

RESERVED
CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated this theday of Oct 2010

CORAM:
HON'BLE MRS. MANJULIKA GAUTAM, MEMBER (A)
Original Application No.623 of 2005
(U/s 19 of the Administrative Tribunals Act 1985)

Gulzari Lal,
S/o Shri Kewal Ram,Applicant
Resident House No.38/3A/1,
Sahid Bhawan, Gopalpura, Agra.

By Adv: Shri. Rakesh Verma

V E R S U S

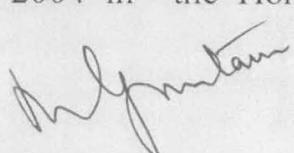
1. Union of India, through Secretary,
Ministry of Defence, North Block,
New Delhi.
2. The Commandant, Central Ordnance Depot,
Agra – 282 009.Respondents

By Adv: Shri R.K. Srivastava

O R D E R

HON'BLE MRS. MANJULIKA GAUTAM, MEMBER (A)

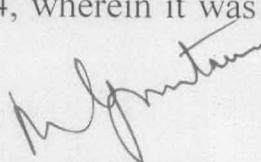
The applicant was working as Senior Store Superintendent. The father in law of his son lodged an FIR under Section 498A, 313, 323, 505, 506 I.P.C. and Section 3/4 of Dowry Prohibition Act at Police Station Mahila Thana Rakabganj,, District Agra. The Sessions Court sentenced him under Section 498A I.P.C. to 1½ years rigorous imprisonment with fine of Rs.1000/- The applicant filed Criminal Appeal No.933 of 2004 in the Hon'ble High Court of Allahabad



against the above mentioned conviction order. The Writ petition was admitted. The applicant was released on bail and realization of the fine including execution of sentence had been stayed. Meanwhile, the applicant had retired on 31.8.2003. The applicant had filed a representation dated 30.1.2004 against impugned orders of 2nd respondent dated 10.4.2004 by which gratuity and commutation of pay totalling to Rs.3,69,614/- had been withheld in accordance with the Rule 69(i)(c) of CCS (Pension) Rules, 1972. The applicant filed a representation dated 24.8.2004 against the impugned orders but it is still not decided. Aggrieved by this, the petitioner has filed the present O.A. seeking the following main reliefs:

- i. To issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 10.4.2004 passed by the respondent No.2(Annexure A-1).
- ii. To issue a writ, order or direction in the nature of mandamus directing the respondent No.2 to release the amount of gratuity i.e. Rs.1,94,799/- as well as commutation of Rs.1,74,815/-, totalling to Rs.3,69,614/- within the period as may be fixed by this Hon'ble Tribunal.

2. In the counter affidavit filed by the respondent it has been stated by the respondents that, the applicant was convicted under section 498A vide judgement dated 28.1.2004 of Additional District Judge, Agra. An appeal has been filed by the applicant in the Hon'ble High Court of Allahabad and it is still pending. The applicant had filed O.A. 855/2003 regarding his promotion which had been decided vide orders dated 26.4.2004, wherein it was held that no case for interference was



made out. According to the counter affidavit, the payment of gratuity/commutation has been withheld in terms of Rule 69 CCS(Pension) Rules, 1972 which reads as follows:

"69. Provisional Pension where departmental or judicial proceedings may be pending.

(I)(a) In respect of a Government Servant referred to in sub-rule (4) of Rule 9, the Accounts Officer shall authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service upto 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 authorized by the Accounts Officer during the period commencing from the date of retirement upto and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon:

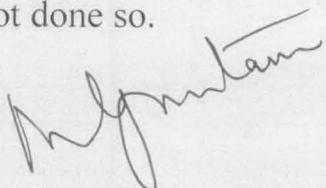
Provided that where departmental proceedings have been instituted under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, for imposing any of the penalties specified in Clauses (i) (ii) and (iv) of Rule 11 of the said Rules, the payment of gratuity shall be authorised to be paid to the Government Servant.

3. The applicant has not been allowed to commute his provisional pension as per condition No.4 chapter 2 of CCS Commutation of pension Rules 1981, whereas under the same rules, provisional pension has already been sanctioned and is being paid to the applicant with effect from 1.9.2003. Thus, the stand of the respondents is that all actions against the applicant had been taken as per rules and law.

4. The applicant on the other hand has stated that, Rule 69(i)(c) of CCS(Pension) Rules does not apply in his case. According to the applicant "judicial proceedings" referred to in the above rules pertains to judicial proceedings connected with official duties and on the basis of which departmental case or criminal case is pending against a Government servant, then the rule would apply. In support of his case, counsel for the applicant has referred to the decision of the Hon'ble Allahabad Bench of CAT in O.A.No.847/01 decided on 20.7.2001 (Abdul Waheed Vs. Union of India and others). The relevant and operative part of the above judgement reads as follows:

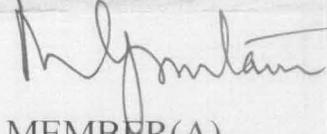
"The second relief of the applicant is for payment of retrial benefits. In the present case there is no doubt that applicant was arrested in criminal case, on the basis of a complaint filed by private person with regard to the dispute of property. The dispute is private having no concern with the department. In these circumstances, there is no likelihood that the department will initiate any disciplinary proceeding against the applicant as no misconduct is involved. The order of suspension was passed against the applicant merely on the ground that he remained in custody for more than 48 hours. The purpose and object behind Rule of CCS (Pension) Rules 69(e) prohibiting payment of retrial benefits, appears to protect the interest of Govt., if the concerned employee is facing criminal or disciplinary proceeding involving a misconduct as Govt. Servant, which also resulted in monetary loss to Govt. There appears no legal and valid reason to extend the application of this Rule to a private dispute regarding property to which the employee is incidentally a party. The purpose is not to punish a retired government servant who happened to be a party to a dispute relating to property. As there appears no legal impediment against payment of pension to applicant, he is entitled for relief."

5. Both the counsel had agreed to provide written arguments and did not wish to make oral submissions. Accordingly counsel for applicant has submitted the written arguments, but the counsel for the respondents has not done so.



6. I have perused the written arguments provided by the applicant's counsel as well the record on file. I am of the opinion that the view taken by the Tribunal in the case of Abdul Waheed Vs. UOI & Ors, which has been quoted above is a correct interpretation of Rule 69(i)(c) as well as Rule 9. In the case of the applicant also criminal proceedings against him were on account of family disputes and were not connected, in any way with discharging of his official duties. Therefore, on the basis of this judicial proceedings, no departmental action could be contemplated against him and therefore, there was no possibility of making any recovery etc from him. The Rule 69(i)(c) quoted above has been made for protecting the interest of the Government and to ensure that any financial loss caused to the Government can be made good by the concerned employee. In this case, none of these is applicable, considering that the applicant has superannuated in the year 2003, there is no reason to withhold payment of his gratuity and commutation. O.A. is, therefore, allowed with direction to the respondents to make the entire payment of Rs.3,69,614/- to the applicant within a period of two months from the date of receipt of copy of this order.

7. O.A. is allowed accordingly. No costs.



MEMBER(A)