IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No.OA 1326/88 Date of decision: 31.7.1989.

Shri Jarnail Singh ..Applicant

Vs.

Union of India & Others ..Respondents

For the Applicant ..Shri S.S. Rana, Counsel

For the Respondents ..Shri P.H. Ramchandan Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. P.C. JAIN, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? Yes

2. To be referred to the Reporters or not? Yes

JUDGMENT

(The judgment of the Bench delivered by Hon'ble Mr. P.K. Kartha, Vice Chairman(J))

The applicant, who has retired from the post of Under Secretary in the Ministry of Home Affairs filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying that the impugned order dated 26.5.1988 (Annexure 14 to the application) be quashed and that the respondents be directed to pay him full pension as admissible with effect from 1.6.1988 together with interest at the rate of 18% and gratuity admissible to him together with interest at the rate of 12% per annum. By the impugned order dated 26.5.1988,

the President decided that the full monthly pension and the entire amount of death-cum-retirement gratuity otherwise admissible to the applicant be withheld on a permanent basis.

2. The facts of the case in brief are that the applicant joined Government service as LDC in the Department of D.G. P & T in 1946 and thereafter he was promoted as UDC in 1954, as Assistant in 1956, as Section Officer in 1965 and as Under Secretary in the Ministry of Home Affairs on 1.3.1978. He worked as Under Secretary in Freedom Fighters Division in the Ministry of Home Affairs from 29.6.1981 to 2.7.1982. He was not given any posting from 3.7.1982 to 30.7.1982. He was placed under suspension from 31.7.1982 due to some alleged irregularities in authorising pension to the persons purported to be freedom fighters. The suspension order was revoked from 17.2.1984.

3. A charge-sheet was issued to him on 26.8.1983 (Annexure A-8) whereby he was alleged to have committed serious irregularities in sanctioning pension to 12 persons purported to be freedom fighters under the Freedom Fighters Pension Scheme, 1972. Subsequently on 14.5.1984, another memorandum was issued to him enclosing therewith revised articles of charge framed against him wherein it was alleged that he had committed such irregularities in respect of 15 persons. The applicant retired on 31.3.1986 on attaining the age of superannuation. He was sanctioned provisional pension with effect from 1.4.1986 until further orders. The departmental proceedings were deemed to be

proceedings under Rule 9(2)(a) of the Central Civil Services (Pension) Rules, 1972. After holding an enquiry, the impugned order dated 26th May, 1988 was passed by the President after consulting the Union Public Service Commission and in accordance with the advice contained in their letter dated 15.2.1988 (Annexure A-14).

4. The case of the applicant in brief is that the 15 persons who had applied for freedom fighters pension were eligible to the grant of pension as they had submitted the requisite documents in support of their claim and he had correctly sanctioned pensions and restored suspended pensions under his own powers in all these cases. Therefore, there was no question of financial loss to the exchequer. He has contended that the action taken by him in sanctioning and restoring suspended pension is not in violation of any circular, order or instruction. The acts done by him were in good faith and bona fide belief and not for his personal benefit and, therefore, no liability or penalty can be imposed on him in such a case. He has also alleged violation of the principles of natural justice in the conduct of the enquiry. In this context, he has alleged that he was not supplied documents required for his defence, that the respondents did not produce the material documents and necessary witnesses and that Shri R.M. Aggarwal whose testimony was relied upon by the Inquiry Officer was not made available for cross examination. He has further

On—

contended that the impugned order passed by respondent No.2 (The Secretary, Department of Personnel & Training) is a non speaking order. Finally he has contended that the penalty imposed on him is excessive, disproportionate and not inconsonance with the alleged irregularities committed by him.

