

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA NO.1162/2016

Order reserved on 28.03.2017
Order pronounced on 03.04.2017

HON'BLE DR BRAHM AVTAR AGRAWAL, MEMBER (J)

Bimla Chaudhary, Supdt (Retd.),
Aged about 61 years,
W/o Shri Jagmal Singh,
Department of Social Welfare,
Govt. of NCT of Delhi,
R/o E-701, Sri Saibawa Apartments,
Sector-9, Rohini,
Delhi-110085.

...Applicant

(By Advocate: Shri Soumyashree Misra)

VERSUS

1. Chief Secretary,
Govt. of NCT of Delhi,
5th Level, Delhi Secretarial,
I.P. Estate, New Delhi.
2. Director, Social Welfare,
Govt. of NCT of Delhi,
GLNS Complex, Feroz Shah Kotla,
Delhi Gate, Delhi.
3. Pay & Accounts Officer,
No.25, Govt. of NCT of Delhi,
Peera Garhi, DTC Depot,
Delhi.

...Respondents

(By Advocate: Shri Vijay Kumar Pandita)

:ORDER:

The applicant, an ex-Superintendent in the Social Welfare Department of the Government of NCT of Delhi, who superannuated on 31.12.2014 and was granted only provisional pension under rule 69(1)(b), CCS (Pension) Rules 1972, vide the

respondent no.3's communication dated 22.02.2016 (Annexure-1), has filed the instant OA praying that the order in the said communication be set aside and that the respondents be directed to issue regular pension order in favour of the applicant, grant her due commutation of pension, release to her amounts of her leave encashment, gratuity and insurance, and pay to her interest @18% for the period of delay in paying the arrears due as well as cost of litigation.

2. I have heard the learned counsel for the parties, perused the pleadings, including the Tribunal's judgment at Annexure-5, and given my thoughtful consideration to the matter.

3. The only reason given by the respondents for resorting to rule 69(1)(b) of the CCS (Pension) Rules is that at the time of her superannuation there was an FIR against the applicant, along with some others, pending investigation by the ACB, Government of NCT of Delhi, in the matter of certain illegal purchases. She was also arrested and suspended, but later reinstated much before her superannuation.

4.1 Rule 69(1), CCS (Pension) Rules 1972 reads as under:

"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 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:

... ."

4.2 Sub-rule (4) of rule 9 of the aforesaid Rules, referred to in rule 69(1), reads as under:

"(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."

4.3 Sub-rule (6) of rule 9 of the aforesaid Rules is also reproduced hereinunder:

"(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 cognizance, is made, and
 - (ii) in the case of civil proceedings, on the date the plaint is presented in the Court."

5. There was initiated no departmental proceeding against the applicant and in the light of the above-quoted rule 9(6), a pending investigation of an FIR cannot be called institution of a judicial proceeding.

6. Accordingly, I am of the view that this OA deserves to succeed. Therefore, the decision in the communication at Annexure-1, not being legally sustainable, is set aside and the respondents are directed to grant to the applicant within six weeks from the date of receipt of a copy of this Order, her regular pension, due commutation, amounts of her leave encashment, gratuity and insurance. The applicant shall also be entitled to and paid interest at the prescribed rate on delayed payment of gratuity [vide rule 68, CCS (Pension) Rules 1972] and @7% p.a. on other terminal benefits for the period of delay in their payment.

7. The OA is allowed accordingly. No costs.

(DR BRAHM AVTAR AGRAWAL)
MEMBER (J)

/jk/