CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.3865/2014

New Delhi this the 17th day of September, 2015

Hon'ble Shri A.K. Bhardwaj, Member (J)

Neelam Arora,
Retired Sr. Auditor (SA-8307181),
Office of CDA (Funds)
W/o Mr. S.K.Arora, R/o 228, Sector-1,
Shastri Nagar, Meerut-250004 (UP). .... Applicant

(By Advocate Shri T.D.Yadav)

VERSUS

1. Union of India through Secretary,
Ministry of Defence, Govt. of India,
New Delhi-110001

2. The Controller General of Defence Accounts
(CGDA), CGDA Hqrs, Ulan Batar Road,
Palam, Delhi Cantt.- 110010

3. The Controller of Defence Accounts (CDA),
(Funds), Near Head Post Office,
Meerut Cantt-250001, UP .... Respondents

(By Advocate Shri Rajinder Nischal)

O R D E R (ORAL)

The short issue arise to be determined in the present OA is whether the respondents are justified in withholding the amount of gratuity and commutation of pension payable to the applicant on her retirement. According to learned counsel for the applicant, the applicant retired from service w.e.f. 21.03.2014 and the concerned Court had taken cognizance of the offence under Section 498A, 406, 174-A, 34 IPC registered against the applicant only on 12.05.2014 i.e after the date of her

retirement, thus the respondents are not justified in withholding the aforementioned terminal benefits of the applicant. According to Mr. Rajinder Nischal, learned counsel for respondents, in terms of Rule 69 (1) (c) of the CCS (Pension) Rules, 1972, no gratuity shall be paid to a Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon and similarly in terms of Rule 4 of the CCS (Commutation of Pension) Rules, 1981, no Government servant against whom departmental or judicial proceedings as referred to in Rule 9 of the Pension Rules have been instituted before the date of his retirement shall be eligible to commute a fraction of his provisional pension authorized under Rule 69 of the Pension Rules. The Rule 69 and 4 (ibid) read thus:-

> " 69. **Provisional pension where departmental or judicial proceedings may be pending**
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> (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.
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> (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 can 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."

"4. **Restriction on commutation of pension.**

No Government servant against whom departmental or judicial proceedings as referred to in Rule 9 of the Pension Rules, have been instituted before the date of his retirement, or the pensioner against whom such proceedings are instituted after the date of his retirement, shall be eligible to commute a fraction of his provisional pension authorized under Rule 69 of the Pension Rules or the pension, as the case may be, during the pendency of such proceedings."

In terms of the provisions of Rule 9 (6) of CCS (Pension) Rules, judicial proceedings are deemed to be instituted 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. An identical issue came up for consideration before the Tribunal in OA No. 59/2012(**Bal Kishan** Vs. **Union of India and Others**). The relevant excerpt of the order read thus:-

"8. It is interpretation of said rule, which is material for determination of prime controversy involved in the present case. As has been noted hereinabove, counsel appearing for applicant interpreted the same to the effect that the judicial proceedings can be said to be pending only when after taking cognizance of report of a Police Officer. Magistrate/Trial Court frame charges. Sh. T.C. Gupta, counsel appearing for respondents, preferred to emphasize that in terms of said rules, judicial proceedings in a criminal case can be said to be pending on filing of report by a Police Officer worth taking the cognizance by Magistrate/Competent Court. Section 173 contained in Chapter XII of Code of Criminal Procedure 1973 contain the provisions regarding report of Police Officers on completion of investigation. In terms of said provisions as soon as investigation is completed, the officer incharge of the police station shall forward to Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating:

(a) the name of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether, any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties.

