

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH :: HYDERABAD**

OA/020/00988/2019

Date of CAV: 31.12.2020

Date of Pronouncement: 19.01.2021



Hon'ble Mr. B.V. Sudhakar, Admn. Member

P. Yohan S/o Late P. Abraham,
Age : 61 years, Retd. Sub Postmaster,
Payasampalli S.O., R/o H.No.24/668,
Near Municipal Park, PRODDATUR.Applicant

(By Advocate : Mr. M. Venkanna)

Vs.

1. The Union of India represented by
The Secretary, Ministry of Communication & IT,
Department of Posts – India, Dak Bhavan,
Sansad Marg, New Delhi – 110001.
2. The Chief Postmaster General,
Andhra Pradesh Circle,
VIJAYAWADA-520 013.
3. The Director of Postal Services,
Kurnool Region, KURNOOL – 518 002.
4. The Superintendent of Post Offices,
Proddatur Division, PRODDATUR-516 360.Respondents

(By Advocate : Mrs. K. Rajitha, Sr. CGSC)

ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:

2. The OA is filed challenging the decision of the respondents in not releasing the terminal benefits of the applicant on retirement.
3. Brief facts are that the applicant, while working as Postal Assistant in the respondents organization, was issued a charge memo under Rule 14 of CCS (CCA) Rules on 10.3.2017 and based on the inquiry report, he was retired compulsorily from service by the Disciplinary authority on 25.9.2017. Later, respondents filed a police complaint and FIR No.248/2017 was registered on 15.11.2017. Respondents are not releasing the terminal benefits on the grounds that the criminal case is pending against the applicant and hence, the OA.
4. The contentions of the applicant are that as on the date of compulsory retirement, there was no criminal case pending against the applicant. On approaching the Tribunal in OA 693/2018, it was disposed of directing the respondents to release the pensionary benefits if the competent court has not taken cognizance of the FIR. Without taking this aspect into consideration, respondents have rejected the claim of the applicant. Applicant cited the verdict of the Hon'ble Supreme Court in K.V.Jankiraman to support his contentions.
5. Respondents in their reply statement have stated that the applicant was involved in misappropriation of NREGS funds and hence, Rule 14 charge memo was issued resulting in imposing the penalty of Compulsory

retirement and a criminal case has been filed in the competent court and therefore, the terminal benefits have not been released in view of the pending judicial proceedings as per rule 69 (1) (c) of CCS (Pension) Rules 1972. The directions in OA 693/2018 were accordingly complied with.



6. Heard both the counsel and perused the pleadings on record.
7. I. The applicant was proceeded on disciplinary grounds for being involved in misappropriation of National Rural Employment Guarantee Scheme payments and was compulsorily retired on 25.9.2017. Thereafter, a complaint was filed with the Police on 15.11.2017 which was registered as FIR No.248/2017 and the competent Court took cognizance of the case on 18.6.2018 vide CC No.156 of 2018. Hearings have commenced and the case is pending for final adjudication. Provisional pension was released on 3.9.2018 and arrears of pension were paid on 8.9.2018. Applicant filed OA 693/2018 wherein respondents were directed to dispose of the representation by a speaking and reasoned order. Accordingly, respondents disposed the representation stating that the pensionary benefits cannot be released till the criminal proceedings pending against the applicant are finalised. We proceed to examine the same as under:

II. The rules regarding release of pensionary benefits are as under:

- a. Gratuity—Rule 69 (1) (C) of CCS (Pension) Rules, 1972

“No gratuity shall be paid to the Government Servant until the conclusion of the departmental or judicial proceedings and issue of final order”.

b. Commutation of pension – Rule 4 of CCS (Commutation of Pension) Rules, 1981



“No Government servant against whom departmental or judicial proceedings as referred to in Rule 9 of the Pension Rules, have been instituted before the date of his retirement, or the pensioner against whom such proceedings are instituted after the date of his retirement, shall be eligible to commute a fraction of his provisional pension authorized under Rule 69 of the Pension Rules or the pension, as the case may be, during the pendency of such proceedings”.

