

**CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH**

**Original Application No.9/2009  
This the 05<sup>th</sup> day of June 2009**

**HON'BLE MR. M. KANTHAIAH, MEMBER JUDICIAL.**

Mohd Farooq Khan aged about 60 years S/o Late Mohd Hanif Khan R/o H.No.625, Hayat Manzil, Ist Lane, Nishatganj, Lucknow.

...Applicant.

**By Advocate: Shri A. Moin.**

**Versus.**

1. Union of India through Secretary, Ministry of Finance, New Delhi.
2. Chief Commissioner of Income Tax, Ayakar Bhawan, Ashok Marg, Lucknow.
3. Commissioner of Income Tax, Ayakar Bhawan, Ashok Marg, Lucknow.
4. Joint Commissioner of Income Tax, Range VI, P.K. Complex, Madan Mohan Malviya Marg, Lucknow.
5. Deputy Chief Controller of Accounts, Central Board of Direct Taxes (Income Tax), Kanpur.
6. Zonal Accounts Officer, CBDT, 18 Radha Kunti Bhawan, Madan Mohan Malviya Marg, Lucknow.

... Respondents.

**By Advocate: Shri Raj Singh for Smt. Poonam Sinha.**

**ORDER**

**BY MR. M. KANTHAIAH, MEMBER JUDICIAL.**

The applicant has filed O.A. with a prayer to quash the impugned order dt. 3.12.2008 (Ann.A-1) passed by Respondent No.4



and direct the respondents to pay the entire retrial dues i.e. pension, gratuity and leave encashment and commutation of pension to the applicant with interest from the date of his retirement till the date of actual payment on the ground that the impugned order is patently perverse and passed such orders with total non application of mind.

2. The respondents have filed the Counter affidavit, denying the claim of the applicant stating that there are no justified gourds for allowing such claim of the applicant.

3. The applicant has filed Rejoinder Affidavit denying the stand taken by the respondents and also stated that after filing of this OA, the authorities of Respondent No.6 addressed letter to Respondent NO.4, indicated that the provisional pension @ Rs. 7720/- per month has been sanctioned to the applicant (Ann.RA-1).

4. Heard both sides.

5. The point for consideration is whether the applicant is entitled for the relief as prayed for.

6. The brief facts of the case are that the applicant retired on 31.10.2008 on attaining the age of superannuation. Before his retirement a major penalty charge sheet dt. 27/30.10.2008 (An.A-2) under Rule-14 of CCS (CCA) Rules, 1965 has been served upon the applicant for which he submitted his reply dt. 7.12.2008 (Ann.A-3) denying such charges. After the retirement, the applicant was paid only GPF and other retrial benefits i.e. pension, DCRG, leave encashment and commutation of pension are yet to be sanctioned. But, after filing this OA, the authorities have sanctioned the provisional pension at Rs.7720/- per month to the applicant. The applicant made representation for releasing of his retrial benefits.

The respondents have issued the impugned order dt. 3.12.2008 (Ann.A-1) informing that there are two criminal cases are pending against him and after disposal of such cases, a departmental proceeding is to be initiated an in such circumstances vigilance clearance could not be granted to the applicant.

7. It is also not in dispute that two criminal cases have been filed against the applicant by the CBI relating to the Crime of the year 2000 leveling grave charges against the applicant. In respect of Crime NO. RC-12 (a) of 2000-LKO which was registered as Criminal Case No.14 of 2003. The applicant filed Criminal Misc. Case NO.880/2005 on the file of Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow and obtained stay order on 21.5.2005 (Ann.A-4) and the same has been continuing. In respect of an other Criminal Case No. 185.1999 also the applicant filed Criminal Misc. Case No. 1138/2000 on the file of Hon'ble High Court and the same was also stayed on 13.10.2000 (Ann.A-5). It is the case of the applicant that the said stay orders have been continuing till today.

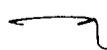
8. Coming to the departmental enquiry, the respondent authorities have issued charge sheet dt. 27/30.10.2008 under Rule-14 of CCS(CCA) Rule, 1965 (Ann.A-12) to the applicant in which, he submitted his reply dt. 7.11.2008 (Ann.A-3) and thereafter, no proceedings have been initiated. But in the impugned order dt. 3.12.2008 (Ann.A-1) the authorities have informed the applicant that departmental proceedings is to be initiated against the applicant only after the criminal proceedings are over and basing on such recital, the applicant contended that as on today no departmental

proceedings have been initiated against him or even the earlier charge sheet issued has been dropped.

9. In respect of the criminal cases filed by the CBI those cases have been stayed by the Hon'ble High Court and mere stay of such criminal cases does not mean that they have been quashed or dropped and the same will be treated as pending only and further order of stay is only an interim relief. Thus, the arguments of the applicant that there are no criminal cases pending against the applicant because of such stay is not at all maintainable.

10. Coming to the departmental proceedings, no doubt the wordings used in the impugned order that departmental proceedings is to be initiated only after criminal proceedings are over shows that they have not initiated such departmental proceedings as on today. Admittedly, the charge sheet has been issued to the applicant under Rule 14 of CCS (CCA) Rules, 1965 while he was in service for which, he also submitted his reply and when such charge sheet has been issued, it is nothing but amounts to initiation of departmental proceedings and it is not the case of either parties that the charge sheet (Ann.A-2) has been dropped by the respondent authorities at any time. Thus, the contention of the applicant that no departmental proceeding is pending against him is not at all correct. In view of the above circumstances, it is clear the two criminal cases and one departmental proceeding are pending against the applicant as on today.

11. Rule-69 of CCS (Pension) Rule, it is clear the employee entitle only for provisional pension when departmental or judicial proceedings are pending and as per Rule 69 © of CCS (Pension)



Rules, no gratuity shall be paid to the Govt. employee until finalization of judicial proceedings and issuing of final order thereof.

12. In the instant case when there are judicial and departmental proceedings are pending against the applicant, the applicant is not entitled for release of pension and gratuity as claimed by him

13. The respondents have not satisfied in respect of withholding of leave encashment and as such, the applicant is entitled for the same. In respect of commutation of pension, admittedly the pension of the applicant has not been finalized and only provisional pension has been sanctioned under Rule 69 of CCS (Pension) Rules, the authorities are directed to consider for sanction of the same as per rules and pass reasoned order.

14. Though, the applicant relied on the decision of this Tribunal in O.A. NO.388/2006 dt.8.8.2007 there is no finding in respect of release of gratuity of the employee because of pendency of criminal case.

15. In view of the above circumstances, the claim of the applicant is partly allowed for release of leave encashment with interest admissible from the date of retirement till the date of actual payment and consider the claim for commutation of pension as per rules and pass reasoned order. No costs.

  
**(M. KANTHAIAH)**  
**MEMBER (J)**

05-06-2009

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