

**(2012) 03 DEL CK 0689**  
**In the Delhi High Court**  
**Case No : Writ Petition (C) 1424 of 2012**

Union of India

APPELLANT

Vs

R. Vasudevan

RESPONDENT

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**Date of Decision :** 14-03-2012

**Acts Referred:**

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 11, 16  
Central Civil Services (Pension) Rules, 1972 — Rule 69, 69(1), 69(2), 69(4), 9

**Citation :** (2012) 03 DEL CK 0689

**Hon'ble Judges :** V.K. Jain, J; Badar Durrez Ahmed, J

**Bench :** Division Bench

**Advocate :** Ankur Chhibber, for the Appellant; M.M. Sudan, for the Respondent

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## Judgement

Badar Durrez Ahmed, J.

CAV 256/2012

The caveat stands discharged inasmuch as the learned counsel for the caveator/respondent is present.

WP(C) 1424/2012 & CM 3106/2012

1. The petitioner is aggrieved by the order dated 24.11.2011 passed in OA 3421/2011 by the Central Administrative Tribunal, Principal Bench, New Delhi. By virtue of the impugned order the respondent's said Original Application was allowed and the petitioner was directed to proceed with fixation of regular pension of the respondent in accordance with the rules and to release all his retiral benefits that remain unpaid with simple interest at the rate applicable to GPF deposits from the date they became due until the date they are actually paid. The petitioner was also directed that the entire exercise be completed within three months from the date of receipt of the certified copy of the Tribunal's order.

2. The learned counsel for the respondent is present before us inasmuch as he

had filed a caveat. With the consent of the learned counsel for the parties, the writ petition is being taken up for disposal straightaway.

3. The learned counsel for the petitioner raised two pleas before us. One was that instead of fixing regular pension, the Tribunal ought to have only directed that provisional pension be paid to the respondent. Secondly, the learned counsel for the petitioner submitted that the gratuity amount could be withheld in view of Rule 69(1)(c) of the CCS (Pension) Rules, 1972. We have also heard the learned counsel for the respondent on both aspects.

4. Insofar as the question of regular pension vis-à-vis provisional pension is concerned, it is an admitted position that Rule 9 of the said Rules would apply. It is also an admitted position that the respondent was working as a Director, Inspection and Investigation with additional charge of Regional Director, Northern Region in the Ministry of Corporate Affairs. He wanted to join the Company Law Board as a member for which purpose he had to seek voluntary retirement from the position that he was holding with the ministry. As a consequence, he sought voluntary retirement and he retired from the ministry with effect from 04.08.2009. It is also an admitted position that on that date, no departmental proceedings were pending against him. It is subsequently, on 27.07.2010, that the departmental proceedings were initiated under Rule 9(2)(b) of the said Rules.

5. Rule 9(4) of the said Rules reads as under:

9 Right of President to withhold or withdraw pension

(1) xxxx xxxx xxxx xxxx

(2) xxxx xxxx xxxx xxxx

(3) xxxx xxxx xxxx xxxx

(4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 69 shall be sanctioned.

It is clear that sub-rule (4) applies to both cases which fall under sub-rule 2(a) or sub-rule 2(b). That being the case, it is only provisional pension which has to be sanctioned as provided in Rule 69 of the said Rules. Consequently, the respondent cannot claim regular pension and, therefore, the Tribunal has erred on this aspect of the matter.

6. Coming now to the question of gratuity, we find that the learned counsel for the petitioner sought support from Rule 69(1)(c) of the said Rules, which reads as under:-

69. Provisional pension where departmental or judicial proceedings may be pending

(1)(a) xxxx xxxx xxxx xxxx

(b) xxxx xxxx xxxx xxxx

(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.

7. It is apparent that Rule 69 relates to provisional pension where departmental or judicial proceedings may be pending. It is our view that Rule 69(1)(c) would apply only where departmental or judicial proceedings are pending on the date of retirement. It would not apply where the departmental or judicial proceedings are initiated after retirement. This is so because gratuity becomes payable immediately on retirement. Therefore, we cannot agree with the submission made by the learned counsel for the petitioner that the respondent is not entitled to gratuity or that his gratuity can be withheld in the circumstances of this case. Gratuity has to be paid on retirement and if the argument of the learned counsel for the petitioner were to be accepted, then the gratuity could be withheld in respect of any employee for a period of four years on the contention that some disciplinary proceedings are under contemplation which may be instituted at any later point of time before the period of four years has elapsed. For these reasons, we do not agree with the learned counsel for the petitioner insofar as the question of gratuity is concerned.

8. This takes care of both the contentions raised by the learned counsel for the petitioner. Insofar as the provisional pension is concerned, we have already held that he is right and that the Tribunal erred in directing that the regular pension be fixed in respect of the respondent. The respondent would only be entitled to provisional pension. Insofar as the gratuity is concerned, the same is payable and the same shall be paid within four weeks. The impugned order is set aside / modified to the extent indicated above.

The writ petition stands disposed of.