

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::::GUWAHATI-5.

O.A. No. 171 of 1997

DATE OF DECISION. 28-10-1998. . . .

Shri Sushil Ranjan Paul, ~~Advocate for the Petitioner(s)~~ (PETITIONER(S))

Mr. B.K. Sharma, Mr. M.K. Choudhury,

ADVOCATE FOR THE
PETITIONER(S).

Mr. S. Sarma

VERSUS

Union of India & Ors.

RESPONDENT(S)

Mr. S. Ali, Sr.C.G.S.C.

ADVOCATE FOR THE
RESPONDENTS.

THE HON. MR. G. L. SANGLYINE, ADMINISTRATIVE MEMBER

THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble **ADMINISTRATIVE MEMBER**

Sanglyine
28/10/98

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.171 of 1997

Date of Order : This the 28th Day of October 1998.

HON'BLE MR.G.L.SANGLYINE,ADMINISTRATIVE MEMBER.

1. Shri Sushil Ranjan Paul, resident Sodagram, P.O. Dholabazar, District Cachar, Section Supervision (Since retired) in the department of Telecommunication, Shillong. Applicants.

By Advocate Mr.B.K.Sharma, Mr.M.K.Choudhury, Mr. S. Sarma

-VS-

1. Union of India, represented by the Secretary to the Government of India, Ministry of Telecommunication, New Delhi.
2. The Chief General Manager(Telecom), N.E.Circle, Shillong.
3. The Superintendent In-charge, Central Telegraph Office, Shillong-793001.
4. Central Bureau of Investigation, represented by the Superintendent, CBI, SPE, Shillong.

... ... Respondents.

By Advocate Mr. S.Ali, Sr.C.G.S.C.

O R D E R.

SANGLYINE, ADMINISTRATIVE MEMBER :

The applicant retired from service as Section Supervisor(Operative) on 31-12-1995. Thereafter he was paid following retirement benefits -

- (i) Provisional Pension,
- (ii) G.P.F. Final Payment,
- (iii) Group Insurance Scheme,
- (iv) Leave encashment after deducting Rs. 10,000/-.

According to the applicant, he is further entitled to the following benefits :

- (i) Final Pension
- (ii) Commutation of Pension
- (iii) Death-cum-Retirement Benefit.

These were not yet given him by the respondents. The applicant made several representations for settlement

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of his retirement benefits and payment thereof. The respondents have replied vide letter No.VIG/CBI-4/85/19 dated 8-10-1996 to the effect that necessary clearance can be granted only after getting a green signal from the CBI. Hence this present application.

2. On 24-12-1985 the CBI lodged an FIR in respect of the applicant and one Sri G.K.Nair, Superintendent In-charge, Central Telegraph Office, Shillong to the effect that the said Nair while working as Superintendent In-charge Central Telegraph Office, Shillong entered into a criminal conspiracy with the applicant, Sri S.R.Paul, who was working as Cashier in the same office, and in pursuance thereof misappropriated a sum of Rs. 4820/- showing the amount as disbursed against a fake LTC Voucher No.97 dated 22-11-1982 in the name of Smt. Hira Lyngdoh, Telegraph Assistant, who neither applied for the LTC as Advance nor received the amount. A regular case was registered under Section 120B/409/468/471 IPC and Section 5(2) read with 5(1) (c) of the Prevention of Corruption Act. On the basis of the FIR, a case was registered, namely, R.C. 30/85-SHG. Consequently, a case No.SC No.3/88, S/Vrs.G.K.Nair & Other was under trial before the Hon'ble Court of the Special Judge, Meghalaya, Shillong and is pending disposal.

3. According to the applicant he cannot be deprived of his retirement benefits simply because of pendency of the case. In fact, the respondents had released retirement benefits to Nair, the main accused though the case against him is still pending. This is discriminatory. Another contention of the applicant is regarding the retention of Rs.10,000/- out of his leave encashment dues. According to the learned counsel for the applicant this amount retained is excessive in comparison with the amount of ;Rs. 4820/- involved in the case. At any rate, no reason was assigned to such retention.

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tion and no opportunity of being heard was afforded to the applicant before the amount was deducted.

4. The respondents rely on the provisions of the various rules in support of non-finalisation of retirement benefits and non-payment of the final amounts to the applicant. According to them final settlement of retirement benefits can be ordered only after conclusion of the aforesaid case pending against the applicant as per rules.

Rule 4 of the Central Civil Services(Commutation of Pension) Rules says :

"No Government servant against whom departmental or judicial proceedings as referred to in Rule 9 of the Pension Rules, have been instituted before the date of his retirement , or the pensioner against whom such proceedings are instituted after the date of his retirement, shall be eligible to commute a fraction of his provisional pension authorised under Rule 69 of the Pension, as the case may be, during the pendency of such proceedings. "

Further, Rule ⁶⁹ of the Central Civil Services (Pension) Rules 1972 reads :-

"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 authorise 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 authorised 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 :

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 authorised to be paid to the

Government 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."

