

Central Administrative Tribunal, Lucknow Bench, Lucknow

O.A. No. 346/2007

This the 16 day of December, 2010

Hon'ble Shri Justice Alok Kumar Singh, Member (J)

Kariman Singh aged about 62 years son of late Shri Sudarshan Singh, resident of Village SA-12/92-H-1, Awadhपुरi Colony, Tandia Pahadia, Varanasi (lastly working as Senior Superintendent of Post Offices, Deoria Division, Deoria).

Applicant

By Advocate: Sri R.C. Singh

Versus

1. Union of India through the Secretary, Ministry of Communication, Department of Posts, New Delhi.
2. Chief Post Master General, U.P. Circle, Lucknow.
3. Postmaster General, Gorakhpur Region, Gorakhpur.
4. Director of Postal Accounts, U.P. Circle, Lucknow.

Respondents

By Advocate: Sri Azmal Khan

ORDER

By Hon'ble Sri Justice Alok Kumar Singh, Member (J)

This O.A. has been filed for issuing a direction to the respondents for modifying the impugned order dated 18.8.2006 (Annexure -1) to treat the extension of period of payment of provisional pension under the relevant rules i.e. 64 of the CCS (Pension) Rules, 1972, and sanction the final pension and other retiral benefits along with interest at the current market rate.

2. Briefly stated the case of the applicant is that he superannuated on 31.12.2005. The respondents, instead of sanctioning regular pension and retiral benefits, issued an order for payment of provisional pension under CCS (Pension) Rules, 1972. Even after one year of the retirement of the applicant, neither final pension was sanctioned nor gratuity and commuted value of pension was paid to the applicant despite repeated requests made to the respondents. It is further pleaded that the applicant did not receive any charge sheet till the filing of this O.A. on 20.8.2007. The applicant was told that some departmental proceedings against him are under consideration in the office of respondent No.2 but no authentic information was provided to him. He therefore, moved several applications on 5.3.2007, 27.3.2007 and 21.5.2007 to the relevant authorities. Vide letter dated 7.6.2007, it was intimated by

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respondent No. 3 that as informed by respondent No.2, a disciplinary proceedings is pending against him. Similarly, vide another letter dated 25.6.2007, it was intimated that applicant is a co-accused in a case of misappropriation of funds relating to Telibagh Post Office and draft of charge sheet has been forwarded to the Directorate of Posts. But the applicant had already retired and as the matter pertained to the period more than 4 years prior to his retirement, no departmental proceedings could have been initiated against him in view of the Provisions contained under Rule 9(2)(b)(ii) of CCS (Pension) Rules, 1972. The applicant, therefore submitted an application dated 10/13 July, 2007 to the Secretary, Department of Posts by name (Annexure A-20). But nothing has been done so far.

3. The O.A. has been contested by all the official respondents by filing a counter affidavit, saying that under Rule 69 of CCS (Pension) Rules, 1972, provisional pension may be authorized in respect of Govt. servant against whom disciplinary or judicial proceedings under Rule 9 is pending. It is further said that as per report of the Circle Officer, Lucknow, a criminal case of fraud involving Rs. 8 crores was pending against the applicant, therefore, provisional pension was initially sanctioned by PMG, Gorakhpur vide order dated 12/13.1.2006 for six months from 1.1.2006 to 30.6.2006 which was extended w.e.f. 1.7.2006 till finalization of the case. A departmental proceedings was contemplated against the applicant and a draft charge sheet was also prepared. But the competent authority decided that no disciplinary proceedings can be initiated against the applicant for the alleged lapse committed by him on account of the fact that the said incident took place about more than 4 years back and the applicant has already superannuated on 31.12.2005. Therefore, the draft charge sheet for initiating the disciplinary proceedings which was forwarded to the Postal Directorate, New Delhi for sanction was dropped on 3.10.2007. Finally, all the pensionary benefits were released in favour of the applicant on 27.11.2007 as per instructions of CPMG, U.P. Circle, Lucknow vide letter dated 15.11.2007.

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4. Considered the arguments advanced on behalf of both the sides and perused material on record.

5. The applicant was working as Senior Superintendent of Post Offices, Devaria Division Devaria. He retired from service on attaining the age of superannuation w.e.f. 31.12.2005. Under chapter 8 of the Central Civil Services (Pension) Rules, 1972, the procedure for determination and authorization of amount of pension and gratuity has been laid down. Rule 58 specifically provides that every Head of Office shall undertake the work of preparation of pension papers in Form 7 two years before the date on which a Govt. servant is due to retire. Rule 59 deals with 3 stages for completion of pension papers well in time so that he may get the retiral benefits immediately after retirement. Rule 64 provides for provisional pension to such government servants where in spite of following the procedure laid down in Rule 59, it may not be possible for the Head of Office to forward the pension papers to the Accounts Officer within the period prescribed. Sub Rule 3 and 4 of Rule 64 provide for granting provisional pension as well provisional retirement gratuity.