(g) whether he has been forwarded in custody under section 170;

(h) whether the report of medical examination of woman has been attached where investigation relates to an offence under section 376, 376A, 376B, 376C or 376D of the Indian Penal Code (45 of 1860);

9. In terms of Section 173 (5) of Code of Criminal Procedure when the police report is in respect of a case to which Section 170 applies, the police officer shall forward to the Magistrate along with report;

(a) all documents or relevant extracts thereof on which the prosecution propose to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

10. In terms of Section 173 (8) of said Code even after a report under sub-Section 173 (2) is forwarded to the Magistrate, the officer incharge of police station may forward further report to the Magistrate regarding evidence obtained by him after submission of the report in the form prescribed. The provisions of sub-Section (2) to (6) of Section 173 of Code of Criminal Procedure may be made applicable in relation to the such report in the same manner in which these are applied to report forwarded under sub-Section 173(2). Provisions regarding cognizance of offences by Magistrates and Courts of Session are contained in Section 190 and 193 of Code of Criminal Procedure (Chapter XIV). In terms of Section 190, any Magistrate of the first class and any Magistrate of the second class specifically empowered in this behalf under sub-Section (2) may take cognizance of any offence:

(a) upon receiving a complaint of facts which constitute such offence;
(b) upon a police report of such facts;
(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

11. As has been held in Minu Kumari vs. State of Bihar (2006) 4 SCC 359, Magistrate can ignore the conclusion arrived at by the Investigating Officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit and exercise his power under section 190(1) (b). While doing so the Magistrate is not bound to follow the procedure laid down in Section 200 and 202 of the Code, though it is open to him to act under Section 200 and 202 also. In Kaptan Singh vs. State of Madhya Pradesh, AIR 1996 (6) SC 2485, Hon'ble Supreme Court viewed that the result of investigation under Chapter XII of the Code is a conclusion that an investigating officer draws on the basis of materials collected during the investigation and such conclusion can only form the basis for a competent court to take cognizance thereupon under Section 190 (1)(b) of the Code and to proceed with the case for trial. The relevant excerpt of said judgment reads as under:-

> "5. ..
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> "The reliance of the trial Judge on the result of investigation to base his findings is again patently wrong. If the observation of the trial Judge in this

> regard is taken to its logical conclusion it would mean that a finding of guilt can be recorded against an accused without a trial, relying solely upon the police report submitted under Section 173, Cr.P.C., which is the outcome of an investigation. The result of investigation under Chapter XII of the Criminal Procedure Code is a conclusion that an Investigating Officer draws on the basis of materials collected during investigation and such conclusion can only form the basis of a competent Court to take cognizance thereupon under Section 190(1)(b), Cr.P.C. and to proceed with the case for trial, where the materials collected during investigation are to be translated into legal evidence. The trial Court is then required to base its conclusion solely on the evidence adduced during the trial; and it cannot rely on the investigation or the result thereof. Since this is an elementary principle of criminal law, we need not dilate on this point any further."

12. The term charge sheet or final report used while referring to police report are misnomers and use of such terms for police report have created sufficiently uncalled for confusion in the matter of interpretation of aforementioned Rule 9 (6)(b). Such expression for police report is also used in police manuals of several States containing the rules and regulations regarding report by police filed under Section 173/170 of the Code. The report sent under Section 169, i.e. where there is no sufficiency of evidence to justify forwarding of a case to a Magistrate, is termed variously, as referred charge, final report or summary. As is ruled in 1985 (2) SCC 537, the Magistrate is required to give notice to incumbent and to provide him opportunity to be heard at the time of consideration of report. Framing of charge is a state subsequent to taking cognizance of a report. While having considered a police report, the Magistrate form an opinion for issuing notice to accused, he can be said to have taken cognizance of an offence. Similarly, when in a complaint case having recorded pre-summoning evidence the Magistrate form an opinion to issue summon to accused, he can be said to have taken cognizance of complaint. While highlighting the stage of taking cognizance in criminal proceedings, judgment of Hon'ble Supreme Court in the case of Minu Kumari (supra) can be usefully referred to. Paragraphs 12 to 16 of the judgment reads as under:-

> "12. The informant is not prejudicially affected when the Magistrate decides to take cognizance and to proceed with the case. But where the Magistrate decides that sufficient ground does not subsist for

proceeding further and drops the proceeding or takes the view that there is material for proceeding against some and there are insufficient grounds in respect of others, the informant would certainly be prejudiced as the First Information Report lodged becomes wholly or partially ineffective. This Court in Bhagwant Singh v. Commnr. of Police (1985 (2) SCC 537) held that where the Magistrate decides not to take cognizance and to drop the proceeding or takes a view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, notice to the informant and grant of opportunity of being heard in the matter becomes mandatory. As indicated above, there is no provision in the Code for issue of a notice in that regard.

