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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, J O D H P U R

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Date of order : 31.07.2000.

O.A.NO.254/98

Laxman Lal Prajapati, aged about 64 years, S/o Shri Bhura Lal By caste Prajapati, R/o Vill. and Post Jetgarh, Tehsil Bheem, District Rajsamand, Ex.Suptd. Post Office, Bhilwara.

.....Applicant.

versus

1. Union of India through the Secretary, Ministry of Communication, Department of Post, Government of India, Dak Bhawan, New Delhi.
2. The Post Master General, Southern Region, Ajmer.
3. The Accounts Officer, Office of Post Master General,, Southern Region, Ajmer.
4. The Accounts Officer (Pension), Office of Post Master General, Southern Region, Ajmer.

.....Respondents.

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CORAM :

HON'BLE MR.A.K.MISRA,JUDICIAL MEMBER

HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

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Mr.M.S.Singhvi, Counsel for the applicant.

Mr.Vineet Mathur, Counsel for the respondents.

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PER MR.A.K.MISRA :

The applicant had filed this application with the prayer that the order dated 8.9.98 (Annex.A/1) passed by respondent No. 4 be declared illegal and be quashed with all consequential benefits and the

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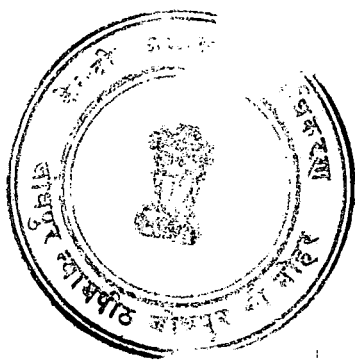
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respondents be directed to release the retirement dues of the applicant in the form of Death-cum-retirement-gratuity, payment towards encashment of leave and commutation of pension with arrears and all consequential benefits. The applicant has further prayed that the respondents be directed to release the aforementioned retirement dues with 18% interest per annum from 30.4.92 till the date of payment.

2. Notice of the O.A. was given to the respondents who had filed their reply to which a rejoinder was filed by the applicant and the respondents filed reply to the rejoinder filed by the applicant.


3. We have heard the learned counsel for the parties and have gone through the case file.

4. In this case the applicant has stated that after serving the respondents for 36 years the applicant retired from service of the Government of India on 30.4.92 from the post of Superintendent, Post Office, Bhilwara. It is alleged by the applicant that the respondents had released only provisional pension to the applicant but had not released other retiral benefits due to an accident which had occurred on 26.8.91 when the applicant was going in the departmental vehicle from Bhilwara to Gangapur. It is alleged by the applicant that a criminal case was instituted against him alleging rash and negligent act of the applicant in driving the departmental vehicle. In that case, the applicant was found guilty <sup>by the trial court but</sup> ~~but in the appeal~~ the appeal of the applicant was accepted and he was acquitted of the charges. It is further alleged by the applicant that simultaneously a Motor Accident Claim was also instituted by the relatives of the deceased and the injured, alleging occurrence of the accident due to the negligence of the applicant who was said to be driving the vehicle. The applicant denied the allegations and asserted that one Shri Sharif Mohd. was driving the vehicle. The claim of the claimants was decreed by the



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Motor Accidents Claims Tribunal, Bhilwara, against which an appeal was filed by the department before the Hon'ble High Court. In that appeal it was stated by the department that the vehicle was being driven by a temporary Driver Shri Sharif Mohd. as the regular Driver of the Jeep was on leave. The applicant in the meantime continued to press his claim for retiral benefits which were denied to him. Consequently, the action of the respondents has been challenged by the applicant on the ground that the retiral dues became due to the applicant on the very day he retired and the respondents had no justification in with-holding the retiral benefits. It is also asserted by the applicant that action of the respondents in with-holding retiral benefits is arbitrary and unjust in view of the finding of the learned Additional Sessions Judge, acquitting the applicant of the criminal charges. The question of financial loss to the ~~department~~ and consequent liability due to accident has not yet been decided and, therefore also, the retiral dues cannot be with-held and hence the O.A.



