

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.158/2003

This the 17th day of March, 2004

HON'BLE SHRI V. K. MAJOTRA, VICE CHAIRMAN (A)

Om prakash S/O Nand Kishore,
R/O H.No.326, Bara Thakurdwara,
Shahdra, Delhi-110032,
last employed as Lab. Assistant in
Bipin Chandra Pal Rajkiya Sarvodaya
Kanya Vidyalaya, Babarpur,
Delhi-110032.

... Applicant

(By Shri R.K.Shukla for Shri S.N.Shukla, Advocate)

-versus-

1. Lt. Governor, National Capital
territory of Delhi, Raj Niwas Marg,
Delhi-110054.
2. Pay & Accounts Officer,
PAO-VIII, National Capital Territory
of Delhi, Guru Teg Bahadur Hospital
Complex, Shahdara, Delhi-110032.
3. Director of Education,
Directorate of Education,
Old Secretariat,
Delhi-110054.
4. The Principal,
Bipin Chandra Pal Government
Sarvodaya Kanya Vidyalaya,
Babarpur, Shahdara,
Delhi-110032.

... Respondents

(By Ms. Renu George, Advocate)

ORDER (ORAL)


Applicant had been working on the post of Lab Assistant with the respondents. He retired from service on 31.3.2002 on attaining the age of superannuation. On detention in judicial custody from 1.5.1995 to 24.5.1995, vide Annexure A-5 dated 10.7.1995, applicant was placed under suspension w.e.f. 1.5.1995. Vide Annexure A-6 dated 26.10.1995 applicant's suspension was revoked.

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2. Applicant has challenged impugned orders Annexures A-1 and A-2 dated 14.11.2002 and 25.11.2002 whereby he was sanctioned provisional pension, but other pensionary benefits were not sanctioned in view of pendency of a criminal case against him. The learned counsel of applicant pointed out that FIR 125/95 initiating a criminal case against the applicant related to charge under Section 451/34 and 380/34 of the Indian Penal Code which related to a property dispute unconnected with discharge of his official duties. The learned counsel stated that applicant's pension, gratuity etc. could be withheld if the applicant was found guilty of grave misconduct or negligence during the period of service. As the criminal case against the applicant related to a property dispute, his retiral benefits could not have been withheld. The learned counsel also relied on *D.V.Kapoor v. Union of India*, 1990 (3) SLR 5.

3. On the other hand, the learned counsel of the respondents stated that applicant was authorised provisional pension of Rs.2400/- per month w.e.f. 1.4.2002 due to the reason that applicant had not been granted vigilance clearance and also that the pay and allowances admissible under FR 54 for the suspension period were to be decided on the conclusion of the pending criminal case against the applicant. The learned counsel stated that the facts of the present case are distinguishable from the case of *D.V.Kapoor* (supra) and as such, the ratio of that case would not be applicable to the instant case.



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4. I have h the rival contentions.

5. Rule 69 of the CCS (Pension) Rules, 1972 reads as follows :

"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:

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."

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In terms of this provision, applicant is held entitled to maximum pension on the basis of his qualifying service and not a provisional pension of Rs.2400/- only. As the applicant's suspension w.e.f. 1.5.1995 had been revoked vide order dated 26.10.1995, the period of suspension shall also be counted as on duty. Rule 9(1) of the Pension Rules states as follows :

"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:"

6. In accordance with the provisions of Rule 9 ibid, the President has right to withhold pension or gratuity or both if in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service. The import of "judicial proceedings" in the context it has been used in this rule means judicial proceedings connected with the service of the pensioner and not any judicial proceedings connected with the personal property disputes of the pensioner wherefrom civil or criminal proceedings have arisen. This also states that retiral benefits can be withheld by the President if the pensioner is found guilty of grave misconduct/negligence during the period of service. The words "grave



misconduct or negligence during the period of service" read together and ejusdem generis imply that judicial proceedings should pertain to applicant's conduct in service and not otherwise. The criminal case against the applicant obviously related to a property dispute and would not constitute any grave misconduct or negligence during the period of service.

