

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 606 of 2009

.....*MONDAY*....., this the 23rd day of November, 2009.

CORAM:

**HON'BLE Dr. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

K.B. Muraleedharan,
S/o. V.K. Bhaskaran Pillai,
(Retd. Superintendent of Central Excise & Customs),
Customs Preventive Commissionerate,
I.S. Press Road, Ernakulam, Cochin : 682 018,
Residing at : Erriyattu House, Neericode Post,
Via. Aluva, Alangad, Ernakulam District : 683 511

... Applicant.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India represented by
The Secretary to the Govt. of India,
Ministry of Finance,
Department of Revenue, New Delhi
2. The Commissioner of Customs (Preventive),
C.R. Building, I.S. Press Road,
Cochin : 682 018
3. The Commissioner of Central Excise,
C.R. Building, I.S. Press Road,
Cochin : 682 018

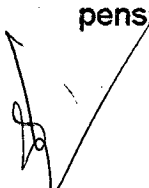
... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

The Original Application having been heard on 16.11.09, this Tribunal on 23.11.09 delivered the following :

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The short question involved in this case is whether on the basis of issue of sanction for prosecution of the applicant in a criminal case prior to his date of superannuation, the respondents could withhold the terminal benefits, and deny the right of commutation of pension of the applicant.



2. Brief facts: The applicant who joined the respondents' organization in 1971, was due for superannuation on 31-05-2007. He was working as Superintendent of Central Excise and Customs in the scale of pay of Rs 7500 – 12000. On his superannuation, the respondents have declined to make available the applicant payment of DCR Gratuity and commuted value of pension and only provisional pension, leave encashment and provident fund accumulations were made available to the applicant. Hence, the applicant filed a representation before the authorities, vide Annexure A-4 dated 18-06-2009. However, the response of the respondents, vide Annexure A-3 is as under:-

" Please refer to your representation dated 18.06.2009 regarding the non-payment of DCRG.

Joint Commissioner (P&V), Central Excise, Cochin-18 under letter C.No. II/39/04/2009 has forwarded a copy of letter C.No. II/39/06/06 Vig. Cx. dated 20.06.2007 of Superintendent (Vigilance) under which it is informed that sanction for prosecution under the Prevention of Corruption Act, 1988, in a Criminal Case No. RC26(A)/2005-KER booked by CBI against Shri K.B. Muraleedharan, Superintendent (now retired) has been accorded by the Commissioner on 31.01.2007.

As per GOI decision 2 below Rule 68 of CCS (Pension) Rules, 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 final orders thereon.

This is for your information please."

3. Earlier the applicant was informed of sanction for provisional pension, vide Annexure A-1 order dated 12-07-2007 followed by sanction order for provisional pension vide Annexure A-2 order dated Nil November, 2008. The applicant has challenged the action on the part of the respondents in withholding his terminal benefits on various grounds and has prayed for the following reliefs:-

(i) Call for the records leading to the issue of A1 and A2 and quash the same to the extent they grant the applicant only the provisional pension as against the regular pension with effect from 01.06.07;

(ii) Call for the records leading to the issue of Annexure A3 and quash the same;



(iii) Direct the respondents to forthwith release the applicant's regular pension with effect from 01.06.07 with a further direction to grant the applicant the commuted value of pension in accordance with law;

(iv) Direct the respondents to forthwith release the applicant's retirement gratuity; and

(v) Direct the respondents to grant the applicant interest @ 12% per annum (compound annually) on the commuted value of pension and retirement gratuity calculated at least with effect from 01.10.2007 till the date of full and settlement of the same.

4. The pivotal ground raised by the applicant in this OA is as given in ground-C which reads as under:-

"C. The applicant begs to submit that it is well settled in law that pension/gratuity are paid as per provisions contained under the statutory rules. If that is so, the pension/gratuity can also be taken away only in accordance with the statutory provisions. As already stated, there is no provision in the CCS (CCA) Rules enabling withholding of pension / gratuity of an employee after his retirement / superannuation except as per provisions contained under Rules 8 and 9. In terms of Rules 8 and 9, in the instant case, admittedly, no departmental proceedings were pending against the applicant as on the date of his superannuation. No judicial proceedings were also pending against the applicant as on the date of his superannuation on 31.05.07. Mere grant of sanction for prosecution by the Commissioner of Central Excise on a date prior to the date of superannuation cannot be said to result in pendency of judicial proceedings as contemplated under CCS (Pension) Rules, 1972. A3, therefore, to the extent it refuses to grant the applicant the benefit of retirement gratuity for the sole reason that permission for prosecution was given on 31.01.07 as per the files sent by the Superintendent (Vigilance) is totally arbitrary, discriminatory, ultra vires the statutory provisions and hence, violative of the constitutional guarantees enshrined in Articles 14, 16 and 21."

