

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 973/86

DECIDED ON December 17, 1992

M. N. Elias

... Applicant

vs.

Union of India & Ors.

... Respondents

CORAM : THE HON'BLE MR. P. C. JAIN, MEMBER (A)

THE HON'BLE MR. J. P. SHARMA, MEMBER (J)

None for either party

JUDGMENT

Hon'ble Mr. P. C. Jain, Member (A) --

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant who was a member of the Central Secretariat Service and retired from the post of Deputy Director (Admn.), All India Radio, on 30.9.1984 on attaining the age of superannuation, is aggrieved by office memorandum dated 20.5.1985 by which the President of India disagreeing with the findings of the inquiry officer, tentatively decided to impose a cut of 20% in the monthly pension admissible to the applicant for a period of three years and give to the applicant an opportunity to make representation, if any, within fifteen days from the date of receipt of the office memorandum. He has prayed for that (1) the pending proceedings envisaging imposition of the penalty of a cut of 20% in the monthly pension of the applicant be quashed; (2) gratuity, commutation value and salary for the month of September, 1984 be directed to be paid with interest at the rate of 18% from 1.10.1984 to date of payment; and (3) that the costs of the proceedings and

other consequential benefits which the Tribunal deems fit and proper, be also allowed. As an interim measure, he has prayed for the main reliefs as aforesaid. By an order passed on 9.12.1986 the respondents were directed to pay to the applicant the entire gratuity after adjustment of the Government dues, if any, and the amount was to be paid within a period of one month from that date. These orders about payment of gratuity were complied with^{though belatedly} as is clear from the statement of the learned counsel for the applicant as on the ordersheet dated 5.3.1987.

2. Briefly stated, the relevant facts are that by office memorandum dated 30.7.1984, an inquiry under Rule 14 of the C.C.S. (C.C.A.) Rules, 1965 was initiated against the applicant in respect of the following four articles of charge :-

"ARTICLE-I"

That the said Shri Marks N. Elias, while functioning as Deputy Director (Admn.) in Publications Division during the period from 1981-84 committed irregularities in appointment of Technical Assistants on adhoc basis with a view to appointing his son, Shri Anil Marcus as Technical Assistant.

By his above act, Shri Elias exhibited lack of integrity thereby contravening the provisions of rule 3(1) (i) of CCS (Conduct) Rules, 1964.

ARTICLE-II

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Marks N. Elias processed the case regarding selection and appointment of his son as Technical Assistant in DPD. He also dealt with the case regarding writ petition filed by six departmental candidates, including his son. While dealing with these cases he did not disclose his relationship with Shri Anil Marcus. Not only this, he did not obtain the prior approval of the Ministry for the selection of

his son for the post of Technical Assistant as per the instructions contained in Ministry of I&B u.o. No. A-12026/10/73Admn.II dt. 20.12.73.

The above acts of Shri Elias were unbecoming of a Government servant and violative of the provisions of rule 3(1) (iii) of the CCS (Conduct) Rules, 1964.

ARTICLE-III

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Marks N. Elias exhibited lack of devotion to duty in as much as he unauthorisedly filed a Counter-affidavit in the High Court of Delhi in reply to the Writ Petition No. 2475 of 1983 on behalf of the Respondents without consulting the Ministry of I&B, the UPSC and the Ministry of Law as required under the instructions on the subject.

By his above acts, Shri Elias exhibited lack of devotion to duty thereby contravening the provisions of rule 3(1) (ii) of the CCS (Conduct) Rules, 1964.

ARTICLE-IV

That during the aforesaid period and while functioning in the aforesaid office the said Shri Marks N. Elias exhibited lack of devotion to duty in as much as he did not handle the classified documents carefully which resulted in the leakage of information causing embarrassment to the Government.

By his above act, Shri Elias contravened the provisions of rule 3(1) (ii) of CCS (Conduct) Rules, 1964."

