

**Central Administrative Tribunal
Lucknow Bench, Lucknow**

Original Application No. 332/00052/2018

Order reserved on: 14.11.2018

Pronounced on: 27.11.2018

The Hon'ble Mr. Devendra Chaudhry, Member (Administrative)

Chandra Pal, aged about 61 years, S/o late Gajodhar Prasad, R/o House No. D-61/E-1, Sector G, LDA Colony, Kanpur Road, Lucknow.

.....Applicant

By Advocate : Sri Dharmendra Awasthi.

Vs.

1. Union of India through the Secretary, Ministry of Communication, Department of Posts, Government of India, North Block, New Delhi.
2. The Chief Post Master General, UP Circle, Lucknow.
3. The Director, Postal Services, Lucknow.
4. Chief Postmaster, Lucknow G.P.O., Lucknow

.....Respondents

By Advocate: Sri Rajesh Katiyar.

Order

Delivered by: Hon'ble Mr. Devendra Chaudhry, Member (A)

The present Original Application (OA) has impugned the order dated 01.07.2017 which has been passed in compliance of the order dated 05.05.2017 passed by this Learned Tribunal in OA No. 89/2017.

2. The case of the Applicant is that a criminal case was registered against the Applicant under certain sections of IPC and the same is pending before Learned Special Judicial Magistrate, CBI, Lucknow. That this case has nothing to do with any official matter concerning the Applicant and while the chargesheet has been filed, the case is still continuing. That, meanwhile the Applicant retired from service vide date 31.07.2016 and the gratuity dues alongwith regular pension has been withheld on the ground of pendency of criminal case against the Applicant without any formal order under Rule-9 of the CCS (Pension) Rules-1972.

That, the Applicant had filed an OA in this Tribunal w.r.t. release of gratuity and the Learned Tribunal had been pleased to pass an order dated 05.05.2017 directing the respondents to pass a reasoned order on the claim of the Applicant w.r.t. release of gratuity and regular pension. In consequence thereof the impugned order has been passed. However, it has not complied with the condition of Rule-9 of the CCS (Pension) Rules wherein a formal order has to be issued on behalf of the President. Since the impugned does not reflect it hence it is bad in law and liable to be quashed and hence the OA.

3. As against this, the Respondents have filed Counter Reply in which they have submitted that based on criminal proceedings against the Applicant, the impugned order dated 01.07.2017 is a speaking order and no further order is required to be passed w.r.t. withholding the gratuity and regular pension and hence the OA should be dismissed.

4. I have heard Learned Counsel's for both the parties at length and also perused the material on records carefully including the counter reply filed by the Respondents.

5. The fact of the case are not disputed w.r.t. the pendency of the criminal proceeding against the Applicant and the withholding of regular pension and gratuity as well as the order dated 01.07.2017, the impugned order in compliance of the order of this Learned Tribunal dated 05.05.2017. The matter is actually quite simple. The Applicant does not seem to know the exact law on the withholding of pension and gratuity etc., as laid down in Rule-9 of the CCS (Pension) Rules-1972 which reproduced as under for clarity:

“.....9. Right of President to withhold or withdraw pension

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement :

Provided that the Union Public Service Commission shall be consulted before any final orders are passed :

Provided further that where a part of pension is withheld or withdrawn the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy-five per mensem.

- (2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service :

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

- (b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment, -
- (i) shall not be instituted save with the sanction of the President,
 - (ii) shall not be in respect of any event which took place more than four years before such institution, and
 - (iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) *Omitted*

(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.

(5) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(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....”

What the above rule lays down is that, any order w.r.t. withholding of pension or gratuity has to be passed on behalf of the President i.e. by seeking a specific approval of the designated authority on behalf of the President of India. The impugned order nowhere states this explicitly implying thereby no specific approval has been taken from the competent authority on behalf of the President of India (emphasis added). The lack of

specific approval on behalf of the President/competent authority on his behalf makes the impugned order liable to be held non-compliant of Rule-9 of CCS (Pension) Rules, 1972. This is the key point missed by the Respondents and they have to set it right.

6. In this connection, Learned Applicant Counsel has filed two rulings specifically supporting his averment. These rulings are (i) Central Administrative Tribunal, Lucknow Bench, Lucknow in O.A. No. 552/2013-Gopal Krishna Shukla v. UoI & Others dated 18.12.2015, and (ii) Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 2517/2010 – Lakhi Ram v. UoI & Others dated 22.09.2011.

7. In conclusion, therefore, the OA of the Applicant is liable to be upheld and the impugned order dated 01.07.2017 is liable to be quashed and is hereby quashed on account of non-compliance of Rule-9 of CCS (Pension) Rules-1972. It is further ordered that Respondents may pass a reasoned order with competent approval of authority authorized on behalf of President of India under Rule-9 of CCS (Pension) Rules, 1972 and record it explicitly and clearly accordingly. This order may be issued in a time period not later than three months from the date of receipt of this order.

8. The OA is disposed of accordingly. No costs.

(Devendra Chaudhry)
Member (Administrative)

/JN/