



Central Administrative Tribunal, Principal Bench

Original Application No.122 of 2003

New Delhi, this the 13th day of March, 2003

Hon'ble Mr. Justice V.S. Aggarwal, Chairman  
Hon'ble Mr. A.P. Nagrath, Member (A)

I.D. Rustogi  
181, Munirka Vihar  
New Delhi-67

.... Applicant

(By Advocate: Shri G.K. Aggarwal)

Versus

1. Union of India,  
through the Secretary,  
Ministry of Urban Development &  
Poverty Alleviation, Nirman Bhawan,  
New Delhi-11

2. Central Vigilance Commission  
Satarkata Sadan, INA  
New Delhi-23

.... Respondents

(By Advocate: Shri R.N. Singh)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

The applicant was working as Additional Director General (Architecture). He superannuated on 31.12.2002. On 13.12.2002, a memo had been served to him under Rule 16 of CCS (CCA) Rules, 1965 with respect to minor penalty.

2. By virtue of the present application, the applicant seeks quashing of the aforesaid memo primarily on the ground that under Rule 69 of CCS (Pension) Rules, 1972 read with Rule 9 of the said Rules, he could only be proceeded after he had superannuated for certain grave misconduct or negligence, which is missing in the present case and, therefore, the proceedings cannot continue.

3. Our attention has been drawn towards the decision of this Tribunal in the case of R.S. Sagar vs. Union of

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India & anr. (O.A.2068/2002) decided on 24.10.2002. The same question had come up for consideration and this Tribunal accepted a similar argument and quashed the proceedings.

4. We find ourselves in respectful agreement with the view so expressed. This Tribunal had held:

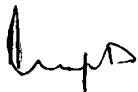
"As mentioned above, under Rule-9(i) of the CCS (Pension) Rules, 1972, the President has the power to with-hold pension or gratuity or withdraw either in full or in part and order recovery from pension or gratuity of the whole or part of loss in the circumstances mentioned therein. However, the proviso to Rule-69(1)(c) of the Pension Rules clearly directs payment of the entire gratuity due to the Government servant when departmental proceedings have been instituted under Rule 16 of the CCS (CCA) Rules, 1965. Obviously, the penalty of withholding or withdrawing a pension or gratuity in full or in part thereafter, that is after such departmental proceedings are complete, would not arise. It is relevant to note that the proceedings instituted by the respondents against the applicant are not major penalty proceedings under Rule 14 of the CCS (CCA) Rules, 1965 but minor penalty proceedings, i.e. under Rules 11 and 16 of the CCS (CCA) Rules. We, therefore, find force in the submissions made by Shri G.K. Aggarwal, learned counsel for the applicant. Accordingly, reading Rule-9(1) of the CCS (Pension) Rules harmoniously with the proviso to Rule -69(1)(c) of the same Rules, it appears that the intention of the Rules is that the payment of gratuity is to be made and it cannot be with-held or withdrawn in part or in whole from the Government servant against whom departmental proceedings under Rule - 16 of the CCS (CCA) Rules, 1965 are instituted and he has retired later. When the proceedings have been instituted only in respect of penalties which could be imposed under Rule-11 (i), (ii) & (iv) of the CCS (CCA) Rules, 1965, these cannot be termed as penalties where the delinquent official can be found guilty of "grave misconduct or negligence during the period of service." The Circular issued by the DOPT dated 31.7.1987 relied upon by the learned counsel for the respondents cannot surpass the provisions of the Pension Rules which have been made under the proviso to Article-309 of the Constitution. In this view of the matter, the Ministry of Personnel, Public Grievances and Pension DOPT Circular dated 31.7.1987 being ultra vires the



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Pension Rules is quashed and set aside."

5. Resultantly, in accordance with the ratio decidendi of the decision of this Tribunal in the aforesaid case, we allow the present application and quash the impugned memo of charge dated 13.12.2002. The respondents are directed to release the dues of the applicant and this exercise should be completed preferably within four months.



( A.P. Nagrath )  
Member (A)



( V.S. Aggarwal )  
Chairman

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