5. The case of the respondents in brief is that the applicant while functioning as Under Secretary in the Freedom Fighters Division of the Ministry of Home Affairs committed serious irregulatiries in granting pensions to persons purporting to be freedom fighters, which warranted Disciplinary Proceedings. They have denied his contention that he had correctly sanctioned pensions and restored suspended pensions under his own powers in all the 15 cases in question. According to them, he had gone beyond the area of authority and his action could not be considered to be normal acts. In some cases, he has not recorded the notes. In some others, the notes recorded by him are not fully explanatory and analytical. In case he was convinced about the need of sanctioning pension or restoring them, he should have sought instructions of the higher authorities, which he never did. According to the relevant circulars and instructions issued by the Ministry of Home Affairs, he was not empowered to sanction or restore pensions to pensioners on his own where the pension had either been suspended or cancelled. He was required to seek the approval of the higher authorities in such cases, which he did not do. The

respondents have denied the contention of the applicant that the documents necessary for his defence were not supplied to him. They have also contended that the inquiry proceedings were not vitiated for denial of principles of natural justice. According to them, the penalty imposed on him was not disproportionate as contended by him.

6. We have carefully gone through the records of the case and have heard the learned counsel of both parties. At the outset, we may consider the contention raised by the applicant to the effect that the respondents have committed Contempt of Court by not complying with the interim order passed by the Sub Judge, Delhi in Suit No.615/85 on 10.7.1985. On 10.7.85, the Sub Judge, Delhi had passed the following order:-

> " Present parties counsel.
>
> For Written Statement, reply and arguments, case to come up on 11.10.1985. In the meantime, the defendants are restrained from announcing the result of the Inquiry findings. They are, however, allowed to proceed with the Inquiry Proceedings as per rules".

6. With regard to the aforesaid order, the applicant has alleged that Suit No.615/85 was transferred to this Tribunal and registered as TA No.679/86 which is still pending. The aforesaid stay order has not been vacated. The announcing of the Inquiry Reports dated 10.1.1985 and 26.6.1986 on 10/11.12.1986 are not only illegal but also amounts to Contempt of Court.

7. There is no substance in the above contention. The stay order dated 10.7.1985 was valid only till 11.10.1985 and there is nothing on the record to indicate that it was continued thereafter. Apart from this, the Tribunal has no jurisdiction to take proceedings in contempt for alleged violation of an order passed by the Civil Court.

8. Under the Freedom Fighters Pension Scheme, 1972, persons who had suffered a minimum of six months imprisonment in the mainland jails before independence were to be treated as freedom fighters. According to Gandhi-Irwin Agreement dated 5.3.1931 these prisoners will be released who are undergoing imprisonment in connection with the civil disobedience movement for offences which did not involve violence other than technical violence or incitement to vilence. The scheme also envisaged that only those freedom fighters were eligible for pension whose annual income was below Rs.5,000/-. The claimants were to apply in duplicate in the prescribed form, one copy of which was to be sent to the Ministry of Home Affairs, and the other to the State Government. The documents required were certificates from the concerned jail authorities, District Magistrates of State Governments regarding imprisonment, detention etc. and in case of non-availability of such certificates, the co-prisoner's certificate from a sitting M.P. or M.L.A. specifying the jail period was required. In the case of persons who had gone underground, documentary evidence by way of court's/Government order proclaiming them as offenders was also required. In the case of internment/

externment an affidavit with a copy of such order or any other corroborative documentary evidence was required to be produced. The scheme commenced from 15.8.1972 and the last date for receipt of applications was extended upto 31.7.1981.

9. The scheme was slightly modified by circular dated 6.6.74 whereby freedom fighters who were sentenced to imprisonment for six months or more and had undergone minimum punishment of five months but were prematurely released due to Gandhi-Irwin pact and the general amnesty order should be considered eligible for pension. There were further modifications in the scheme in 1980 which are not relevant in the present context.

10. A brief reference may be made to the relevant instructions on the subject of examination of such cases in the Freedom Fighter's Section in the Ministry of Home Affairs and the powers of the Under Secretary in this regard. Where decision about acceptability of documentary evidence is to be determined at a higher level, the cases have to be submitted by the Under Secretary to or through Deputy Secretary (vide Circular dated 27.10.1975). According to another instruction, persons should apply afresh on a new modified form whose applications were received after 31.3.1974 and were rejected as time barred. Eligible persons may be sanctioned pension from 1.8.1980 if their applications were received in state Government or Central Government on or before 31.7.1981 (vide Circular dated 11.12.1980). More than ordinary caution should be exercised

when the sanction involves substantial payment of arrears (vide circular dated 16.3.1981). The Branch Officer should continue to put up cases of sanction/rejection to Deputy Secretary where the eligibility is not categorically established and the claim for pension is based on underground, internment/externment and where interpretation of existing provisions is involved (vide circular dated 20.4.82). The Under Secretary could sanction pension in those cases where eligibility of freedom fighters was categorically established and the cases were supported by the recommendation of the State Government. In cases where eligibility was not categorically established, they were required to be put up by the Under Secretary to his senior officers.

