

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 1975/91.

Date of decision

15/12/92

Shri S.K. Chopra ... Applicant

Vs.

Union of India & Ors. ... Respondents

CORAM:

The Hon'ble Shri Justice Ram Pal Singh, Vice-Chairman (J)

The Hon'ble Member Shri I.P. Gupta, Member (A)

For the Applicant ... Shri N. Chander-sekharan
with Shri Gyan Prakash, counsel.

For the Respondents ... Shri M.L. Verma, counsel

(1) Whether Reporters of local papers may be
allowed to see the Judgement ?

✓ (2) To be referred to the Reporter or not ? Yes.

JUDGEMENT

Delivered by Hon'ble Shri I.P. Gupta, Member (A) 7

In this application filed under Section 19 of the
Administrative Tribunals Act, 1985, the applicant has
requested for computing qualifying period for the purpose
of working out provisional pension the entire period of
unjust suspension with effect from 17.2.1986 till the date
of retirement on 30th June, 1991 and to treat the entire
period of suspension as deemed service. The applicant has

further prayed that the gratuity may be released and the other benefits such as leave encashment, insurance and provident fund and relief of pension should also be released.

2. The applicant was appointed as Assistant Engineer in CPWD on 16.6.1958. He was promoted as Executive Engineer on 17.3.1966. On 30.4.1985, he was promoted as Superintending Engineer. The applicant was placed under suspension on 17th Feb., 1986 (Annexure A-6) since certain criminal offence against him was under investigation. A departmental charge-sheet was also given to him on 14.10.1988 under rule 14 of CCS(CCA) Rules regarding irregularities of 1981-84. The applicant filed his statement of defence on 24.11.1988. The charge-sheet was amended by a corrigendum on 8.1.1990. An enquiry officer was appointed on 26.2.1990. On 27.2.1990 the charge-sheet filed in court in 1989 was supplied to him. A second charge-sheet for departmental enquiry was issued to him on 6.3.1991 regarding incidents of 1972-85. The applicant was allowed to retire on 30.6.1991 on attaining the age of superannuation.

3. The Learned Counsel for the applicant contended that,

(i) There has been undue delay in disposal

of the disciplinary proceedings since

the charges related to 1972-85. He

further contended that a decision in

the court case had also been pending.

The non-revocation of suspension was

unjustified.

(ii) The gratuity should be released since

the disciplinary case which was initiated

while he was in service can be deemed to

be proceeding under rule 9 of the CCS

(Pension) Rules. According to rule 9(2)

and Rule 9⁽ⁱ⁾, the President reserves to

himself the right to withhold or withdraw

pension. Gratuity cannot be withheld since

rule 9 mentions only about pension. An

amendment was made in rule 9 of the CCS(Pension)

Rules, 1972 by order dated 23.8.1991 and presently

rule 9 reads as follows:-

" (1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension 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 Governmental 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 requirement.

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where part of pension is withheld or withdrawn the amount of such pensions shall not be reduced below the amount of rupees three hundred seventy five per mensem".

The above amended rule 9 will be applicable only from 23rd

August and, therefore, the President had no right to withhold gratuity under rule 9 which stood prior to amendment

and which reads as follows :-

" 9. Right of President to withhold or withdraw pension

(1) The President reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pension 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:

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees sixty per mensem."

Learned Counsel for the applicant also cited the case of

S.K. Kaul v/s Union of India [1991 (17)ATC 495] where it

was held that non-payment of a substantial part of gratuity for an unduly long period renders the Government liable to pay interest. Three months period after retirement was considered adequate for payment of gratuity. He further cited the case of Shri B.D. Kapoor v/s Union of India & Ors. [AIR 1990(3) SC 403-7], the following extracts were quoted by the Learned Counsel:-

" 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 jurisprudence."

(iii) It was further contended that relief of pension is payable since it has been held in the case of R.D. Sharma v/s Union of India & Ors. [1989 (1)(CAT) 61-7] that the relief of pension is a part of pension and recovery of dues is possible only after establishing in disciplinary proceedings.

4. The Learned Counsel for the respondents pointed out that the

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applicant has been paid provisional pension in view of rule 69 of the CCS (Pension) Rules. He has also been paid insurance amount (CGEIS) and payment of GPF has also been made. What remains to be paid is only the gratuity, leave encashment and relief on pension. Gratuity cannot be paid pending the conclusion of departmental or judicial proceedings. Rule 69 enables payment of only provisional pension and not relief on pension. The leave encashment has been withheld in terms of rule 39 of CCS (Leave) Rules because the criminal and disciplinary cases are pending against him and the disciplinary cases relate to charges wherein a total loss to the tune of Rs. 21 lakhs was caused to the Government and it was likely that while imposing penalty some amount may have to be recovered from the applicant.

