

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 29th day of July, 2010

ORIGINAL APPLICATION No.468/2009

CORAM :

HON'BLE MR.K.S.SUGATHAN, ADMINISTRATIVE MEMBER

Kishan Lal Nimesh
S/o Shri Thakuria Ram,
R/o 66, Shiv Colony, Kisan Marg,
Tonk Phatak,
Jaipur.

... Applicant

(By Advocate : Shri Vinod Goyal)

Versus

1. Union of India through
Comptroller & Auditor General of India,
10, Bahadur Shah Zafar Marg,
New Delhi.
2. Principal Accountant General (Civil Audit),
Rajasthan,
Janpath, Near Statue Circle,
Jaipur.

... Respondents

(By Advocate : Shri R.G.Gupta)

ORDER

PER HON'BLE MR.K.S.SUGATHAN

The applicant retired from the post of Senior Audit Officer on 31.12.2008. Prior to his retirement, an FIR was lodged against him and other members of his family by the wife of his son under section 498-A and 406 IPC in the Mahila Thana (East), Gandhi Nagar, Jaipur. After investigation, the Police

filed charge-sheet against three persons including the applicant. Copy of the charge-sheet is at Ann.R/2. The said criminal case is registered as Case No.219/08 dated 29.4.2008. Aggrieved by the decision of the Police in filing charge-sheet against only three persons instead of 14 persons mentioned in the FIR, father-in-law of the son of the applicant filed a private complaint in the court, which was registered as Case No.108/08 and rejected by the Judicial Magistrate on 6.9.2008. Copy of the rejection order is at Ann.A/2. In the said rejection order, there is a reference to the advertisement published by the applicant informing the public that his son is not under his control. The said reference in the rejection order by the court in Case No.108/08 has been interpreted by the applicant as exoneration in the case against him. Relying on the order of the Judicial Magistrate First Class in Case No.108/08, the applicant has been representing for release of his gratuity and commutation of pension. The respondents vide order dated 23.9.2009 have rejected his contention on the ground that the criminal case No.219/08 against the applicant is still pending. The communication dated 23.9.2009 is under challenged in this OA and by way of relief the applicant has sought release of his gratuity and commutation of pension.

2. The respondents have filed reply in which they have stated that as per Rule-9(4) of the CCS (Pension) Rules, where a judicial proceeding is pending against an employee, only provisional pension can be sanctioned and that has been done in the case of the applicant. Further, as per Rule-69(c) of the CCS (Pension) Rules, when a judicial proceeding is pending against an employee gratuity cannot be released. The applicant has been asked to produce copy of the order in Case No.219/08 clearly indicating that he has been acquitted in the said case. As per information obtained from the Police, the Case No.219/08 is still pending. Under the said circumstances, the respondents have justified their decision in not releasing the gratuity and commutation of pension.

3. I have heard learned counsel for the applicant Shri Vinod Goyal and learned counsel for the respondents Shri R.G.Gupta. I have also perused the documents available on record.

4. The issue for consideration in this OA is whether the action of the respondents in continuing to withhold the gratuity and also continuing to pay the provisional pension can be sustained under the rules. The relevant rules applicable to this case are Rule-9(4) & Rule-69(c) of the CCS (Pension) Rules. The said rules are reproduced below:

"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"

Rule 9(6(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 cognizance, is made and

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

Rule 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 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 Comment Authority.

(c) No gratuity shall be paid to the Government servant until the conclusion of the department or judicial proceedings and issue of final orders thereon:

Provided that where department 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 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 proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension to the pension is reduced or withheld either permanently or for a specified period"

5. Grant of commutation of pension is covered by Rule-4 of Central Civil Services (Commutation of Pension) Rules, 1981. Rule-4 of the said rules stipulates that a government employee shall not be eligible to commute the provisional pension during the pendency of departmental or judicial proceedings. Rule-4 is reproduced below :

"4. Restriction on commutation of pension –

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 Rules or the pension, as the case may be, during the pendency of such proceedings."


6. It is evident from the available pleadings that Criminal Case No.219/08 under Section 498-A & 406 IPC, in which the applicant is one of the accused, is pending trial. The contention of the applicant that reference to his name in the order of the



Judicial Magistrate in Case No.108/08 tantamount to his exoneration cannot be accepted because in that case the Judicial Magistrate has considered a private complaint of the father-in-law of the son of the applicant whose grievance related to the exclusion of 11 other family members from the charge-sheet by the Police. From the aforesaid facts seen from the pleadings, it is absolutely clear that Criminal Case No.219/08 is still pending against the accused. Under the said circumstances, the action of the respondents in continuing to withhold his gratuity and also continuing to pay the provisional pension is valid under the rules.

7. In view of the above discussion, I am of the considered opinion that the applicant has not been able to establish that he has been acquitted in the criminal case No.219/08. Therefore, the action of the respondents in withholding the gratuity and continued payment of provisional pension is in accordance with the rules.

8. For the reasons stated above, this OA has no merit and it is, therefore, dismissed with no order as to costs.


(K.S.SUGATHAN)
MEMBER (A)

| vk