11. There is documentary evidence in support of the contention of the respondents that in terms of the Gandhi-Irwin pact, there is a presumption that the prisoners were released by 31.3.1931 (vide letter of Ministry of Home Affairs dated 8.6.78 to Bihar Government wherein it is stated that all political prisoners had been released in March 1931 following the said pact). To the same effect are the note dated 25.2.78 at Exhibit S.2 which had been approved by the Minister in the Ministry of Home Affairs and notes dated 8.1.80 at Exhibit S.7, note dated 25.2.78 at Exhibit S.10 and note dated 15.3.79 at Exhibit S.16. The applicant, however, took the presumptive date as May, 1931 while processing

Or

the cases in question. In support of this, he has relied upon a letter dated 22.6.1983 by an Under Secretary wherein it is stated that very few persons might have been released in April/May, 1931. He has also relied upon a Cabinet Note dated 22.4.1974 in which it is stated that most of the political prisoners were released from March to May, 1931. It is, however, pertinent to point out that while processing the cases in question, the applicant did not rely upon the said letter of the Under Secretary or the Cabinet note. The Cabinet note was relied upon by him for the first time in the defence brief submitted by him after the completion of the enquiry. The applicant has relied upon the decision taken in some earlier cases in support of his action in the 15 cases in question. In the case of Ghina Singh, a claimant from Bihar, the applicant had proposed in his note dated 18.1.1982 that it was not advisable to accept the recommendation of the State Government for the grant of pension in the absence of acceptable documentary evidence. This view was endorsed by Director(FF) but the Joint Secretary, vide his note dated 4.3.82 directed that pension may be sanctioned. The Joint Secretary observed that the proposal to reject pension amounted to "taking too technical view of this case". He also referred to the observation made by the Home Minister in another case that "we should not take too technical a view while examining these cases as long as the applicant appears to be a genuine freedom fighter".(vide Annexure A-4). The decision taken in this case cannot be taken as a binding precedent. It also indicates that in

doubtful cases, the Under Secretary is required to seek the orders of his superior officers. Another precedent relied upon by him is the decision taken in the case of Natheshwar Prasad Singh, another claimant, by Director (FF) on 12.3.1982. The Director accepted the proposal submitted by the applicant for sanctioning pension to the applicant "because of the powerful reasonings given in his note". In that case, the applicant had stated in his note dated 12.3.82 that there were many cases in which pension had been sanctioned after the applications were received after 31.3.74, that due to the old age of the claimant, it was not advisable to request him to submit a fresh application, that almost all the prisoners were released by the end of May,1931 after the signing of the Gandhi-Irwin Pact on 5.3.31, that the claimant might have undergone full term of six months imprisonment as mentioned in the court document and that he had submitted co-prisoners certificate. This case also cannot be taken as a binding precedent.

12. Out of the fifteen cases in question, the applicant reopened three cases which had not been sanctioned earlier(Article of charge, Serial Nos. (i), (ii) and (iii)). In these cases he has not recorded any note but issued sanctions on 23.6.82. One case involved payment of huge arrears(S.No.(iv). In this case, he recorded a note on 31.5.82 holding that the applicant is eligible for arrears from 15.8.73 and got the sanction issued on 20.6.82. The remaining 11 cases involved restoration of suspended pensions (S.Nos. (v) to (xv). Pensions in some cases had been suspended by the orders of the Minister (S.Nos. (xiii) and (xv). He reopened these cases on his own initiative and took undue interest in processing some of them at his own level, without involving even his own Section Officer or the concerned section for preparing the draft sanction letters, getting them fair typed and despatching them. The procedure followed by him was quite unusual, having regard to the normal procedures in the conduct of Government Business at the level of Under Secretary. The applicant cannot, therefore, be said to have conducted himself as a person of ordinary prudence while processing these cases involving payment of substantial arrears. Any other officer in such circumstances would have been more

circumspect and submitted the papers to higher authorities seeking their approval to the proposed course of action.