13. We may add here that the expressions 'charge-sheet' or 'final report' are not used in the Code, but it is understood in Police Manuals of several States containing the Rules and the Regulations to be a report by the police filed under Section 170 of the Code, described as a "charge-sheet". In case of reports sent under Section 169, i.e., where there is no sufficiency of evidence to justify forwarding of a case to a Magistrate, it is termed variously i.e., referred charge, final report or summary. Section 173 in terms does not refer to any notice to be given to raise any protest to the report submitted by the police. Though the notice issued under some of the Police Manuals states it to be a notice under Section 173 of the Code, though there is nothing in Section 173 specifically providing for such a notice.

14. As decided by this Court in Bhagwant Singh's case (supra), the Magistrate has to give the notice to the informant and provide an opportunity to be heard at the time of consideration of the report. It was noted as follows:-

> "....The Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report..."

15. Therefore, the stress is on the issue of notice by the Magistrate at the time of consideration of the report. If the informant is not aware as to when the matter is to be considered, obviously, he cannot be faulted, even if protest petition in reply to the notice issued by the police has been filed belatedly. But as indicated in Bhagwant Singh's case (supra) the right is conferred on the informant and none else.

> 16. When the information is laid with the Police, but no action in that behalf is taken, the complainant is given power under Section 190 read with Section 200 of the Code to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. These aspects have been highlighted by this Court in All India Institute of Medical Sciences Employees' Union (Reg.) through its President v. Union of India and others (1996 (11) SCC 582). It was specifically observed that a writ petition in such cases is not to be entertained."

13. We may conveniently appreciate the intent of Rule 9 (6)(b) of CCS Pension Rules in aforementioned backdrop. Apparently, after forwarding a report under Section 173 of Code of Criminal Procedure, a Police Officer may forward further report in terms of Section 173(8). Having gathered an impression regarding further investigation in the matter and possibility of filing further report which is normally called supplementary report, a Magistrate may consider the report filed under Section 173(2) as not riped for taking cognizance and may await supplementary report. At the same time, Magistrate may consider a police report deficient and require the investigating officer to do further investigation and file further report. Thus, what is required to be seen is that at what stage a report of a police officer can be called a report of which the Magistrate takes cognizance. Of course, Magistrate can take cognizance of a report on filing of the same under Section 173 (2) of Code of Criminal Procedure and he may consider and take cognizance of it after filing of report under Section 173 (8). If we go by the literal interpretation, judicial proceedings in the case of criminal proceedings can be deemed to be instituted on a police report of which Magistrate takes cognizance being **made.** In other words, with the preparation of a report in terms of provisions of Section 173 (2) of Code of Criminal

