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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No.OA 1294/91

Date of decision: 24.12.1991.

Shri Jeet Singh Virdi

....Applicant

Vs.

Union of India through
the Secretary, Ministry of
Urban Development & Another

...Respondents

For the Applicant

...Shri G.B. Singh,
Counsel

For the Respondents

...Shri N.S. Mehta,
Counsel

CORAM:

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

THE HON'BLE MR. B.N. DHOUNDIYAL, 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

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

The question whether a Government servant who has been implicated in a criminal case relating to alleged suicide of his daughter-in-law is entitled to gratuity and leave encashment on his retirement from Government service during the pendency of the criminal case, arises for consideration in this case.

2. The applicant was holding the post of Manager, Govt. of India Press at the time of his retirement on attaining the age of superannuation on 30.6.1990. He has been paid 100% provisional pension. He had been placed under suspension on 27.12.1988 on the ground that a case against him in respect of a criminal offence in connection with

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the death of daughter-in-law was under investigation/trial and he was paid subsistence allowance till the date of his retirement.

3. At the time of retirement of the applicant, criminal proceedings were already pending against him. These are still pending.

4. The basic contention of the applicant is that according to the decision of the Supreme Court in D.V. Kapoor Vs. Union of India, 1990 SCC(L&S) 696, the employee's right to pension is a statutory right. In that case, the Supreme Court held that "the order to withhold gratuity as a measure of penalty is obviously illegal and is devoid of jurisdiction".(Emphasis supplied)

5. The decision of the Supreme Court in D.V. Kapoor's case is clearly distinguishable. In that case, the respondents had held disciplinary proceedings against the appellant, an Assistant of Indian Foreign Service, on the charge of being guilty of wilful misconduct in not reporting to duty after his transfer from Indian High Commission at London to the office of External Affairs Ministry, New Delhi. The Inquiry Officer found that though the appellant derelicted his duty to report to duty, it was not wilful for the reason that he could not move due to his wife's illness and he recommended sympathetic consideration. The President accepted his finding but decided to withhold gratuity and payment of pension and ordered accordingly. The Supreme Court observed that the measure of deprivation

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must be correlative to or commensurate with the gravity of the grave misconduct or irregularity.

6. In the instant case, whether or not the death of the daughter-in-law was a simple case of suicide or an instance of dowry death is subjudice in the criminal court whose verdict is awaited. In the meanwhile, the respondents have withheld the amount of gratuity payable to the applicant, not as a measure of penalty but as a measure of financial prudence and in terms of Rule 9(1) of the CCS(Pension) Rules, 1972 as amended by Notification dated 23.8.1991, which reads as under:-

"(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, 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".

7. Rule 69 of the CCS(Pension) Rules, 1972 provides, inter alia, that though provisional pension should be paid to a Government servant in cases where departmental or judicial proceedings may be pending, the Government need not pay gratuity until the conclusion of the criminal case and the issue of final orders thereon. There is ^apre-supposition in the above provisions that the proceedings pending against the officer concerned in the criminal court will conclude within a ^{reasonable} period. The rules do not envisage a case where there may be prolonged litigation for years before reaching the final outcome of the criminal case.

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In our opinion, in a case of this kind, the rules should not be made applicable in full force in view of the possibility of rounds of litigation in the High Court and Supreme Court by the losing party.

8. In the interest of justice, equity and fair play and following the decision of the Tribunal in a similar case to which one of us (P.K. Kartha) was a party (Judgment dated 8.12.1989 in Shri R.D. Kathuria Vs. Union of India & Others), we order and direct as follows:-

(i) The respondents shall pay at least one half of the gratuity normally payable to the applicant within a period of two months from the date of communication of this order subject to his executing a bond of indemnity with two sureties to the effect that he will refund the amount to the Government in case the final verdict of the criminal court goes against him.

(ii) The amount of gratuity to be released to the applicant as in (i) above will be liable to adjustment, depending on the final verdict of the court.

(iii) With regard to ~~xxxxxx~~ the claim for leave encashment ^{we} direct that the amount due and admissible under the rules to him shall be released within a period of two months from the date of communication of this order.

(iv) There will be no order as to costs.

B. N. Dhoundiyal
(B.N. DHOUNDIYAL)
MEMBER (A)

P.K. Kartha
24/12/91
(P.K. KARTHA)
VICE CHAIRMAN (J)