13. We are conscious of the legal position that this Tribunal cannot in a case of this kind reappraise the evidence adduced during the enquiry and that if there is some evidence to substantiate the charge, the Tribunal should not interfere with the findings arrived at as a result of the inquiry. On going through the voluminous records of the enquiry, we are satisfied that there was adequate evidence to prove the charges brought against the applicant.

14. In our opinion, the enquiry was conducted in conformity with the principles of natural justice. The applicant had, at no stage, complained that his defence was handicapped by the non-production of certain documents required by him. These documents had not also been relied upon by the prosecution. The plea of the applicant that Shri R.M. Aggarwal, who had worked as Joint Secretary at the relevant time and who was one of the witnesses for the prosecution, was not available for cross-examination is devoid of any substance, as he was in fact cross-examined on behalf of the defence. The applicant has made a grievance in that Shri Mukhopadhyay, the then Director (FF) was not produced as a witness for the prosecution. The respondents have stated that at the time of the enquiry, he had already been reverted to the State Government of Orissa and he could not appear before the Inquiry Officer as he was unwell. If that be so, nothing prevented the applicant from citing him as a defence witness, had he chosen to do so.

14A. As to the contention that the impugned order passed by the respondents is not a speaking order, it may be stated that the Disciplinary Authority before passing its order is not bound to state reasons in support of its order if it concurs with the findings and recommendations of the Enquiry Officer. In State of Madras Vs. A.R. Srinivasan, AIR 1966 SC 1827, a Constitution Bench of the Supreme Court, while repelling the contention advanced on behalf of the respondent that the State Government's order compulsorily retiring him from service was bad as it did not give reasons for accepting the findings of the Enquiry Tribunal and imposing the penalty of compulsory retirement observed as follows:-

> " In dealing with the question as to whether it is obligatory on the State Government to give reasons in support of the order imposing a penalty on the delinquent officer, we cannot overlook the fact that the disciplinary proceedings against such a delinquent officer begin with an enquiry conducted by an officer appointed in that behalf. That enquiry is followed by a report and the Public Service Commission is consulted where necessary. Having regard to the material which is thus made available to the State Government and which is made available to the delinquent officer also, it seems to us somewhat unreasonable to suggest that the State Government must record its reasons why it accepts the findings of the Tribunal. It is conceivable that if the State Government does not accept the findings of the Tribunal which may be in favour of the delinquent officer and proposes to impose a penalty on the delinquent officer, it should give reasons why it differs from the conclusions of the Tribunal, though even in such a case, it is not necessary that the reasons should be detailed or elaborate. But where the State Government agrees with the findings of the Tribunal which are against the delinquent officer, we do not think as a matter of law, it could be said that the State Government cannot impose the penalty against the delinquent officer in accordance with the findings of the Tribunal unless it gives reasons to show why the said findings were accepted by it. The proceedings are no doubt, quasi-judicial; but having regard to the manner in which these enquiries are conducted, we do not think an obligation can be imposed on the State Government to record reasons in every case".
>
> (see also Tarachand Khatri Vs. Municipal Corporation, 1977 SCC (L&S) 151).

15. We are also not impressed by the contention of the applicant that the penalty imposed on him was not commensurate with the alleged misconduct. The UPSC has, in their advice dated 15.2.88, estimated the total loss caused by him to nearly Rs.1,73,550/-. They have also observed that his intentions were "mala fide" as he acted with "undue haste" and "stealth" by preparing draft sanction letters himself, getting them fair typed and arranging to issue them directly without routing through the concerned section or dealing hand.