An inquiry officer was appointed vide order dated 18.8.1984 and after holding the inquiry he submitted his report dated 22.9.1984 in which he came to the conclusion that none of the charges levelled against the applicant was proved. However, by impugned office memorandum dated 20.5.1985, the disciplinary authority (the President) after examining the facts and circumstances of the case as also the inquiry report in the light of the evidence on record came to the conclusion that it was not possible to agree with the findings of the inquiry

officer as explained in the note at Annexure-I to the aforesaid office memorandum and, therefore, tentatively decided to impose a cut of 20% in the monthly pension admissible to the applicant for a period of three years and the applicant was given an opportunity to make representation within fifteen days of receipt of the office memorandum. The applicant made his representation dated 10.6.1985 (Annexure-II to the OA). The grievance of the applicant in this OA was that no action or decision has been taken by the disciplinary authority even though a period of more than 16 months had elapsed since ^{he} submitted his detailed reply to the show cause notice in respect of which he also sent reminders. The respondents in their reply stated that the representations of the applicant was referred to the UPSC for their advice and that the advice of the Commission had been received and a final decision is likely to be taken shortly. The counter reply by the respondents which includes the above statement was filed on 4.3.1987. The case came on daily-board and was called for hearing on 9.7.1992. None appeared for either party on that date. On the next date, i.e., 13.7.1992, it was adjourned on the request of the learned counsel for the applicant. On 29.7.1992, learned counsel for the applicant submitted that he had no oral submissions to make and that the case may be decided on the basis of the material available on record. Learned counsel for the respondents was not available on that date. Therefore, the case was adjourned to 30.7.1992. The case was again called on 3.8.1992 but none appeared for either side. Therefore, the OA was reserved for orders. However, on 16.10.1992 it was listed for suo motu direction as the case required elucidation/arguments and it was directed to be listed on 27.11.1992 for final

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hearing before another Bench. On 27.11.1992, learned counsel for the applicant appeared and again submitted that he did not wish to make any oral submissions but none appeared for the respondents. It finally came up on 4.12.1992 before us. Learned counsel for the applicant had already submitted that he did not wish to make any oral submissions and as such he did not appear on this date and none appeared for the respondents also. The OA was, therefore, reserved for orders.

3. The above information in regard to the progress of the case has been indicated with a view to highlighting that neither party either placed on record the final order which may have been passed by the disciplinary authority (the President) or any other action taken in the matter after the pleadings in this case were complete in March, 1987. In view of the oral statement made by the learned counsel for the applicant that he had no submissions to make and in the absence of any representation on behalf of the respondents, on date we do not know anything about the developments in this case after March, 1987. We are inclined to presume that the disciplinary authority must have passed the final order in the disciplinary proceedings initiated against the applicant while in service and which were continued even after his retirement, and that the applicant was either satisfied with the final orders so passed or was not interested to pursue the matter further. In this background we may now briefly deal with the contentions raised by the applicant in this OA on the impugned show cause notice dated 20.5.1985.

4. The first ground taken by the applicant is that the proposed penalty of imposing 20% cut in his monthly pension is illegal as no such penalty is mentioned in Rule 11 of CCS (CCA) Rules. This contention should not hold us any longer in view of Rule 9 of the CCS (Pension) Rules, 1972

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according to which the President has the power of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement subject to the conditions laid down in that Rule. This rule also provides that the departmental proceedings instituted while the Government servant was in service, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as the Government servant continued in service. In the case before us the President being the disciplinary authority, the disciplinary proceedings against the applicant were initiated by order and in the name of the President and the impugned show cause notice issued after the retirement of the applicant has also been issued by order and in the name of the President. Hence, the contention of the applicant that no specific orders have been made by the President directing continuation of the said proceedings under Rule 9 of the CCS (Pension) Rules, 1972, cannot be upheld.

