

**Central Administrative Tribunal  
Principal Bench, New Delhi.**

**OA-2327/2015**

**Reserved on : 23.12.2016.**

**Pronounced on :09.01.2017.**

**Hon'ble Mr. Shekhar Agarwal, Member (A)**

Sh. Nawab Singh Dubey, aged 62 years,  
S/o Sh. Hukmi,  
Superintendent Service Tax, (Retd.)  
R/o H.No. T-279, Indira Colony,  
Narela, Delhi-110040.

..... Applicant

(through Dr. Puran Chand, Advocate)

Versus

1. Ministry of Finance through  
Its Secretary,  
North Block, New Delhi.
2. Chief Commissioner of Service  
Tax, CR Building, IP Estate,  
New Delhi.
3. Commissioner Service Tax  
(Delhi-1) 17-B, IAFA House,  
M.G. Road, I.P. Estate,  
New Delhi-110002.
4. Commissioner (Cadre Control)  
Central Excise (Delhi-1), C.R.  
Building, I.P. Estates, New  
Delhi-110002.

.... Respondents

(through Sh. Piyush Gaur, Advocate)

**ORDER**

The applicant retired on 31.01.2013 as Superintendent in the Service Tax Commissionerate in the pay scale of Rs. 15600-39100 with

Grade Pay of Rs. 5400/-. He had completed 41 years of service by then. However, his retiral benefits were withheld by the respondents vide their letter dated 27.06.2014 on the ground that vigilance clearance had been denied to him because of pendency of a criminal case under Section 498A filed by his daughter-in-law Ms. Jyoti, who was working as a Clerk in the office of Additional District & Sessions Judge, Sonapat, Haryana. According to the applicant, due to his detention in the aforesaid case, he was placed under deemed suspension from the date of detention dated 07.09.2010 vide order dated 16.09.2010. The suspension order was, however, revoked on 03.12.2012. On his retirement, the respondents paid him provisional pension of Rs. 14625/- and denied other retiral benefits. The applicant represented against withholding of his retiral benefits on 03.01.2014 but the same was rejected on 27.06.2014. Hence, he has filed this O.A. seeking the following relief:-

- “(a) pass an appropriate order quashing of impugned order dated 27.6.2014 vide which the representation dated 3.1.2014 made by the applicant requesting to release the retiral benefits (i.e. amount of gratuity and regular pension in place of provisional pension) has been rejected by respondents.
- (b) direct the respondents to release the retiral benefits (i.e. amount of gratuity, and committed amount) with 18% interest thereon from the date of retirement i.e. 31.01.2013 till the realisation of the amount and releasing the regular pension in place of provisional pension presently being given to the applicant.

(c) Grant any other relief or further relief as deem fit and proper in facts and circumstances of the case in favour of the applicant.”

2. The contention of the applicant is that the respondents have totally ignored the principle laid down by the Apex Court that pension was not a bounty payable at the sweet will and pleasure of the Government and that the right to pension was a valuable right vested in a Government servant. Also it has been held by the Apex Court that pension was a property within the meaning of Article 300A of the Constitution and cannot be withheld by an executive order. In this regard, the applicant has relied on the judgment of the Apex Court in the case of **All India Reserve Bank Retired Officers Association Vs. UOI**, AIR 1992 SC 767. He has also relied on the judgment of Hon'ble Supreme Court in the case of **State of Jharkhan & Ors. Vs. Jitendra Kumar Srivastava & Anr.** (Civil Appeal No. 6770/2013) dated 14.08.2013 wherein it was held that executive instructions do not have statutory character and cannot be termed as law within the meaning of Article 300A.

3. In their reply the respondents have stated that as per Rule-69 of CCS (Pension) Rules no gratuity is payable to a government servant until the conclusion of proceedings pending against him and issue of final order thereon. The respondents have also stated that the 3<sup>rd</sup> MACP benefit w.e.f. 01.12.2011 has not so far been granted to the applicant on account of criminal complaint filed by his daughter-in-

law which led to his suspension as well as detention in judicial custody. The findings of the Departmental Screening Committee have been kept in sealed cover in terms of DoP&T O.M. dated 14.09.1992.

