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IN THE PLENARY ADMINISTRATIVE HABEAS CORPUS

O.A. No. 1003/93

New Delhi this the 9th Day of November, 1993.

Hon'ble Sh. B.N. Dhoundiyal, Member(A)

Shri A.R. Sundrani
son of late Sh. Arjun Dass Sundrani
R/O CP-121 Maurya Enclave,
Pitampura,
Delhi-34.

... Petitioner

(By Advocate Sh. Sant Lal)

versus

The Union of India,
through the Secretary,
Ministry of Communications,
Department of Posts,
Dak Bhawan, New Delhi.

... Respondents

(By Advocate Sh. Dinesh Chandra))

ORDER(ORAL)

In this O.A., Sh. A.R. Sundrani, who retired as Deputy Supdt. RMS, Lucknow, has challenged the impugned order dated 10.02.1993 intimating that no interest is payable for the period of his gratuity was withheld. The aforementioned order states that "the ruling on the subject is that where the Government servant has not been fully exonerated on the conclusion of disciplinary/judicial proceedings and where the competent authority decides to allow payment of gratuity in such cases, the payment of gratuity will be deemed to have fallen due on the date of issue of orders by the competent authority. If payment is delayed in such cases, interest is payable for the period of delay beyond 3 months from the date of issue of orders."

The admitted facts of the case are these. The applicant was due to retire on 31.3.1988 and a few days

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before his retirement he was served a chargesheet on 17.3.1988. These proceedings were deemed to be under Rule 9 of CCS (Pension) Rules, 1972 and Sh. K.C. Msihra Sr. Supdt. RMS(O) Division Lucknow was appointed as Inquiry Officer. He submitted his report on 30.10.1989 in which he exonerated the applicant. The disciplinary authority disagreeing with the enquiry report conveyed displeasure to the applicant on 26.4.1991 even while ordering dropping of the disciplinary proceedings on the ground that the established charges do not warrant imposition of a penalty of cut in pension of the officer in terms of CCS(Pension) Rules, 1972.

I have gone through the records of the case and heard the learned counsel for the parties. The learned counsel for the applicant has drawn attention to Rule 69(c) of the CCS(Pension) Rules which reads as under:-

"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 authorised to be paid to the Government servant."

On the other hand the learned counsel for the respondents relies on Govt. of India decision appended to Rule 68 of the CCS(Pension) Rules as extracted below:-

"In cases where the Government servant is not fully exonerated on the conclusion of disciplinary/judicial proceedings and where the competent authority decides to allow payment of gratuity, in such cases interest will be payable for the period of delay beyond three months from the date of issue of the above-mentioned orders by the competent authority.

It is clear that even if a Government servant is proceeded under Rule 16 of the C.C.S. (Punishment and Appeal) Rules and even if it is presumed that ultimately the departmental proceedings will result in minor punishment, the gratuity cannot be withheld. It can, therefore be said that there would be much less justification for withholding it in this case where the proceedings would drop and only 'displeasure' was conveyed. Even the legality of this order is doubtful as only the President is entitled to pass any orders under Rule 9 of the Pension Rules and that too in regard to the pension only. Award of any other penalty after the retirement, when the master-servant relationship has ceased to exist, would not be legally sound.

In the facts and circumstances of the case, I hold that the applicant is entitled to the benefit of Government of India's decision No.2 appended to Rule 68(c) Pension Rules and the application is disposed of with the following directions:-

- (a) 7% interest per annum shall be paid after three months of his retirement upto one year.

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(b) 10% interest shall be paid after the above period till the date of actual payment.

(c) These orders shall be implemented within three months from the date of communication.

No costs.

B.N. DHOUDIYAL
(B.N. DHOUDIYAL) 9/11/93

MEMBER(A)

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