Estate Officer/^{competent authority} shall be free to assess the amount which is to be recovered, after adjustment of the payments stated to have already been made, from the applicant's husband and after his death from the applicant for the period of alleged unauthorised occupation in accordance with the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and the relevant Fundamental Rules and Subsidiary Rules, in accordance with law. It may be mentioned here that Government officers are entitled to retain the residential accommodation allotted to them while in service for a period of four months after the date of retirement on superannuation on payment of normal licence fee. Further, in Station Commander, Station Hq, Delhi Cantt. order No.200/N-51/Q4 to UA BSO (East), Delhi Cantt., copy to Smt. Krishna Nagi w/o late Shri R.N. Nagi, BSO (Retd.)

See

with reference to HQ letter No.200/N-51/Q5, dated 2.4.84, the market rent for T-12, Tabruk Line as assessed by GE (East) is mentioned as Rs.236.80 per month while the claim appears to have been made at the rate of Rs.1200 per month. It was also mentioned by the applicant in her letter dated 7.3.88 addressed to the Station Commander, Station HQ, Delhi Cantt. (with copy to G.E. (East), Delhi Cantt. and G.E. (West), Delhi Cantt.) that vide the Ministry of Defence Deputy Secretary's order No.13(1)78/D(Qtg), dated 25.10.78, the applicant's husband was permitted to retain the accommodation upto 30.11.78 and the said date was subsequently extended upto 14.2.79 under orders of the Delhi High Court. The correctness of these statements may be verified and the period of unauthorised occupation may then be determined.

9. The application is allowed in terms of the above directions. We leave the parties to bear their own costs.

Jomane
(J.P. SHARMA) 28.9.80
Member (J)

Clear
28/9/80
(P.C. JAIN)
Member(A)