

## CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCHO.A.NO.: 789 OF 2005[Patna, this Tuesday, the 14<sup>th</sup> Day of November, 2006]C O R A M

HON'BLE SHRI JUSTICE P.K.SINHA, VICE-CHAIRMAN.

Alakh Deo Prasad Singh, son of Late Sabit Singh, resident of village – Pirauta, P.O.- Kosumhar, Via.- Akbarpur, Distt.- Nawadah, Ex-Assistant Postmaster, Khagau, P.O.- District – Patna. ....APPLICANT.

By Advocate :- Shri M.P.Dixit.  
Shri S.K.Dixit.

Vs.

1. The Union of India through the Chief Postmaster General, Bihar Circle, Meghdoot Building, Patna-1.
2. The Director Postal Services [H.Q.], Office of Chief Postmaster General, Bihar Circle, Patna-4.
3. The Sr. Superintendent of Post Offices, Patna Postal Division, Patna-4.
4. The Director of Accounts Postal, Exhibition Road, Patna. ....RESPONDENTS.

By Advocate :- Shri M.D.Dwivedi, ASC.

O R D E R [ORAL]

Justice P. K. Sinha, V.C.:- This is an application for grant of retiral benefits.

2. Following points are not in dispute :-
  - [i] The applicant retired from service w.e.f. 30.04.2005.
  - [ii] Prior to his retirement a departmental proceeding, as well a <sup>were</sup> criminal case, ~~was~~ pending against him.
  - [iii] It is admitted that provisional pension has been granted to the applicant and sometimes back, as admitted by the learned counsel for the applicant also, the amount in the GPF was also paid to him.



3. However, it has been claimed that the gratuity, amount of leave encashment and GIS amount have not been paid to the applicant till now and the learned counsel submits that these should be paid to him with interest for delayed payment.

4. Learned counsel for the applicant has relied upon a decision of the High Court of Judicature at Patna in the case of **Samsher Bahadur Sinha Vs. State of Bihar & Anr.; 2002 [3] BLJ 389** in which it was held, based on a decision of the Division Bench of the same court in the case of **Bajrang Narayan Singh Vs. State of Bihar; 1999 [3] PLJR 949**, that it was not competent for the State Government, within the meaning of Rule 43[b] of the Bihar Pension Rules to withhold gratuity in case a departmental proceeding or a criminal proceeding was pending.

5. However, in this regard the learned counsel for the respondents has submitted that while the respondents have no objection to the payment of amount of leave encashment and of GIS for which action is being taken, the amount of gratuity cannot be paid in view of Rule 69 of Central Civil Services [Pension] Rules, 1972 [hereinafter referred to as the '1972 Rules'].

6. For better appreciation of the arguments, the provisions under Rule 43 [a] & [b] of the Bihar Pension Rules as well <sup>under</sup> <sub>under</sub> Rule 69 of the 1972 Rules, need be reproduced :-

“43[a] Future good conduct is an implied condition of every grant of pension. The Provincial Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner is convicted of serious crime or be guilty of grave misconduct. The decision of the Provincial Government on any question of withholding or withdrawing the



whole or any part of a pension under this rule, shall be final and conclusive.

[b] The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement."

Now, relevant portions of the Rule 69 of the 1972 Rules :-

**"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 up to the date of retirement of the Government servant, or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension.

[b] The provisional pension shall be authorized 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 Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon:"



The provision under Clause [c] of sub-rule [1] of Rule 69 expressly prohibits payment of gratuity until the conclusion of the departmental or the judicial proceeding and issue of final orders thereon. However, there is no similar provision under Rule 43 of the Bihar Pension Rules. Therefore, the decision relied upon on behalf of the applicant, in my opinion, will not serve the purpose of the applicant.

For such delayed payment, it may however be also pointed out that if the applicant is cleared in the departmental proceeding and in the criminal case, there is provision of payment of interest also under Rule 68 of the 1972 Rules, but at this stage, since it has been submitted and admitted that the departmental proceeding and the criminal case are pending, this Tribunal in view of Rule 69 [1][c] cannot direct the respondents to pay the amount of gratuity. However, the amount of leave encashment and of GIS have to be paid to the applicant. Nothing has been produced before me on behalf of the respondents to show that these payments could be withheld, rather it was submitted that the payments are in process.

7. In that view of the matter, the respondents are directed to calculate and make payment of amounts on account of leave encashment and GIS within two months of receipt of a copy of the order, with interest as per rules or prevailing circular, for the delayed payment. A decision about payment of gratuity and the full pension will be taken within three months of the conclusion of the departmental proceeding and the criminal case, when the result, particularly of the criminal case is brought to the notice of the respondents.



5.

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8. With the aforesaid directions, this Application is disposed of.

No costs.



[P.K.Sinha]/VC

skj.