

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No.465 of 1998

This the 12<sup>th</sup> th day of November, 2003

Hon'ble Mrs. Meera Chhibber, J.M.

Mohd. Mustaqim,  
son of late Mohd. Amin  
resident of 345-E, Daryabad  
Allahabad - 211003.

.....Applicant.

(By Advocate : Shri A.B.L.Srivastava)

Versus

1. The Union of India through the Secretary to Government of India Department of Post & Director General of Post, Dak Bhawan, Sansad Marg, New Delhi - 110001.
2. The Director Postal Services, office of Post Master General, Allahabad.
3. The Director of Postal Accounts, Sector-D Aliganj Scheme Aliganj, Lucknow.
4. The Senior Superintendent Post Offices, Allahabad Division, Allahabad.
5. The Head Post Master, Kachkeri Head Post Office, Katra, Allahabad. ....Respondents.

(By Advocate : Shri S. Chaturvedi)

ORDER

Grievance of the applicant in this case is that at the time of filing of the O.A. <sup>by grievance B</sup> was that after his retirement as Sub-Post Master HSG-II Level on 29.02.1996, applicant was not paid the full DCRC nor he was allowed the commutation of

B

Pension due to him but he was paid only provisional pension and 90% of the D.C.R.G. only on 24.02.1998. Even when neither any chargesheet <sup>was</sup> issued to the applicant nor he was suspended nor there was any other legal impediment in his way. He had thus, sought a direction to the respondents to release all the settlements dues of the applicant alongwith 18% interest on the arrears as delayed payments. During the pendency of this O.A. applicant was paid the balance amount of gratuity amounting to Rs.10,500/- in September, 2001 and he was also allowed commutation of pension. Therefore, when the matter came up for final hearing, counsel for the applicant submitted that since the payments were made to him with inordinate delay without any justification, he is entitled to interest @18% plus costs of the litigation and also compensation for causing him harassment.

2. Respondents on the other hand have submitted that an amount of Rs.27,800/- has been misappropriated by showing the fraudulent deposit in the accounts by Shri Rajendra Kumar Sharma agent of Smt. Raj Kumari Sharma Mahila Agent No. UPA 130 in connivance with the applicant and Shri Amrit Lal the then P.A. Sohbatiyabagh P.O. Allahabad for which they are fully responsible due to their negligence. As applicant and Shri Amrit Lal both failed to check whether the amounts have been credited in the Government of account or not. They have submitted that investigation is going on as the matter has



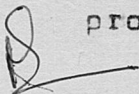
already been reported to the Police. They have thus, submitted that due to the pendency of the fraud case against the applicant his pension case <sup>earlier. B</sup> could not be finalised. In any case, applicant never approached the higher authorities before approaching this Tribunal, therefore, this petition is liable to be dismissed as being barred by Section 20 of the A.T. Act, 1985. They have further submitted that his pension case will be finalised immediately on the findings of the fraud case pending against him.

3. We have heard both the counsel and perused the pleadings as well.

4. Applicant's counsel has annexed <sup>copy of</sup> the F.I.R. along with his Misc. Application No.5488 of 2000, which is Annexure A-14, which shows that F.I.R. was filed only on 21.12.1998, whereas the applicant had retired on 29.02.1996. Respondents have not been able to show that either applicant had been served with a chargesheet either in criminal case or in any departmental enquiry on the date when applicant was retired, <sup>nor he was suspended B</sup> Therefore, we have to see in this background as to whether the respondents could have withheld the full pension, gratuity or commutation of pension to the applicant. At this point, it would be <sup>of CCS (Pension) Rules B</sup> relevant to refer to Rule 69(1) a and b which for ready reference reads as under:-

69: Provisional pension where departmental or judicial proceedings may be pending.

(1) (a): In respect of a Government Servant referred to in sub-rule(4) of Rule-9, the Accounts Officer shall authorise the provisional pension equal to the



maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government Servant, or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension.

- (b) The provisional pension shall be authorised by the Accounts Officer during the period commencing from the date of retirement up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the Competent Authority.

It would also be relevant to quote Rule-9(6) (a) & (B) <sup>8</sup>-  
CCS (Pension) Rules B  
which for ready reference reads as under:-  
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**9. Right of President to withhold or withdraw pension:  
(6) For the purpose of this rule-**

- (a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government Servant or pensioners, or if the Government servant has been placed under suspension from an earlier date, on such date; and
- (b) judicial proceedings shall be deemed to be instituted-
- (i) in the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognizance, is made and
- (ii) in the case of civil proceedings, on the date the plaint is presented in the Court."

5. In the instant case, admittedly, since FIR was filed only on 21.12.1998, which is evident from Annexure A-14, obviously it cannot be said that criminal proceedings were pending against the applicant on the date <sup>he B</sup> retired. Therefore, we find no justification for withholding the gratuity, regular pension or commutation of pension to the applicant. Counsel for the applicant has relied on the following Judgments:-

- (i) A.T.J. 2000(2) 82                      (ii) A.T.J. 1996(2) SC 639  
Punjab & Haryana High Court  
(iii) A.T.J. 1997(2) 42                      (iv) A.I.R. 2000(2) SC 1918  
Calcutta



while counsel for the respondents has relied on 2000 SCC(L&S)166. We have seen the Judgment relied upon by the respondents counsel but find the same would have no application in the present case. As in that case, since the criminal proceedings was pending against the applicant when he retired and Rule-52(1)(c) of A.P. Revised Pension Rules 1980 expressly permitted to the State to hold gratuity during the pendency of the judicial proceedings. Moreover, there was also an express order of the Tribunal which was binding on the appellant as Tribunal had directed that D.C.R.G. was not <sup>to be</sup> paid to the appellant therein till the judicial proceedings were concluded and final orders were passed thereon. Whereas in the instant case, admittedly there was no chargesheet pending against the applicant on the date when he retired. On the contrary, the FIR itself was filed on 21.12.1998 i.e. almost after more than 2 years from the date of his retirement. The Judgments relied upon by the applicant as referred above would fully apply in the present case. Therefore, we hold that the applicant would be entitled to interest @ 9% on the delayed payments from the date when they were actually supposed <sup>to</sup> have been paid to the applicant, till they were paid to him. We ~~are~~ <sup>have</sup> given interest @9% because rate of interest has considerably been dropped. Therefore, <sup>applicant B</sup> ~~we~~ would be entitled to the interest @9%. Even though in the Judgment <sup>referred B</sup> ~~stated~~ by the applicant, interest was granted @18% per annum.

6. Since we are holding that there was no justification for



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the respondents for making delayed payments, applicant would also be entitled to the cost of Rs.2500/-. However, I have no power to grant any compensation, therefore, that relief is rejected. Respondents shall ~~conclude~~ <sup>compute</sup> the arrears to be paid to the applicant after calculating the interest @9% w.e.f. May, 1996 i.e. after 3 months from the date of his retirement <sup>the date when</sup> till date he was actually paid the amounts, <sup>and pay the same to applicant</sup> This exercise shall be completed within 2 months from the date of receipt of a copy of this order.

7. With the above direction, this O.A. is allowed. No order as to costs.

Member (J)

shukla/-