

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA 3433/2016

This the 27th day of September, 2018

Hon'ble Mr. Pradeep Kumar, Member (A)

S.K. Garg, Aged 67 years.
S/o Late Shri Gannamal
Assistant Accounts Officer (RTD)
Group "B"
House No. RZG-214, Gali No. 9
Bhagat Singh Marg, Raj Nagar Extension
New Delhi

....Applicant

(By advocate: Mr. E.J. Verghese)

Versus

1. Union of India through the Secretary
Ministry of Defence
Govt. of India
South Block
New Delhi-110011
2. The CGDA, Ulan Batar Road
Palam
Delhi Cantt-110010

....Respondents

(By advocate: Mr. Subhash Gosain)

ORDER (ORAL)

Learned counsel for the applicant pleaded that the applicant was working in respondents' department CGDA, under the Ministry of Defence, who is respondent No. 1 in the instant case. He had retired from service on 31.08.2009. Prior to that he was due for grant of 3rd MACP w.e.f. 01.09.2008 however, the same was not granted to him.

2. The applicant further brought out that one criminal case was started by the Meerut Police against the applicant w.e.f. 14.02.2009. The applicant brought out that this criminal case is purely in his personal capacity and is nowhere related to either the office colleagues/staff or in discharge of his official duties in any manner.

3. The present OA has been filed on two grounds, firstly non-grant of 3rd MACP w.e.f 01.09.2008 when there was no criminal case or any proceedings were pending against him and secondly the respondents have since granted him provisional pension but Gratuity, Leave Encashment and Commutation of Pension have not been granted to him because of the criminal case proceedings going on against him. Further non-grant of 3rd MACP is adversely affecting him in provisional pension and it will have adverse effect on all other retiral dues and leave encashment also.

4. The respondents brought out that the concerned applicant had actually been arrested by the Meerut Police for a period extending more than 48 hours w.e.f 15.02.2009 and was released on bail on 30.01.2010 that is almost five months after retirement. Accordingly the applicant was placed under suspension and when he retired, provisional pension was granted to him but other benefits could not be released as CCS (Pension Rules) 1972 framed for Central Govt. Employees have a provision in Rule 69 that only provisional pension shall be granted to central government servant against whom departmental or judicial proceedings are pending. Further, during

this period no gratuity is allowed to be paid. This rule 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 :*

¹*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.”*

5. The respondents also brought out that in regard to the 3rd MACP the same was considered by Screening Committee however in view of the said Criminal Case going on, recommendations were

kept in a sealed cover which will be opened when this criminal case is over and he has been exonerated.

6. The matter has been heard at length. In regard to 3rd MACP, it is admitted that the same was due on 01.09.2008. It is also admitted that on this date, there was no criminal case or any other proceedings against the applicant. MACP is to be considered and if employee is found eligible on the assigned date, it is granted. The case of the applicant has already been considered and recommendations kept in sealed cover pending finalization of criminal case proceedings. In the instant case said criminal case can have no bearing on this 3rd MACP, as this case was instituted on 14.02.2009 i.e. much later to the due date which fell on 01.09.2008. Accordingly, this sealed envelope be opened forthwith and if he is found fit, 3rd MACP be granted to the applicant.

This entire process be completed within a period of eight weeks from the date of receipt of a certified copy of this order with all consequential benefits in respect of provisional pension also.

7. In regard to the other retiral benefits, The Tribunal observes that rule 69 of CCS Pension Rule, quoted in para 4 above, is in the context where department may have initiated a case or some judicial proceedings may have started as a result thereof (e.g. Vigilance care, CBI/CVC case) and department may have to effect certain recoveries etc. later on or may have to make good certain losses due to various reasons e.g. due to unauthorized actions or malfeasance on the part of the retired employee. But for this course

of action, the case has to relate to official discharge of duties. In respect of instant applicant, the judicial proceedings admittedly, do not relate to anything official.

Therefore, in regard to other retiral benefits, the applicant is given four weeks' time to make a formal representation to the respondents along with all supporting judgments and documents to claim his retiral dues. On receipt of such a representation, the respondents are directed to pass a speaking and reasoned order in respect of the applicability or otherwise of the Rule 69 of the CCS (Pension) Rules, in the instant case, within a further period of eight weeks from the date of receipt of representation.

In case as a result of this examination, it is found that this rule 69 is not attracted in the instant case, it is also directed that the respondents shall release all retiral dues including pension to the applicant within a further period of eight weeks, along with interest at GPF rate w.e.f. 31.08.2009 which was his due date of retirement.

8. In view of above, the OA is disposed off with above directions with liberty to the applicant to approach this Tribunal in case some grievance still subsists after reasoned order is passed by the respondents as directed in para 7 above. No costs.

**(Pradeep Kumar)
Member (A)**

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