

24/

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No. : 858/96.

XXXXXXXXXXXXXXXXXXXX

Date of Decision

28-08-97

Bhagwati Charan Verma,

Petitioner/s

Shri M. S. Ramamurthy,

Advocate for
the Petitioner

Versus

Union Of India & Another,

Respondent/s

Shri B. Ranganathan for
Shri J. P. Deodhar,

Advocate for
the Respondent

Coram :

HON'BLE SHRI. M. R. KOLHATKAR, MEMBER (A).

XXXXXXXXXXXX

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to other X
Benches of the Tribunal ?

M.R.Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A).

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 858/96.

Dated this Proforma, the 28th day of August, 1997.

CORAM : HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

Bhagwati Charan Verma,
S.O(Engg) (SD) (Retd.)
Environment,
Assessment Division
Modular Laboratory,
Bhabha Atomic Research Centre.
Residing at :
C-19, Manasarovar,
Anushakti Nagar,
MUMBAI - 400 094.

... Applicant

(By Advocate Shri M.S. Ramamurthy)

VERSUS

1. Union Of India through
The Secretary,
Department of Atomic Energy,
Anushakti Bhavan,
Chatrapati Shivaji Marg,
Mumbai - 400 001.
2. Assistant Establishment
Officer (Pension),
Central Complex,
Bhabha Atomic Research Centre,
Trombay,
MUMBAI - 400 085.

... Respondents.

(By Advocate Shri B. Ranganathan
for Shri J. B. Deodhar).

: ORDER :

¶ PER.: SHRI M. R. KOLHATKAR, MEMBER (A) ¶

The applicant retired from Bhabha Atomic Research Centre as S.O/Engineer (SD) on superannuation with effect from 30.11.1995. His grievance is that his retirement dues comprising of gratuity, provident fund, leave encashment and commutation value of pension have not been paid to him. The respondents have pointed out in their written statement and it is not disputed by the applicant that since then, the provident fund amounting to Rs. 3,68,079/- has been paid to the applicant on 08.12.1995. The Leave encashment of Rs. 77,122/- has been paid after adjusting Rs. 18,000/- on

account of rent for occupation of Government quarter, on 19.11.1996 and the only amounts which have not been paid, are the gratuity amounting to Rs. 35,589/- (and not Rs. 1,00,000/- as alleged by the applicant) and the commutation value of pension.

2. The respondents contend that these amounts were withheld by them in terms of applicable rules, namely, Rule 9 of the C.C.S. Pension Rules, which deals with the 'Right of President to withhold or withdraw pension' read with Rule 69, which deals with payment of 'Provisional pension where departmental or judicial proceedings may be pending' and also Rule 4 of the Central Civil Service (Commutation of Pension) Rules, 1981, which deals with restriction of commutation of pension.

3. According to Rule 9 (4) - "In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 69 shall be sanctioned." Thus, the Government servant is entitled to payment only of provisional pension and it is again not disputed that the applicant has in fact, been sanctioned the provisional pension of Rs. 2,375/- per month from the date of retirement. The Rule 69 (c) stated that "no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon." It is in terms of this rule, that the gratuity has been withheld. Rule 4 of the Central Civil Service (Commutation of Pension) Rules, 1981 (Restriction of Commutation of Pension), states that the Government servant against whom departmental or judicial proceedings have been instituted before the date of his retirement or the pensioner against whom such

proceedings are instituted after the date of retirement,
not
shall be eligible to commute a fraction of his
provisional pension authorised under Rule 69 of the
CCS (Pension) Rules or the Pension, as the case may be,
during the pendency of such proceedings.

4. It is again not disputed that there are no
departmental proceedings against the applicant but there
said to be
are pending "judicial" proceedings. The contention of the
applicant is that, these proceedings are stale proceedings
initiated in the year 1983 on a private complaint by one
Shri Gurnani against the applicant and some other persons.
The applicant contends that the complainant is adopting
dilatory tactics and even now, the charges have not been
framed and in this connection, he referred to the order
passed by the Metropolitan Magistrate's Court at Kurla
on 09.01.1991, directing that copies of the prosecution
(Applicant)
documents be handed over to the accused so that they can
properly defend themselves, which order was affirmed by
the Sessions Court at Bombay on 29.09.1992, placed at
page 33. It is seen from the order that the case against
the accused was for cheating, Criminal Breach of trust
and forgery in the matter of Co-operative Housing Society.
The Learned Judge also observed that the parties are
prolonging the matter by challenging one or the other
order of the Magistrate. The contention of the applicant is
that the judicial proceedings, because of the pendency
of which, gratuity and commutation have not been released,
proceedings initiated on a
are the same private complainant, which is not disputed
by the respondents. The respondents' case appears to be that,
the rules being what they are, till the applicant obtains
the final judgement in the judicial proceedings, these
pensionary benefits cannot be released to him. The Counsel

for the applicant has contended that the term 'Judicial Proceedings' is required to be interpreted in this connection. According to him, such judicial proceedings should relate to allegations of pecuniary loss to the Government and they should have something to do with the discharge of the duties of the applicant and the judicial proceedings started on a private complaint cannot be stated to be such judicial proceedings as are referred to in the Pension Rules 9(3) and 69 and relevant rules relating to commutation of pension.