5. In this connection, the respondents have stated that the judgment of the criminal court is not helpful to the applicant. The matter of compensation and civil liability has become final against the department as well as the applicant and, therefore, the applicant is not entitled to any retiral benefits.

6. Both the learned counsel for the parties advanced their arguments on the lines of their pleadings which we have duly considered. The retiral benefits of the applicant have been with-held solely on the ground that on the date of his retirement a judicial proceeding was pending against him and subsequent thereto the retiral benefits were not released seemingly on the ground that in the claim petition an award was passed by the Motor Accidents Claims Tribunal against the department as well as the applicant. But in our opinion detention of retiral benefits due to the applicant is without any legal basis.

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7. The Leave Encashment benefit of the applicant was detained on account of communication Annex.A/1 but no specific provision has been shown to us that leave encashment due to the applicant could be detained by the department on account of pendency of departmental or judicial proceedings, therefore, the action of the respondents in this regard seems to be quite illegal. The applicant was entitled to encashment of earned leave on the very next day of his retirement which has not been paid to him till now. Thus, the applicant has been deprived of the amount and its benefit which were legally due to him. In our opinion, the applicant is entitled to the amount of encashment of earned leave at the credit of the applicant at the time of superannuation and is also entitled to interest at the simple rate of 12% per annum on that amount till payment.

8. The applicant has claimed that payment of Death-cum-retirement-gratuity (for short "DCRG"), has also not been released to the applicant till today. In this regard, Rule 69 of the Central Civil Services (Pension) Rules, 1972 (for short "the Rules"), can be usefully quoted which is 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 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 preceeding 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.

(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

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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.

(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."

9. From the aforesaid rule, it appears that if either judicial proceedings or departmental proceedings were pending against a Government servant on the date of his superannuation, he shall be entitled to only provisional pension and no gratuity shall be payable to him until the conclusion of the departmental or judicial proceedings. In this case, it appears that when the applicant retired on 30.4.92 on superannuation a criminal case against him was pending which related to the accident which had taken place on 26.8.91 when the applicant was allegedly driving the official vehicle. The Trial Court convicted the applicant. The appeal filed by the applicant (accused) was accepted by the learned Additional Sessions Judge No.2, Bhilwara, vide its judgment dated 1.10.97 and the applicant was acquitted of the criminal charges. Thus, the criminal case came to an end only on 1.10.97 when verdict of acquittal was pronounced in favour of the applicant. As per the quoted rule, the amount of gratuity cannot be said to have become due for payment to the applicant so long the criminal proceedings were pending against the applicant but the amount became due for payment to him on the termination of the criminal proceedings. But, no orders were passed by the department in this regard in spite of the verdict of acquittal. In this respect decisions of Government of India dated 11.7.79 and 10.1.83 respectively printed at Page 146 of Swamy's Pension Compilation, 13th Edition 1993, are very clear which are quoted hereunder :-

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"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.

(G.I., Dept. of Per. & A.R., O.M.No.F.7(1)-P.U./79, dated the 11th July, 1979).

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.

(G.I., Dept. of Per. A.R., O.M.No.1(4)/Pen.Unit/82, dated the 10th January, 1983.)"



10. From the above decisions of Government of India, it is very clear that the amount of D.C.R.G. becomes immediately due to a Government servant when he is acquitted in criminal case or exonerated in departmental proceedings. In order to safe-guard the Government servant of loss of interest, it has also been clearly provided that in case of exoneration the Government servant shall be entitled to interest on the amount of DCRG from the date following the day of retirement on the delayed payment of gratuity. Thus, in the instant case, the applicant on account of acquittal in the criminal case, is entitled to the amount of gratuity along with interest at the simple rate of 12% per annum from the very next day of his retirement till payment.