Procedure, the criminal proceedings can be deemed to be instituted. However, a question may be raised, whether a report made by police officer can be considered as worth taking cognizance on preparation of the same or on being forwarded to the Court at a stage when the same is not considered by Magistrate for issuing notice to the accused. Of course, the intention of the aforementioned rule is not that the report of police officer should be in order good enough to he considered by Magistrate to frame the charge against the Government servant or not. In terms of said rule, the investigating agency of the State must be found to have discovered sufficient material to indict the concerned Government servant. However, the entitlement of a Government servant to receive his gratuity on his retirement may not be left to interpretation and understanding of said rule alone, more particularly, for the reasons that the conclusion of criminal proceedings may take unduly long period. Further, since the report to be made by police officer mentioned in Rule 9(6)(b) is further qualified by use of expression "of which the Magistrate takes cognizance", there is a scope for the authorities in the helm of affairs to settle terminal benefits including gratuity of a Government servant to have their own subjective interpretation of the same. In their wisdom, the different authorities may again interpret said rules as per their individual perceptions. Such interpretation may lead to uncertainty. In the present case the phrase "report of police officer of which the Magistrate takes cognizance is made" can be understood in different ways such as preparation of report by investigating officer, approval of such report by Station House Officer or some other authority concerned to do so or approval of report by Directorate of Prosecution. When any narrow or literal interpretation of any rule may laid to uncertainty or is found not leading to achievement of object of such rules, same may be accepted, but may not be adopted in practice. As early as in 1879, the Privy Council viewed in the case of Sayed Mir Ujmuddin Khaunalad Mir Khariurudin vs. Zia UI Nissa Begum, 1879 ILR 3Bom. 422 (P.C) that the widest operation permitted by the language of the statute should be given and the word, of such a statute must be so construed as "to give the most complete remedy contemplated by the statute". It is well settled rule of construction that the words in a statute should be construed as to accord with the intent of enactment. The etymological or grammatical propriety of the language is not the criterion but what matters in the construction is the object to be attained. As stated by Brett. M.R., in Lion Mutual Marine Insurance Association vs. Tucker , (1983) 12 Q.B.D., "grammatically words may

cover a base; but whenever a statute or document is to be construed, it must be construed not according to the ordinary general meaning of the words, but according to the ordinary meaning of the words as applied to the subject matter with regard to which they are used, unless there is something which renders it necessary to read them in a sense which is not their ordinary sense in the English language as so applied. A good illustration of the purposeful objection and harmonious construction is the case of Sirsilk vs. Government of A.P., AIR 1964 SC 160. There was a conflict between two equally mandatory provisions viz Sections 17 (1) and 18 (1) of the Industrial Disputes Act, 1947. Hon'ble Supreme Court ruled that the only way to resolve the conflict was to hold that all settlements which becomes effective from the date of signing the industrial dispute comes to an end and the award becomes infructuous and the government cannot publish it. Meaning of a doubtful word or phrase may be ascertained by applying the principle of Noscitur a sociis. This principle has application where the word isolated from the context yield no sensible meaning, but when associated with expressions gives asesible meaning. In other words, in doubtful cases other words supply guidance to ascertain the meaning of a particular expression, which when isolated is capable of more than one meaning. According to Maxwell, when two or more words which are susceptible of analogous meaning, are coupled together they are understood to be used in their cognate sense. Noscitur a sociis provide construction of words with reference to words found in immediate connection with them and is wider than ejusdem generis which is only an application of the broader maxim noscitur a sociis. In present case Rule 9 (6)(b) define the institution of judicial proceedings. Judicial proceedings mean any proceeding wherein judicial action is invoked and taken or any step taken in a court of justice in the prosecution or defense of an action. Said terms as described in Black's Law Dictionary, Fifth Edition reads as under:

> "Any proceeding wherein judicial action is invoked and taken. Mannix v. Portland Telegram, 144 or172, 23 P.2d 138. Any proceeding to obtain such remedy as the law allows. Any step taken in a court of justice in the prosecution or defense of an action. A general term for proceedings relating to, practiced in, or proceedings from, a court of justice; or the course prescribed to be taken in various cases for the determination of a controversy or for legal redress or relief. A proceeding wherein there are parties, who have opportunity to be heard, and wherein the tribunal proceedings either to a determination of facts upon evidence or of law upon proved or conceded facts."

