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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 4972/2017 and CM APPL. 21452/2017

UNION OF INDIA AND ANR ..... Petitioners

Through: Mr. Vijay Joshi, Advocate.

versus

D K GUPTA ..... Respondent

Through: Respondent in person.

**CORAM:**
**HON'BLE MR. JUSTICE VIPIN SANGHI**
**HON'BLE MS. JUSTICE REKHA PALLI**

**O R D E R**

**% 19.09.2017**

1. The respondent has appeared in person and argued his case. He has also filed his reply, which is on record.

2. The petitioner Union of India has preferred the present writ petition to assail the order dated 05.10.2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (CAT/ Tribunal) in O.A. No. 1798/2015 preferred by the respondent.

3. The respondent had preferred the said Original Application to seek a direction to the petitioner to release his gratuity with 18% interest from 31.01.2015 till the date of payment. He also sought 12% interest for the delayed payment of CGEGIS and leave encashment. The Tribunal, by the impugned order, had issued a direction to the petitioner to make immediate payment of gratuity and interest on delayed payment of CGEGIS and leave encashment for the period of delay, at the rate of interest provided for in

case of delayed payment of gratuity. The petitioner is aggrieved by this order since it is claimed that the direction issued by the Tribunal at least qua release of gratuity is hit by Rule 69 of the CCS (Pension) Rules.

4. The case of the petitioner is that the respondent was facing a departmental proceeding at the time of his superannuation on 31.01.2015. On that account, by application of Rule 69 aforesaid, his gratuity was withheld.

5. The respondent, on the other hand, submits that the inquiry relates to an incident of the year 2007 and the inquiry was initiated in the year 2014. According to the respondent, the preliminary investigation report was submitted on 18.03.2011. In fact, it is claimed that the same has been tampered with by the petitioner. He submits that in that respect, he has already preferred a writ petition before this Court being W.P. (C.) No. 7701/2016, which is pending disposal.

6. Having heard learned counsel for the petitioner, perused the impugned order and heard the respondent in person, we are of the view that the direction issued by the Tribunal for release of the respondent's gratuity is contrary to Rule 69 of the CCS (Pension) Rules.

7. Reliance placed by the Tribunal on ***State of Punjab and Others etc. Vs. Rafiq Masih (White Washer) etc.***, AIR 2015 SC 696, to justify release of gratuity in the teeth of Rule 69 of the CCS (Pension) Rules, is completely erroneous. ***Rafiq Masih*** (supra) was a case where on account of a mistake committed by the employer, for which the employee was not responsible, some excess payment had been made. The Supreme Court held in ***Rafiq Masih*** (supra) that in certain circumstances, recovery of the excess payment

so released may not be made. The said decision has no application to a case where gratuity is withheld under a statutory rule, namely Rule 69 on account of pendency of the disciplinary proceedings against a Government servant, who retires during the pendency of departmental proceedings.

8. The aforesaid direction directing immediate payment of gratuity to the respondent is, therefore, set aside. However, the direction issued by the Tribunal for payment of interest on delayed payment of CGEGIS and leave encashment for the period of delay, at the rate of interest provided for in case of delayed payment of gratuity, is maintained. The said interest shall be paid for the period of delay, i.e. after excluding the permissible period within which the said amounts should have been released to the respondent upon his superannuation on 31.01.2015.

9. Learned counsel for the petitioner submits that the inquiry is complete and the Inquiry Officer has found the charges against the respondent to have been established. The respondent has already been granted opportunity to make his representation, which he has made in July 2017.

10. The petitioner is directed to expedite completion of the inquiry proceedings with the passing of the order by the Disciplinary Authority.

11. The petition stands disposed of in the aforesaid terms.

**VIPIN SANGHI, J**

**REKHA PALLI, J**

**SEPTEMBER 19, 2017**
***B.S. Rohella***