4. The Counsel for the applicant, in this connection, has relied on the decision of the Tribunal in O.A. NO.: 754/96 .. K.K. Rajan V/s. Department of Atomic Energy, decided on 14.02.1997. That was a case in which Shri K. K. Rajan, who appears to be a co-accused with the applicant in the case No. 85/W/1983, on the File of the Metropolitan Magistrate, 30th Court, Kurla, Mumbai, was not given 'No Objection Certificate' in connection with the issue of passport. The Tribunal considered the terms and conditions relating to issue of 'No Objection Certificate' and observed that the guidelines do not refer to the pendency of criminal case as a ground for refusal for issue of 'No Objection Certificate'. Therefore, the Tribunal granted the relief of issue of 'No Objection Certificate' to the applicant but however, directed the respondents that while issuing the 'No Objection Certificate', they may mention that a criminal case is pending, which has not been disposed of.

5. This case would not directly help the applicant because the guidelines do not refer to the judicial proceedings, whereas, I am required to interpret the meaning of the term 'Judicial Proceedings' in the context of Rule 9 and 69 of the Central Civil Services (Pension Rules). It may be noted in this connection, that the terms 'departmental' or 'judicial' proceedings are used both in Rules 9 and 69 conjunctively. When the words are used conjunctively, they are required to be interpreted on the basis of the rule of ~~Constitution~~ ^{YUC} "Noscitur A Sociis" which as explained ⁱⁿ _{by} G.P. Singh's Principles of Statutory Interpretation on page 298 is that the meaning of the words / to be judged by the company it keeps. As stated by the Privy Council : "it is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them." It is a rule wider than the rule of ejusdem generis; rather the latter rule is only an application of the former. The rule has been lucidly explained by GAJENDRAGADKAR, J. in the following words : "This rule, according to MAXWELL, means that when two or more words which are susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general." Some examples where ^{the} ₂ doctrine has been applied may now be mentioned :-

- 1) Rule 31 of the Rajasthan Rules of Business, which required that 'Proposals for dismissing, removing or compulsory retiring of an Officer', should be referred to the Governor, was construed, as not necessitating any such reference in case of compulsory retirement not amounting to punishment. It was held that the phrase 'compulsory retirement' as it occurs in the rule in association with 'dismissal' and 'removal' must be taken to cover

only cases of punishment and not normal cases of compulsory retirement such as those which result on attaining superannuation age or those which fall under Rule 244 of the Civil Service Rules.

2) Similarly, in construing the word 'posting' as it occurs in Article 233 (1) of the Constitution in association with words 'appointment' and 'promotion', the Supreme Court held that the word 'posting' took its colour from the associated words and meant "the assignment of an appointee or promotee to a position in the cadre" and not his transfer from one station to another.

3) Again, in construing Article 194 (3) of the Constitution which refers to Powers, Privileges and Immunities of a House of the Legislature of a State, the Supreme Court said that the word 'Powers' must take its colour from words in immediate connection with it and it should be construed to refer not to legislative powers but to powers of a House which are necessary for the conduct of its business.

Therefore, the 'Judicial' proceedings are required to be read in light of the above maxim and judicial proceedings are required to be construed as those transactions, in relation to which the departmental proceedings could be taken. The judicial proceedings also should be such in which a misconduct is alleged. Certainly, a Government employee can be said to be guilty of ~~immoral~~ ~~at~~ turpitude in case the charge of criminal breach of trust is proved against him. However, in such a situation the complaint would have been filed by an investigating agency like Central Bureau Of Investigation/Anti-Corruption Bureau, etc. Therefore, judicial proceedings would not include proceedings initiated on the basis of private complaint. If such a meaning is not put on the term 'judicial proceedings', it would amount to giving a licence to any private person, including even a colleague of the

Government employee, by filing a complaint against him and thus, depriving him of pensionary benefits. Such an improbable construction is required to be avoided. I am, therefore, of the view that the judicial proceedings which are pending against the applicant, are not judicial proceedings within the meaning of Rules 9 and 69 of the C.C.S. Pension Rules and therefore, the respondents were wrong to have withheld the gratuity and commutation of pension to the applicant. The applicant is, therefore, entitled to the relief claimed by him, namely; that the basis for non-payment of gratuity, ^m commutation value, etc. as communicated ~~undef~~ letter dated 06.09.1995, is illegal and the letter dated 06.09.1995 is hereby quashed and set aside. The respondents are also directed to pay to the applicant the gratuity amount alongwith interest as per rules and also arrange to pay the commutation value of pension. Since the applicant has enjoyed the benefit of non commutation value of pension, though in the form of provisional pension, which the applicant is required to refund, In the circumstances, I am not inclined to allow interest on the commutation value of pension. Action to comply with the above directions should be completed within three months from the date of communication of the order.

6. The O.A. is disposed of with the above directions. There would be no order as to costs.

M.R. Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A).