14. Apparently preparation of report by police officer or the process during investigation cannot be treated as judicial action or step taken in a court of justice. As has been discussed herein above, once the language used in aforementioned Rule 9 (6) (b) intend to define deemed institution of judicial proceedings, the words, ☒ on the date on which the complaint on report of a police officer of which Magistrate take cognizance is made "would be required to construe with reference to term judicial proceedings only. Thus, in view of principle of noscitur a sociis the words report of police officer of which Magistrate takes cognizance is made can be construed only with reference to the words, judicial proceedings in immediate connection with which same are used. In view of the aforementioned discussion and finding, the literal interpretation of aforementioned Rule 9 (6) (b) (i) as given by Sh. T.C. Gupta, learned senior counsel for Union of India though may be accepted but cannot be adopted in practice. The object of aforementioned rule would be achieved only if it is understood as provided that the judicial proceedings shall be deemed to be instituted on the date when Magistrate takes cognizance of a police report under Section 190 (1) of Code of Criminal Procedure, i.e. when having examined such report, he issued order for production of accused. It is made clear that in practice cognizance should not be understood as framing of charges. Between the date of cognizance or from the framing of charge, there may be a long time gap. One more issue which is required to be addressed in present facts of the case is, when in terms of Rule 9 of CCS Pension Rules, the President can withhold pension or gratuity or both either in full or in part permanently or for specific period only if in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence during the period of service or is found to have cased pecuniary loss to the Government whether irrespective of nature and degree of allegations against a Government servant in criminal or departmental proceedings, payment of gratuity can be denied to him till conclusion of departmental proceedings and issuance of final order in such proceedings. The aforementioned Rule 9 was noted and interpreted by Hon'ble Supreme Court in Union of India and another vs. G.Ganayutham (Dead) by LRs., 1997 (7) SCC 463 in following words:

> "7. Rule 9 of the Rules refers to the power of the President to withhold or withdraw pension, whether permanently or for a specified period, and to the ordering of recovery from the pension, of the whole or part of any pecuniary loss caused to the Government, in any departmental or Judicial

> proceedings, if the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement. The proviso requires that the Union Public Service Commission be consulted before any final orders are passed. Rule 3 of the Rules defines 'pension' as including 'gratuity' except when the term pension is used in contradistinction to gratuity. In Jarnail Singh v. Secretary, Ministry of Home Affairs, (1993) 1 SCC 47 : (1994 AIR SCW 936) it was held that 'the term 'pension' used in Rule 9(1) must be construed to include gratuity since the said word, in the context, was not used in contradistinction to gratuity'. It was further held that the amendment made in Rule 9(1) by the Central Civil Services (Pension) Third Amendment Rules, 1991 which substituted the words 'pension or gratuity, or both' in the body of Rule 9 was clarificatory and was intended to remove the doubt created by certain decisions of the Court rendered in 1990. It was also held that in an earlier decision in D. V. Kapoor v. Union of India, (1990) 4 SCC 314 : (AIR 1990 SC 1923) which took a contrary view, Rule 3(1)(0) was not brought to the notice of the Court. As to Jesuratnam v. Union of India, 1990 Supp SCC 640 it was said that there was no discussion in that case."

15. From the aforementioned rule it is clear that even the President can withhold the amount of gratuity payable to a Government servant or withdraw the same either permanently or for a specified period or order recovery from it either full or in part of pecuniary loss caused to the Government only when either in departmental or judicial proceedings the pensioner is found guilty of negligence or grave misconduct. However, Rule 69 (1)(c) provide for non-payment of gratuity to Government servant during pendency of departmental or judicial proceedings. Rule 69 (1)(a) of said rules refer to sub-Rule (4) of Rule 9. From harmonious construction of Rule 9 and 69 of these rules it can be construed that the object of Rule 69(1)(c) is only to ensure proper implementation of order to be passed in proceedings under Rule 9 (1). Thus, only in such cases where the criminal proceedings involving grave misconduct or negligence during the period of service or charge of pecuniary loss are pending, the amount of gratuity payable to a pensioner may not be released. Rule 9 (1) provide for right reserved to President to withhold the gratuity, order recovery from the same and its withdrawal on a pensioner being found guilty in judicial proceedings of grave misconduct or negligence during the

