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

+ **W.P.(C) 40/2018**

DARSHAN KUMAR GUPTA Petitioner

Through: Petitioner in person.
versus

UNION OF INDIA Respondent

Through: Mr. Rajesh Kumar with Ms.
Santwana, Advocates.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

% **16.01.2020**

Dr. S. Muralidhar, J.:

1. The present petition is directed against an order dated 8th July, 2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('CAT'), dismissing the Petitioner's OA No. 1610/2015. The CAT has by the impugned order rejected the Petitioner's prayer for commutation of his pension on the ground that such prayer had already been considered and rejected by its earlier order dated 20th April, 2006 in OA No. 768/2005 filed by the Petitioner.

2. The background facts are that while working as a Superintending Engineer in the office of the Chief Engineer ('CE'), Jabalpur the Petitioner, who belongs to the Military Engineering Service, gave 3 months' notice on 1st August, 1996 seeking voluntary retirement from service in terms of the Civil Service Regulation ('CSR') 459 (i) read with Rule 48 (1-A) of the Central Civil Service (Pension) Rules ['CCS (Pension) Rules']. In terms of

the notice period of 3 months, the Petitioner was to retire on 31st October, 1996. The CE, Jabalpur Zone by a letter dated 31st October, 1996 informed the Petitioner that the Competent Authority ('CA') had rejected his request for voluntary retirement from that date.

3. The Petitioner, however, proceeded to give to the CE a departure report dated 31st October, 1996. He also submitted his pension papers to the CE. By a separate letter dated 2nd November 1996, he requested the CE to process his retiral benefit on a priority basis. The CE in a reply dated 7th November, 1996, informed the Petitioner that he had not stood relieved from his duties and that, therefore, no question arose of processing his papers for the purpose of post-retiral benefits.

4. Aggrieved by the action of the Respondent in rejecting his voluntary retirement and refusing to process his papers for post-retiral benefits, the Petitioner filed OA No.1062/1998 before the CAT. When the CAT dismissed the said OA by its judgment dated 18th July, 2000, he challenged the said judgment by filing CWP No.5349/2000 in this Court. By an order dated 10th January, 2002 this Court *inter alia* held that:

“...we are of the view that once the petitioner has exercised his statutory right in terms of Article (*sic* CSR) 459(1), question of acceptance thereof did not arise, and the petitioner stood relieved w.e.f. 31.10.1996. We make it clear that we have not entered into the question as to whether the petitioner would be entitled to take benefit of CCS Pension Rules or not.”

5. By the aforesaid order, the Court also set aside the Show Cause Notice (SCN) issued to the Petitioner for not reporting for duty from 1st November,

1996. The Court clarified that:

“we have not considered as to whether provisions of Rule 48 and 48A would apply in the case of the petitioner, the petitioner would be at liberty to pursue his other remedy for retrial benefit in accordance with law.”

6. On the strength of the above order of this Court, the Petitioner submitted a formal application dated 20th March, 2002 for sanction of pension and gratuity. He submitted *inter alia* a commutation application of that date in the prescribed form. He also claimed interest on the delayed payments at 18% p.a., the same being the rate awarded by the Supreme Court by its order in ***Vijay L. Mehrotra v. State of U.P. JT 2000 (5) SC 171.***

7. By an order dated 14th August 2002, amended on 18th September 2002, the Respondent notified that the Petitioner had voluntarily retired on 31st October, 1996 under CSR 459 (i). A Pension Payment Order (‘PPO’) dated 4th March, 2003 was issued to the Petitioner setting out the “absolute date of commutation of pension” as 1st November, 1996. The nature of pension was shown as “Discipline”, although, according to the Petitioner as of 31st October, 1996, he was neither involved in any disciplinary case nor were any judicial proceedings pending against him. As a result, the Petitioner was denied the benefit of gratuity, commutation of pension and interest on delayed payment of retiral benefits. The Petitioner further points out how in the said PPO no weightage was accorded to qualifying service in terms of Rule 48-B of the CCS (Pension) Rules, 1972. Upon his request, weightage was accorded to 5 years of qualifying service and an amended PPO was issued on 10th November, 2003.

8. It must be mentioned at this stage that on 18th November 1997, a First Information Report ('FIR') was filed in the CBI Court at Jabalpur in which the Petitioner was arraigned as a co-accused.