5. Respondents have contested the O.A. According to them, in view of the fact that sanction for prosecution of the applicant has already been given, only provisional pension has been paid to the applicant, withholding his DCR Gratuity as well as commutation facility. Provisions of Government of India decision under Rule 68 of the CCS Pension Rules have been invoked by the respondents.



6. Counsel for the applicant submitted that there is no possibility of withholding of terminal benefits save on the ground as provided for in the Pension Rules. The same are as under:-

"9.(4). In the case of a 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)

(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."

7. As the case of the applicant does not fall under the above provisions, on mere issue of sanction for prosecution, no withholding of gratuity or other terminal benefits is legally valid, argued the counsel. Counsel for the applicant also relied upon the following decisions:-

- (a) 1988 (8) ATC – 100 : M.L. Malik vs. Lt. Governor, Delhi & Anr.
- (b) 1995 (30) ATC 330 : Ram Shiromani vs. UOI & Ors.
- (c) SLJ 1997 (2) (CAT) 550 : Debi Prasad Banerjee vs. UOI & Ors.
- (d) 2003 (2) ATJ 647 : G. Kumararaj vs. Union of India
- (e) SLJ 2009 (3)(CAT) 211 : Dr. Anil Mehta vs. Govt. & NCT of Delhi
- (f) 1985 SCC (L&S) 278 : State of Kerala vs. M. Padmanabhan Nair
- (g) Govt. of India decision below Rule 68 of the CCS (Pension) Rules, 1972.

8. The applicant has claimed interest from the date the amount fell due to be paid to him. Counsel for the respondents submitted that sanction for prosecution having been issued, the applicant is not entitled to the terminal benefits at present.



9. Arguments were heard and documents perused. Rule 9(4) read with 9(6) is unambiguous. The stage of initiation of criminal proceedings cannot be said to have reached prior to the stage of the Court taking cognizance of the charge sheet submitted before the Court. In the instant case, that stage was not there at the time of superannuation. The applicant relied upon the decision of the Principal Bench of the Tribunal in the case of **M.L. Malik vs Lt. Governor, Delhi and Another**, (1988) 8 ATC 100, wherein it has been held as under:-

"9. As regards gratuity, it has been provided in Rule 69(1)(c) that no gratuity shall be paid to the Government servant until the conclusion of the department of judicial proceedings and issue of final orders thereon.

10. Sub-rule (6) of Rule 9 provides as to when judicial proceedings shall be deemed to have been instituted. Sub-rule 6(b) reads as follows :

For the purpose of this rule

(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 offices, of which the Magistrate takes cognisance, is made

11. The learned counsel for the applicant contended that criminal proceedings shall be deemed to be instituted only when the charge sheet was filed in the criminal court. The learned counsel for the respondents contended that the date of the First Information Report (FIR), would be the date on which the judicial proceedings shall be deemed to be instituted.

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18. In the case before us, the registration of a criminal case by the CBI under Section 161 of the IPC was on 18.11.1985 which was before the superannuation of the applicant on 30.11.1985. This is only in the nature of a First Information Report. The charge sheet was filed against the applicant in the Court of the Special Judge, Delhi, only on 15.07.1986, i.e., after his superannuation.

19. In view of the above the date of institution of criminal proceedings has to be taken as 15.07.1986 when the charge sheet was filed in the criminal court and not as 18.11.1985 when the FIR was registered by the CBI against the applicant. Therefore, in the instant case, it cannot be said that judicial proceedings had been instituted before the date of retirement of the applicant.

20. It follows from the above discussion that on the date of superannuation of the applicant, no judicial proceedings had been

instituted or were pending, warranting the grant of only provisional pension and the withholding of gratuity under Rule 69 of CCS (Pension) Rules. The applicant would be entitled to receive full pension and gratuity as admissible under the rules. He would also be entitled to commute portion of his pension as admissible under the rules.

21. In the circumstances, we order and direct that the respondents shall sanction and pay to the applicant full pension as admissible under the rules. Such payments will not be provisional in nature. The respondents should also release the gratuity to the applicant in the manner in which it would have been payable on the date of his retirement. The respondents should also sanction and pay the full amount admissible on account of commutation of pension. In addition, the respondents shall pay to the applicant interest at the rate of 10 per cent per annum on the amounts due to him towards pension and gratuity w.e.f the expiry of three months after his retirement. We, however, make it clear that the respondents will be at liberty to initiate action with regard to pension and gratuity as may be allowed by law after the conclusion of the criminal proceedings against the applicant. This order should be complied with within a period of three months from the date of its communication to the parties. There will be no order as to costs."

