(2021) 03 CAT CK 0020

In the Central Administrative Tribunal

Case No : Original Application 879 Of 2020

Baldev Singh (ASI Retd. Gr. "C") APPELLANT

Vs

Union Of India & Others RESPONDENT

Date of Decision : 02-03-2021

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 69
Central Civil Services (Leave) Rules, 1972 — Rule 39(3)
Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 11, 11(i), 11(ii), 11(iv), 16</i>

Citation : (2021) 03 CAT CK 0020

Hon'ble Judges : Aradhana Johri, Member (A)

Bench : Single Bench

Advocate : Sujeet Kumar Mishra, Purnima Maheshwari

Final Decision : Partly Allowed

Judgement

Aradhana Johri, Member (A)

1. The applicant was appointed to the post of Constable (GN) with the respondents on 31.07.1975. A CBI case under PC Act was registered on 09.11.1995 and he was suspended with effect from 09.11.1995. The suspension was subsequently revoked vide order dated 28.03.2000. He was convicted by the Trial Court on 02.08.2001 and preferred an appeal before Hon'ble High Court at Delhi which is still pending. He was dismissed from service but subsequently reinstated and superannuated on attaining the age of retirement on 31.08.2015. Though he was paid provisional pension, his gratuity and leave encashment for the last year of service were not paid to him. This OA has been filed for grant of the same along with interest.

2. It is the contention of the applicant that gratuity and leave encashment have been illegally withheld and should be paid to him. He has cited OA No. 314/2018 (Mahal Singh vs. Union of India & Anr.) order dated 31.07.2019, OA No. 276/2018 (Ram Naresh Tiwari vs. Union of India & Anr.) order dated 12.07.2019)

and Hon'ble Supreme Court of India judgment in Civil Appeal No. 1677-1678 of 2020 (Dr. Hira Lal vs. State of Bihar & Ors.).

3. The respondents have denied the claims of the applicant and have cited Rule 69 of CCS (Pension) Rules 1972 and 39(3) of CCS (Leave) Rules 1972 in support of their contention that no gratuity or leave encashment is payable. They have filed the leave record according to which 278 days leave stood to his credit at the time of retirement which has been withheld. They have also cited and filed Supreme Court of India Civil Appeal No. 9693 of 2013 (Chairman-cum-Managing Director, Mahanadi Coalfields Limited vs. Sri Rabindranath Choubey).

4. Heard Shri Sujeet Kumar Mishra, learned counsel for applicant and Ms. Purnima Maheshwari, learned counsel for respondents and perused the record.

5. The matter of payment of gratuity is covered under Rule 69 of the CCS (Pension) Rules, 1972 which reads as follows:

"(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 :

(1) 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."

6. The rules are unambiguous that no gratuity shall be paid to the government servant until the conclusion of the departmental or judicial proceedings and the issue of final orders thereon.

7. Furthermore, in the OA of Mahal Singh (supra) and Ram Naresh Tiwari (supra), the same view has been reiterated. The Hon'ble Supreme Court in the

case of Mahanadi Coalfields (supra) has given quietus to this issue :

"39. ....Que. 1-Whether it is permissible in law for the employer to withhold the payment of gratuity even after the employee has attained his superannuation from service because of the pendency of disciplinary proceedings against him?

Ans. I am in agreement with the view expressed by brother Justice Shah that in view of Rule 34.3 of the Rules, 1978, the employer has a right to withhold gratuity during pendency of the disciplinary proceedings."

Therefore, I am of the view that no gratuity is payable at this stage.

8. On the issue of leave encashment, the relevant rule 39 (3) reads as follows :

"(3) The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any."

9. A plain reading of these rules will indicate that this rule provides that the authority competent to grant leave may withhold whole or part of cash equivalent of Earned Leave, if in view of the authority, there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him.

10. Accordingly, in the case of Mahal Singh (supra) and Ram Naresh Tiwari (supra) this Tribunal has directed for payment of leave encashment. In the current case too, the plea of money becoming recoverable has not been taken by the respondents. Therefore, I am of the view that leave encashment of 286 days should be paid to the applicant. However, the said rule has no provision for payment of any interest on leave encashment, therefore no interest is payable.

11. Accordingly this OA is partly allowed as per para 10 above. It is directed that the respondents will pay the cash equivalent of 286 days of leave, without any interest, to the applicant within a period of three months from the date of receipt of certified copy of this order. The prayer for release of gratuity is not upheld as per Para 7.

12. No order as to costs.