

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.20/354/2019

Reserved on: 16.07.2019

Pronounced on: 22.07.2019

Between:

G.V. Chaitanya Kumar – Group C,
S/o. late G. Venkataratnam,
Age 59 years, Postal Assistant (Compulsory Retired),
Nuzivedu Head Post Office,
Gudivada Division, R/o. H. No. 10/444,
Agavarappadu, Opp. Vasavinagar,
Gudivada – 521 301.

... Applicant

And

1. The Union of India, Represented by its
Secretary, Government of India,
Ministry of Communications and IT,
Department of Posts – India,
Dak Bhavan, Sansad Marg, New Delhi – 110 001.
2. The Chief Postmaster General,
AP Circle, Vijayawada – 520 013.
3. The Director of Postal Services,
Vijayawada Region, Vijayawada – 520 003.
4. The Superintendent of Post Offices,
Gudivada Division, Gudivada – 521 301.

... Respondents

Counsel for the Applicant ... Mr. M. Venkanna

Counsel for the Respondents ... Mrs. D. Shoba Rani, Addl. CGSC

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. The OA is filed for release of Pension and Pensionary benefits on superannuation.

3. Brief facts are that the applicant who worked as Sub Post Master in the respondents organisation was imposed with the penalty of 'compulsory retirement' on 1.12.2017. Respondents processed the papers submitted for Pension and Gratuity but did not release them. In the meanwhile, respondents filed a Police complaint against the applicant and the same was registered on 12.1.2019 as FIR No. 9/2019. As Pension and terminal benefits have not been released, OA has been filed.

4. The contentions of the applicant are that except for leave encashment all other retirement benefits including terminal benefits have not been released though time period allowed is 3 months from the date of retirement. Respondents have processed papers for release of gratuity but are holding the same on the ground that a Police case has been registered and that too, after a year of compulsory retirement of the applicant. Applicant asserts that Pension can be withheld only if proceedings under Rule 9 of CCS (Pension) Rules, 1972 are pending or if there is a court case pending against the applicant as on the date of retirement.

5. Respondents inform that the applicant was involved in a case of shortage of cash to the extent of Rs.5,38,640.25 and therefore, he was

proceeded on disciplinary grounds. Applicant admitted that he has used the amount for personal use and thereafter credited the total amount found short in Govt accounts on 31.8.2015. Considering the nature of offense, penalty of 'Compulsory Retirement' was imposed on 1.12.2017. After retirement, applicant was paid an amount of Rs 5,79,600/- towards leave encashment. While processing the Pension papers, a complaint was lodged with the Police on 2.1.2019 and an FIR bearing No.9/2019 dated 12.1.2019 was registered. Memo for release of Gratuity was issued on 10.1.2019 with a condition that Gratuity has to be released if there is no departmental or Judicial proceedings pending against the Govt. Servant as on the date of retirement. Further, as per Rule 69 (1)(c) of CCS (Pension) Rules, 1972, Gratuity should not be released until the conclusion of the departmental or judicial proceedings. Therefore, in view of the pending criminal case, Gratuity was not released. In regard to pension, provisional pension is being paid in accordance with the interim orders of this Tribunal on 9.4.2019.

6. Heard both the counsel and perused the pleadings on record.

7. I) The applicant was proceeded under Rule 14 of CCS (CCA) Rules, 1965 for shortage of cash to the tune of around Rs.5 lakhs and imposed the penalty of 'compulsorily retirement' on 1.12.2017. Applicant, admitting the mistake committed, has credited the entire amount to the Govt Account. However, after a year on being compulsorily

retired, a Police complaint was registered on 12.1.2019 vide FIR No.9/2019. Sanction issued for release of Gratuity has a clause as under:

“It may also be ensured that no departmental/Judicial case is pending against the Govt. Servant on the date of retirement.”

Applicant retired on 1.12.2017 whereas the FIR was registered on 12.1.2019 and hence the clause cited above cannot be invoked to deny release of Gratuity to the applicant. Equating date of retirement with date of payment of benefits, for reckoning as to whether any judicial proceedings are pending, as has been made out by the respondents in the reply statement, is illogical, to say the least. Respondents are under the mistaken impression that by filing a complaint with the police, the judicial proceedings have commenced. This Tribunal will clarify this aspect in the following paras as the analysis of the case progresses.

II) Respondents have cited Rule 69(c) of CCS (Pension) Rules for withholding gratuity. The rule is extracted hereunder:

“69(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:..”

