

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL,

ALLAHABAD BENCH, ALLAHABAD

Allahabad, this the **26th** day of **March 2019**

Present:

Hon'ble Rakesh Sagar Jain, Member (J)

Original Application No. 330/1092/2014

(U/S 19, Administrative Tribunals Act, 1985)

S. B. Shukla, Aged about 60 years,

S/o Late K. N. Shukla.

Ex-Superintendent of Central Excise,

R/o 117-A, Alopi Bagh (Near Allahabad Bank),

Distt - Allahabad.

.....Applicant.

By Advocates – Shri Manish Kumar Yadav.

VERSUS

1. Union of India through the Secretary Ministry of Finance & Revenue, New Delhi.
2. The Chief Commissioner, Customs, Central Excise & Service Tax, Lucknow.
3. The Commissioner, Customs, Central Excise & Service Tax, 38 MG Marg, Allahabad.

..... Respondents.

By Advocate : Dr. Rajeshwar Tripathi

ORDER

Delivered by Hon'ble Mr. Rakesh Sagar Jain :

1. The present O.A has been filed by applicant S.B.Shukla under Section 19 of Administrative Tribunals Act, 1985 seeking the following reliefs:

 - i. Issue a writ, order or direction in the nature of mandamus commanding the respondents to make the payment of gratuity to the applicant in terms of order and judgment given by the Hon'ble Supreme Court in the case of state of Jharkhand Vs. Jitendra Prasad Srivastava and Another, Date 14-08-2013.
 - ii. Issue any other writ, orders or directions in nature of mandamus commanding the respondents to make payment of 18% interests on the delayed payment of post retiral benefits to the applicant.
2. Brief facts of the case are that applicant seeks directions to the respondent to release his gratuity. Applicant's case as per the O.A. is that "the applicant was issued charge sheet dated 26-09-2013 which to on the wrong appreciation of the fact and with prejudice mind. The charge sheet was served upon the applicant at 07:35 P.M. on the last day of his service, at his residence forcibly (after office hours as 28 & 29-09-2013 were Saturday and Sunday), i.e.

Holidays and 30-09-2013 was the date of his superannuation. The true copy of Charge Sheet dated 26-09-2013 is being filed as Annexure – A -1."

3. It is the case of applicant that the respondents have withheld his gratuity on account of the DE pending against him which is against the law laid down by the Hon'ble Apex Court in State of Jharkhand and Others vs. Jitendra Kumar Srivastava & Another, [(2013) 12 SCC 210. Hence the present O.A. for release of gratuity.
4. In their counter affidavit, respondents have taken the plea that the gratuity has been withheld under Rule 69 of CCS (Pension) Rules, 1972 since a departmental proceeding is pending against the applicant.
5. I have heard and considered the arguments of learned counsels for the parties and gone through the material on record.
6. Learned counsel for applicant argued that withholding of his gratuity on account of the DE pending against him is against the law laid down by the Hon'ble Apex Court in State of Jharkhand and Others vs. Jitendra Kumar Srivastava & Another, [(2013) 12 SCC 210.
7. On the other hand, learned counsel for respondent relying upon Rule 69 (1) (c) of Central Civil Services (Pension) Rules, 1972 argued that, as per, Rule 69 (1) (c), gratuity cannot be paid to the government servant i.e. the applicant since a DE was initiated against the applicant.

8. The O.A. is to be disposed of on a short ground. Learned counsel for applicant has placed on record Order No. 8/2017 dated 07.02.2017 issued by Under Secretary to the Government of India wherein it has been mentioned that the Competent Authority has decided to close the disciplinary proceedings instituted against the applicant by exonerating him of all the charges levelled against him on the basis of charge memorandum dated 26.09.2013.

9. In view of this matter, if the applicant has been exonerated of the allegations levelled against him in the charge sheet referred to the O.A. as well as the counter-affidavit, the respondents are under a legal obligation to issue necessary directions under Rules for disbursement of the retiral dues to the applicant within the time frame as laid down in the Rules with direction to disburse the retiral dues, if there are no legal impediments. O.A. is accordingly disposed of. No order as to costs.

(Rakesh Sagar Jain)

Member (J)

/Shashi/