

OPEN COURT.

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD

Original application No.1455 of 1998.

Allahabad this the 24th day of May 2004.

Hon'ble Mr. Justice S.R. Singh, Vice-Chairman

Hon'ble Mr. S.K. Hajra, Member-A

Mohammad Naseem Ex-Chargeman, P. No.6966798, COD Chheoki,
Allahabad. R/o 47 Noorullah Road, Badri Panda Ki Gali, District Allahabad.

.....Applicant.

(By Advocates: Sri H.S. Srivastava/Sri Ashok Kumar)

Versus.

1. The Union of India through the Chief C.D.A (Pension) Allahabad.
2. The Defence Pension Disbursing Officer (DPDO) T/55, MRC,
Kanpur Road, Allahabad.
3. The Commandant, C.O.D. Chheoki, Allahabad.
4. The Brigadier, Officer-In-charge Records, Sena Ayudh Corps
Abhilekh Karyalaya, Army Ordnance Corps Records, Post Box
No.3, Trimulgherry Po, Secunderabad-5000 15.
5. The Administrative Officer, C.O.D. Chheoki, Allahabad.

.....Respondents.

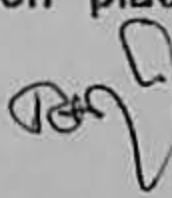
(By Advocate: Sri S. Mandhyan)

ORDER

(By Hon'ble Mr. Justice S.R. Singh, V.C.)

Heard Sri H.S. Srivastava, learned counsel for the applicant and Sri D.S Shukla holding brief of Sri S Mandhyan learned counsel for the respondents.

2. The applicant retired on superannuation w.e.f. 30.11.1996 as Senior Chargeman in Central Ordnance Depot, Chheoki, Allahabad. It appears that before he attained the age of superannuation, the applicant was involved in criminal case No.931/99 under section 420/405/408/504/506 I.P.C State Vs. Mohd Naseem and others and in that connection he was arrested and sent to jail and bailed out after about two weeks. By order dated 11.12.1996, the applicant was "deemed" to have been placed under suspension from 23.11.1996 to



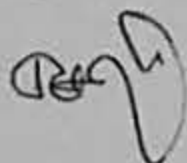
30.11.1996. The suspension order was issued in terms of sub Rule (2) of Rule 10 of C.C.S (C.C.A) Rules 1965. The applicant was ultimately acquitted of the charges vide judgment dated 16.10.1999. By order dated 25.03.2000 (Annexure SCA-1), C.D.A. (Pension) CI/Civil, Allahabad was accordingly directed to issue necessary corrigendum regarding payment of service benefits and commuted value of gratuity.

3. According to the applicant, retiral benefits were ultimately paid in the month of July 2000. The instant O.A. seeks quashment of suspension order dated 11.12.1996 coupled with a direction to the respondents to release the entire retiral benefits i.e. gratuity, leave in-cashment of 240 days, full pension and salary of 08 days w.e.f. 23.11.1996 to 30.11.1996 with interest as provided under the law.

4. So far as the quashment of the suspension order dated 11.12.1996 is concerned, suffice is to say that since the applicant was detained and sent to jail and he was, under the law, ^{required to be} deemed to have been placed under suspension with effect from the date he was arrested and sent to jail and though he was released from jail subsequent to his retirement, suspension was continued till the date of his superannuation i.e. 30.11.1996. In the circumstances, therefore, no exception can be taken to the impugned suspension order dated 11.12.1996 and the O.A. in so far as the quashment of the suspension order dated 11.12.1996 is concerned, is liable to be dismissed.

6. So far as the release of entire retiral benefits i.e. gratuity, leave incashment and other retiral benefits is concerned, learned counsel for the applicant has conceded that whatever the retiral benefits were due to the applicant, he has since been paid except interest on delayed payment of gratuity and commuted value of pension. Learned counsel has, therefore, pressed the O.A. only with regard to the applicant's claim for interest on delayed payment of gratuity of Rs.89,440/- and commuted value of pension amounting to Rs.1,21,252/-.

