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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 1978/92.
M.A.No. 3516/93.

Dated: 12.10.1994.

Hon'ble Shri N.V. Krishnan, Vice-Chairman (A)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

PARKASH CHANDRA,
(Retd. Executive Engineer, CPWD),
House No. 13, V & PO Alipur,
Delhi-110 036. ... Applicant

(By Advocate Shri G.K. Aggarwal)

versus:

Union of India through Secretary,
Ministry of Urban Development,
Nirman Bhawan, New Delhi-110011. .. Respondent No.1.

The Director General (Works),
Central Public Works Department,
Nirman Bhawan, New Delhi-110 011. .. Respondent No.2

(By Advocate Shri M.M. Sudan)

ORDER (Oral)

L Hon'ble Shri N.V. Krishnan, Vice-Chairman (A) J

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The applicant, while in service as Executive Engineer, was suspended on 12.8.1987 pending investigation of a criminal offence of having demanded illegal gratification of Rs. 500/- from a contractor. Sanction for prosecution was given on 18.8.1988. Simultaneously, departmental proceedings were instituted against the applicant under Rule 14 of the CCS (CCA) Rules, 1965. He was, however, permitted to retire on 30.4.1991.

2. Against the disciplinary proceedings initiated against him, the applicant filed O.A.No. 1427/92, which was disposed of by the order dated 4.9.1992 directing the disciplinary proceedings to be stayed until order is passed in the criminal case and the decision of the Trial Court (P.47 of paper book).

3. Admittedly, after retirement, the applicant is receiving provisional pension under Rule 69(1)(a) of the C.C.S. (Pension) Rules, 1972 - Pension Rules for short. He has been denied the payment of gratuity ^u respectively, and commutation of pension under Rule 69(1)(c) of the Pension Rules and Rule 4 of the C.C.S. (Commutation of Pension) Rules, 1981 - Commutation Rules for short.

4. The applicant has, therefore, filed this O.A. for a direction that the applicant be paid his full

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gratuity and allowed commutation of pension. He has also prayed that for this purpose, if so found necessary, Rules 69(1)(c) of the Pension Rules and Rule 4 of the Commutation Rules be struck down as unconstitutional.

5. The applicant has also filed M.A. 3516/93 for an interim direction to the respondents to pay half the gratuity and allow him half the commutation value of pension subject to furnishing of personal surety.

6. We have heard the learned counsel for both the parties.

7. The learned counsel for the applicant submits that the applicant is being treated as if he has already been convicted in a criminal case and/or found guilty in the disciplinary proceedings and a decision has already been taken under Rule 9(1) of the Pension Rules to stop gratuity and commutation. He points out that the President can either with-hold or with-draw the pension or a part thereof under Rule 9(1), only after his conviction in the criminal case or being found guilty in the departmental enquiry. As that has not yet taken place, he should be treated less severely than such a person. He further points out that in

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Jeet Singh Virdi v. UOI (1992 (1) ATJ 530) the Principal

Bench had considered a similar matter and made the following observations :-

" 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 Govt. need not pay gratuity until the conclusion of the criminal case and the issue of final orders thereon. There is a presupposition 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. 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."

On that consideration, the Tribunal directed release of 50% of the gratuity subject to certain conditions. The learned counsel submits that Rule 69, has to be read down as above. If not, the Rule which imposes unreasonable restraint has to be declared unconstitutional.

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8. The learned counsel for the respondents contended that this judgment is distinguishable. The applicant therein was implicated in a criminal case relating to the alleged suicide of the daughter-in-law i.e. something not connected with his official duties. It is in this background that in the interest of justice and fair play, that judgment was delivered. In the present case, the charge against the applicant is that he was caught red-handed accepting an illegal gratification i.e. connected with his official duties and such considerations should not apply.

9. He draws our attention to the mandatory nature of Rule 69(1)(c) of the Pension Rules under which gratuity has been withheld. That clause reads as follows :-

" (c) No gratuity shall be paid to a Govt. servant until the conclusion of a departmental/judicial proceedings and issue of final order thereon."

He, therefore, points out that it would not be fair to water down this provision, particularly when the criminal case is in respect of a charge of bribery, directly connected with the performance of official duties.

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9. In answer to our query, the learned counsel further points out that the Govt. has applied its mind while formulating Rule 69. Therefore, provisions have been made for payment of provisional pension during the pendency of the case in the court or the D.E. It has been directed that the provisional pension should be equal to cent-percent of the normal pension. As far/gratuity is concerned, it was specifically provided that it should not be paid until final orders are issued. Even in this regard, an exception has been made in respect of a case where the pending disciplinary proceedings had been initiated only under Rule 16 of the CCS (CCA) Rule 1965 i.e. for imposing a minor penalty. He, therefore, contends that Rule 69(1)(c), cannot be quashed on the ground of its being unconstitutional.

