

**Central Administrative Tribunal
Lucknow Bench,
Lucknow**

Original Application No. 332/00283/2018

Order reserved on : 07.02.2020

Order pronounced on: 16th March 2020

Hon'ble Mr. Devendra Chaudhry, Member-A.

Ghulam Baqar, aged about 61 years, son of Sirajul Hasan, Resident of 41-Ka, Ahata Mirza Ali Khan, Near Unity College, Husainabad, Lucknow.

.....Applicant.

By Advocate: Sri Deepak Shukla for Sri S.A.A. Rizvi.

Vs

1. Union of India through Ministry of Tele Communication, New Delhi.
2. Post Master General, Hazratganj, Lucknow.
3. Senior Superintendent, Post Office, Lucknow Division, Lucknow.

.....Respondents

By Advocate: Smt. Prayagmati Gupta.

ORDER

Delivered by:

Hon'ble Mr. Devendra Chaudhry, Member-A.

The current Original Application (OA) has been filed, challenging the non-payment of 10% Gratuity, 40% of Commutation amount of Pension and CGEGIS (Central Government Employees Group Insurance Rules, 1980) dues (in total referred to hereinafter as 'Balance Retiral Dues') by the Respondents.

2. The Applicant has prayed for directing the Respondent No. -3 to pay the amounts concerning the Balance Retiral Dues with 24% interest w.e.f. 01.01.2018 till the date payment when made.

3. The brief facts of the case are that, having attained the age of superannuation, the Applicant retired from Post Office, Chowk, Lucknow under the Respondent-3 on 31.12.2017. That following his retirement, dues consisting of 10% Gratuity, 40% of Commutation amount of Pension and GIS dues have not been paid. That, the Applicant represented to Respondent No. 3 regarding the same vide his representations dated 16.05.2018 and 09.06.2018 (Annexure A-2 and A-3) but the balance retiral dues have not been released till date nor any order passed qua his representations; hence the O.A.

4. *Per contra*, the Respondents have submitted in their Counter Affidavit that 05 months after retirement of the Applicant, there were complaints regarding mis-appropriation of funds by the Applicant which involved officials of Daliganj Post Office, Lucknow and consequently an F.I.R. was filed bearing No. 391 dated 13.07.2018 under Section 406, 420, 468 and 471 of I.P.C. at Hasanganj Police Station, Lucknow. Accordingly, departmental disciplinary proceedings were instituted with the permission of President of India vide Directorate Memo dated 26.10.2018 (Annexure-CR-1) as per Rule 9 of the CCS (CCA) Pension Rules, 1972 and under Rule 14 of CCS (CCA) Rules, 1965 as the applicant had retired earlier on 31.12.2007. That, keeping in mind, the on-going disciplinary proceeding and the fact that the allegation involved mis-appropriation of huge amount of Rs. 5.55 lac, which could increase after due verification which was still in progress, therefore, a part of the retiral dues have been withheld in public interest. Accordingly, the balance of dues as sought by the Applicant cannot be released under the provisions of the CCS (Pension) Rules, 1972 (hereinafter referred to as 'Pension Rules') given that the proceedings under way under CCS (CCA) Disciplinary Rules, 1965 (hereinafter referred to as 'Disciplinary Rules') and, therefore, the OA is liable to be dismissed.

5. Arguments were heard on behalf of the Learned Counsel of both the parties and the material on record perused carefully.

6. The key issue which falls for consideration is that: Whether the Respondents can legally withhold the Balance Retiral Dues comprising of (i) 10% of withheld gratuity, (ii) 40% of withheld commutation of pension amount, (iii) 100% of withheld GIS amount totaling Rs 9,23,050 and if it cannot be withheld given the facts and circumstances then along with release of the said detained amount, payment of interest charges on the withheld amount at the rate of 24% per annum from the date of withholding of the amount to the date the withheld amount is paid to the applicant.