However, it must be remembered that Gratuity has to be paid for the service rendered by the applicant. It is not a boon. There are certain conditions to be complied with, in making deductions or withholding Gratuity. The foremost among them is Proviso (g) of Section 60 of Civil Procedure Code, wherein it was ordained that Gratuity cannot be attached even by a court decree as specified hereunder:

“60. Property liable to attachment and sale in execution of decree.-

(1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale, namely

(a) xxx

(b) xxx

(c) xxx

(d) xxx

(e) xxx

(f) xxx

(g) Stipends and gratuities allowed to pensioners of the Government or of a local authority or of any other employer, or payable out of any service family pension fund notified in the Official Gazette by the Central Government or the State Government in this behalf, and political pensions;”

Therefore, the action of the respondents is against Section 60 (g) of the CPC and hence untenable. The nature and character of Gratuity and the application of Section 60 (g) of CPC has been dealt at length by the Hon’ble Supreme Court in the case of **Secretary, ONGC Ltd. v. V.U. Warriar, (2005) 5 SCC 245**, as under:-

“20. It is well settled that gratuity is earned by an employee for long and meritorious service rendered by him. Gratuity is not paid to the employee gratuitously or merely as a matter of boon. It is paid to him for the service rendered by him to the employer (vide Garment Cleaning Works v. Workmen).

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21. In Jarnail Singh v. Secy., Ministry of Home Affairs, this Court had occasion to consider the provisions of the Central Civil Services (Pension) Rules, 1972. The definition of “pension” included gratuity under Rule 3.”

The rules governing the Central Government Employees also govern the employees of the BSNL. The CCS (Pension) Rules, 1972 provide for payment of gratuity as also recovery or withholding of Gratuity. Some of the relevant rules are as under:-

“71. Recovery and adjustment of Government dues

1. It shall be the duty of the Head of Office to ascertain and assess Government dues payable by a Government servant due for retirement.

2. The Government dues as ascertained and assessed by the Head of Office which remain outstanding till the date of retirement of the Government servant, shall be adjusted against the amount of the retirement gratuity becoming payable.

3. The expression 'Government dues' includes -

(a) dues pertaining to Government accommodation including arrears of licence fee, as well as damages (for the occupation of the Government accommodation beyond the permissible period after the date of retirement of allottee), if any;

(b) dues other than those pertaining to Government accommodation, namely, balance of house building or conveyance or any other advance, overpayment of pay and allowances or leave salary and arrears of income tax deductible at source under the Income Tax Act, 1961 (43 of 1961)”

As per Rule 3 of the CCS (Pension) Rules, 1972, vide Sub-Rule (i) & (ii) “Government” means the Central Government; and “Government dues” means dues as defined in sub-rule (3) of Rule 71.

The above rule is clear that recovery is certainly permissible from out of the gratuity but, the said recovery should be 'government dues'. Here, government having been defined as 'Central Government', the due should be payable to the 'Central Government'. Thus, State Government dues or private dues are outside the scope of the provisions of the CCS (Pension) Rules. May be that since as per Rule 71(3) the term 'government dues' is an inclusive clause, certain other dues could also be covered within the term government dues, but here again, such dues should be of 'central Government'. Nothing less; nothing else!

In a very recent case of ***Radhey Shyam Gupta v. Punjab National Bank***, (2009) 1 SCC 376, the Apex Court has held as under:-

"22. Ms Shobha's submission finds support in the decision of this Court in Calcutta Dock Labour Board v. Sandhya Mitra wherein it was reaffirmed that gratuity payable to dock workers under a scheme in absence of a notification under Section 5 of the Payment of Gratuity Act, 1972, would not be liable to attachment for satisfaction of a court's decree. The same principle was reiterated by this Court in Union of India v. Wing Commander R.R. Hingorani and Gorakhpur University v. Dr. Shitla Prasad Nagendra.

23. However, in all fairness, Ms Shobha also cited the decision of this Court in Union of India v. Jyoti Chit Fund and Finance, where while dealing with the provisions of Sections 3 and 4 of the Provident Funds Act, 1925, prohibiting attachment of sums held by the Government, as well as proviso (g) to Section 60(1) of the Code, this Court held that till such time as amounts payable by way of provident fund, compulsory deposits and pensionary benefits did not reach the hands of the employee they retained their character as such and could not, therefore, be attached. However, once the amounts were received by the employee they ceased to retain their original character and,

were, therefore, capable of being attached. Ms Shobha urged that the aforesaid decision had been rendered long before the other decisions cited by her and the subsequent decisions would prevail over the earlier decision.

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27. On behalf of the Bank, Mr Dhruv Mehta submitted that despite several attempts having been made to locate the Matador, the same could not be traced and the Bank, therefore, had no alternative but to proceed against the appellant in his capacity as the guarantor for recovery of its dues. Mr Mehta urged that the provision of proviso (g) to Section 60(1) of the Code would apply only to the source of the amounts received by way of retiral benefits, such as pension and gratuity, but not to payments made in respect thereof. On the other hand, once such payments were made, their character stood altered as they became mixed with the other assets of the employee concerned.

28. In support of his submission, Mr Mehta also relied on Wing Commander R.R. Hingorani which had been referred to by Ms Shobha, wherein in the context of Section 11 of the Pensions Act, 1871, which provided for exemption of pension from attachment, this Court referred to the decision in Jyoti Chit Fund case⁷ where Krishna Iyer, J., speaking for the Bench, had indicated that once the monies covered by the provisions of the proviso to Section 60(1) of the Code had been paid to the employee concerned, they no longer retained their original character and were, therefore, amenable to attachment.

