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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. 1585/94.

Dt.of Decision : 30.12.94.

T. Jeevarathnam

.. Applicant.

Vs

1. Secretary, Dept. of Posts, .
Ministry of Communications,
Sansad Marg, New Delhi.
2. Director (Vigilance),
Dept. of Posts, Min. of Comm-
unications, New Delhi.
3. Postmaster General,
Vijayawada Region,
Vijayawada.

.. Respondents.

Counsel for the Applicant : Mr. S.Ramakrishna Rao

Counsel for the Respondents : Mr. N.R.Devaraj, Sr.CGSC.

CORAM:

THE HON'BLE SHRI JUSTICE V.NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

OA 1585/94

JUDGMENT

Dt:30.12.954

(AS PER HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE-CHAIRMAN)

Heard Shri S.Ramkrishna Rao, learned counsel for the applicant and Shri N.R.Devaraj, learned standing counsel for the respondents.

2. The applicant retired from service on 30.6.1994 as Senior Superintendent of Post Offices while working at Vijayawada. He settled at Tirupathi. Charge memo dated 30.6.1994 was served upon the applicant^{and} in view of same the regular pension was not paid to the applicant. But as per the order dated 1.7.1994, the provisional pension of the applicant was fixed at Rs.1813/- and it was directed to be paid for six months. The applicant was not paid DCRG^{the} amount towards encashment of leave salary, computation of pension and CGEIS.
3. The applicant filed OA 867/94 challenging the charge memo dated 30.6.1994 and it is pending.
4. The applicant was informed by the letter dated 3.9.1994 (Annexure-V) that he has to receive the

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provisional pension at Vijayawada as per the instructions of the Director of Postal Accounts, Hyderabad even though in the letter dated 1.7.94 the Post Master, Tirupathy was directed to disburse the provisional pension to the applicant on the identification.

5. This OA was filed on 29.12.1994 praying for direction to R-3 to release the provisional pension of the applicant at Tirupathy instead of at Vijayawada, and leave salary encashment for 92 days as certified by the Director of Accounts (Postal), Hyderabad, DCRG as per ~~the~~ eligibility, CGEIS contributions made by the applicant and the computation of pension as per eligibility.

6. Rule 69-c of CCS (Pension) Rules, 1972 lays an embargo with regard to the payment of gratuity to the Government servant until completion of departmental or judicial proceedings and issue of final orders thereon subject to the provision that if the departmental proceedings have been instituted under Rule 16 of CCS (CCA) Rules for imposing any of the penalties prescribed in clauses (i), (ii) and (iv) of Rule 11 of the said rules, the payment of gratuity shall be authorised to ~~the Government~~ be paid to the Government servant. As the charge

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memo was issued to the applicant under Rule 14 of CCS (CCA) Rules, no direction can be given for payment of gratuity ~~xxxxx~~ during the pendency of the departmental proceeding against the applicant. The question as to whether any interim ~~xxx~~ direction can be given for payment of the same ~~xxxxx~~ subject to ~~xxx~~ security in case of inordinate delay in disposal of the inquiry need not be considered for disposal of this OA and it is left open for consideration as and when it arises. A perusal of the charge memo dated 30.6.1994 shows that at best the amount for which recovery can be ordered, if it has to be ordered, is only for about ~~xxxxx~~ Rs.25,000/- to Rs.30,000/-. As the DCRG amount is said to be Rs.71,000/- and thus more than the maximum that can be recovered, it is just and proper to direct the respondents to release the amount due towards encashment of leave, even though Rule 39(3) of CCS (Leave) Rules contemplates withholding amounts towards encashment of leave, if recovery is contemplated.

7. No provision is shown to the effect that contributions of the employee to the CGEIS can be withheld in view of the disciplinary proceedings. Hence, ~~xx~~ a direction can be issued for release of the same also.