7. The facts of the case as relating to detention of the said Balance Retiral Dues are undisputed. To decide the key issue aforesaid, it would be just and proper to reproduce the Rules 9, 69, 71, 72 (1) and 73 of the Pension Rules as well as the Rules 4&5 of the CCS (Commutation of Pension) Rules, 1981 and the same are reproduced herein below:

"Rule 9. Right of President to withhold or withdraw pension

- (1) *The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, 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, including service rendered upon re-employment after retirement:*

Provided that the Union Public Service Commission shall be consulted before any final orders are passé:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pensions shall not be reduced below the amount of Rupees Three thousand five hundred per mensem.

2 (a) *The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:*

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) *The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment,-*

- (i) shall not be instituted save with the sanction of the President,
- (ii) shall not be in respect of any event which took place more than four years before such institution, and
- (iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) omitted

(4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 69 shall be sanctioned.

(5) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(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 pensioner, 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.

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 authorize 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 authorized 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.

(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 authorized to be paid to the Government servant.

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

71. Recovery and adjustment of Government dues

(1) It shall be the duty of the Head of Office to ascertain and assess Government dues payable by a Government servant due for retirement.

(2) The Government dues as ascertained and assessed by the Head of Office which remain outstanding till the date of retirement of the Government servant, shall be adjusted against the amount of the [retirement gratuity] becoming payable.

(3) The expression 'Government dues' includes -

(a) dues pertaining to Government accommodation including arrears of licence fee as well as damages for the occupation of the Government accommodation beyond the permissible period after the date of retirement of the allottee, if any ;

(b) dues other than those pertaining to Government accommodation, namely, balance of house building or conveyance or any other advance, overpayment of pay and allowances or leave salary and arrears of income tax deductible at source under the Income Tax Act, 1961 (43 of 1961).

Rule 72: Adjustment and recovery of dues pertaining to Government accommodation:

(1) The Directorate of Estates on receipt of intimation from the Head of Office under sub-rule (1) of Rule 57 regarding the issue of No Demand Certificate shall scrutinize its records and inform the Head of Office within two months, if any licence fee was recoverable from him in respect of the period to eight months of his retirement. If no intimation in regard to recovery of outstanding licence fee is received by the Head of Office by the stipulated date, it shall be presumed that no licence fee was recoverable from the allottee in respect of the period preceding eight months of his retirement."

Rule 73: Adjustment and recovery of dues other than dues pertaining to Government accommodation:

- (1) For the dues other than the dues pertaining to occupation of Government accommodation as referred to in Clause (b) of sub-rule (3) of Rule 71, the Head of Office shall take steps to assess the dues one year before the date on which a Government servant is due to retire on super-annuation; or on the date on which he proceeds on leave preparatory to retirement, whichever is earlier.
- (2) The such assessment of Government dues referred to in sub-rule (1) shall be completed by Head of Office eight months prior to the date of the retirement of the Government servant.
- (3) The dues as assessed under sub-rule (2) including those dues which come to notice subsequently and which remain outstanding till the date of retirement of the Government servant, shall be

adjusted against the amount of the retirement gratuity becoming payable to the Government servant on his retirement.

8. Rule-4 of CCS (Commutation of Pension) Rules, 1981

" 4. Restriction on commutation of pension

No Government servant against whom departmental or judicial proceedings as referred to in Rule 9 of the Pension Rules, have been instituted before the date of his retirement, or the pensioner against whom such proceedings are instituted after the date of his retirement, shall be eligible to commute a Percentage of his provisional pension authorized under Rule-69 of the Pension Rules or the pension, as the case may be, during the pendency of such proceedings.."

