

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A No. 2506/2004

New Delhi this the 19th day of September, 2005

Hon'ble Mrs. Meera Chhibber, Member (J)

Shri M.K. Jha,
Superintendent of Police (Retired),
Central Bureau of Investigation,
R/o E-20-F, MIG Flats,
Mayapuri,
New Delhi-110064.

.... Applicant.

(By Advocate Shri S.N. Anand)

Versus

Union of India through

1. The Secretary,
Department of Personnel & Training,
M/o PG & Pension,
North Block,
New Delhi.
2. The Director,
Central Bureau of Investigation,
Block No. 3, CGO Complex,
Lodhi Road, New Delhi-110001.
3. The Director,
DP&T,
M/O PG & Pension,
North Block,
New Delhi.

.... Respondents.

(By Advocate Shri T.C. Gupta)

O R D E R

By this O.A., applicant has sought a direction to the respondents to release payment of gratuity amounting to Rs.3,50,000/- with interest @ 9% per annum.

2. The brief facts, as stated by the applicant, are that he retired as Superintendent of Police, on 31.1.2004 but just a day before his retirement i.e. on 30.1.2004, he was charge-sheeted for alleged irregularity committed by him for the year 1996 (page 23), as a result of which till date his gratuity has not been released.



3. It is submitted by counsel for the applicant that there is absolutely no justification to withhold the gratuity of applicant, as charge-sheet has been issued with undue delay, which is not attributable to the applicant at all. Since the facts were already in the knowledge of the respondents, they could have issued the charge-sheet if at all they wanted, much earlier but by issuing charge-sheet on the eve of his retirement, he has been deprived of his gratuity illegally and arbitrarily even though the same could not have been denied to him in law. Counsel for the applicant relied on the following judgments to state that 75% of the gratuity could be ordered to be released, subject to an indemnity bond being filled by the applicant to refund the amount, ultimately in the event any order is passed by way of penalty against him under Rule 9 of the CCS (Pension) Rules:

- (i) **F.R. Jesuratnam Vs. Union of India & Ors.** reported in (1990 (Supp) SCC 640);
- (ii) **R.P. Gupta Vs. UOI & Ors.** (OA 1952/2001), decided on 3.5.2002 and some other O.As, as referred in the judgment of **R.P. Gupta**;
- (iii) **Jeet Singh Virdi Vs. UOI & Ors.** reported in 1992 (Vol.21) ATC 620.

4. Respondents have opposed this O.A. They have submitted that applicant has been charge-sheeted along with two other officers of the CBI on the allegations of misconduct with regard to registration, investigation and prosecution in RC 12(A)/96-SHG. Although ACP/CBI, Guwahati was not competent to take cognizance of the allegations contained in the said complaint, yet artificial jurisdiction was invoked for registration of RC-12 (A)/96-SHG, on the basis of photo copies of fraudulently prepared documents obtained from the complainant. Investigation of the case was done in a superficial and improper manner. The said charge-sheet is still pending.

5. As far as the aspect of delay in initiating the charge-sheet is concerned, they have explained that applicant had challenged the charge-sheet dated 30.1.2004 by filing OA 1506/2004, but the Tribunal was pleased to dismiss the same vide reasoned order dated 23.11.2004. The applicant carried the matter



to the Hon'ble High Court wherein the following order has been passed on 16.2.2005:

"We do not stay the departmental proceedings. However, we direct the respondent not to pass any final order till this application is disposed of".

I was informed that the next date in the case is now 10.11.2005. Counsel for the respondents thus submitted that since challenge to the charge-sheet on the ground of delay has already been looked into by the Court, applicant cannot take the same ground once again in the present O.A. As far as the judgment relied on by the counsel for the applicant in the case of **F.R. Jesuratnam (supra)** is concerned, he submitted that the judgment has already been over ruled by a subsequent judgment of the Hon'ble Supreme Court in the case of **Jarnail Singh Vs. Secretary, Ministry of Home Affairs & Ors.** (1993 (1) SCC 47) wherein it is clearly held that as per Rule 69 (1) (c) of the CCS (Pension) Rules, no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon. He submitted that since departmental proceedings are pending against the applicant, his gratuity has rightly been withheld as per Rule 69 of the CCS (Pension) Rules.