11. From the facts of the case, it appears that while the criminal case was pending against the applicant, a motor accident claim case was also instituted against the department and the applicant, in which an Award was passed on 28.4.97 against the

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Government of India and the applicant. The appeal filed by the Government of India, was dismissed by the Hon'ble High Court on 23.7.98 and the award was up-held. In this respect, it was argued by the learned counsel for the respondents that due to accident caused by the applicant <sup>and</sup> on account of award passed by the Motor Accidents Claims Tribunal, the department has suffered loss and consequently the retiral benefits of the applicant have not been finalised. But, in our opinion, simply because an award has been passed against the department in an accident claim case, the amount of retiral benefits of the applicant cannot be detained. The Department was expected to take appropriate steps as provided in service and pension rules consequent to such award. But, no such steps were taken by the department against the applicant, therefore, the award passed by the Motor Accidents Claims Tribunal, does not come in the way of the respondents in finalising the retiral benefits of the applicant. It may be noted that in case of award against two persons, if only one person is made to pay the entire amount then invoking the principles of *rateable* contribution the respondents can claim the amount from the applicant by having the re-course of the judicial proceedings as per law for such contribution. In absence of any such step the respondents are not entitled as per law to retain the amount of DCRG of the applicant. The arguments in this regard are, therefore, difficult to accept.

12. The applicant has also claimed for commutation amount of pension. The applicant was drawing provisional pension due to pendency of criminal case. So long a Government servant draws provisional pension, he, as per law, is not entitled to give option for commutation of pension. So long the option of commutation is not exercised, the Government servant continues to get full pension. As per rules, after termination of criminal proceedings on account of acquittal of the applicant the competent authority shall have to take decision in respect of granting final pension to the applicant and



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once the decision in respect of final pension is taken by the concerned authority, the applicant can exercise option relating to commutation of pension. Therefore, it cannot be said that amount of commutation has wrongly been with-held by the respondents.

13. It may be noted that after the award was passed by the Motor Accidents Claims Tribunal, no action as contemplated by Rule 9 of the Pension Rules, was taken by the department against the applicant either for fixing the financial liability or for initiating any departmental action for with-holding part pension or withdrawing the full pension, therefore, the amount of gratuity cannot be allowed to be detained by the respondents on the ground that due to the said award the department has to bear the financial liability.



14. In view of the above discussions, we are of the opinion that the applicant is entitled to the amount of encashment of leave and of death-cum-retirement-gratuity as is legally due to him along with interest at the simple rate of 12% per annum from the date next to the date of superannuation till the amount is paid to the applicant.

15. The O.A., therefore, deserves to be accepted in part.

16. The O.A. is, therefore, partly accepted. The order passed by the respondent No.4 dated 8.9.98 (Annex.A/1), is hereby quashed. The respondents are hereby directed to take a decision in respect of grant of final pension to the applicant and pay to the applicant following retiral benefits with interest within a period of three months from the date of communication of this order :-

(i) Leave Encashment amount with interest at the

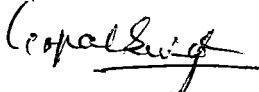


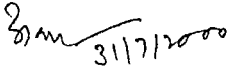
simple rate of 12% per annum from 1.5.92 till the date of payment and

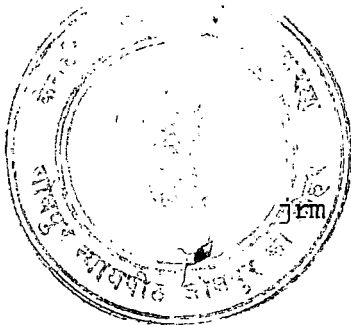
- (ii) The payment of amount of Death-cum-Retirement-Gratuity, as per the entitlement of the applicant with interest at the simple rate of 12% per annum from 1.5.92 i.e. the date next to the date of applicant's superannuation.

17. On sanction of final pension, the applicant shall be permitted to exercise option for and shall be granted commutation of pension by the respondents, as per rules.

18. In the circumstances of the case, parties are left to bear their own costs.

  
(GOPAL SINGH)  
Adm. Member

  
(A.K. MISRA)  
Judl. Member



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