7. Rule 68 of C.C.S Pension Rules 1968 provides for payment of interest on delayed payment of gratuity in case the delay in payment is attributable to administrative lapses. The Government of India's decision NO.3 (1) at the foot of Rule 68 of C.C.S Pension Rules, 1968 reads as under:



"(i) Admissibility of interest on gratuity allowed after conclusion of judicial/departmental proceedings:-

1. Under the Rules, gratuity becomes due immediately on retirement. In case of a Government servant dying in service, a detailed time-table for finalizing pension and death gratuity has been laid down vide Rule 77 onwards.
2. Where disciplinary or judicial proceedings against a Government servant are pending on the date of his retirement, no gratuity is paid until the conclusion of the proceedings and the issue of the final orders thereon. The gratuity if allowed to be drawn by the competent authority on the conclusion of the proceedings will be deemed to have fallen due on the date of issue of orders by the competent authority.
3. In order to mitigate the hardship to the Government Servants who, on the conclusion of the proceedings are fully exonerated. It has been decided that the interest on delayed payment of retirement gratuity may also be allowed in their cases, in accordance with the aforesaid instructions. In other words, in such cases, the gratuity will be deemed to have fallen due on the date following the date of retirement for the purpose of payment of interest on delayed payment of gratuity. The benefit of these instructions will, however, not be available to such of the government servants who die during the pendency of judicial/disciplinary proceedings against them and against whom proceedings are consequently dropped.
4. These orders (Paragraph 3) shall take effect from the 10th January, 1983".

8. It is thus evident that where on the conclusion of judicial/department proceedings, a Government servant is fully exonerated, the interest on delayed payment of retirement gratuity may also be allowed. In the instant case no departmental proceedings was pending against the applicant at the time of his retirement though judicial proceedings and criminal case was no doubt pending in the Criminal Court as pointed out hereinabove. The applicant has been honourably acquitted of criminal charge, which was not found proved. In that view of the matter, the applicant is entitled to the payment of interest at the prescribed ^{rate} ~~grade~~ on the delayed payment of retirement gratuity. Payment of retirement gratuity according to the aforesaid Government instruction will be deemed to have fallen due on the date following the date of retirement for the purpose of payment of interest on delayed payment of retirement gratuity. The prescribed rate of interest on the delayed payment is ~~at the rate~~ ^{at the rate} of 10% per annum. The applicant was acquitted on 16.10.1999. Retirement gratuity became due on the date following retirement i.e. 11.12.1996. The applicant is, therefore, entitled to interest on the delayed payment of gratuity at the rate of 10% per annum.

PS

9. It may be certainly observed though under Rule 9 of C.C.S Pension Rules, the President reserves to himself the right of withholding a pension or gratuity, or both, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service. Rules 69 of C.C.S (Pension) Rules empowers the competent authority to authorize the provisional pension during the pendency of departmental or judicial proceedings. But nothing in these rules provides for withholding of pension or gratuity due to the pendency of any criminal case, which does not relate to grave misconduct or negligence in discharge of duty. The Government of India have since issued a circular dated 04.07.2003 to this effect which is quoted below:

"Important Circular
No.ATV/DAD/PEN/15101/Vol III
O/o the C.G.D.A West Block-V, R.K.
Puram, New Delhi, 110066, dated
4.7.2003.

To,
The PCDA(CC)
Lucknow
All PsCDA/CsDA.

Sub: Release of gratuity and computation of pension withheld due to judicial proceedings are pending against the concerned retirees.

This HQrs. Office is receiving representations from the DAD pensioners for releasing of withheld amount of gratuity and the amount of commuted value of pension in whose cases the same have been withheld due to pendency of any judicial proceedings against them in terms of Rule 9(4) and 69 (b) of C.C.S (Pension) Rules, 1972.

In one of such case Hon'ble High Court of Allahabad in their judgment dated 10.05.2001 have observed that every judicial proceedings irrespective of the gravity of the related misconduct or negligence will not attract Rule 9 & 69 of CCS (Pension) Rules, 1972 and only such judicial proceedings as may be related to grave misconduct or negligence will attract. Ministry of Personnel, P.G. & Pension, Deptt. Of P&PW, to whom the matter was referred to have also stated that there is nothing which is contrary to the provisions of Rule 9 & 69 of CCS (Pension) Rules in the observation of the High Court.

In view of the above, it has been decided that the provisions of Rule 9 & 69 of CCS (Pension) Rules, 1972, may be applied only in these cases where a judicial proceedings is pending

PCDA

against the retiring Govt. Servant for alleged misconduct/negligence in performing of his official duties.

It is, therefore, requested that all such cases of withheld gratuity/capitalized value of pension due to pendency of judicial proceedings in the Courts may be reviewed and action taken accordingly.

Jt. CGDA (Systems)".

10. In view of the aforesaid circular the pension or retirement could be withheld only in these cases where a judicial proceeding is pending against the retiring Govt. servant for alleged misconduct/negligence in performance of his official duties.

11. In view of the aforesaid discussions, the O.A. is allowed in part. Respondents are directed to pay interest to the applicant on delayed payment of retirement gratuity and commuted value of pension with effect from the date the applicant retired at the interest of 10% per annum. The order shall be complied with within a period of four months.

No costs.

Samir Kumar Hazra
Member-A.

Raj
Vice-Chairman.

Manish/-