The argument of the applicant is that there was no criminal case as on the date of retirement. True, however, rules cited supra make it explicit that gratuity and commutation of pension are not to be released during the pendency of the criminal case.

III. Further, Section 4 (6) (b) (ii) of the Payment of Gratuity Act states that notwithstanding anything contained in sub-section (1)(b), the gratuity payable to an employee may be wholly or partially forfeited, if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment. Applicant was involved in misappropriation of NREGS payments to be made to the beneficiaries under the scheme, in the course of his employment. Due inquiry was conducted and thereafter, he was compulsorily retired on 25.9.2017. Thus, the grounds for the penalty was moral turpitude and hence, under the cited provision of the Gratuity Act, applicant is not eligible for payment of gratuity till the competent court decides the criminal case filed against him.

IV. Ld. Counsel for the Applicant has relied on Rule 9 of CCS (Pension) Rules, to state that only the President is empowered to withhold pension or gratuity. Nevertheless, Rule 69 (1) (C) of CCS (Pension) Rules 1972 is categorical that gratuity can be withheld when criminal case is pending as was brought out supra. The rule, which is of statutory nature, states that if judicial proceedings are pending, then gratuity can be withheld. It did not state that the criminal proceedings have to be pending as on the date of retirement and hence even after retirement if the criminal case is taken cognizance of, then gratuity can be withheld till the disposal of the case.

V. The competent court has taken cognizance of the case on 18.6.2018 and therefore, release of gratuity would not arise during the pendency of the criminal case. The point repeatedly raised by the learned applicant's counsel is that, as on the date of compulsory retirement, there was no criminal case pending. The respondents gave 45 days grace period for the applicant to appeal against the order of compulsory retirement dated 25.9.2017 and thereafter, filed the FIR in the concerned police station on 15.11.2017. There appears to be valid reason in the submission of the applicant to this extent. However, the important aspect is that the applicant was involved in a case of moral turpitude and as a criminal case was registered after compulsory retirement of the applicant, gratuity cannot be released till the criminal case is finalised. The criminal case may end up in acquittal of the applicant, which will enable the applicant to receive the gratuity amount due to him and if the verdict were to be adverse, then depending on the decision of the competent court, withholding of the



gratuity fully or partially would arise, as is provided for in the Gratuity Act. Hence, release of the gratuity during the pendency of the criminal case would, thus, not be legally sustainable, since it would be a violation of the Gratuity Act as well as the rule cited supra.



A Full Bench of Hon'ble High Court of Allahabad has held that full pension and gratuity can be withheld during pendency of disciplinary/judicial proceeding, vide its judgment dt. 08th May 2019 in - SPECIAL APPEAL No.40 of 2017 in the matter of Shivagopal v.- State of U.P. And 4 Others and batch. The observations of the Hon'ble High Court are as under:

The Allahabad High Court has held that a Government servant is not entitled to full pension/death cum-retirement gratuity on/or during pending disciplinary/judicial proceedings against the government servant.

The full bench comprising of Justice Pankaj Mithal, Justice Suneet Kumar and Justice Rohit Ranjan Agarwal observed that the entitlement to full pension /death-cum-retirement gratuity to the government servant is subject to the outcome of the disciplinary/judicial proceedings and issue of final orders thereon by the competent authority. The Full Bench was considering a reference to it on the issue of entitlement of the government servant to receive death cum-retirement gratuity on superannuation or otherwise, pending judicial proceedings.

The court upheld a Division Bench judgment view that the term 'pension' would include 'gratuity' particularly in Article 351, 351-A of the Civil Service Regulations. Referring to these regulations, the Bench observed:

- *Future good conduct is implied condition of ever grant of pension. Full pension is not to be given as a matter of course, or unless the service rendered has been thoroughly satisfactory.*
- *Article 351 and/or 351-A can be invoked by the State Government or the Governor, as the case may be, if the pensioner (a) be convicted of serious crime; (b) be guilty of grave misconduct (c) caused pecuniary loss to the government in service. The power can be exercised in either of the eventualities. The action thereunder is punitive.*
- *Pendency of disciplinary/judicial proceedings on the date of retirement, or instituted after retirement, provisional pension equal to maximum pension as mandated under Article 919-A may be sanctioned to the government servant for the period upto conclusion of the proceedings.*
- *No gratuity is payable to the government servant during pendency of disciplinary/judicial proceedings/enquiry by Administrative Tribunal, until*



conclusion of the proceedings/enquiry and orders being passed thereon by the competent authority.