10. We have carefully considered this matter. No doubt, there has been application of mind in making Rule 69 and a classification has been made by Government. Rule 69 provides for provisional arrangements. Accordingly, clause (a) of sub-rule (1) provides for payment of provisional pension. The other entitlement

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is gratuity. In this regard, it is provided that it may be paid provisionally if the only proceeding pending is a proceeding which was initiated while the employee was in service, under Rule 16 of the CCS (CCA) Rules, 1965 and in other cases it shall not be paid. If the proceedings were initiated only for imposition of a minor penalty, such penalty, if imposed while the Government servant was in service would not have resulted in ^{the} ~~service~~ forfeiture of ~~gratuity~~. Hence, this provision. In fact, both pension and gratuity would be totally lost only if an employee, while in service, is either removed or dismissed from service. Keeping this consideration in view, Rule 69 could as well have provided for payment of provisional gratuity, fully or partly, to others also, in respect of whom only a disciplinary proceeding (as distinct from a criminal case) is pending and where the charges are such, that even if they are proved, the employee would not have been removed or dismissed from service, if the order was passed while he was in service. We are of the view that in the case of a retired employee, a view can certainly be taken as to what maximum penalty would have been imposed on him if he had still been in service. On that basis an (12)

an appropriate order could be passed.

11. We come to cases where the only proceeding against a retired employee is a criminal proceeding. It is our view that even in such proceeding a view can be taken based on the gravity of the offences. If the offences are less serious, perhaps, some provisional gratuity may be given, in addition to provisional pension.

12. Pendency of proceedings for a long time is common to both disciplinary proceedings and criminal proceedings. Rule 69 permits withholding pension and gratuity till these proceedings came to an end. Therefore, the period for which the proceedings are pending is also a relevant factor, which should be taken into account. For example, where an employee is suspended, the quantum of subsistence allowance payable is reviewed after three months. Likewise, there is a case for considering whether any gratuity is to be paid provisionally, if there is delay in the finalization of these proceedings. The reason for this is mentioned in Jeet Singh Virdis case in the extract reproduced in para 7 supra viz, there is a supposition that these proceedings will come to an end within a reasonable period, If not, there should be some provision to make provisional payment of gratuity also.

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13. What is noteworthy is that the Pension Rules do not permit relaxation of Rule 69(3) even in a deserving case.

Perhaps, powers could be vested in some authority to pass an appropriate order in such cases, notwithstanding the provisions of Rule 69(1)(c). In the absence of such provisions, the rule may be held to be invalid because it treats unequal situations as equal and applies the same rule blindly to all. We do not wish to express any view in this regard. In our opinion the question whether section 69 requires to be amended to make any further provisional arrangement has to be considered by Government only.

14. In so far as the present case is concerned we are of the view that the question of gratuity should be decided on the basis of Jeet Singh Virdis case.

15. In so far as the commutation of pension is concerned, we are of the view that it stands on a different footing.

Commutation is allowed only when pension is finalized. It cannot be granted ~~as~~ ^{as} ~~on~~ ^{as} a provisional pension. So long as provisional pension is paid under Rule 69(1) (a), the employee cannot be considered to ~~be~~ ^{be} suffering any hardship. He would be treated to be in the same position as a suspended employee who gets subsistence allowance and nothing else. Further, gratuity

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becomes due immediately after retirement, irrespective of the pendency of any proceedings. If its payment is held up for long it causes hardship. On the contrary, commutation is not due until regular pension is sanctioned. Therefore, no case of hardship comparable to gratuity is made out in regard to commutation of pension. Hence the applicant's prayer in this regard is liable to be dismissed.

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Taking these factors into consideration, we are of the view that in the interest of justice, it is necessary to provide relief to the applicant and, following the decision in the case of Shri Jeet Singh Virdi v. UOI (Supra) we dispose of this O.A. with a direction that the respondents should grant to the applicant 50% of the gratuity normally payable to him, within two months from the date of receipt of a copy of this order, subject to his executing a bond alongwith two sureties to the effect that he and his sureties will jointly/severally refund the amount to the Government in case the final verdict in the criminal case or the disciplinary proceedings goes against him and the President decides to withhold his gratuity and recover the amount already paid. We also make it clear that the amount of gratuity so released would be subject to the final order passed by the President of India on the conclusion of the proceedings. The O.A. is disposed of accordingly.

No costs.

Lakshmi Swaminathan

(Lakshmi Swaminathan)

Member (J)

N.V. Krishnan
12.10.94

(N.V. Krishnan)

Vice Chairman (A)