5. Another ground taken by the applicant is that the proceedings are infected by malafide, malice or oblique motives and are outcome of colourable exercise of power. This contention also cannot be upheld as the applicant has not made any person a party by name against whom he alleges malafide nor any particulars of such a malafide have been stated. Another ground is that there has been inordinate delay in finalisation of proceedings and this vitiates the

proceedings. Undoubtedly, there has been delay inasmuch as the show cause notice was issued in May, 1985 and the applicant had also made his representation in June, 1985 itself but till March, 1987 no final orders appear to have been issued. The delay though regretable, cannot make the proceedings themselves as illegal. If either party had placed before us the position of the final order, we could have considered granting appropriate relief in terms of interest etc. on delayed payment, if any, to compensate the applicant for this delay but unfortunately, as already stated above, in the absence of any information about the final order from either side we are constrained from making any further observation in this regard. In their counter reply the respondents have since stated that the salary of the applicant for the month of September, 1984 was being released.

6. Another ground taken by the applicant is that under the relevant rules, gratuity, commutation value of pension and also salary for the last month of service becomes due immediately on retirement unless withheld by legally valid orders which could not be passed without giving him a reasonable opportunity to show cause. It is not in dispute that the gratuity has since been paid to the applicant in pursuance of the directions given by the Tribunal, as already stated above. Further, it is also not in dispute that the provisional pension was sanctioned to the applicant. Rule 69 of CES (Pension) Rules, 1972 provides that in respect of a Government servant against whom action is initiated in accordance with Rule 9, provisional pension 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 will be sanctioned. However, no gratuity

shall be paid until the conclusion of the departmental proceedings and issue of final orders thereon. As the impugned notice only indicated a tentative decision to impose a cut in the monthly pension, the Tribunal directed payment of the full gratuity and which has been paid to him. Thus, there is no illegality in the action initiated by the respondents as no order was passed against the applicant affecting his retirement benefits without giving him an opportunity to show cause and without any authority of the rules.

7. Another ground taken by the applicant is that Rule 69 (1) (c) of CCS (Pension) Rules, 1972 ^{for} withholding of gratuity during the pendency of disciplinary proceedings is arbitrary, bad in law, unconstitutional and legally invalid and violative of Articles 14 and 16 of the Constitution inasmuch as this rule gives unbridled powers to withhold gratuity without having regard to the facts and circumstances of the case, is inconsistent with Rule 8 of the Pension Rules, and does not provide any reasonable opportunity to a Government servant against withholding gratuity which involves evil consequences to the Government servant. It is also stated that it negates the statutory right to acquire, hold and dispose of property, it is a discriminatory provision, and it permits denial of gratuity for an unspecified and uncertain period, there being no limit in point of time on finalisation of the proceedings under Rule 9. We are not persuaded by this contention. As already stated above, Rule 9 empowers the President to withhold pension in whole or in part. It was held by a Full Bench of this Tribunal in the case of Shri Amrit Singh vs. Union of India & Ors. decided on 6.9.1988 (Ld.)

(Full Bench Judgments of CAT (1986-1989)²²⁷ that pension includes gratuity. Rule 9 comprehensively lays down the conditions under which the President can exercise the powers. The powers given to the President under Rule 9 cannot be said to be unbridled inasmuch as consultation with the UPSC is prescribed and an opportunity to show cause is also provided. It is true that no time limit is laid down in Rule 9 for passing the final order but it is expected that the proceedings initiated or deemed to be continued under Rule 9 shall be completed with expedition and in case of arbitrary or malafide delay, the courts can always interfere. The plea of discrimination also has no basis because payment of pensionary benefits to a person who retires on superannuation without any departmental or judicial proceedings initiated or pending against him, cannot be said to be similarly placed with a person against whom such proceedings have been initiated or are deemed to be pending under Rule 9 of the Pension Rules.

