

(2019) 07 CAT CK 0044

In the Central Administrative Tribunal

Case No : Original Application No. 276 Of 2018

Ram Naresh Tiwari

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 12-07-2019

Acts Referred:

Central Civil Service (Pension) Rules, 1972 — Rule 9, 9(4), 11(i), 11(ii), 11(iv), 16, 69, 69(1)(c)

Citation : (2019) 07 CAT CK 0044

Hon'ble Judges : Mohd. Jamshed, Member (A)

Bench : Single Bench

Advocate : Haider Ali, G.D. Chawla, Harvinder Oberoi, Mananjay Mishra

Final Decision : Partly Allowed

Judgement

Mohd. Jamshed, Member (A)

1. The applicant has filed this OA being aggrieved by the non payment of his superannuation benefits, such as, gratuity and earned leave encashment

by the respondents. The applicant has submitted that he has worked with Delhi Police since 1969 as Constable and was promoted as ASI w.e.f.

29.06.1988. He was placed under suspension w.e.f. 15.06.1996 for having been involved/arrested in R. C. No. 47(A)/96 DLI dated 15.06.1996 u/s 07

POC Act by CBI authorities. The CBI Special Court vide its judgment dated 25.04.2001 awarded the sentence of simple imprisonment for 02 years

and fine of Rs. 2000/-.

2. The applicant filed an appeal in Honâ??ble Delhi High Court, which is still pending for decision. He was dismissed from service vide order dated

01.02.2007 and reinstated vide order dated 30.07.2007 of this Honâ??ble Tribunal. Thereafter, the applicant retired from service on attaining the age

of superannuation on 30.06.2010. The applicant was granted provisional pension w.e.f. 30.06.2010 and the pensionary benefits such as gratuity and

leave encashment were not sanctioned to the applicant. The applicant made a representation dated 14.12.2017 to the respondents for payment of the

same, however, no action has been taken by the respondents. Hence, he filed the OA seeking the following relief(s):-

i. To issue directions to the respondent to forthwith pay the applicant the due amount payable to the Applicant on account of gratuity as per the

rules for the entire period of services, i.e. for a tenure of 41 years along with interest @ 18% for the delayed period; and/or 0

ii. To issue directions to the Respondents to pay to the applicant the amount due and payment on account of leave encashment, which is for a period

of 300 days along with interest @ 18% from the date of retirement i.e. 30.06.2010; and/or

iii. To pass orders for consequential benefits.

iv. To pass order for award of cost against the Respondent and, in favour of the Applicant.

v. To pass such other and further orders which this Honâ??ble Tribunal may deem fit and proper in the interest of justice.â??

3. Through this OA, the applicant is seeking payment of due gratuity and earned leave encashment. The respondents in their counter reply submitted

that the applicant was held guilty in the criminal case vide judgment dated 25.04.2001 and sentenced to one year of imprisonment. The applicant,

thereafter filed a criminal appeal in the Honâ??ble Delhi High Court. It is submitted that as per Rule -69 (1) (c) of CCS (Pension) Rules, 1972 only

provisional pension is to be authorised and no gratuity shall be paid to the government servant until conclusion of departmental or judicial proceedings.

The action of the respondents, thus, is quite in line with the existing rules.

4. Heard Mr. Haider Ali, learned counsel for the applicant and Mr. G. D. Chawla for Ms. Harvinder Oberoi and Mr. Mananjay Mishra learned

counsel for the respondents, perused the pleadings and relied upon judgments.

5. The applicant while working as ASI was arrested by the CBI and a case dated 15.06.1996 u/s 7 of POC Act was registered against him. He was

later convicted by Learned Special Judge vide judgment dated 25.04.2001. The applicant was subsequently dismissed from service vide order dated

01.02.2007 and later on reinstated in compliance of the order dated 30.07.2007 of this Tribunal.

6. The applicant has filed a criminal appeal in the Honâ??ble High Court of Delhi against the judgment dated 25.04.2001, which is still pending for

decision. The applicant retired from service on attaining the age of superannuation on 30.06.2010. The respondents vide order dated 30.06.2010

authorised payment of provisional pension to the applicant till conclusion of the judicial proceedings and passing of final orders by the Competent

Authority. The applicant is aggrieved by the fact that the respondents have also withheld his gratuity and earned leave encashment amount. He is

seeking Tribunalâ??s indulgence in directing the respondents to pay the sum, which he is entitled to.

7. Respondents have categorically stated that as per the extant rules during the pendency of the departmental or judicial proceedings only the

provisional pension is to be provided and the same has been done. The gratuity and earned leave encashment has been withheld as per Rule 69 (1)(c)

of CCS (Pension) Rules, 1972. The Rule 69 of the CCS (Pension) Rules, 1972 relied upon by the respondents, reads as under:-

â??(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.â??

8. The above mentioned Rule 69 of the CCS (Pension) Rules, 1972, specifically mentions about authorization of provisional pension during the

pendency of departmental proceedings and also of withholding of gratuity. However, withholding of leave encashment amount has not been mentioned

therein. The respondents in their reply have not been able to justify withholding of leave encashment amount. The fundamental principles of

withholding of gratuity as mentioned in Rule 69 of the CCS (Pension) Rules, 1972, is primarily to compensate any pecuniary loss, which may have

been caused to the Government by the servant, if, in any, departmental or judicial proceedings he is found guilty. This has also been held by

Honâ??ble High Court of Himachal Pradesh in para 6 of Pushpender Kumar v. State of H.P. and Ors. decided on 24.03.2018, the relevant para

reads as under:-

â??6. Rule 9 of CCS (Pension) Rules empowers the Government to withhold the pension or gratuity or both either in full or in part or withdrawing the

pension in full or part, either permanently or for a specified period or to order a recovery from pension or gratuity of the whole or part of any

pecuniary loss caused to the Government by the servant, if, in any departmental or judicial proceedings, for grave misconduct or negligence on the part

of employee during the period of his service including service rendered upon re-employment after retirement.â??

9. The applicant is being granted provisional pension. His gratuity and earned leave encashment has been withheld by the respondents. During the

arguments and also in the counter reply filed by the respondents, it has not been made clear as to why and under what rule his earned leave

encashment has been withheld. Rule 9 of CCS (Pension) Rule has been quoted for withholding gratuity and for releasing only provisional pension till

completion of judicial proceedings. The order dated 30. 06.2010 (Annexure A-4), by which the respondents have authorised provisional pension to the

applicant does not indicate withholding of gratuity and earned leave encashment. In view of the above mentioned, it is evident that the respondents

have rightly withheld the gratuity and provided only provisional pension to the applicant in view of the ongoing judicial proceedings.

However, withholding of earned leave encashment amount has not been justified under any rule by the respondents.

10. The OA is partly allowed with the direction to the respondents to release the earned leave encashment amount to the applicant as due to him

within a period of three months from the date of receipt of certified copy of this order. However, no interest shall be paid on this amount. His

provisional pension and gratuity shall continue to be governed in terms of extant rules. There shall be no order as to costs.