It may be mentioned herein for convenience that Rule 9(4) states :

"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."

The respondents further rely on Rule 39(3) of the Central Civil Services(leave) Rules, 1972 in support of withholding of the amount of Rs. 10,000/- out of leave encashment dues.

This rule reads :

(3) The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any)."

According to the respondents, their action is justified in law as the aforesaid case against the applicant is pending before the court of law.

5. It is also relevant to reproduce rule 9(6)(b) of the Pension Rules, which reads as below:-

(6) For the purpose of this rule, -

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) Judicial proceedings shall be deemed to be instituted -

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognisance, is made, and

(ii) in the case of civil proceedings, on the date the plaint is presented in the Court.

6. I have heard counsel of both sides. The facts are that the applicant retired from service on attaining superannuation on 31-12-1995 and the case SC.No.3/88, S/Vrs.

G.K.Nair & other in which the applicant was one of the accused was pending as on the date of his retirement. According to the submission of both sides there is no information that the case has since ended as on to-day. In the facts and the circumstances the respondents have acted in terms of the statutory rules in not granting final pension, Commutation of Pension and Death-cum-retirement gratuity to the applicant pending disposal of the above-mentioned case against him. The learned counsel for the applicant, however, placed the following decisions in support of his contention that the respondents be directed to release all retirement benefits to the applicant.

(1) R.Kaliappan Vs. Union of India, (1990) 14 ATC 307.

The issue decided in that case is that 100% provisional pension should be given. I do not see how this case is applicable to the present case of the applicant where the quantum of Provisional Pension given to the applicant is not in question. At any rate, Rule 69 Supra provides for a provisional pension equal to the maximum pension. Further, proviso to Rule 69(1)(c) above is not applicable to the case of the applicant as there is no departmental proceeding against him.

(2) B.N.Singh Vs. Union of India and others 1991(2)SLJ (CAT)547. The decision in this case is not however applicable at all to the case of the applicant as it was a case where no proceedings under any rules or law had been initiated

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against the pensioner.

(3) D.V.Kapoor Vs.Union of India and Others,

(1990) 14 ATC 906.

The decision in this case also is not applicable to the facts of the case presently under consideration. In that case the entire gratuity and pension were withheld on a permanent basis as a measure of punishment as a result of the disciplinary proceedings. In the present case of the applicant final pension, Commutation of Pension and death-cum-retirement gratuity are not given not as a measure of penalty but because the aforesaid case SC.No.3/88, S/Vrs. G.K.Nair and other is pending before the Court. According to rules final decisions in these matters will be taken after the case ended.

7. In short, I do not find any illegality in the following of the rules by the respondents in the facts of this case. The legality of none of the aforesaid rules has been challenged by the applicants.

8. The next contention of the learned counsel is that the respondents have discriminated against the applicant in not releasing to him final pension, amount of Commutation of Pension and Death-cum-retirement gratuity because all retirement benefits had been given to the main accused Shri G.K.Nair despite pendency of the aforesaid case against him. The respondents cannot throw any light on the alleged payments to Shri Nair except stating that they are not aware whether his retirement benefits had been given him or not as he had retired from Kerela Circle. The written statement was submitted on behalf of Respondents No.1,2 and 3. It is surprising how such written statement pleading ignorance could be submitted for respondent No.1, Secretary to the Government of India, Ministry of Telecommunication, representing the Union of India, I am not however, taking a presumption that because of the failure of the respondents to rebut clearly

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that Nair was paid or a conclusion that in the circumstances the applicant should be paid. If Nair was paid in contravention of the rules in the facts of his case there cannot be any discrimination in the non-payment to the applicant. However, if despite the rules and facts a discretion was ever exercised to pay Nair then there cannot be any justifying reason why the same discretion should not be exercised by the respondents in favour of the applicant who is similarly placed as Nair. In the circumstances I direct Respondent No.1 to scrutinise the alleged payments to Nair and communicate a speaking order to the applicant enclosing copies of the payment orders made to Nair, if any, within sixty days from the date of his receipt of this order.

9. A sum of Rs. 10,000/- was deducted from the Leave Encashment dues of the applicant and retained by the respondents. This is contested by the applicant as stated hereinabove. Clause (3) of Rule 39 of the Central Civil Services (Leave) Rules, 1972 no doubt empowers the competent authority to withhold the amount of leave encashment as stated therein. In the present case the amount involved is Rs. 4820/-. There is no reason given by the respondents why it is justified to withhold Rs. 10,000/- when the money recoverable on conclusion of the proceeding is likely to be Rs. 4,820/- only. Moreover, no opportunity of being heard was afforded to the applicant for retaining an amount in excess of the sum involved. In the circumstances, I direct the respondent No.1,2 and 3 to refund the excess amount within sixty days from the date of receipt of this order to the applicant.

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10. The applicant may take up with the respondents the issue of payment of Interest on various amounts in due course.

11. The application is disposed of in the lines as indicated above. No order as to costs.

Sanglyine 28/10/98
(G.L.SANGLYINE)
ADMINISTRATIVE MEMBER

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