6. In the case in hand, the respondent No. 3 issued an order on 12/13, January, 2006 for payment of only provisional pension to the applicant under Rule 64 of the aforesaid rules (Annexure A-3) for six months, (1.1.2006 to 30.6.2006) or issue of final PPO from DAO, Lucknow whichever is earlier. Concededly, no provisional retirement gratuity was sanctioned. Then by means of impugned order dated 18.8.2006, the period was extended w.e.f. 1.7.2006 till finalization of the case. But this time the order was issued under Rule 69 of the said rules. It has been opposed by the applicant on the ground that initial provisional pension order was passed under Rule 64. Therefore, this extension should also have been made under the same rule as there was no change of circumstances. It is also contested on the ground that Rule 69 deals with the provisional pension where departmental or judicial proceedings may be pending. But as submitted on behalf of the applicant and rightly so that in the present case, no departmental proceedings were actually pending. According to pleadings of respondents themselves only a draft charge sheet was submitted

to competent authority who rejected it on the ground that no disciplinary proceedings can be initiated for the alleged lapse said to have been committed about more than four years before his retirement. There is a difference between contemplation of an enquiry and pending of an enquiry. No enquiry was actually pending against the applicant on the date of retirement. Therefore, his pension and other papers pertaining to retiral benefits should have been processed from two years before his retirement and retiral benefits ought to have been paid to him immediately after retirement as provided under the CCS (Pension) Rules as discussed hereinbefore. But it was not done. Instead unnecessary correspondence was started and that too appears to have been done at a late stage. The basis of that correspondence appears to be a criminal case which case was probably pending in respect of alleged misappropriation of funds relating to period from 3.6.96 to 7.5.99. The applicant had already retired on 31.12.2005. As the aforesaid period was much beyond the prescribed period of 4 years prior to his retirement and therefore, in view of Rule 9(2)(b)(ii) of CCS (Pension) Rules, 1972, no departmental proceedings could have been initiated against the applicant and therefore the judicial proceeding pertaining to that period was also not relevant. That is why the competent authority dropped the draft charge sheet on 3.10.2007 and thus retiral benefits were released on 27.11.2007. Therefore, aforesaid ~~the~~^{the} extension of payment of provisional pension under Rule 69 also not justified. The applicant has therefore, sought first relief for modifying the aforesaid impugned extension order dated 18.8.2006 and to treat this extension under Rule 64 instead of Rule 69. It may be mentioned that at the time of filing of this O.A. on 20.8.2007, no retiral benefits were paid to the applicant. But now, as comes out from the C.A., the final retiral benefits have been released in favour of the applicant on 27.11.2007 i.e. after about 3 months of filing of this O.A. Therefore, though the modification sought under relief (a) is justified but now it has become irrelevant.

7. The learned counsel for the applicant has fairly conceded that relief (b) for issuing direction to the respondents to sanction final pension, commuted

value of pension and retirement gratuity have also become infructuous. But under this relief clause, interest at the current market rate has also been sought. Learned counsel for applicant submits that since the applicant retired in December, 2005 and the retiral benefits were released with delay of more than one year, i.e. on 27.11.2007, the applicant is entitled to get interest. The learned counsel for the applicant also draws the attention of the Tribunal towards Rule 64 sub Rule 7 which says that if the final amount of pension and gratuity have not been determined by the Head of Office within a period of six months, referred to in clause (a) of sub rule (6), the Accounts Officer shall treat the provisional pension and gratuity as final and issue pension payment order immediately on the expiry of the period of six months. But this was also not done in the case of the applicant. Besides, as said above, no provisional retirement gratuity was paid at all. Similarly, without any sufficient casue, the applicant was also deprived from getting the lump-sum amount of commuted value of pension on time. Both theses i.e. the amount of gratuity and commuted value of pension were paid on 27.11.2007 after a delay of more than one year.

8. From the other side, it was argued that prior to the payment of final pension, the applicant was being paid full provisional pension and therefore, he did not suffer any loss on account of delayed payment of value of commuted pension. But in reply to this, the learned counsel for the applicant submitted and rightly so that only small amount of pension was being paid on monthly basis whereas the applicant was deprived from getting a lump-sum amount of commuted pension on which he could have earned sumptuous amount of interest. As far as delayed payment of gratuity is concerned, there does not appear to be any explanation at all as to why it was not paid along with the provisional pension.

9. Learned counsel for the respondents also submitted that there is no provision in the Rules for payment of interest. But he could not show any negation also in the Rules in respect of payment of interest in the event of delayed payment of retiral benefits. When the Rules are silent on any point

then the rule of natural justice fair play and equity takes care. The learned counsel for respondents also pointed out that the applicant did never raise any question of interest in any of his representations which he had made to the respondents. First of all, these were not statutory representations and therefore, the applicant cannot be estopped from claiming interest on this ground. Otherwise also, till the time of filing of this O.A. final retiral benefits were not released and therefore, the question of claiming of interest did not arise. Thus, the aforesaid points are decided accordingly in favour of the applicant.

10. In view of the above, the O.A. is partly allowed. Respondents are directed to calculate and pay the interest on account of late payment of commuted value of pension and retirement gratuity to the applicant @ 6% per annum at an early date, preferably within a period of 3 months from the date, a certified copy of this order is produced before them. No order as to costs.

Alok Kumar Singh
(Justice Alok Kumar Singh) 16.12.2010
Member (J)

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