Thus, where the stage of charge being framed by the Criminal court has not reached, it cannot be said that for the purpose of withholding of terminal benefits, a criminal case is actually pending.

10. Issue of sanction for prosecution and pending of criminal case are two independent issues, and there is a huge gap between the two. May be, for adopting sealed cover procedure for promotion, either of these could be the proper stage, as per OM No. 12th January, 1988, as amended by OM dated 14th September, 1992 which reads as under:-

"Cases of government servants to whom Sealed Cover Procedure will be applicable -

2. At the time of consideration of the cases of government servants for promotion, details of government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:

(i)

(ii)

(iii) Government servants in respect of whom prosecution for a criminal charge is pending or sanction for prosecution has been issued or a decision has been taken to accord sanction for prosecution; (Emphasis supplied)

(iv)"

11. While the above is the stipulation for the purpose of adoption of sealed cover procedure, what has been stipulated for the purpose of withholding of gratuity is is not the sanction for prosecution but actual filing of the charge before the criminal court and the taking of cognizance by the Judge of the same. Till then, the provisions of Rule 9 of the CCS(Pension) Rules cannot apply. In this regard, support could be held from the decision of the Apex Court in the case of *Union of India v. Sangram Keshari Nayak*, (2007) 6 SCC 704, wherein the Apex Court has held as under:-

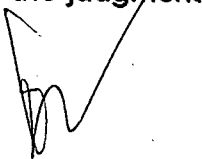
"Indisputably, the DPC recommended the case of the respondent for promotion. On the day on which, it is accepted at the Bar, the DPC held its meeting, no vigilance enquiry was pending. No decision was also taken by the employer that a departmental proceeding should be initiated against him.

12. The terms and conditions of an employee working under the Central Government are governed by the rules framed under the proviso appended to Article 309 of the Constitution of India or under a statute. The right to be promoted to a next higher post can, thus, be curtailed only by reason of valid rules. Such a rule again, however, cannot be construed in a manner so as to curtail the right of promotion more than what was contemplated by law."

12. The above dictum of the Apex Court, though relates to right to be promoted, could well be taken in support of in the instant case, as here the right to receive gratuity is also under the rules framed under the proviso appended to Art. 309 of the Constitution and thus, the rule cannot be construed in a manner so as to curtail the right of drawal of gratuity more than what was contemplated by law.

13. Thus, withholding of gratuity when the situation did not warrant the same as on the date of superannuation is illegal. Respondents are liable to pay forthwith the withheld gratuity.

14. The question that arises now is as to the entitlement for payment of interest. Many of the judgments cited by the applicant's counsel are in respect of entitlement to interest. In so



far as admissibility or otherwise of interest on gratuity withheld, the Apex Court has held in the case of *R. Veerabhadram v. Govt. of A.P.*, (1999) 9 SCC 43, (where the gratuity was withheld under the provisions of the Act, coupled with a direction by the Tribunal to withhold the gratuity till the disciplinary proceedings were finalized,) as under:-

" 7. The payment of gratuity was withheld, in the present case, since the criminal prosecution was pending against the appellant when he retired. Rule 52(1)(c) of the A.P. Revised Pension Rules, 1980 expressly permits the State to withhold gratuity during the pendency of any judicial proceedings against the employee. In the present case, apart from Rule 52(1)(c), there was also an express order of the Tribunal which was binding on the appellant and the respondent under which the Tribunal had directed the death-cum-retirement gratuity was not to be paid to the appellant till the judicial proceedings were concluded and final orders were passed thereon. In view of this order as well as in view of Rule 52(1)(c), it cannot be said that there was any illegal withholding of gratuity by the respondent in the case of the appellant. We, therefore, do not see any reason to order payment of any interest on the amount of gratuity so withheld.

8. Learned counsel for the appellant has placed strong reliance on a decision of this Court in the case of **State of Kerala v. M. Padmanabhan Nair**. In that case, there was a delay in payment of gratuity to the pensioner. ^{53 46} The Court said that since the delay was unexplained and unjustified and the State was guilty of neglect in the discharge of its duties, interest should be granted on delayed payment of gratuity. In the present case, there is no such unjustified delay in payment of gratuity. Gratuity was withheld on legitimate grounds as set out above.