9. Following position emerges after examination of the above Rules:-

- (i) Rule 9(1) as seen above, provides for withholding of the Gratuity or recovery from a pension or gratuity with regards to any pecuniary loss caused to the Government, **if, in any departmental or judicial proceedings, the pensioner is found guilty** (emphasis supplied). That is to say, that, on finding an employee **finally** guilty of misconduct, gratuity can be withheld or recovery from pension made.
- (ii) Rule 9 (2) (b) states that disciplinary proceedings (DP) in case of a retired employee can be initiated only with the approval of the President of India for an incident not earlier than four years from the date of institution of such DP
- (iii) Rule 69 (c) provides that 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 CCS (CCA) Rules, 1965 for imposing any of the penalties specified in Clauses (i), (ii) and (iv) of Rule 11 of the CCS (CCA) Rules, 1965, the payment of gratuity shall be authorize to be paid to the Government servant.
- (iv) Rule 71 (i) provides that Head of Office shall assess Government dues payable by a Government servant due for retirement.
- (v) Rule 71(ii) provides that Government dues outstanding till the date of retirement, shall be adjusted against the amount of the retirement gratuity becoming payable.

1981 (hereinafter referred to as 'Commutation Rules'). Accordingly, vide and the Rule position thereof is as follows:

Pension Rules 1972:

- (i) Rule 68 provides for interest on delayed payment of gratuity, which is reproduced herein below for clarity:

"68. Interest on delayed payment of gratuity

(1) In all cases where the payment of gratuity has been authorised later than the date when its payment becomes due, including the cases of retirement otherwise than on superannuation, and it is clearly established that the delay in payment was attributable to administrative reasons or lapses, interest shall be paid at the rate applicable to General Provident Fund amount in accordance with the instructions issued from time to time:

Provided that the delay in payment was not caused on account of failure on the part of the Government servant to comply with the procedure laid down by the Government for processing his pension papers.]

(2) Every case of delayed payment of gratuity shall be considered by the Secretary of the Administrative Ministry or the Department in respect of its employees and the employees of its attached and subordinate offices and where the Secretary of the Ministry or the Department is satisfied that the delay in the payment of gratuity was caused on account of [administrative reasons or lapse], the Secretary of the Ministry or the Department shall sanction payment of interest.

(3) The Administrative Ministry or the Department shall issue Presidential sanction for the payment of interest after the Secretary has sanctioned the payment of interest under sub-rule (2).

(4) In all cases where the payment of interest has been sanctioned by the Secretary of the Administrative Ministry or the Department, such Ministry or the Department shall fix the responsibility and take disciplinary action against the Government servant or servants who are found responsible for the delay in the payment of gratuity [on account of administrative lapses].

(5) Deleted"

Under this Rule, **if it is clearly established that if the delay in payment of pension and gratuity is attributable to administrative reasons or lapses, interest shall be paid at the rate applicable to General Provident Fund amount in accordance with the instructions issued from time to time (emphasis supplied), provided that the delay in payment was not caused on account of failure on the part of the Government servant to comply with the procedure laid down by the Government for processing his pension papers.**

- (ii) Rule 68 (2) also provides that every case of delayed payment of gratuity shall be considered by the Secretary of the Administrative Ministry or the Department in respect of its employees and where the Secretary of the Ministry or the

Department is satisfied that the delay in the payment of gratuity was caused on the account of administrative reasons or lapse, the Secretary of the Ministry or the Department shall sanction payment of interest.

(iii) Rule 68 (3) provides that the Administrative Ministry or the Department shall issue Presidential sanction for the payment of interest after the Secretary has sanctioned the payment of interest under sub-rule (2) of Rule 68.

(iv) Rule 68 (4) also provides that in all cases where the payment of interest has been sanctioned by the Secretary or Administrative Ministry or the Department, such Ministry or the Department shall fix the responsibility and take disciplinary action against the Government servant who are found responsible for the delay in the payment of gratuity on account of administrative lapses.