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33. However, we are also of the view that having regard to proviso (g) to Section 60(1) of the Code, the High Court committed a jurisdictional error in directing that a portion of the decretal amount be satisfied from the fixed deposit receipts of the appellant held by the Bank. the High Court erred in altering the decree of the trial court in its revisional jurisdiction, particularly when the pension and gratuity of the appellant, which had been converted into fixed deposits, could not be attached under the provisions of the Code of Civil Procedure. The decision in Jyoti Chit Fund cas has been considerably watered down by later decisions which have been indicated in para 22 hereinbefore and it has been held that gratuity payable would not be liable to attachment for satisfaction of a court decree in view of proviso (g) to Section 60(1) of the Code."

Hence, withholding the gratuity amount by the respondents is against the legal principle laid by the Hon'ble Supreme Court.

III) Further as per Section 7 (3 & 3A) of the Gratuity Act, which is extracted hereunder, interest has to be paid for the delayed release of Gratuity, by the respondents:

“(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.”

(3-A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3) the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits, as that Government may, by notification specify.”

IV) Similarly, when it comes to payment of GPF due to the applicant, there is protection provided from attachment under Section 10 of the Provident Fund Act 1952 as under:

“10. Protection against attachment. -

(1) The amount standing to the credit of any member in the Fund or of any exempted employee in a provident fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any Court in respect of any debt or liability incurred by the member or the exempted employee, and neither the officer assignee appointed under the Presidency Towns Insolvency Act, 1909 (3 of 1909) nor any receiver appointed under the Provincial Insolvency Act, 1920 (5 of 1920), shall be entitled to or have any claim on, any such amount.

(2) Any amount standing to the credit of a member in the fund or of an exempted employee in a provident fund at the time of his death and payable to his nominee under the Scheme or the rules of the provident fund shall, subject to any deduction authorised by the said Scheme or rules, vest in the nominee and shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or of

exempted employee and shall also not be liable to attachment under any decree or order of any court.

(3) The provisions of sub-section (1) and sub-section (2) shall, so far as may be, apply in relation to the pension or any other amount payable under the pension Scheme and also in relation to any amount payable under the Insurance Scheme as they apply in relation to any amount payable out of the Fund. “

Therefore, notwithstanding the criminal case filed, Provident Fund amount has to be released to the applicant. Similarly, based on the prevailing legal position in regard to Gratuity and PF, CGEGIS need also to be considered for release, since here too, applicant has contributed for the Group Insurance cover. The reply statement is silent as to why CGEGIS Amount has been withheld. One more pertinent aspect to be mentioned is that the applicant has recouped the loss caused to the respondents organisation. For the misconduct, applicant has been punished by imposing the penalty of compulsory retirement. In the garb of criminal proceedings about which, the respondents are not too sure in regard to the commencement of the proceedings, holding of the terminal benefits appears to be too harsh.

V) Further, the applicant has been penalised with compulsory retirement. Pension and commutation of pension can be granted if there are no disciplinary and judicial proceedings pending. Respondents have taken cover of Rule 69 of CCS (Pension) Rules to deny commutation. There are no disciplinary proceedings pending against applicant and only an FIR has been filed with the police in regard to the criminal case. Respondents based on the FIR claim that Judicial Proceedings are pending, which is incorrect. A judicial proceeding is said to be pending

from the date the Magistrate takes due cognizance of the report of the Police officer in regard to the offence in a criminal case. Rule 9(6) of CCS (Pension) Rules clarifies the position in regard to the institution of judicial proceedings as under:

“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.”*

Reply statement does not indicate such a date nor did the learned counsel for the respondents informed about the same while making the submissions. Hence it is not known as to whether Judicial proceedings have commenced.

VI) Rule 4 of the CCS (Commutation of Pension) Rules, 1981 state that 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 percentage of his provisional pension authorised under Rule 69 of the Pension Rules or the pension, as the case may be, during the pendency of such proceedings. Under this Rule, the respondents presuming that the judicial proceedings are pending have

prohibited the applicant from commuting his pension. However, as seen from the details stated above, respondents have not indicated as to whether the Magistrate has taken cognizance of the report of the Police Officer. In the absence of such information, it has to be construed that the judicial proceedings against the applicant have not commenced.

VII) Therefore, in the view of the legal principle laid down by the Hon'ble Apex Court, provisions of the Code of Civil Procedure, Provident Fund Act, Rule 9(6) of CCS (Pension) Rules and the CCS (Commutation of Pension) Rules, 1981 cited, action of the respondents is not as per rules and arbitrary. Hence, the respondents are directed to consider as under:

- i) To release the Gratuity amount due along with interest at prevailing GPF rate of interest from date due till the date of payment.
- ii) To release the GPF/CGEGIS amount due to the applicant.
- iii) To allow commutation of pension if judicial proceedings are not pending against the applicant as on the date of the receipt of this order.
- iv) Time allowed is 3 months from the date of receipt of this order.
- v) With the above directions the OA is allowed.
- vi) No order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 22nd day of July, 2019

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