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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

O.A. 2423/90.

DATE OF DECISION: 11.7.1991.

Chandan Lal

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Applicant.

V/s.

The Director General,
Employees' State Insurance
Corpn., New Delhi & Anr.

Respondents.

CORAM:

Hon'ble Mr. Kaushal Kumar, Vice Chairman (A).

Hon'ble Mr. Justice Ram Pal Singh, Vice Chairman (J).

Shri G.B. Singh with Shri Gurmeet Singh, counsel for the
Applicant.

Shri D.P. Malhotra, counsel for the Respondents.

Shri Kaushal Kumar:

JUDGMENT

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who was Manager Grade II in the office of Employees' State Insurance Corporation, Gwalior, has challenged Memorandum dated 18.7.88 (filed as Annexure 1 to the application) which is the charge-sheet under regulation 14 and para 3 of 3rd Schedule of the Employees' State Insurance Corporation (Staff and Conditions of Service) Regulation, 1959 (as amended), issued to him. The charge-sheet was issued to the applicant on 18th July, 1988 and he retired from service on superannuation on 31st August, 1988. The learned counsel for the applicant contends that the departmental proceedings initiated against the applicant are still pending and the enquiry against him in pursuance of the charge-sheet, has not been completed. The departmental proceedings have been initiated after the retirement of the applicant under Rule 9 of the Pension Rules, which have been made applicable to the employees of ESIC. The learned counsel Shri G.B. Singh has vehemently argued that the charges levelled against the applicant do not constitute grave misconduct and, as such, the continuation of the departmental proceedings under Rule 9 of the Pension Rules cannot be sustained. In this connection, the learned counsel relies on the judgment of the Hon'ble Supreme Court in G.D. Kapoor Vs. Union of India, AIR 90,

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Supreme Court, 1923. Their lordship while examining the scope of Rule 9 of the Rule 1972 observed as follows:

"5. It is seen that the President has reserved to himself the right to withhold pension in whole or in part thereof whether permanently or for a specified period or he can recover from pension of the whole or part of any pecuniary loss caused by the Government employee to the Government subject to the minimum. The condition precedent is that in any departmental enquiry or the judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service of the original or on re-employment. The condition precedent thereto is that there should be a finding that the delinquent is guilty of grave misconduct or negligence in the discharge of public duty in office, as defined in Rule 8(5) explanation (b) which is an inclusive definition, i.e. the scope is wide of mark dependent on the facts or circumstances in a given case. Myriad situations may arise depending on the ingenuity with which misconduct or irregularity was committed."

2. The learned counsel further contends that the respondents cannot withhold the gratuity of the applicant till the completion of departmental proceedings. In support of his contention, he relies on the following observations of the Hon'ble Supreme Court in the judgment referred to above. The relevant observations are extracted below:

"The right to gratuity is also a statutory right. The appellant was not charged with nor was given an opportunity that his gratuity would be withheld as a measure of punishment. No provision of law has been brought to our notice under which the President is empowered to withhold gratuity as well, after his retirement as a measure of punishment. Therefore, the order to withhold the gratuity as a measure of penalty is obviously illegal and is devoid of jurisdiction."

3. The application is resisted by the learned counsel for the respondents on the ground that since the enquiry has not been completed there is no finding at present whether the applicant is guilty or not guilty of any misconduct. He has also referred to Rule 69 of the Pension Rules, clause 1(c)

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of which states that:

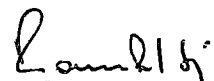
"No gratuity shall be paid to the Government servant until conclusion of the department or judicial proceedings and issue of final orders thereon".

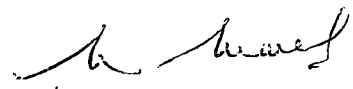
4. After perusal of the documents placed before us and considering the arguments advanced on both sides, we are of the view that in the present case since the enquiry has not been completed, there is no finding as on date of any misconduct - what to say of any grave misconduct - on the part of the applicant. Since no final order has been passed by the disciplinary authority, it would not be appropriate or proper to anticipate what finding the disciplinary authority would give in this case. The indefinite delay in the completion of the disciplinary proceedings after retirement cannot be countenanced. The learned counsel on both sides say that since a criminal prosecution is also pending on the basis of the same facts which gave rise to the charge sheet against the petitioner, the department is not proceeding against the applicant's case. There is no bar to the departmental proceedings being continued and finalised even when a criminal case is pending.

5. In the circumstances, we direct the respondents to complete the enquiry and the departmental proceedings within a period of three months from the date of receipt of this order. In so far as the question of gratuity is concerned, since the applicant is facing hardship after retirement we direct 50% of the amount of gratuity to be paid to the applicant forthwith. The present O.A. stands disposed of with the above directions. However, the applicant will be at liberty to file a fresh O.A., if so advised, after the respondents have passed an appropriate order on the conclusion of the departmental enquiry and the applicant has exhausted the remedies available to him

W. S. Kumar

under the Service Rules. We leave the parties to bear their own costs.


(RAM PAL SINGH)
Vice Chairman (J)


(KAUSHAL KUMAR)
Vice Chairman (A)

11.7.1991.