12. An analysis of all the above Rules reveals the following points:-

- (i) That, upto full Gratuity can be withheld under Rule 9(1) only after the pensioner has been finally found guilty of grave mis-conduct.
- (ii) This means that the Gratuity cannot be withheld or any recovery made in part for any pecuniary loss without the charges of grave mis-conduct being proved after conclusion of disciplinary inquiry.
- (iii) That, Rule 69 (c) would have us conclude that Gratuity need not be paid until the conclusion of departmental proceeding and issue a final order thereon, but then as we shall shortly see, **the payment can be withheld even if for part time after retirement if the DP are initiated while the employee was still not retired and that the gratuity cannot be withheld even if for part time if the DP initiated after the retirement.**

In the present case, with regards to pension, (i) the pension is being paid to the Applicant since he retired on 31.12.2017 and is continuing to be paid as there is no claim for release of pension by the applicant, (ii) however 40% of the pension commuted amount which was to be paid lumpsum has been withheld and

not yet paid. With regards to gratuity, 10% has not yet been paid and is presently withheld since date of retirement. Further the GIS dues have not been paid at all.

It is also clear from the examination of the above rules that pension and gratuity dues were payable immediately after the date of retirement notified under Rule 74 of the Pension Rules and once the retirement is effected, and pension + gratuity are not paid then, vide provisions of Rule-68, the penal interest clause is triggered against the Government/ Administrative Officer liable for timely release of pension and gratuity dues. This has been done to prevent any malafide or arbitrary delay w.r.t. release of pension and retirement dues of an employee immediately post-retirement. **Further that** the luxury of delay is not allowed because the government is to initiate assessment of retiral dues one year before the due date of retirement as per Rule-58 of the Pension Rules. Under Rule 64(3), where the amount of pension + gratuity cannot be determined for reasons other than DP, the Head of Office (HOO) shall issue a letter of sanction addressed to the retiring Government servant endorsing a copy to the Accounts Officer authorizing 100% of pension as provisional pension for a period not exceeding six months from the date of retirement and sanction of 100% gratuity even while withholding 10% of gratuity.

13. It is also clear that while pension is apparently being paid in the present case, the interest clause has got triggered as from 01.01.2018 with respect to the 10% gratuity withheld. Further as regards the withheld commutation amount, as per Rule-4 of the Commutation Rules abstracted above, it is clearly stated that the **no pensioner against whom DP are instituted after the date of retirement shall be eligible to commute a percentage of his provisional pension authorized under Rule-69 of the Pension Rules, 1972 or the pension as the case may be during the pendency of such proceedings.** Meaning thereby that for an employee the facility of commutation of pension is not available even if the DP is instituted after retirement as in the case of the present applicant in contrast to the provision whereby the full provisional pension is admissible even for an employee against whom DP is instituted after retirement under Rule

9(4) read with Rule 69 of the Pension Rules, 1972. In the present case the applicant seems to have already taken 60% of the commuted amount and only 40% is balance to be released. **Therefore, without adjudicating further on the application of the Rule-4 of the Commutation Rules, it is clear that the Pension Rules, 1972 do not provide for delayed interest payment under Rule 68 for commuted pension amount and the Commutation Rules 1981 also do not provide for delayed commutation amount payment anywhere.** Hence it follows that the applicant is not entitled to any delayed interest payment in the case of balance of Commuted pension amount as per the Commutation Rules 1981 which do not provide anywhere for any delayed payment of commutation amount.

14. There is no penal interest for withholding of CGEGIS dues which however cannot be withheld as dues to be paid even if penal interest is not provided for any delayed payment in the CGEGIS, 1980 notification as amended from time to time.

15. As regards the gratuity amount, in the absence of having any DP against the applicant on the date of retirement, the same cannot be withheld even if to the extent of 10% under Rule 69(1)(c). Respondents have made this unpardonable legal mistake in the case of withholding of 10% gratuity. **What the respondents have misread is that given the protection of Rule 69(2) read with Rule 9(1) of the Pension Rules, whatever would be the consequence of the DP instituted vide Charge Memo dated 14.12.2018, they had the liberty to recover dues if the applicant was eventually found guilty of defalcation of the government moneys, and there was no illegality in releasing the full gratuity amount later if not withheld due to licence dues pertaining to government accommodation as may be possible under Rule-72/73 of the Pension Rules-1972.**