7. The learned counsel of the respondents has not been able to distinguish the case of **D.V.Kapoor** (supra) from the facts in the present case. It was held/observed in that case as follows :

"8. It is seen that the President has reserved to himself the right to withhold pension in whole or in part thereof whether permanently or for a specified period or he can recover from pension of the whole or part of any pecuniary loss caused by the Government employee to the Government subject to the minimum. The condition precedent is that in any departmental enquiry or the judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service of the original or one re-employment. The condition precedent thereto is that there should be a finding that the delinquent is guilty of grave misconduct or negligence in the discharge of public duty in office, as defined in Rule 8 (5), explanation (b) which is an inclusive definition, i.e., the scope is wide of mark dependent on the facts or circumstances in a given case. Myriad situation may arise depending on the ingenuity with which misconduct or irregularity was committed. It is not necessary to further probe into the scope and meaning of the words 'grave misconduct or negligence' and under what circumstances the findings in this regard are held proved. It is suffice that charges in this case are that the appellant was guilty of wilful misconduct in not reporting to duty after his transfer from Indian High Commission at London to the Office of External Affairs Ministry, Government of India, New Delhi. The enquiry officer found that though the appellant derelicted his duty to report to duty, it is now wilful for the reasons that he could not

move due to his wife's illness and he recommended to sympathetically consider the case of the appellant and the President accepted this finding, but decided to withhold gratuity and payment of pension in consultation with the Union Public Service Commission.

9. As seen the exercise of power by the President is hedged with a condition precedent that a finding should be recorded either in departmental enquiry or judicial proceedings that the pensioner committed grave misconduct or negligence in the discharge of his duty while in office, subject of the charge. In the absence of such a finding the present is without authority of law to impose penalty of withholding pension as a measure of punishment either in whole or in part permanently or for a specified period, or to order recovery of the pecuniary loss in whole or in part from the pension of the employee subject to minimum of Rs.60/-.

10. Rule 9 of the rules empowers the President only to withhold or withdraw pension permanently or for a specified period in whole or in part or to order recovery of pecuniary loss caused to the State in whole or in part subject to minimum. The employee's right to pension is a statutory right. The measure of deprivation therefore, must be correlative to or commensurate with the gravity of the grave misconduct or irregularity as it offends the right to assistance at the evening of his life as assured under Art. 41 of the Constitution. The impugned order discloses that the President withheld on permanent basis the payment of gratuity in addition to pension. The right to gratuity is also a statutory right. The appellant was not charged with nor was given an opportunity that his gratuity would be withheld as a measure of punishment. No provision of law has been brought to our notice under which, the President is empowered to withhold gratuity as well, after his retirement as a measure of punishment. Therefore, the order to withhold the gratuity as a measure of penalty is obviously illegal and is devoid of jurisdiction.

11. In view of the above facts and law that there is no finding that appellant did commit grave misconduct as charged for, the exercise of the power is clearly illegal and in excess of jurisdiction as the condition precedent, grave misconduct was not proved. Accordingly the appeal is allowed and the impugned order dated November 24, 1981 is

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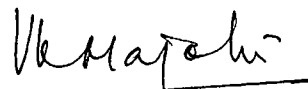


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quashed but in the circumstances parties are directed to bear their own costs".

8. The ratio of D.V.Kapoor squarely applies to the facts of the present case. Criminal case against the applicant did not relate to any misconduct or negligence during the period of applicant's service and as such, respondents could not have taken pendency of such a criminal case against the applicant as a ground for non-grant of retiral benefits or for issuance of provisional pension only.

9. Having regard to discussion made above and in the facts and circumstances of this case, Annexures A-1 and A-2 are quashed and set aside. Respondents are directed to fix and pay the retiral dues to the applicant without taking into account the pendency of the criminal case against the applicant and also treating the suspension period as spent on duty. Respondents are further directed to implement these orders expeditiously and preferably within a period of one month from the date of communication of these orders. No costs.



(V. K. Majotra)
Vice Chairman

17-3-2004

/as/