6. I have heard both the counsel and perused the pleadings as well as the judgment relied upon by them. In the judgment of **F.R. Jesuratnam (supra)**, Hon'ble Supreme Court had held that gratuity is not a bounty, therefore, it can no longer be regarded as a provision in the discretion of the President, as provided in the Pension Regulations. Moreover, there is no legal provision empowering the authorities to forfeit the gratuity payable to an employee. However, this position has been clarified by a three Bench judgment given by the Hon'ble Supreme Court in the case of **Jarnail Singh (supra)** and the view taken in **F.R. Jesuratnam (supra)** has been over ruled. Hon'ble Supreme Court has explained in the case of **Jarnail Singh (supra)** that Rule 3 (1) (o) of the CCS (Pension) Rules defines pension to include the gratuity. Moreover, Rule 9 (1) of the CCS (Pension) Rules was amended in 1991 only to clarify the position which became necessary to clarify the position in view of certain judgments taking a contrary view. Hon'ble Supreme Court relied on Rule 69 (1) (c) wherein it is



clearly provided that no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of the final orders thereon and held ultimately that the term 'Pension' includes gratuity and the same can be withheld as per Rule 69 (1) (c) in case there is a departmental proceeding or judicial proceeding pending against the Government servant. Therefore, reliance placed by the counsel for the applicant on the judgment of **F.R. Jesuratnam** is absolutely misplaced. In fact, I have referred to Rule 69 (1) (c) of the CCS (Pension) Rules above which, for ready reference, reads as under:

"Provisional pension where departmental or judicial proceedings may be pending.

(1) (a) and (b) x x x x x x x x.

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon;

Provided that where departmental proceedings have been instituted under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, for imposing any of the penalties specified in Clauses (i), (ii) and (iv) of Rule 11 of the said rules, the payment of gratuity shall be authorized to be paid to the Government servant.

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period".

This rule makes it abundantly clear that respondents are well within their right to withhold gratuity in case departmental proceedings are pending against the Government servant. Therefore, I find no illegality in the order dated 19.3.2004 (Annexure A-1).

7. As far as the contention of counsel for applicant that charge sheet has been issued with undue delay, is concerned, he had already raked up this issue at the time when he challenged his charge sheet by filing OA 1506/2004 but after considering all the facts, the said OA was dismissed. Therefore, it is not open to the applicant now to raise that ground once again in the present petition. I am informed by the counsel that the matter with regard to the challenge to the





charge sheet is pending before the Hon'ble High Court but even Hon'ble High Court had not stayed the inquiry proceedings. Their Lordships had only directed the respondents not to pass any final orders till CM 2007/2005 is disposed of. It goes without saying that if ultimately the Hon'ble High Court reverses the judgment of the Tribunal or decide to quash the charge sheet, naturally applicant would be entitled to get all the dues pertaining to gratuity but so long as the departmental proceedings are pending against him, that too for a serious grave misconduct, respondents have rightly invoked Rule 69 (1) (c) of the CCS (Pension) Rules.

8. Counsel for the applicant has relied on some judgments passed by the Tribunal. Even though in view of the judgment of Hon'ble Supreme Court exactly on the point there is no need to refer to those judgments but yet on going through the said judgments, it is seen that even those judgments do not advance the case of the applicant inasmuch as in the case of **Shri R.P. Gupta** more than seven years had gone bye since the date of his retirement but no charge sheet had been issued in the criminal case even though he had been challaned in the year 1994. His leave encashment was also withheld and in the departmental proceedings applicant therein had admittedly been exonerated on 29.5.2000 whereas in the instant case applicant has retired only on 31.1.2004. The departmental proceedings are pending against him, his leave encashment has already been paid to him, therefore, the basic facts of both the cases are absolutely different. As such, no benefit of the same can be given to the applicant. As far as **Jeet Singh Virdi's case** (supra) is concerned, it is seen that a criminal case was pending against the applicant therein on account of death of his daughter-in-law. It was not yet decided whether it was a case of suicide or an instance of dowry death as this aspect was yet to be decided by the criminal court. In this case also, the relief was granted to the applicant therein on the basis of judgment given by Hon'ble Supreme Court in the case of **D.V. Kapur Vs. Union of India** but the judgment of **D.V. Kapur** has also been overruled in the case of **Jarnail Singh** by Hon'ble Supreme Court itself, as referred to above. In fact, the case of **Jeet Singh** was absolutely on a different



footing because that criminal case could not have been said to be a misconduct as far as his service was concerned whereas the applicant before us has been charge sheeted for a misconduct on account of his acts committed during the service. Therefore, he cannot get benefit of even that judgment. Apart from these judgments, applicant has not even challenged the order dated 19.3.2004 wherein it was held that no gratuity can be released to him in view of clear provisions of the CCS (Pension) Rules.

9. In view of the above, O.A. is found to be devoid of any merit. The same is accordingly dismissed. No order as to costs.


19/9/05
(Meera Chhibber)
Member(J)

'SRD'