16. The question arises whether the withholding of the full monthly pension and the entire amount of Death-cum-Retirement Gratuity otherwise admissible to the applicant, is legally sustainable. The learned counsel of the applicant submitted that in any event, the respondents should not have withheld the full monthly pension and the entire amount of gratuity in terms of the provisions of the CCS (Pension) Rules, 1972. At the most, they could have recovered from the pension any pecuniary loss caused to the Government. He also relied upon the second proviso to Rule 9(1) of the CCS (Pension) Rules, 1972 which states that "where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of Rs.375/- per mensum." As regards gratuity, he submitted that there is no provision in the rules to withhold the same on a permanent basis . In this context, he has relied upon the decision of the Supreme Court in F.R. Jesuratnamm Vs. Union of India & Others, 1986(2) SCALE 879 and of this Tribunal in G. Gnanayutham Vs.

Union of India, 1988(6) ATC 117.

17. In Jesuratnamm's case, the Supreme Court set aside the order of the High Court as also the order of the Government forfeiting the gratuity of the applicant and directed that it shall be paid to the applicant. In this context, it was observed that "there is no legal provision empowering the authorities to forfeit the gratuity payable to the appellant".

18. In Gnanayuthamm's case, an order was issued in the name of the President withholding 50% of the pension and 50% of the death-cum-retirement gratuity of the applicant on a permanent basis. The Tribunal held that as pecuniary loss had been caused to the Government, the President has the right to withhold or withdraw the pension under Rule 9 of the CCS (Pension) Rules, 1972. As regards question of withholding of gratuity, the Tribunal agreed with the judgment delivered by the Madras High Court on 14.9.84 in WMP Nos. 7085, 9361 and 9362 of 1984 and in WP Nos. 4510, 6039 and 6049 of 1984. The Madras High Court had held that gratuity cannot be withheld under Rule 9 of the CCS (Pension) Rules, 1972. The Madras High Court had observed as follows:-

> " For my part I am unable to agree with the learned Government Pleader, because when the Rule specifically talks of withholding of pension and does not even make an oblique reference to gratuity, it is not for the Court to supply words in the guise of interpretation. Then again under Rule 69 gratuity is not to be paid till the termination of the judicial proceedings. This would only mean postponement of the payment of gratuity but not cessation of liability on the part of the Government to pay gratuity."

19. With regard to the judgment of the Supreme Court in Jesuratnamm's case, it may be stated that it is not clear as to the facts and circumstances in which the Court held that gratuity cannot be forfeited. It is also not clear whether in that case the Supreme Court had to consider the question whether under Rule 69 of the CCS (Pension) Rules, 1972, the gratuity payable to a Government servant could be withheld. The respondents have drawn our attention to the subsequent decision of the Supreme Court in State of U.P. Vs. Brahm Datt Sharma and Another, 1987(1) SCALE 457. In that case, the question arose whether the State Govt. could issue a show cause notice to a Government servant calling upon him to show cause as to why his pension and gratuity be not forfeited in accordance with the provisions of Article 470(b) of the Civil Services Regulation. The High Court had held that the notice was invalid and was liable to be quashed. The Supreme Court held that the High Court was not justified in quashing the show cause notice. The Supreme Court observed as follows:-

> " If the Government incurs pecuniary loss on account of misconduct or negligence of a Govt. servant and if he retires from service before any departmental proceedings are taken against him, it is open to the State Government to initiate departmental proceedings, and if in those proceedings he is found guilty of misconduct, negligence or any other such act or omission as a result of which Govt. is put to pecuniary loss, the State Govt. is entitled to withhold, reduce or recover the loss suffered by it by forfeiture or reduction of pension".

20. With regard to the Tribunal's Judgment in

Gnanayutham's case which was decided on the basis of the ruling of the Madras High Court mentioned above, it may be stated that the Madras High Court had only referred to Rule 69 of the CCS (Pension) Rules, 1972 which, provides, inter alia, that " no gratuity shall be paid to the Govt. servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon". Rule 72 of the CCS (Pension) Rules, 1972 provides for adjustment and recovery of dues pertaining to Govt. accommodation from out of the gratuity before its payment is authorised. Rule 73 deals with the adjustment and recovery of dues other than dues pertaining to Govt. accommodation from the gratuity. If any pecuniary loss has been caused to the Government before the retirement of the Govt. servant, the same could be recovered from gratuity. The Madras High Court did not refer to Rules 72 and 73 of the CCS(Pension) Rules, 1972.

