

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

Original Application No. 380/2011

This, the 9th day of October, 2013

Hon'ble Sri Navneet Kumar, Member (J)

V.K. Bajpai aged about 66 years son of late Sri Ambika Prasad Bajpai resident of House No. 529 Ka/147, Shyam Nagar, Picnic Spot Road, Khurram Nagar, Lucknow (lastly worked as Income Tax Inspector, Office of the Income Tax Officer, Unnao)

Applicant.

By Advocate: Sri Prashant Kumar Singh

Versus

1. Union of India through the Secretary, Ministry of Finance, Department of Revenue, New Delhi.
2. Chairman, Central Board of Direct Taxes, New Delhi.
3. Chief Commissioner of Income Tax, Lucknow
4. Deputy Commissioner of Income Tax, Range II, Lucknow.
5. Income Tax Officer, Range 2(i), Lucknow.

Respondents.

By Advocate: Sri Rajendra Singh for Sri R. Mishra

(Reserved on 30.9.2013)

ORDER

By Hon'ble Sri Navneet Kumar, Member (J)


The present Original Application has been preferred by the applicant u/s 19 of the AT Act with the following reliefs:-

- i) Issuing /passing of an order or direction to respondents to pay the gratuity and final pension together with arrears of difference of pension with interest at the current market rate of 12% per annum and commuted value of pension to the applicant as has been done in the case of Sri V. K. Rastogi, within a period of two months.
 - ii) Issuing /passing of any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.
 - iii) Allowing this Original Application with cost.
2. The brief facts of the case are that the applicant who was initially appointed as Lower Division Clerk in the Income Tax Department w.e.f. 24.10.1966 and thereafter he was promoted as Upper Division Clerk in the year 1974 and he was further promoted to the post of Assistant in the year 1988 and in the year 1992, a charge sheet of major penalty was issued to the

applicant vide letter dated 2.12.1992, in which charges were made relating to the submission of a photo copy / certified copy of the order dated 25.06.1992 passed by the Hon'ble High Court in writ petition No. 2395 (M/B) of 1992 allegedly knowing fully well that the order was forged. The applicant submitted reply to the charge sheet and after conclusion of disciplinary proceedings, the applicant was promoted to Head Clerk on the probation for the period of two years vide order dated 29.4.1997. In response to the complaint, a case was registered u/s 120-B, 420, 466, 268 and 471 of IPC with the Special Judicial Magistrate, CBI. It is also pointed out by the learned counsel for the applicant that one Sri V.K.Rastogi, who was also in the said crime has filed a petition u/s 482 Cr.PC before the Hon'ble High Court wherein the Hon'ble High Court passed an interim order staying the prosecution of Sri Rastogi and subsequently, the applicant has also filed petition before the Hon'ble High Court u/s 482 Cr.PC and vide order dated 21.12.2000, the prosecution of the applicant in Criminal Misc. Case No. 185 of 1989 was stayed. Thereafter, the applicant superannuated on 30th June, 2005 as Income Tax Inspector on attaining the age of superannuation while serving at Unnao.

3. The learned counsel for applicant has preferred the present O.A. for non-payment of gratuity and other retiral dues.

4. The learned counsel for respondents has filed reply and through reply, it was pointed out by the respondents that as per Central Board of Direct Taxes instruction, the gratuity and commuted value of pension can be paid to the applicant only after finalization of departmental/ judicial proceedings. It is also pointed out by the learned counsel for the applicant that since a criminal case was filed by the CBI against the applicant leading to the initiation of Departmental proceedings against him, as such, the retiral dues were not paid. Not only this, the respondents have also submitted in their reply that the Hon'ble High Court has only granted the interim stay and the criminal case is still pending and until and unless vigilance clearance is made, which is a pre-requisite for release of gratuity, final pension and commuted value of pension. The same can be paid only after the finalization of the departmental/judicial proceedings. Learned counsel for the respondents have also taken ground of Rule 9(4) read with Rule 69 of CCS (Pension) Rules,



1972 and pointed out that the applicant is not entitled for any withheld retiral dues in terms of these provisions.

5. Learned counsel for applicant has filed Rejoinder Reply and through Rejoinder reply, it is pointed out by the learned counsel for the applicant that although the applicant was paid Provident Fund, leave encashment and Group Insurance but the commuted value of pension were not paid and the vigilance clearance has been withheld only on the ground of judicial proceedings. Apart from this, another co-accused in the departmental proceedings Sri V.K.Rastogi was also not given the Vigilance clearance but he has been paid pension, gratuity and commuted value of pension as such, the applicant submits that he has been discriminated. Apart from this, the learned counsel for the applicant has relied upon two decisions of Principal Bench passed in O.A. No. 264/2009 as well as in O.A. No. 2517/2010 in which the provision of Rule 9(4) read with Rule 69 of CCS (Pension) Rules, 1972 has been dealt with and the applicants of those OAs were paid the retiral dues.

