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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHAvAD.

Registration (O.A.) no. 1234/1987

Najmul Hasan

applicant.

Versus

Union of India and others.

Respondents.

Hon'ble D.S.Misra,A.M.

Hon'ble G.S.Sharma,J.M.

(Delivered by Hon'ble D.S.Misra-A.M.)

This is an application under Section 19 of the A.T. Act XIII of 1985 against the nonpayment of full pension and death cum retirement gratuity on his compulsory retirement.

2. The brief facts of the case are that the applicant while working as Assistant Head Record Officer, R.M.S.(G) Division, Gorakhpur, was placed under suspension w.e.f 22.10.83. On the date of suspension, five disciplinary cases under Rule 14 of CCS(C.C.A.) Rules 1965 were pending against him. Case No. K-6/Vigilance/23/29.9.83 was decided by the disciplinary authority vide memo dated 17.1.1986 and the applicant was awarded the punishment of compulsory retirement from service with immediate effect. The applicant was given provisional pension equivalent of 100 per cent of the pension at the rate of Rs.359/- per month vide order dated 31.12.1986. At present four disciplinary cases are pending against the applicant. In all the above four cases departmental inquiry has been completed and the report submitted to the disciplinary authority. The applicant's grievance is that the respondents have kept the inquiry reports pending without any valid reasons and against the standing instructions of the Government of India that disciplinary proceedings should be completed within a period of three months. The applicant

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has alleged that some of these inquiry proceedings are pending for more than 5 years and the respondents are not finalising it due to ulterior motive. The applicant has further alleged that the amount of provisional pension being paid to him is less than the minimum of Rs.375/-fixed by the Government of India. The applicant has prayed that the respondents be directed to sanction and cause payment of full pension with arrears and interest thereon after finalising the disciplinary proceedings within a reasonable time to be fixed by the tribunal. The applicant has also claimed interest at the rate of 6% per annum on the amount of death cum retirement gratuity ^{admissible} to him w.e.f. 17/8/86 till the date of final payment

3. In the reply filed on behalf of the respondents it is contended that they have taken action in accordance with rule 16 of the CCS(CCA)Pension Rules 1972. The respondents have also contended that under Rule 40 and Rule 9(4) of the CCS(CCA)Pension Rules 1972, the applicant is not entitled for getting any pensionary benefits except the provisional pension which is being paid to him. It is also contended on behalf of the respondents that the finalization of the departmental inquiry will be done after obtaining presidential order under Rule 9 of the CCS(CCA)Pension Rules, 1972.

4. The applicant has filed rejoinder affidavit, in which the allegations made in the claim petition have been reiterated.

5. The respondents also filed a supplementary counter affidavit in which it is stated that the final pension payable to the applicant will be decided after final decision

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in the disciplinary cases is taken by the President of India; that the applicant was responsible for serious financial irregularities and the inquiry proceedings took long time for which the applicant is also responsible ; that the inquiry in the 1ast four cases was completed in September,87 and necessary action has been taken for obtaining the sanction of the President for further action in the matter.

6.We have heard the arguments of the applicant in person and Sri Ashok Mohiley,learned counsel for the respondents.The fact of four disciplinary proceedings pending against the applicant is not in dispute.The applicant's grievance is mainly the delay in the finalisation of the disciplinary proceedings even after the conclusion of the inquiry.The contention of the respondents that the last of the four inquiries was completed in September,1987 has not been denied by the applicant.

7.We have examined the case of the applicant under CCS(CCA)Pension Rules,1972. Rule 40 of the C.C.S. (Pension) Rules 1972 deals / with the grant of compulsory retirement pension. Similarly,Rule-9 of the CCS(Pension) Rules authorises the President to withhold a pension or part thereof whether permanently or for a prescribed period,if in any departmental or judicial proceeding the applicant is found guilty of grave misconduct or negligence during the period of his service. This rule further provides that such pension shall not be reduced below the amount of Rs.60/- per mensum. Sub rule (4) of Rule 9 provides that when a government servant who is retired and against whom departmental proceedings are continued, a provisional pension as

provided in Rule 69 shall be sanctioned. Rule 69 of the CCS (Pension) Rules 1972 provides that a provisional pension shall be authorised 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. Sub rule C of Rule 69 aforesaid states that no gratuity shall be paid to the government servant until the conclusion of the departmental proceedings and issue of final orders thereof. The above position has been further clarified in the instructions contained in the Government of India decision no.6 under Rule 9 of CCA(Pension) Rules,1972 issued vide Government of India OM dated 28.2.78. We have considered the matter and we are of the opinion that the respondents have taken necessary action in accordance with the existing instructions and rules applicable to the case of the applicant and there has been no violation of any of these rules and instructions. we are,however, of the opinion that the final orders in the disciplinary cases ~~are~~ pending against the applicant should be passed expeditiously. Accordingly we direct the respondents to pass final orders in respect of the four/cases ^{pending} within a period of 6 months from the date of receipt of this order.

The application is disposed of accordingly. There will be no order as to costs.

Bhima
A.M. 14.3.80

S. Narasimha
14/3/80
J.M.