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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

16.08.2011

OA No. 292/2010

Mr. C.B. Sharma, Counsel for applicant.

Mr. Mukesh Agarwal, Counsel for respondent no. 1.

None present for respondent no. 2.

On the request of the learned counsel for the applicant, put up on 01.09.2011.

K. S. Rathore
(Justice K.S. Rathore)
MEMBER (J)

AHQ

Recon

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01/09/2011

OA No. 292/2010

Mr. C.B. Sharma, Counsel for applicant.
Mr. Mukesh Agarwal, Counsel for R-1.
Mr. K.S. Sharma, Counsel for R-2.

Heard.

The O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

K. S. Rathore
(Justice K.S. Rathore)
Member (J)

Recon

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 1st day of September, 2011

Original Application No.292/2010

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)

V.K.Verma
s/o Shri Badan Singh Verma,
r/o C-58, Chatrashal Nagar,
via Malviya Nagar, Jaipur,
retired from the post of
Divisional Engineer, Telecom District,
Jaipur on 31.01.2008.

.. Applicant

(By Advocate,: Shri C.B. Sharma)

Versus

1. The Union of India
Through its Secretary to the Govt. of India,
Department of Telecom,
Ministry of Communication and
Information Technology,
Government of India,
Sanchar Bhawan, 20, Ashoka Road,
New Delhi.
2. Chief General Manager,
Telecom, Rajasthan Telecom circle,
Sardar Patel Marg,
Jaipur.

.. Respondents

(By Advocate: Shri Mukesh Agarwal for resp. No.1 and Shri K.S.Sharma for resp. No.2)

O R D E R (ORAL)

The applicant preferred this OA seeking relief that respondents be directed to release the amount of DCRG and Commutation with due benefits with interest at market rate from August 2009 till payment and if any order passed by the respondents against the applicant, which is not made available, be quashed and set aside with all consequential benefits.

2. Brief facts of the case are that the applicant retired as Divisional Engineer Telecom on 31.1.2008 on superannuation. At the time of holding the post of Sub Divisional Engineer in the year 1999-2000 and officiating as Divisional Engineer, tenders were called for providing underground cable and in verification of work, some so called irregularities were found. The applicant was also found responsible for test check of 10% of work against which matter was reported to the CBI and the CBI authorities after due investigation filed challan against four officers including the applicant before the competent court.



3. The respondents department also served a memorandum dated 22.10.2003 for initiation of departmental proceedings under Rule 14 of CCS (CCA) Rules, 1965 and the Enquiry Officer after conducting the enquiry submitted his report which was forwarded to the competent authority at DOT Headquarters, New Delhi for further action as per direction in R.D.A. issued by DOT Headquarter. The Disciplinary Authority after consultation with UPSC has imposed penalty upon the applicant vide Ann.A/2. The UPSC advised that gratuity may be released, if not required in any other case. But the same has not been released because a criminal case is still pending in the CBI Court against the applicant and vigilance clearance has not been accorded for releasing gratuity. Vide order issued by the DOT dated 25.2.2008 the applicant was retired by paying provisional pension and directed for withhold of DCRG and CVP till conclusion of criminal case in the CBI Court.

4. Both the learned counsel appearing for the parties referred to Rule 69 of CCS (Pension) Rules, 1972, which is in the following terms:-

"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 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:

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 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 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."

As per clause 1(c) of Rule 69 no gratuity shall be paid to the government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon. Here, in the instant case, it is not disputed that criminal case is pending in the CBI Court against the



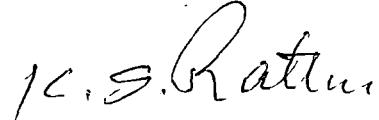
applicant. Therefore, the applicant cannot be allowed full pension and gratuity as per Rule 69 of the CCS (Pension) Rules, 1972. However, it is not disputed by the respondents that on conclusion of criminal proceedings and issue of final order, the gratuity will be released forthwith.

5. Having considered the order dated 23rd July, 2009 whereby the President after considering the record of inquiry, the findings of the inquiring authority, the submissions made by the applicant, the advice tendered by the UPSC, and all other facts and circumstances relevant to the case and considering the circumstances in totality and on an objective assessment of the entire case, found the applicant guilty of grave misconduct during the period of his service and has accepted the advice tendered by the UPSC and accordingly ordered that 10% of the monthly pension otherwise admissible to the applicant be withheld for a period of three years and further ordered that the gratuity may be released if not required in any other case. But, as discussed hereinabove, a criminal case is pending against the applicant before the CBI Court and as per Rule 69, gratuity cannot be released as judicial proceedings are pending in the court of law and can only be released after final order thereon is passed.

6. Thus, I find no illegality in withholding gratuity of the applicant in view of the relevant rules and instruction vide

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order dated 23.7.2009 (Ann.A/2) and thus, action of the respondents requires no interference by this Tribunal. Consequently, the OA being bereft of merit deserves to be dismissed and is hereby dismissed with no order as to costs.



(JUSTICE K.S.RATHORE)
Judl. Member

R/