- *The Regulations mandates that government servant is entitled to provisional pension equal to maximum pension during pendency of the proceedings until conclusion. The Regulations does not mandate the entitlement of full pension/gratuity on the ground of 'hardship' being faced by the pensioner pending proceedings.*
- *The nature of the charge/allegations against the government servant cannot be gone into during pendency of the proceedings. The government servant whether guilty of 'serious crime' and/or 'grave misconduct' in the opinion of the competent authority can be assessed/considered while passing final orders upon conclusion of the disciplinary/judicial proceedings.*
- *The impact on pension/gratuity would arise after the competent authority has had the occasion to consider and issue final orders upon conclusion of the proceedings. The cause to the government servant arises thereafter and not at the stage pending proceedings /enquiry.*

VI. Similarly, in case of leave encashment, it can be withheld if a criminal case/disciplinary proceeding is pending against the employee/pensioner, as held by the Hon'ble Patna High Court in *Arvind Kumar Singh v. State of Bihar; 2018 SCC OnLine Pat 749*; dated 02-05-2018, as under:

*The High Court stated that if an employee is facing a criminal case or a departmental proceeding at the time of his retirement, the government has the power to withhold leave encashment. Therefore, by stating the case of *Vijay Kumar Mishra v. State of Bihar; 2017 (1) PLJR 575*, it was held that leave encashment of a Government employee can be withheld and its withholding by executive instructions is permissible.*

Time is a non spatial continuum that is measured in terms of events which succeed one another from past through present to future. The Hon'ble High Court has not used the expression at "that point of time" in its order supra to refer to the date of retirement. Hence, any criminal case filed after the retirement will also be a good ground to withhold the leave encashment.

VII. Therefore, the action of the respondents is as per rules and we find no error in their decision to withhold the pensionary benefits till the

criminal proceedings are finalised. Hon'ble Supreme Court has held that the rules are to be scrupulously followed in the following judgments.

*The Hon'ble Supreme Court observation in **T.Kannan and ors vs S.K. Nayyar** (1991) 1 SCC 544 held that "Action in respect of matters covered by rules should be regulated by rules". Again in **Seighal's case (1992) (1) supp 1 SCC 304** the Hon'ble Supreme Court has stated that "Wanton or deliberate deviation in implementation of rules should be curbed and snubbed." In another judgment reported in (2007) 7 SCJ 353 the Hon'ble Apex court held "the court cannot de hors rules*



VIII. The legal principles stated supra also support the action of the respondents. We have gone through the additional material furnished by the Ld. Counsel for the applicant at the time of the final hearing of the case and found that the definitions of Pension, clause 9 of CCS (Pension) Rules etc. to be of no assistance to the case of the applicant. The reference to K.V.Jankiraman case would also be of no help to the applicant because it deals with promotion and not in respect of pension and pensionary benefits. The pertinent aspect of the issue pertaining to moral turpitude of the applicant in misappropriating NREGS payments is under adjudication by the competent court. The technical aspect is as to whether the criminal case was pending on the date of retirement is of little significance vis-à-vis the substantive aspect as to whether the conduct of the applicant in misappropriating NREGS payments comes under the ambit of moral turpitude and is to be dealt as an offence, which is under adjudication. It is substantive justice, which prevails over technical justice, as held by the Hon'ble Supreme Court in *State Rep. by Inspector of Police, CBI vs M Subrahmanyam* on 7 May, 2019 in Criminal Appeal No(s). 853 of 2019 (arising out of SLP (Crl.) No(s). 2133 of 2019). Therefore, till the criminal

case under reference is finalized, withholding of pensionary benefits by the respondents to the extent claimed by the applicant is in order.

IX. In view of the aforesaid circumstances, we do not find any merit in the OA and hence, dismiss the same, with no order as to costs.



(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

evr