9. The appellant has also relied upon a decision of the Gujarat High Court in the case of **Shah Babulal Balkrishna v. State of Gujarat** where the Court said that withholding the amount of gratuity payable to the petitioner, when two departmental enquiries had concluded in favour of the petitioner, was unreasonable and arbitrary and the petitioner was entitled to gratuity with interest @12%. We do not find in the judgment a reference to any rule which permitted withholding of gratuity. There is also a reference in the judgment to a government resolution which permits award of interest @ 9%. However, the Court granted interest @ 12%. This case cannot, therefore, be relied upon in the present case when there is an express rule which permits the Government to withhold gratuity and when there is also a binding order of the Tribunal which has directed that death-cum-retirement gratuity should not be paid until the judicial proceedings are concluded. In fact, in view of the statutory rules and the order of the Tribunal, it cannot be said that there is any delay in the payment of gratuity. The appellant is, therefore, not entitled to any interest or gratuity."

15. In para 2 of the decision in *State of Kerala v. M. Padmanabhan Nair*, (1985) 1 SCC 429, the Apex Court has held as under:-



"2. Usually the delay occurs by reason of non-production of the L.P.C. (last pay certificate) and the N.L.C. (no liability certificate) from the concerned Departments but both these documents pertain to matters, records whereof would be with the concerned Government Departments. Since the date of retirement of every Government servant is very much known in advance we fail to appreciate why the process of collecting the requisite information and issuance of these two documents should not be completed at least a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following month. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over-emphasised and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement."

16. As held by the Apex Court in the case of *State of W.B. v. Haresh C. Banerjee*, (2006) 7 SCC 651, "*Pension is not a bounty payable on the sweet will and the pleasure of the Government and to receive pension is a valuable right of a government servant is a well-settled legal proposition.*" The term pension axiomatically includes gratuity, as Rule 3 of the CCS (Pension) Rules, 1972 contains the definitions. Clause (o) in sub-rule (1) of Rule 3 is as under :

"Pension' includes gratuity except when the term pension is used in contradistinction to gratuity".

17. From this definition of the word 'pension', it is clear that ordinarily the word 'pension' wherever used in these Rules includes gratuity except when the term 'pension' is used in contradistinction to gratuity. (See *Jarnail Singh v. Secy., Ministry of Home Affairs*, (1993) 1 SCC 47).

18. In another case of *R. Kapur v. Director of Inspection*, (1994) 6 SCC 589, the Apex Court has held as under:-

"10. This Court in *M. Padmanabhan Nair* case has held as under:

"Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any

culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."

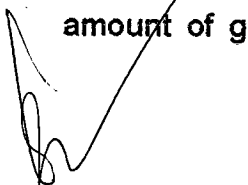
11. *The Tribunal having come to the conclusion that DCRG cannot be withheld merely because the claim for damages for unauthorised occupation is pending, should in our considered opinion, have granted interest at the rate of 18% since right to gratuity is not dependent upon the appellant vacating the official accommodation. Having regard to these circumstances, we feel that it is a fit case in which the award of 18% is warranted and it is so ordered. The DCRG due to the appellant will carry interest at the rate of 18% per annum from 1-6-1986 till the date of payment. Of course this shall be without prejudice to the right of the respondent to recover damages under Fundamental Rule 48-A. Thus, the civil appeal is allowed. However, there shall be no order as to costs."*

19. In *Union of India v. Justice S.S. Sandhawalia*, (1994) 2 SCC 240, the Apex Court has held as under:-

"Once it is established that an amount legally due to a party was not paid to it, the party responsible for withholding the same must pay interest at a rate considered reasonable by the Court. Therefore, we do not see any reason to interfere with the High Court's order directing payment of interest at 12% per annum on the balance of the death-cum-retirement gratuity which was delayed by almost a year. "

20. Thus, not only that the applicant is entitled to receive the withheld DCR Gratuity, but also that he is entitled to interest on the withheld gratuity and commuted value of pension, and as the withholding of interest has been since the date of his retirement, i.e. 31st May, 2007, and as normally accrual of interest commences from the expiry of three months of the date when payment was due, the period of interest shall be w.e.f. 01-09-2007 till the date of payment and the rate of interest would appropriately be the the same rate of interest on term deposit in any nationalised bank, prevalent as of September, 2007 in respect of a senior citizen, which is ascertained as 10%.

21. The O.A. is thus, *allowed* and the respondents are directed to pay the withheld amount of gratuity with simple interest calculated @ 10% per annum for the period from



01-09-2007 till the date of payment (part of the month being omitted). Provisional pension shall be made as regular pension. Commutation of pension would be worked out from 01.06.2007 and from the amount of commuted value, the extent of commuted portion of pension for the period from 01-06-2007 till the date of payment of commuted value would be reduced, as the applicant has been drawing full pension as on date. This amount of commuted value would also qualify for interest @ 10% as for interest on gratuity withheld. This order shall be complied with, within a period of two months from the date of communication of this order.

22. No costs.

(Dated, the 23rd November, 2009)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



Dr. K B S RAJAN
JUDICIAL MEMBER

cvr.