period of service. Rule 9 (2) (a) provide for continuance of proceedings pending against a Government at the time of retirement as if the same are instituted after his retirement under Rule 9(2)(b). Rule 9 (4) provide for payment of provisional pension to such Government servant against whom the departmental proceedings are continued under the sub-rule (2) of Rule 9 on their retirement. Rule 69 (1) (c) provide for non-payment of gratuity to such government servant who are referred to in Rule 9 (4). Thus, apparently in terms of Pension Rule, gratuity should not be paid to such government servants against whom an order under Rule 9 thereof is possible. Such order can be passed only in the cases where either he is involved in grave misconduct or the allegations of causing pecuniary loss are there against him. In terms of Section 14 (6) of Payment of Gratuity Rules 1972 notwithstanding anything contained in sub Section (1) thereof, the gratuity of an employee whose services are terminated for any act, willful omission or negligence causing any damage or loss or destruction or property belonging to employer shall be forfeited to the extent of damage or loss so cased. In clause (b) of said sub-Section 6, the gratuity payable to an employee may be forfeited in whole or in part, if services of such employee are terminated for his riotous or disorderly conduct or any other conduct violative on his part or for committing an offence involving moral turpitude provided that such offence is committed by him in the course of his employment. For easy reference Section 14(6) is extracted herein below:

> "Section 14(6) - Notwithstanding anything contained in sub-section (1):
>
> (a) the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or distribution or, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;
>
> (b) the gratuity payable to an employee (may be wholly or partially forfeited)."

16. When apparently the payment of gratuity to a pensioner is not to be made only in such cases where there is possibility of an order by President in terms of Rule 9 (1), employer should not refuse payment of such benefit in a routine manner. While taking a view on release of gratuity to an employee referred to in Rule 9 (4) of CCS (Pension) Rules, the concerned authority should satisfy itself regarding the nature of allegations against such Government servant, i.e. whether the allegations are

of causing pecuniary loss to the Government or are of grave nature warranting order under Rule 9, if proved. There is another aspect of the matter that conclusion of disciplinary proceedings may take a long period, thus whether a pensioner can be kept deprived of the amount of gratuity due to him for such a long period. Since the object of withholding of gratuity is to facilitate the implementation of an order possible under Rule 9 (1) of CCS Pension Rules, possibility may be explored to release the amount of gratuity on furnishing of a surety of serving Government servant by pensioner for reimbursing the amount of gratuity in the even he is required to do so in terms of an order passed under Rule 9 (1). As far as the amount of leave encashment cannot be withheld during pending criminal proceedings against a Government servant entitled to payment of such amount on his retirement. Of course, a pension commutation is a part of pension paid to a Government servant in advance. In terms of Rule 9 (1) of CCS Pension Rules, during pendency of departmental/judicial proceedings in respect of allegations mentioned in such rule the President can withheld amount of pensioner permanently. Thus, when there is possibility of issuance of an order under said rule against pensioner he may not be given a portion of pension in advance by 15 years. In view of the aforementioned, Original Application is disposed of with a direction to respondents to verify the date on which the concerned Court of Magistrate/Additional Session Judge took cognizance of police under Section 19 (1) or 193 of Code of Criminal Procedure. If the cognizance of such report is found to be taken after the date of his retirement, respondents would release the entire amount of gratuity of applicant within two months. Even if it is found that the Magistrate/competent Court has taken cognizance of police report referred prior to retirement of applicant, respondents would examine as such whether the finalization of criminal proceedings pending against applicant would invite an order under Rule 9 (1) against him having effect on his gratuity. And, if on such assessment they arrive at a conclusion that such final order even if the same is passed against the applicant may not invite an order of withholding of his gratuity, they may explore the possibility to release the same to him. While doing so, the concerned authority may ask concerned employee to furnish surety of serving Government employee of Central Government to the satisfaction of concerned authorities regarding reimbursement of amount of gratuity in the event of issuance of an order against applicant under Rule 9 (1) of CCS Pension Rules concerning the same. Outcome of aforementioned exercise to be carried out by respondents shall be communicated to applicant by way of speaking order."

Ex-facie, the issue involved in the present Original Application is in all fours of the aforementioned order. In the wake, the OA is disposed of with direction to respondents to consider the claim of the applicant for payment of terminal benefits in terms of the aforementioned judgment as expeditiously as possible preferably within eight weeks from the date of receipt of a copy of this order. No cost.

(A.K.Bhardwaj)
Member (J)

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