4. I have heard both sides and have perused the material placed on record. The short point to be decided in this case is whether retiral benefits of a government employee can be withheld due to pendency of criminal proceedings against him, when the criminal case does not pertain to discharge of his official duties. Learned counsel for the applicant had argued that it is true that Rule-9 of the CCS (Pension) Rules empowers the President to withhold pension and gratuity in full or in part if a government servant is found guilty of grave misconduct or negligence during the period of service in any departmental or judicial proceeding. However, such proceedings should have nexus with the official duties of the government servant. In cases where such judicial proceedings pertain to private disputes, the President is not empowered by the Rules to withhold pension. In this regard, learned counsel has relied on the judgment of Apex Court in the case of **D.V. Kapoor Vs. UOI & Ors.**, AIR 1990 SC 1923 wherein the following has been held:-

“6. As seen the exercise of the power by the President is hedged with a condition precedent that a finding should be recorded either in departmental enquiry or judicial proceedings that the pensioner committed grave misconduct

or negligence in the discharge of his duty while in office, subject of the charge. In the absence of such a finding the President is without authority of law to impose penalty of withholding pension as a measure of punishment either in whole or in part permanently or for a specified period, or to order recovery of the pecuniary loss in whole or in part from the pension of the employee, subject to minimum of Rs.60.”

4.1 He has also relied on the judgment of a Co-ordinate Bench of this Tribunal in **OA-3312/2009** (Tejpal Singh Tuli Vs. UOI & Ors.) dated 22.04.2010. The following paras of the judgment are relevant:-

“6. The learned counsel for the applicant has placed the case of Abdul WaheedVs. UOI & Ors., OA-847/2001 decided by a Co-ordinate Bench of the Tribunal at Allahabad on 20.07.2001 to contend that retiral benefits cannot be withheld on the ground that a person was arrested in a criminal case which was a private property dispute having no concern with government. It is stated that similar views were expressed by a Co-ordinate Bench of the Tribunal at Allahabad in OA-778/1995 in the case of Gyasi Ram Vs. the UOI & Ors, decided on 12.12.2000.

7. A perusal of the case law relied upon by the learned counsel for applicant supports his contention that the Tribunal had in the case of Abdul Waheed (supra) noticed that the dispute was a private one and there being no likelihood that the department will initiate disciplinary proceeding, it was held that the purpose and object behind the relevant Rule of the CCS (Pension) Rules appeared to be to protect the interest of government if the concerned employee was facing criminal or disciplinary proceeding involving misconduct as a government servant, which also resulted in monetary loss to government. It was held that there appears to be no legal and valid reason to extend the application of the Rule to a private dispute regarding property and no legal impediment against payment of pension. The O.A. was disposed of with directions to pay the entire retiral benefits within a stipulated period of time.

8. The learned counsel for the respondents points out that in the case of Abdul Waheed (supra) the employee was incidentally party but in the present case he has been intentionally made a party. It is not explained how such a conclusion is arrived at and in what manner it could affect the

substantive issue involved in the present case. In Gyasi Ram (supra), however, the issue included suspension and applicability of Rule 9 of the CCS (Pension) Rules, 1972, which is not the case here.

9. I find that this Tribunal in OA-2411/2007 has as recently as on 19.12.2008, in the case of Jogeshwar Mahanta Vs. UOI relating to matrimonial discord, in which the applicant had been proceeded under Rule 14 of the CCS (CCA) Rules, 1965 by issue of chargesheet on the basis of allegations made by the wife, decided that there has to be a nexus with official duty and whereas the applicant may be still embroiled in matrimonial dispute with his wife, there would be no justification to carry on with the departmental proceedings against him. The charge memo was therefore quashed and the application was allowed.

10. Keeping in view the ratio of the judgements noticed above, I am inclined to accede to the prayer of the applicant. The respondents are directed to release the retirement benefits of the applicant within a period of three months from the date of receipt of a certified copy of this order. No costs."

4.2 After hearing both sides and considering the submissions made by them I am inclined to agree with the learned counsel for the applicant. The only reason given by the respondents for withholding the retiral benefits of the applicant was that he was not clear from vigilance angle. The respondents have not indicated in their counter affidavit whether any other judicial or departmental proceeding except for the case filed by the daughter-in-law of the applicant was pending against him. Thus, the only reason for withholding the retiral benefits is pendency of the criminal case u/s 498A and other related sections against the applicant. Since this has no nexus with the official duties of the applicant as a Superintendent in the Service Tax Directorate, in terms of the judgments relied upon

by the applicant, the respondents could not have withheld his retiral benefits.

5. I, therefore, allow this O.A. and quash the order dated 27.06.2014 by which the representation of the applicant regarding release of his retiral benefits has been rejected by the respondents. I further direct them to release all the retiral benefits of the applicant within 08 weeks from the date of receipt of a certified copy of this order provided there is no other reason for withholding the same. The applicant shall also be entitled to interest at GPF deposit rates for delayed payment of his retiral benefits counted from his date of retirement till the date of actual payment. No costs.

**(Shekhar Agarwal)**  
**Member (A)**

/Vinita/