

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

OA 1798/2015
MA 836/2016

Reserved on: 27.09.2016
Pronounced on: 5.10.2016

Hon'ble Mr. P.K. Basu, Member (A)

D.K. Gupta, Age 60 years (Retired)
S/o Shri R.L. Gupta
613, New Ashiana CGHS
Plot No.10, Sector-6
Dwarka, Delhi-75

... Applicant

(Appeared in person)

Versus

1. The Secretary
Department of Telecommunications
Sanchar Bhawan,
20, Ashoka Road
New Delhi-110001
2. Sr. DDG (TEC)
Telecom Engineering Centre
Department of Telecommunications
K.L. Bhawan, Janpath
New Delhi-110001 ... Respondents

(Through Shri Acharya Santosh Prasad Chaurasiya, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicant joined as Assistant Executive Engineer on 22.10.1977 and retired as DDG (Civil) in the respondent-organization namely Department of Telecommunication (DoT) on 31.01.2015. It is alleged that he was paid his leave encashment on 11.02.2015 and Group Insurance dues on 9.04.2015.

However, gratuity has not been paid till date. The OA has, therefore, been filed seeking the following reliefs:

- a) Direct the respondent to pay gratuity to applicant along with 18% interest from 31.01.2015 till the date of payment and 12% interest on delayed payment of CGEGIS and leave encashment.
- b) Award the cost of the Original Application to the applicant.
- c) Award the exemplary cost for not complying with the provisions of Section 80-C of CPC as per principles laid down by the Hon'ble Supreme Court of India.
- d) Direct the respondents to credit the monthly pension in my S/B account through electronic clearance system or any other system as deemed appropriate.

2. The respondents have stated that dues of CGEGIS, leave encashment and GPF final payment were sanctioned to the applicant vide memos dated 7.04.2015, 10.02.2015 and 30.01.2015 respectively but since a departmental proceeding is pending against the applicant, the gratuity shall be paid to him only after conclusion of the departmental proceeding as per Rule 69 of CCS (Pension) Rules 1972, which provides as follows:

“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:

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.”

3. Learned counsel for the applicant in reply has placed reliance on the judgment in **Prem Nath Bali Vs. Registrar, High Court of Delhi and another**, Civil Appeal No.958/2010.

This was a case in which the appellant before the Supreme Court was a Lower Division Clerk (LDC) in the office of District and

Sessions Court, Delhi. A departmental proceeding commenced against him on 18.07.1990 and continued for more than nine years. Ultimately, a major penalty of compulsory retirement was imposed on the applicant by the District and Sessions Judge, Delhi on 27.10.1999 and 28.10.1999. These orders also stated that the appellant will not be entitled to any amount more than the allowances already paid during the period of suspension. The Hon'ble Supreme Court made the following observations regarding the period of nine years during which the appellant remained under suspension:

“33. Keeping these factors in mind, we are of the considered opinion that every employer (whether State or private) must make sincere endeavor to conclude the departmental inquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then efforts should be made to conclude within reasonably extended period depending upon the cause and the nature of inquiry but not more than a year.”

4. It is argued by the learned counsel for the applicant that department proceedings have still not been completed by the respondents though instructions on this subject are very clear as contained in DoP&T OM dated 29.11.2012 and the applicant should not be penalized for that. The learned counsel also relied on the judgment in **D.V. Kapoor Vs. Union of India and others**, 1990 AIR 1923 with specific reference to para 7 of the judgment where the Hon'ble Supreme Court held as follows:

"7. Rule 9 of the rules empowers the President only to with-hold or withdraw pension permanently or for a specified period in whole or in part or to order recovery of pecuniary loss caused to the State in whole or in part subject to minimum. The employee's right to pension is a statutory right. The measure of deprivation therefore, must be correlative to or commensurate with the gravity of the grave misconduct or irregularity as it offends the right to assistance at the evening of his life as assured under [Art.41](#) of the Constitution. The impugned order discloses that the President withheld on permanent basis the payment of gratuity in addition to pension. The right to gratuity is also a statutory right. The appellant was not charged with nor was given an opportunity that his gratuity would be withheld as a measure of punishment. No provision of law has been brought to our notice under which, the President is empowered to withhold gratuity as well, after his retirement as a measure of punishment. Therefore, the order to withhold the gratuity as a measure of penalty is obviously illegal and is devoid of jurisdiction."

It is contended that in view of this categorical ruling of the Hon'ble Supreme Court, the respondents are not empowered to withhold gratuity. The learned counsel for the applicant also relied on **Vijay L. Mehrotra Vs. State of U.P. and others**, JT 2000 (5) SC 171 and stated that the Hon'ble Supreme Court has held that it is expected that all the payment of the retiral benefits should be paid on the date of retirement or soon thereafter if for some unforeseen circumstances the payments could not be made on the date of retirement.

5. Lastly, it is argued that in view of the judgment of the Hon'ble Supreme Court in **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.**, AIR 2015 SC 696, there cannot be any recovery from retired employees or employees who are due to retire within one year. Therefore, even if the

respondents were to recover any amount, they cannot do so now as the applicant has retired on 31.01.2015.

6. I have heard the learned counsel for the parties, gone through the pleadings available on record and perused the judgments cited.

7. The following facts emerge:

- (i) The applicant has retired on 31.01.2015 and, therefore, normally he would expect all his retirement dues to be paid but gratuity has been held up in view of provisions of Rule 69 of the CCS (Pension) Rules 1972;
- (ii) A departmental proceeding is pending against the applicant and the respondents could not give any intimation by when this would be completed;
- (iii) In D.V. Kapoor (*supra*), the Hon'ble Supreme Court has held that there is no provision of law brought to their Lordships notice under which the President is empowered to withhold gratuity. The order to withhold gratuity is thus illegal and devoid of jurisdiction;
- (iv) In Vijay L. Mehrotra (*supra*) and Prem Nath Bali (*supra*), the Hon'ble Supreme Court has held that payment of pensionary dues should be on the date of retirement and a maximum outer limit of one year

has been indicated to complete departmental proceedings. Clearly, the respondents have not followed the timeline and there has been delay in payment of CGEGIS, leave encashment and gratuity; and

(v) The Hon'ble Supreme Court has clearly laid down that it is impermissible under law to make recoveries from retired government servants.

8. From the above, it is clear that though Rule 69 of the CCS (Pension) Rules 1972 has a provision to withhold gratuity where departmental or judicial proceedings are pending, the law settled by the Hon'ble Supreme Court in D.V. Kapoor (supra) would prevail. Moreover, in this case the applicant has retired on 31.01.2015 and, therefore, according to Rafiq Masih (supra), no recovery can be made from him. Also, the Hon'ble Supreme Court in Vijay L. Mehrotra (supra) and Prem Nath Bali (supra) has laid down the ratio that payment of pensionary dues should be on the date of retirement or soon thereafter.

9. In view of above discussion, I allow the OA with a direction to the respondents to make immediate payment of gratuity and interest on delayed payment of CGEGIS and leave encashment for the period of delay, at the rate of interest provided for in case of delayed payment of gratuity. No costs.

10. MA-836/2016 has been filed for waiver of payment of cost. In the circumstances of the case, payment of cost is waived. MA is disposed of.

(P.K. Basu)
Member (A)

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