

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH ALLAHABAD

Original Application No. 1480 of 2014

Dated: This the 27th day of July 2018.

PRESENT:

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

Ajay Kumar Nigam, S/o Late J. N. Nigam, retired S. S. S. A. Employees Provident Fund Organization, Nidhi Bhawan, Sarvodaya Nagar, Kanpur.

. . . Applicant

By Adv: Shri D. K. Pandey.

V E R S U S

1. Central Provident Fund Commissioner Bheeka ji Kama Place, New Delhi.
2. Regional Provident Fund Commissioner, U. P. Nidhi Bhawan, Sarvodaya Nagar, Kanpur.
3. Assistant Provident Fund Commissioner (Vigilance) Regional Office, Nidhi Bhawan, Sarvodaya Nagar, Kanpur.

. . . Respondents

By Adv: Shri Satyajit Mukerji

O R D E R

1. The present Original Application has been filed by applicant- Ajay Kumar seeking the following reliefs :-

- a) Quash the impugned order dated 11.02.2014 passed by respondent No. 2 (Annexure No. A-1).
- b) Direct the respondents to ensure pay and allowances of the applicant for the suspension period (Since 31.05.1996 to 22.02.2001) and entire retiral dues as well as consequential benefits after exoneration from all the charges under departmental proceedings.
- c) Any other order o direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.
- d) Award costs of the application to the applicant.

2. The brief facts narrated in the present original application are that applicant was initially appointed as L.D.C. on 17.02.1977 and promoted to the post of U.D.C. in the year 1989 and retired on 28.06.2014 from the post of S.S.S.A. (Senior Social Security Assistant). While posted at E.P.F.O., Nidhi Bhawan, Sarvodaya Nagar, Kanpur U.P., whereas due to pendency of criminal proceeding before C.B.I. Court Lucknow, the applicant had been placed under suspension vide order dated 31.5.1996 (Annexure A-2) issued by

the respondent No.2 under Rule 6 (1) of Employees Provident Fund Staff (Classification, Control and Appeal) Rules, 1971 and by memorandum dated 19.12.1996 (Annexure A-3), the applicant was directed to submit his defence against the charges leveled against him. Applicant submitted his reply on 7.1.1997. Enquiry Officer was appointed vide order dated 13.4.2004.

3. A criminal case was also lodged against the applicant under section 19 (1) (c) of the Provident Fund Act, 1988 in C.B.I. Court Lucknow under Rule 120B/420/467/471 of I.P.C and 13 (2) read with 16 (1) (d) of the Prevention of Corruption Act 1988 with the allegations that the applicant entered into an offence of cheating, forgery and criminal misconduct, which is pending before the C.B.I. Court. Enquiry Officer, after completion of enquiry proceedings, submitted his enquiry report with the finding that the charges leveled against the applicant are not proved and liable to be set aside. After exoneration from all the charges, applicant moved an applications dated 26.07.2010 and 16.9.2014 before respondent No.2 and requested to ensure the payment of pay

and allowances of suspension period as well as promotion benefits as the promotional benefit to the post of Section Supervisor was due in the year 2012 and emoluments for the period of suspension (i.e. 31.05.1996 to 22.05.2001) has not given so far, in spite of revocation of suspension order w.e.f. 22.05.2001 and also withheld entire retiral dues.

4. In pursuance of aforesaid applications, the respondent No.2 passed impugned order dated 11.2.2014 informing the applicant that a criminal proceeding against the applicant is still pending before C.B.I. Court, Lucknow. Thereafter applicant has been retired on 28.06.2013 after attaining the age of superannuation and in this regard, respondent No.2 issued office order dated 27.6.2013. Applicant has been paid only provisional pension by withholding gratuity, leave, encashment and commutation of pension.

5. In reply, the respondents have pleaded in their counter affidavit that applicant was suspended with effect from 31.05.1996 due to serious

charges against him (Annexure A-2 of the O.A.). The suspension of the applicant was revoked by the Regional Provident Fund Commissioner, U.P. vide order dated 22.05.2001 with immediate effect. It was made clear in that order that the applicant would not be entitled to pay and allowances for the period of suspension till the criminal proceedings initiated against him were finalized.

6. It is further stated in the counter affidavit that the applicant was exonerated in the Departmental proceedings vide order dated 18.02.2009 (Annexure A-6 to the O.A.). The applicant thereafter, retired on 28.06.2013 after attaining the age of superannuation. On his retirement he was only paid provisional pension (Annexure A 7 to the O.A.). Admittedly, the criminal proceedings before the C.B.I. /Court Lucknow are still pending.

7. As per the counter affidavit, in the instant case there is revocation of suspension which is in accordance with Rule 10(5). The order of revocation of suspension is also in consonance

with the provisions of fundamental Rule 54-B. The applicant never challenged the conditional order of revocation of suspension. Through counter affidavit it is also brought on record that as per Rule 13 of Swamy's -FR & SR Part III. Sub Rule 3 of Rule 13 when an employee retires on superannuation while under suspension or while disciplinary or criminal proceedings are pending against him, the whole or part of case equivalent of leave salary may be withheld to meet recoveries from him possible arising on conclusion of the proceedings. On conclusion of the proceedings, payment may be released after adjustment of government dues if any. As regards withholding of gratuity is concerned, the allegation against the applicant was that he was responsible for creating a pecuniary loss to the Department to the tune of Rs.17,36,498.75/.