16. While the applicant retired on 31.12.2017, and there was no existing DP which got initiated only as from the date of issue of charge sheet which is admittedly 14.12.2018 (Annexure R-1 filed by respondents), then the respondents already have blood on their hands of at least 12 months qua the delay in release of 10% balance gratuity which **had to be released before the sun set of 01.01.2018 in the absence of a DP.** The point not understood by the respondents is that,

immediately after retirement the gratuity payment become due and the Rule 69(c) does not provide for withholding gratuity payments when there are no departmental proceedings pending on the date of retirement if the departmental proceeding is not initiated while the government servant was still in service but have been initiated subsequently after Presidential sanction under Rule 9(2), meaning thereby the implication is that the gratuity **can be withheld till the conclusion of the DP only and only if the DP was initiated while the concerned employee was still in service or in the latest on the date of retirement and not later than that in any case after his due date of retirement.**

17. In the present case, the Applicant retired on 31.12.2017 and DP were non-existent on that date, so the respondents have triggered the Rule -68 of the Pension Rules w.r.t delayed payment of gratuity and nothing can save them from this destiny. The opportunity of stopping 10% gratuity was lost as the sunset on the day of 31.12.2017. That the Commutation Rules 1981 do not provide for any penal interest on any percentage of released or withheld commuted pension amount. **In fact they provide as per Rule-4 of the Commutation Rules to NOT sanction commutation of pension if the DP is instituted even after retirement.** Therefore, but, since there was no DP on dated of retirement, commutation pension benefit could not have been withheld. DP is initiated later as from 14.12.2018 with the issue of the Charge Memo. However, it is noteworthy that various rules of Commutation of Pension 1981 do not have any provision for payment of delayed interest to an employee for a withheld commuted amount and also in light of Rule-4 thereof, withholding commuted pension is not liable for delayed interest payment. But, these are dues withheld without reason and hence in the interest of justice, same accountability has to be there on the respondents with compensations thereof to such suffers as has been pronounced by various Courts of Hon'ble High Court/Hon'ble Apex Court level. The same would apply for unreleased payments concerning CGEGIS dues for which also no plausible and convincing reason at all is argued by the respondents.

18. As regards gratuity, which is a one-time payment, the same has to be released as the DP was not initiated before retirement and Rule 69(c) prohibits withholding gratuity release if DP is not initiated before

retirement as per the wordings in the said rule. **Consequently, the penalty of interest has already kicked in as per Rule 68 discussed above because the full gratuity became due as from the date of the next day following the date of retirement i.e. from 01.01.2018 as the retirement date was 31.12.2017. Also for the release of the interest penalty in favour of the applicant by the respondents on the unreleased gratuity the as per provision of Rule-68, the Secretary of the Administrative Ministry, that is Secretary Posts in the Union of India arrayed as Respondent -1 shall have to fix the responsibility of this delay and take appropriate action as provided in Rule 68(4) of the Pension Rules 1972.**

19. The die is cast and there is no going back. In conclusion, the OA is liable to be allowed and the respondents are directed to issue orders as follows:

- i. to pay interest as per Rule-68 of the Pension Rules, 1972 as from 01.01.2018 on the 10% gratuity amount withheld, till the date of payment to the applicant;
- ii. to pay CGEGIS amount due in full;
- iii. to pay the 40% pension commuted amount;
- iv. Interest payment on Commuted pension balance amount and the CGEGIS amount to be paid at the rate of interest applicable for delayed GPF payment.
- v. All the above payments shall be made ensured within four weeks of the receipt of this order by the respondents into the bank account stated by the applicant.

20. The OA is disposed of accordingly. Let a copy of this order be served by the Registry by Registered Post on the Respondent-1-Secretary Post, Department of Posts, Ministry of Tele Communications, Government of India, Dak Bhawan, Sansad Marg, New Delhi for appropriate action and in the interest of justice including avoidable litigation as well as government liabilities. No costs.

(Devendra Chaudhry)

Member (A)