

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 388/2006

This the 8th day of August, 2007

HON'BLE SHRI JUSTICE KHEM KARAN, VICE CHAIRMAN

Hari Kumar Jaitley, aged about 61 years son of Late K.N. Jaitley r/o House No. 3/474, Vivek Khand, Gomti Nagar, Lucknow

...Applicant

By Advocate: Shri A.K. Srivastava

Versus

1. The Union of India, through Secretary, Revenue, Central Secretariat, , North Block, New Delhi.
2. The Principal Chief Controller of Accounts, Central Board of Direct Taxes, 9th Floor , Khan Market, Lok Nayak Bhawan, New Delhi.
3. The Dy. Chief Controller of Accounts, Central Board of Direct Taxes, (income Tax) Kanpur.
4. Zonal Accounts Officer, Central Board of Direct Taxes, 1st Floor, Kunti Bhawan, 18, Madan Mohan Malviya Marg, Lucknow.

...Respondents.

By Advocate: Shri P.K.Srivastava B/h for Sri N.H.Khan

ORDER (ORAL)

BY HON'BLE SHRI JUSTICE KHEM KARAN, V.C.

Applicant Hari Kumar Jaitley, who retired on 31.7.2005 from the service of the respondents, is praying for quashing order dated 10/20.2.2006 (Annexure 7) by which the respondents communicated to him that in view of pending criminal case, his gratuity and commutation of pension had been withheld.

2. There is no dispute on the point that on the date applicant retired on 31.7.2005, a criminal case (Crime No. 95 of 2005) under Section 498 A, 323, 504, 506 of IPC and U/s 3/4 of Dowry Prohibition Act was pending against him in a court at Lucknow. In exercise of their powers, under sub Rule (4) of Rule 9 and under Rule 69 of CCS (Pension), Rules 1972, authorities withheld the payment of gratuity and pension. They , however,



released the provisional pension. Aggrieved of withholding of pension, commuted value of pension and gratuity, applicant filed this O.A. According to him, pension could not have been withheld, on account of pendency of a criminal case.

3. The respondents have filed reply contesting the claim. They say that in view of the provisions contained under Sub Rule (4) of Rule 9 and clause (b) and (c) of Rule 69 of the Rules 1972, the respondents were perfectly justified in withholding payment of gratuity, commuted value of pension and pension.

4. Relying on a Division Bench decision of Hon'ble High Court, Allahabad in ***Dukhan Parsed Singh Vs. Union of India reported in 2006 (4) AWC page 3210***, Sri A.K. Srivastava has argued that withholding of pension, was not permissible under sub rule (4) of Rule 9 and Rule 69 of the Rules of 1972. The learned counsel has referred to para 26, which reads as under:-

"26. Thus, it is well-settled by the Apex Court that the pension is not a bounty. It is a legal entitlement which can only be curtailed by an express provision of law and not otherwise. Non-mention of the word 'continued' in respect of the judicial proceedings in sub rule (4) of Rule 9 of the Pension Rules is significant. As sub rule (4) of Rule 9 of the Pension Rules does not contemplate a situation where judicial proceedings have been instituted prior to the superannuation of the Government servant and are continued after his superannuation, we are of the considered opinion that the order of provisional pension as provide in Rule 69 of the Rules could not have been passed and instead the regular pension ought to have been given. It may be mentioned here that under Rule 8 of the Pension Rules future good conduct is an implied condition of every grant of pension and its continuance and if the pensioner is convicted of a serious crime or is found guilty of grave misconduct, the appointing authority may, by order in

writing withhold or withdraw a pension or a part thereof, whether permanently or for a specified period. Thus, the authorities have been given sufficient powers to withhold or withdraw the pension either in full or in part, permanently or for a specified period in case of conviction of a pensioner in a serious crime or he being found guilty of grave misconduct."

5. Learned counsel for the respondents could not show any contrary view as regards the said interpretations of sub Rule (4) of Rule 9 and Rule 69 of the Rules of 1972. The Tribunal has therefore, to go by what the Hon'ble High Court ~~has~~ said in para - 26 above.

6. But Shri A.K.Srivastava was not able to satisfy me, as to how the said dictum of law would apply to ~~withholding~~ of gratuity.

7. Thus, O.A. is accordingly disposed of and the impugned communication dated 10/20.2.2006, so far as it relates to withholding of regular pension and commuted value of pension, is quashed with a direction to the respondent No. 4 to release the pension and commuted value of pension in accordance with rules within a period of 4 months from the date, a certified copy of this order is received. In case, the same is not released within the said period, the respondent will be liable to pay interest @ 12% per annum from the date of this order.

*..... on
8.8.07*
Vice Chairman

HLS/-