8. In the Rejoinder filed by the applicants, the contentions in the OA have been reiterated. It is further submitted that as per rules gratuity cannot be withheld once an applicant exonerated from all the charges under departmental proceedings and criminal proceedings initiated

against the applicant. As provided in Article 300A of the Constitution of India, no person shall be deprived of payment of gratuity.

9. In nutshell, applicant challenges the impugned order dated 11.2.2014 passed by respondent No.1 whereby the pay and allowances of the applicant for the suspension period and entire retiral benefits have been withheld by the department till the final disposal of the criminal case against the applicant, which is, pending in C.B.I. Court, Lucknow.

10. I have heard and considered the arguments of learned counsels for the parties and gone through the material on record. During the arguments, learned counsel for applicant confined his relief to the withholding of the gratuity and earned leave.

11. Learned counsel for applicant argued that the departmental proceeding against him stands concluded in his favour and mere pendency of a criminal case in the Court will not disentitle the applicant to get his gratuity.

12. On the other hand, learned counsel for respondent relying upon Rule 69 (1) (c) of Central Civil Services (Pension) Rules, 1972 argued that since admittedly a criminal case is pending against the applicant, as per, Rule 69 (1) (c), gratuity cannot be paid to the government servant i.e. the applicant.

13. Rule 69 (1) (c) of Central Civil Services (Pension) Rules, 1972 lays down that: No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceeding and issue of final orders thereon"

14. Hon'ble Supreme Court also dealt with this issue while interpreting Rule 52 (C) of A.P. Revised Pension Rules, 1980 in the case of R. Veerabhadram Vs. Govt. of A.P., (1999) 9 SCC 43 in the context of analogous provisions of the corresponding Rules of Andhra Pradesh Government and upheld the action of the State government to withhold the gratuity of the

employee during the pendency of criminal proceedings.

15. Rules 52(c) of the A.P. Revised Pension Rules, 1980, which reads as "No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon"

16. While interpreting 52(c) of the A.P. Revised Pension Rules, 1980, Hon'ble Apex Court in *R. Veerabhadram Vs. Govt. of A.P.*, (1999) 9 SCC 43 held that "The payment of gratuity was withheld, in the present case, since the criminal prosecution was pending against the appellant when he retired. Rule 52(c) of the A.P. Revised Pension Rules, 1980 expressly permits the State to withhold gratuity during the pendency of any judicial proceedings against the employee. In the present case, apart from Rule 52(c), there was also an express order of the Tribunal which was binding on the appellant and the respondent under which the Tribunal had directed that death-cum-

retirement gratuity was not to be paid to the appellant till the judicial proceedings were concluded and final orders were passed thereon. In view of this order as well as in view of Rule 52(c), it cannot be said that there was any illegal withholding of gratuity by the respondent in the case of the appellant."

17. Learned counsel for applicant relied upon Narendra Kumar Singh v/s State of U.P., 2013 (9) ADJ 199 (DB) and Shiv Sewak Prasad Mishra v/s State of U.P., 2015 (2) ADJ 393. However, the law laid down by the Hon'ble Apex Court is binding and reliance cannot be placed on the rulings cited by learned counsel for applicant.

18. Insofar as submission of learned counsel for applicant regarding retention of leave salary is concerned, O.M. dated 27.6.2017 is very clear that when employee retires on superannuation or while criminal proceedings are pending against him, the whole or part of cash equivalent of leave salary may be withheld to meet recoveries from him possibly arising on conclusion of the proceedings. On conclusion of

the proceedings, payment may be released after adjustment of Government dues, if any.

19. In the instant case, the allegation against applicant is that by his wrongful conduct he has caused a loss to the Government which may ultimately have to be recovered from the applicant and in any case, there is a criminal case pending against the applicant, as such, the prayer of applicant for a direction to the respondents to release the leave salary cannot be acceded to. It be noted notice that charges for which the applicant is facing trial in the criminal case filed by the C.B.I. are serious in nature: they involve offences of cheating, forgery and criminal misconduct, allegedly committed by the applicant while in Government service. These are surely not simple offences. If there is delay in finalization of the criminal case, it is for the applicant to take necessary legal steps to expedite the trial. The respondents have no role to play in that. For the foregoing discussions, it is not possible for this Tribunal to give a direction to the respondents to release the withheld

gratuity amount before finalization of the pending criminal case.

20. In view of the facts of the case, I am of the opinion that no good ground has been made by the applicant for allowing the application and quashing the impugned order. The application being meritless, is dismissed. In circumstance of the case, parties are left to bear their own costs.

(Rakesh Sagar Jain)
Member (J)

Manish/-