8. Another ground taken by the applicant is that order to be made by the President in the pending proceedings will have prospective effect and that denial of commutation of pension during the pendency of proceedings is bad in law, invalid and violative of Articles 14 and 16 of the Constitution. In this connection, it should suffice to observe that commutation of pension can only of final sanction and not of provisional pension for the obvious reason that provisional pension is amenable to change and in the event of any such change being ordered by the competent authority in accordance with the due process of law it would be very difficult if not impossible to recover the difference. As already stated above, during pendency of the disciplinary proceedings only provisional

sanction can be given and which has been done in the case of the applicant. If in pursuance of the final order passed or to be passed in this case, the provisional pension is converted into final pension, the applicant shall be entitled to commutation on the basis of the final pension so sanctioned. The right to receive pension immediately on retirement in a normal case is subject to the provisions of the rules which have statutory force for temporarily or finally withholding some of the payments if disciplinary proceedings or judicial proceedings are pending. In view of the clear provisions of rules, the action of the respondents in this regard cannot be said to be either arbitrary or discriminatory and as such the plea of violation of Articles 14 and 16 of the Constitution is not tenable. The order which may have been passed by the President in the proceedings initiated against the applicant is not before us nor has it been assailed in these proceedings. Without seeing the final order it is neither possible nor fair to comment on the prospective or retrospective effect of that order.

9. Still another contention of the applicant is that Rule 68 of CCS (Pension) Rules, 1972 which provides for payment of interest at normal rate on delayed payment of gratuity is arbitrary, bad in law and in violation of principles of natural justice, and that in fixing the rate of interest at a low rate no regard has been given to the prevailing rates, cost of money, loss and damage caused to a Government servant because of withholding of gratuity etc. In the aforesaid rule it is stated that in the cases where on the conclusion of the proceedings a pensioner is fully exonerated, interest on delayed payment of DCRG may also be allowed. The rate of

interest prescribed vide Government of India, Department of Personnel & A.R. O.M. No. 7/3/84-Pension Unit dated 20.7.1984 is at the rate of 7% per annum beyond three months from the date of retirement and upto one year and 10% per annum beyond one year. At the relevant time when these rates were prescribed, these may not have been significantly lower than the interest allowed by the banks on fixed deposits. Moreover it cannot be ignored that the gratuity is directed to be withheld pending disciplinary proceedings on the alleged misconduct on the part of the charged officer or pending judicial proceedings on the charge of committing offence under the law of the land. Thus, it is not a case where payment of gratuity is withheld for no valid reason, particularly in pursuance of the orders passed in the judicial proceedings, some recovery may have to be made from the amount of gratuity otherwise due to a Government servant. To the best of our knowledge, at no point of time so far any bank has allowed the interest of 18% per annum on a fixed deposit for any duration. Therefore, the claim of the applicant for payment of interest at the rate of 18% from 1.10.1984 to date of payment cannot be said to be justified. The rate of interest which may be available to investors in unofficial and undisclosed transactions cannot be the basis for arriving at an appropriate rate of interest.

10. In the light of the foregoing discussion, the prayer of the applicant for quashing the impugned show cause notice dated 20.5.1985 and sanctioning the commuted value of pension during the pendency of disciplinary proceedings cannot be granted. However, we are of the view that he is entitled to interest for the delayed payment on the salary for the month of

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September, 1984 as well as on the gratuity. Accordingly, the OA is disposed of in terms of the following directions :-

- (1) Final order in the disciplinary proceedings initiated against the applicant shall be passed, if not already passed, within a period of one month from the date of receipt of a copy of this judgment, and further action in regard to payment of monthly pension and commuted value of pension shall be taken with utmost expedition, if not already taken, in terms of the final order which has been passed or may be passed as aforesaid.
- (2) The applicant shall be paid interest at the rate of 12% per annum on the amount of salary for the month of September, 1984 from the period from 1.10.1984 till the end of the month preceding the date of actual payment. This shall also be paid to him within a period of one month from the date of receipt of this judgment.
- (3) The Tribunal had directed payment of full gratuity due to the applicant within one month from 9.12.1986. It appears that it was not paid within the aforesaid period. Accordingly, the applicant shall be entitled to interest at the rate of 12% per annum on the entire amount of gratuity from 8.1.1987 till the date of actual payment. This payment shall also be made to him within one month from the date of receipt of a copy of this judgment.

No costs.

J. P. Sharma

(J. P. Sharma)
Member (J)

(P. C. Jain)
17/12/92
(P. C. Jain)
Member (A)