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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO. 1683/2004

New Delhi, this the 8th day of February, 2005

**HON'BLE MR. JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE MR. S.A. SINGH, MEMBER (A)**

Shri Bhagwan Prasad Verma,
S/o late Shri B.N. Verma,
R/o PENT HOUSE, ATS Green-I,
B-2, Sector-50,
NOIDA.

...Applicant

(By Advocate: Shri Rajesh Kumar)

-versus-

1. Union of India through
Cabinet Secretary,
Rashtrapati Bhawan,
New Delhi.

2. The Secretary/Under Secretary (Revenue)
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi.

3. The Pay & Accounts Officer,
Central Pension Accounting Office,
Ministry of Finance,
Trikoote-II, Bhikaji Cama Place-I,
New Delhi - 110 006.

...Respondents

(By Advocate: Shri Madhav Panikar)

ORDER (ORAL)

Justice V.S. Aggarwal, Chairman:

The applicant, who was the Chairman of the Central Board of Excise and Customs and Special Secretary, by virtue of the present Original Application, seeks quashing of the order of 24.02.2004 and to direct the respondents to release full pensionary benefits including gratuity, commutation, leave encashment and consequential benefits.

The impugned order reads:-

“Subject: Request for release of pensionary benefits.

Sir,

I am directed to refer to your letter dated 16-10-2003 on the subject cited above and to state that since you were under suspension on the date of your retirement, provisional pension has been sanctioned to you in accordance with the provisions of CCS(Pension) Rules, 1972. However, as per the advice of the Deptt. of Pension & Pensioner's Welfare and the Deptt. of Personnel & Training, it has not been found possible to make the payments of amounts of Gratuity, Commutation and Leave Encashment till the finalization of the CBI cases registered against your name.”

2. Some of the other facts can conveniently further be delineated to precipitate the question in controversy.

3. While the applicant was serving in the Department as Chairman, Central Board of Excise & Customs (for short, the Chairman), his house was searched by the Central Bureau of Investigation on 31.3.2001.

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Following the said search, the applicant was arrested on 1.4.2001. He remained in custody. Since he remained in custody for more than 48 hours, he was placed under deemed suspension. He was admitted to bail on 15.05.2001. On 31.08.2001, he attained the age of 60 years. Provisional pension was sanctioned.

4. Applicant contends that he is entitled to full pension and other pensionary benefits, hence the present Original Application.

5. The Original Application is being contested. Respondents plead that pensionary benefits have been withheld with valid reasons. When applicant attained the age of superannuation, he was already under suspension. Provisional pension had been sanctioned. He was given provisional full pension from 01.09.2001. The retiral benefits have been withheld in terms of CCS (Pension) Rules, 1972.

6. We have heard the parties' counsel and have seen the relevant records.

7. It had been contended that the order by which commuted pension is withheld, is illegal. However, **Rule 4 of CCS (Commutation of Pension) Rules, 1981** provides the answer that the person against whom the departmental proceedings are pending, even under Rule 9 of the Pension Rules, he is only entitled to commute fraction of his

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provisional pension authorized under Rule 69 of the said Rules during pendency of the departmental proceedings. The rule reads:

"4. Restriction on commutation of pension

No Government servant against whom departmental or judicial proceedings as referred to in Rule 9 of the Pension Rules, have been instituted before the date of his retirement, or the pensioner against whom such proceedings are instituted after the date of his retirement, shall be eligible to commute a fraction of his provisional pension authorized under Rule 69 of the Pension Rules or the pension, as the case may be, during the pendency of such proceedings."

Keeping in view the same, the applicant indeed cannot insist on the commutation of pension because provisionally he is being paid the pension.

8. So far as the payment of **Gratuity** is concerned, our attention is being drawn to Sub Rule (1) (c) of Rule 69 of the CCS (Pension) Rules, 1972 which provides that no gratuity is to be paid until the conclusion of departmental or judicial proceedings and issue of final orders thereon. **Under Rule 3(1)(o) of the CCS (Pension) Rules, 'pension' includes 'gratuity'** except when the term pension is used in contradistinction to gratuity, but does not include dearness relief.

9. Learned counsel for the applicant relied upon the decision in the case of **D.V.KAPOOR v. UNION OF INDIA AND OTHERS**, AIR 1990 SC

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1923, wherein the Supreme Court held:

"7. Rule 9 of the rules empowers the President only to withhold or withdraw pension permanently or for a specified period in whole or in part or to order recovery of pecuniary loss caused to the State in whole or in part subject to minimum. The employee's right to pension is a statutory right. The measure of deprivation, therefore, must be correlative to or commensurate with the gravity of the grave misconduct or irregularity as it offends the right to assistance at the evening of his life as assured under Art.41 of the Constitution. The impugned order discloses that the President withheld on permanent basis the payment of gratuity in addition to pension. 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."

Perusal of the findings clearly show that the Supreme Court held that gratuity cannot be withheld by way of penalty after retirement. Though learned counsel for the respondents insisted and referred to Rule 69(1) (c) to which we have referred to above but keeping in view the binding nature of the findings of the Supreme Court, we find that it will not be appropriate to withhold the same and it should be paid on furnishing a surety bond of the like amount.



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10. The last dispute is pertaining to the **Leave Encashment** under **Sub Rule (3) of Rule 39 of Central Civil Services (Leave) Rules, 1972.**

It reads as under:

"[(3) The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a 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. On conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any.]

11. In the present case, keeping in view the nature of the allegations, to which we have referred to above, it may be possible that at the conclusion of the proceedings the amounts withheld can be paid and taking stock of the position that applicant is facing proceedings under Prevention of Corruption Act, it cannot be guessed as to if there is possibility of some money being recoverable from him. Further opinion would be embarrassing because it will not be proper to express in this regard.


12. No other argument has been advanced.

13. For these reasons, we hold that Original Application must ^{partly succeed} ~~fail~~. It is directed that the applicant is entitled to the gratuity due to him on


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furnishing a surety bond of the like amount that in case the amount becomes refundable, he would do so.


(S.A. Singh)
Member (A)

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(V.S. Aggarwal)
Chairman