5. The questions that arise for consideration are -

- (i) Whether non-revocation of suspension was unjustified;
- (ii) whether gratuity could be withheld;
- (iii) whether non-release of leave encashment was justified; and

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(iv) whether non-payment of relief on
pension as part of provisional pension
during the pendency of the proceedings
was legal.

6. We proceed to deal therefore with the questions now.

The applicant was suspended by order dated 17th February, 1986, pending investigation in respect of a criminal case. Disciplinary proceedings were also later initiated against him apart from the investigation of the criminal case. By order dated 24th October, 1988 the appropriate authority issued another order continuing the suspension of the applicant. The applicant was allowed to retire on 30th June, 1991 on attaining the age of superannuation. On such superannuation of the applicant the order of suspension automatically ceased to continue. Doubtless, the disciplinary proceedings have taken far too long and this cannot be viewed with favour. What remains to be considered now is only as to how the period of suspension should be treated. The suspension ab initio cannot be considered as illegal since it was issued pending investigation in respect of a criminal offence. A charge-sheet for that offence has also been filed in the court in 1989. Disciplinary proceedings

were also later initiated, as stated above by a charge-sheet of 14th October, 1988. The charge-sheet was amended in January 1990 and yet another charge-sheet was given on 27th February, 1990. The rules enable the appointing authority to place a Government servant under suspension where a case against him in respect of any criminal offence is under investigation, inquiry or trial or where a disciplinary proceeding against him is contemplated. The suspension has ceased to continue and the manner in which the period of suspension should be treated is to be decided by the appropriate authority at the appropriate time. No direction can be issued as such that the period of suspension should be treated as duty for all purposes, pending conclusion of criminal case/disciplinary proceedings.

7. As regards release of gratuity, rule 69 of the CCS(Pension) Rules. it has clearly been laid down that 'no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final order thereon.' In the face of this, no direction can be given for payment of gratuity. The vires

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of rule 69 has not been challenged in this case.

Even then we would like to observe that rule 69 is not inconsistent with rule 9 of the Pension Rules.

Rule 9, as it stood prior to amendment, gave the right to the President to withhold or withdraw pension and the word 'gratuity' was not included therein; but the word pension in rule 9 has to be read along with rule 3(o) where pension has been defined. Rule 3(o) of Pension Rules says that "pension" includes gratuity except when the term pension is used in contradistinction to gratuity". To remove any further doubt it appears that the respondents later incorporated the word 'gratuity' in rule 9 to set the matter beyond doubt.

But even prior to the amendment, rule 69 made it mandatory for the respondents to withhold the gratuity until the conclusion of the departmental or judicial proceedings. In the case of Shri S.K. Kaul v/s UOI and Another 1991(17) ATC 4957 what was observed was that non-payment of a substantial part of gratuity for an unduly long period rendered the Government liable to pay interest. That case is not similar to the one under consideration here. Even in the

case of D.V. Kapoor quoted by the Learned Counsel for the applicant it was mentioned that no provision of law has been brought to our notice under which the President was empowered to withhold gratuity as well after retirement as a measure of punishment. We are of the opinion that in view of the provisions of law as incorporated in rule 69 of the Pension Rules read with rule 9 and rule 3(o) the right to withhold payment of gratuity to a Government servant vests in the appropriate authority until the conclusion of the departmental or the judicial proceedings and the issue of final order thereon. Rule 69, however, provides for payment of provisional pension during pendency of departmental or judicial proceedings equal to the maximum pension which would be admissible on the basis of qualifying service upto the date of retirement or if the Government servant was under suspension on the date of retirement upto the date immediately preceding the date on which he was placed under suspension. Provisional pension has already been paid to the applicant and we see no merit in the case for release of gratuity.

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8. As regards leave encashment, rule 39 of the CCS (Leave) Rules, gives the enabling power to the competent authority to withhold whole or part ^{if} cash equivalent of earned leave in the case of Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. Therefore, it is for the appropriate authority to take a view in the matter. However, we expect of the appropriate authority to consider the release of leave encashment in view of the long delay in finalisation of the disciplinary proceedings as well as the criminal proceedings. The disciplinary proceedings relate to very old charges for the period 1972-85 and the charge-sheet in the court in regard to criminal matters was filed in 1989 and is said to be still pending.

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9. As regards the grant of relief on pension, it has been held that relief for pension is a part of pension in R.D. Sharma v/s UOI - 1989(1)(CAT)61-7. Therefore if rule 69

of the Pension Rules authorises the payment of provisional

pension, equal to the maximum pension, as admissible, we
direct that the relief of pension should be released
during the pendency of the proceedings in the present
case, moreso when the cases have been unduly prolonged.

10. With the observations and directions given above,
the O.A. is disposed of with no order as to costs.

I.P. Gupta
I.P. Gupta
Member (A)

15/12/92

Ram Pal Singh
Ram Pal Singh
Vice-Chairman (J)

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