21. In the instant case, the amount of gratuity payable to the applicant would be much less than the total loss to the exchequer caused by the applicant, as estimated by the UPSC (i.e. Rs.1,73,550). We do not, therefore, consider that in any event the gratuity or any portion thereof is payable to the applicant. We are also of the opinion that having regard to the nature of the misconduct and the evidence adduced during the enquiry, there is no justification for directing the respondents to pay to the applicant his pension either in full or in part.

22. After the Madras High Court delivered its judgment in Gnanayutham's case on 5.12.86 a Full Bench of this Tribunal in Amrit Singh Vs. U.O.I. and Others, 1988(2) ATLT (CAT) 539 at 554 had occasion to consider whether death-cum-retirement gratuity can be withheld. The question arose while considering the question whether disciplinary proceedings can be continued against a Govt. servant even after his retirement under the CCS(Pension) Rules or the corresponding provisions of the Railway Pension Rules, even where the officer had not been suspended but allowed to retire during the pendency of the disciplinary proceedings and whether the disciplinary proceedings can be continued or initiated after retirement even where there has been no pecuniary loss for the Govt. by the alleged misconduct of the Govt. servant on which the disciplinary proceedings are based. The Full Bench held that gratuity is a retirement benefit and when there is a specific provision in Article 2308 of the Indian Railways Establishment Code for withholding pension which included gratuity and where there is no specific rule prohibiting withholding/ withdrawing of gratuity, the Railways have power to order withholding or withdrawing of pension. Unless there is a proceeding under Article 2308, the Railways have no right to withhold payment of gratuity. The contention that gratuity cannot be withheld even if proceedings are pending was rejected by the Full Bench. In this context, reference was also made to the definition of pension in Rule 3(1)(o) of the CCS (Pension) Rules, 1972

which is an inclusive definition and which reads as follows:-

> " Pension includes gratuity except when the term of pension is used in contradistinction of gratuity".

In Rule 9 of the CCS (Pension) Rules, 1972, the expression 'pension' has not been used in contradistinction to gratuity and, therefore, it would also include gratuity.

23. Article 366(17) of the Constitution provides that Parliament is competent to enact laws relating to "Union pension, that is to say, pensions payable by the Government of India or out of the consolidated Fund of India"(vide Entry 70, List I of Seventh Schedule to the Constitution). Article 366(17) of the Constitution defines the expression to mean "a pension, whether contributory or not, of any kind whatsoever payable to or in respect of any person and includes retired pay so payable, a gratuity so payable and any sum or sums so payable by way of the return, with or without interest thereon or any other addition thereto, of subscriptions to a provident fund"(emphasis supplied). The CCS (Pension) Rules, 1972 have been made in exercise of the powers conferred by the proviso to Article 309 of the Constitution. Therefore, the definition of 'pension' in Article 366(17) of the Constitution would be relevant.

24. In our opinion, the inclusive definition of 'pension' under Rule 3(1)(o) of the CCS (Pension) Rules, 1972 and the definition of pension in Article 366(17) of the constitution read with Entry 70 of List I of the Seventh Schedule would apply to the instant case. Accordingly, there is no legal infirmity in the impugned order dated 26.5.88 whereby the

entire amount of gratuity otherwise admissible to the applicant was withheld.

25. The second proviso to Rule 9(1) of the CCS (Pension) Rules, 1972 relied upon by the applicant will apply to cases where the competent authority has come to the conclusion that the retired Government servant should be paid a part of the pension admissible to him under the rules. In such cases, the quantum of pension should not be reduced below the amount mentioned in the second proviso, i.e., Rs.375/- per month. This does not apply to the instant case where the President has come to the conclusion that the entire pension to which the applicant would have been otherwise entitled to should be withheld on a permanent basis.

26. In the light of the foregoing, we see no merit in the present application and the same is dismissed. In the circumstances of the case, the parties will bear their own costs.

31/7/89
(P.C. JAIN)
MEMBER (A)

31/7/89
(P.K. KARTHA)
VICE CHAIRMAN(J)