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8. Rule 69 of CCS (Pension) Rules makes it clear that only provisional pension but not regular pension that can be paid during the pendency of the disciplinary proceedings. The proceeding dated 1.7.1994 was already issued for payment of provisional pension. But it is stated that it is only for six months. Rule 66 of CCS (Pension) Rules contemplates payment of provisional pension for six months pending finalisation of pension. But it is Rule 69 of CCS (Pension) Rules which is applicable for payment of provisional pension when the retired employee is facing departmental inquiry. It says that the provisional pension has to be paid till the inquiry is over and it can be adjusted as against final retirement benefits. A direction ^{hence} has to be given to the respondents for payment of provisional pension till the disciplinary proceeding initiated on the basis of the charge memo dated 30.6.94 is over. Ofcourse, if the said charge is going to be quashed, the applicant will be entitled to regular pension from the beginning.

9. An employee can be permitted to apply for computation of pension only in case where regular pension is finalised. As the regular pension cannot be finalised during the pendency of the departmental inquiry, the applicant is not entitled to the same.

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10. The only other point for consideration is as to whether provisional pension has to be paid at Tirupathy as per the option of the applicant or whether it has to be paid at Vijayawada as directed in Annexure-V dated 3.9.1994. The applicant is relying upon Rule 87 of the Financial Hand Book Volume-II to contend that the provisional pension also has to be paid at the place opted by the pensioner. But the learned standing counsel for the respondents is relying upon Note-3 of the said Rule 87 to urge that the provisional pension is payable only at the place of retirement. To appreciate the relevant contentions, it will be convenient to R read the above Rule 87 and the Note-3 thereunder:-

"87. Service pension shall be paid at any Head or Sub Post Office in India, or at any Branch Post Office, which has been authorised in this behalf by the Director General. In all cases, however, the first payment of pension shall be made at the Head or Sub Post Office in the jurisdiction of which the pensioner has elected to receive payment.

Note:1 xxxx xxxx xxxx

Note:2 xxxx xxxx xxxx

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Note-3: Provisional pension, where payable through Head of office shall be drawn by the head of office in which the Government servant served immediately prior to his retirement, at the Post Office or authorised office of disbursement at which the pay and allowances of the establishment are drawn by him."

There is force in the contention for the applicant that Note-3 is intended for the purpose of accounting ^{ie for work entitling} and it does not indicate that the provisional pension has to be paid only at the place of retirement. No one can be compelled to settle or to stay at the place of retirement till the pension is ~~xxxx~~ regularised. The main Rule 87 clearly shows that the pension has to be paid at the place elected by the pensioner. Note-3 merely indicates that the head of office ~~xxx~~ in which employee retired from service has to draw and remit it to the Post Office at which the employee opted for receiving the pension. Hence, a direction has to be given to the respondents to disburse the provisional pension to the applicant through the Post Master, Tirupathi Head Post Office.

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11. In the result, the OA is disposed of at the admission stage as Under:-

(i) R-3 has to release the amount due to the applicant towards leave salary encashment and CGEIS by 31.1.1995 failing which the same carries interest @ 12% per annum from 1.2.1995.

(ii) The provisional pension of the applicant has to be paid through the Post Master, Head Post Office, Tirupathi.

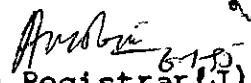
The OA in regard to the other reliefs is dismissed.

12. The OA is ordered accordingly. No costs. /


(R. RANGARAJAN)
MEMBER (ADMN.)


(V. NEELADRI RAO)
VICE CHAIRMAN

DATED: 30th December, 1994.
Open court dictation.


Deputy Registrar (J) CC

To vsn

1. The Secretary, Dept. of Posts, Ministry of Communications, Sansad Marg, New Delhi.
2. The Director (Vigilance) Dept. of Posts, Ministry of Communications, New Delhi.
3. The Postmaster General, Vijayawada Region, Vijayawada.
4. One copy to Mr. S. Ramakrishna Rao, Advocate, CAT. Hyd.
5. One copy to Mr. N. R. Devraj, Sr. CGSC. CAT. Hyd.
6. One copy to Library, CAT. Hyd.
7. One spare copy.

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TYPED BY

C.C. today
6/1/95

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE-CHAIRMAN

AND

THE HON'BLE MR. R. RANGARAJAN : M(A.M.N)

DATED: 30-12-1994

ORDER/JUDGMENTN:

M.A./R.A/C.A.No.

in

O.A.No.

1585/94

T.A.No.

(w.p.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Ordered/Rejected

No order as to costs.

Dvm