6. Heard the learned counsel for the parties and perused the record.

7. Admittedly, the applicant who was serving with the respondents superannuated on 30th June 2005 and prior to that date, criminal case was filed against the applicant u/s 120-B, 420, 466, 268 and 471 of IPC before the Special Judicial Magistrate, CBI. The applicant has also preferred petition before the Hon'ble High Court u/s 482 Cr.PC wherein the Hon'ble High Court has stayed the prosecution. After the stay of the said prosecution, the applicant superannuated as Income Tax Inspector, Unnao. Now, the only question which is required to be determine is whether during the pendency of criminal case, the gratuity, final pension and commuted value of pension can be withheld or not. The learned counsel for respondents has relied upon Rule 9(4) read with Rule 69 of CCS(Pension) Rules, 1972. Keeping in view the provisions of Rule 69 of CCS (Pension) Rules, 1972, the retiral benefits such as gratuity, commuted value of pension and regular pension shall be released on conclusion of disciplinary proceedings pending before the competent court and also after receipt of vigilance clearance from the competent authority. The learned counsel for the applicant has raised the contention that under Rule 69 of the CCS (Pension) Rules, 1972 read with



Rule 9, the pension related dues of the applicant could be withheld only if the judicial proceedings related to matters in the discharge of his official duties. Since in the instant case, the FIR was lodged u/s 120-B, 420, 466, 268 and 471 of IPC, as such the retiral dues cannot be withheld. Apart from this, it is also pointed out by the learned counsel for applicant that the payment of gratuity is governed by the Payment of Gratuity Act, 1972 and gratuity can only be withheld under sub section (6) of the Section 4 of the aforesaid Act. For ready reference, **Rule 9(4) of CCS (Pension) Rules reads as under:-**

- "9. Right of President to withhold or withdraw pension-
- (1)
- (2)
- (3)
- (4) **When full fledged enquiry is held, no further opportunity to show cause necessary before imposing cut in pension-**

The question whether a second show cause notice is necessary before taking action under Rule 9 of the CCS (Pension) Rules, 1972, when a full fledged enquiry under the CCS (CCA) Rules, was conducted and the person concerned was given an opportunity to show cause in the proceedings, was examined in consultation with the Department of Legal Affairs and it has been decided that if a full fledged enquiry in accordance with the CCS (CCA) Rules, has been conducted and the person concerned has been given an opportunity to show cause in the proceedings, it is not necessary to give the pensioner concerned any further opportunity to show cause before imposing the cut in pension.

Rule 69 of CCS (Pension) Rules reads as under:-

"69. Provisional pension where departmental or judicial proceedings may be pending-

- (1) (a) In respect of a Government Servant referred to in sub-rule (4) of Rule 9, the Accounts officer shall authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service upto the date of retirement of the govt. servant, or if he was**

under suspension on the date of retirement upto the date immediately preceding the date on which he was placed under suspension.

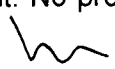
(b) The provisional pension shall be authorize by the Accounts Officer during the period commencing from the date of retirement up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

(c) No gratuity shall be paid to the Govt. servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon;

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 authorized to be paid to the govt. 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."

8. Rule 9 of the rules empowers the President only to withhold or withdraw pension permanently or for a specified period in whole or in part or to order recovery of pecuniary loss caused to the State in whole or in part subject to minimum. The employee's right to pension is a statutory right. The measure of deprivation therefore, must be correlative to or commensurate with the gravity of the grave misconduct or irregularity as it offends the right to assistance at the evening of his life as assured under Art. 41 of the Constitution. The right to gratuity is also a statutory right. The appellant was not charged with nor was given an opportunity that his gratuity would be withheld as a measure of punishment. No provision of law has been brought



to our notice under which, the President is empowered to withhold gratuity as well, after his retirement as a measure of punishment. Therefore, the order to withhold the gratuity as a measure of penalty is obviously illegal and is devoid of jurisdiction.

9. Relevant portion of Sub-section 1 of Section 4 of the Payment of Gratuity Act, 1972 (hereafter the Act) reads thus:

Payment of gratuity (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years
on his superannuation, or
on his retirement or resignation, or
on his death or disablement due to accident or disease.

The Sub-Section 6 is the non obstante section:

(6) Notwithstanding anything contained in sub-section (1), -


the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

the gratuity payable to an employee [may be wholly or partially forfeited]-

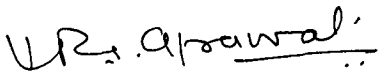
if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

10. In the case of the Applicant, there is a criminal case pending against him in the Court of Law. However, so far there has been no decision in the case pending against the Applicant. In the light of the above, it would be amply clear that only on the basis of the case pending against the Applicant, pension cannot be withheld under Rule 8 of CCS (Pension) Rules, 1972. It has to abide by the final decision in the criminal case against the Applicant. Gratuity cannot, in any case, be withheld or withdrawn under the provisions of Rule 8 *ibid*.



11. In the light of the analysis as above, the OA is allowed. The Respondents are directed to release the regular pension, commuted amount of pension and gratuity to the Applicant without interest within two months from the receipt of a copy of this order. The Respondents, however, would be free to take action against the Applicant subject to the provisions of Rule 8 of CCS (Pension) Rules, 1972, as discussed above. No costs.


(NAVNEET KUMAR)
MEMBER (J)

HLS/-