9. Aggrieved that the PPO order dated 4th March, 2003 contained the word "Disciplinary" in column 8, on account of which the Petitioner had been denied commutation of pension and retiral gratuity, the Petitioner filed OA No.768/2005 in the CAT. In response to the notice issued in the OA, it was contended by the Respondents that in view of the FIR dated 18th November, 1997, the Petitioner was "under cloud" and "was facing criminal proceedings" as on 14th August 2002, when a decision was taken to allow the Petitioner to proceed on voluntary retirement with effect from 31st October, 1996.

10. The CAT in its order dated 20th April, 2006 disposing of OA No. 768 of 2005 first addressed the issue of the effect of the deemed retirement in terms of Rule 9 (6) of the CCS (Pension) Rules, 1972. The said Rule 9 reads as under:

"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 :

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the limit specified in sub-rule (5) of rule 49.

(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment:

(i) shall not be instituted save with the sanction of the President,
(ii) shall not be in respect of any event which took place more than four years before such institution, and
(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose, or in respect of an event which took place, more than four years before such

institution.

(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 65 or rule 74, as the case may be, shall be sanctioned.

(5) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule –

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted –

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made, and

(ii) in the case of civil proceedings, on the date the plaint is presented in the court.”

11. The CAT then proceeded to observe as under:

“12. It is not in dispute that the applicant is deemed to have retired on 31.10.1996, on which date he was neither facing departmental nor judicial proceedings. As per rule 9 (6) of the aforesaid Rules, the judicial proceedings is deemed to have been instituted on the date when the cognizance of FIR dated 18.11.1997 had been taken by the court of competent

jurisdiction, which date was latter than 18.11.1997. In other words, there was no impediment for grant of pension or retiral benefits.

As per provisions of rule 9 (1) of the aforesaid Rules, the penalty which could be imposed upon the applicant on being found guilty of misconduct is: “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.....”. As noticed hereinabove, the term "pension" includes gratuity except where the said term is used in contradistinction to gratuity. A perusal of the above rule 9 would show that it is not only the pension but gratuity too either individually or cumulatively can be withheld, either in full or in part. Similarly, the same can be withheld permanently or for a specified period. In other words, it is the discretion of the President to withhold pension or gratuity or both. Not only this, the recovery can also be ordered from pension or gratuity of the whole or part of any pecuniary loss caused to the Government. Whatever penalty, if any, imposed would have only prospective application.”

12. The CAT observed that if the Petitioner had been allowed to proceed on retirement with effect from 31st October 1996, when neither a departmental enquiry nor judicial proceedings were pending against him, he would have been paid normal pension instead of provisional or “discipline” pension, as stated in the PPO dated 4th March, 2003. Likewise, gratuity would also have become payable to him. However, according to the CAT the same Rule would not apply as far as commutation of pension was concerned on account of Rule 4 of the CCS (Commutation of Pension) Rules, 1981, which reads thus:

“4. Restriction on commutation of pension

No Government servant against whom departmental or judicial proceedings as referred to in Rule 9 of the Pension Rules, have been instituted before the date of his retirement, or the pensioner against whom such proceedings are instituted after the date of his retirement, shall be eligible to commute a fraction of his provisional pension authorized under Rule 69 of the Pension Rules or the pension, as the case may be, during the pendency of such proceedings”

13. According to the CAT, the above Rule dealt with two of the following situations:

- (1) When departmental or judicial proceedings were prior to the date of retirement;
- (2) When they are instituted after the date of his retirement.

14. Since the latter situation applied to the case at hand, according to the CAT, the Petitioner would not be entitled to commutation pension. The CAT, however, directed the deletion of the term “Discipline” in column 8 of the PPO and payment of gratuity to the Petitioner. The operative portion of the order dated 20th April, 2006 of the CAT reads thus:

“17. In view of the discussion made hereinabove, I find there is no justification in inserting the term "DISCIPLINE" under column 8 of the PPO. Similarly, I find no reason and justification in the Respondents' action in withholding gratuity payable to the applicant. However, in the peculiar facts and circumstances, he would not be entitled to any interest, as prayed for. Accordingly, OA is partly allowed. The necessary exercise shall be completed within a period of two months from the date of communication of this order. No costs.”

15. On 31st July 2007, the CBI Court at Jabalpur passed an order in Special

Case No. 9/2000 acquitting the Petitioner all the charges. The Petitioner then sent a copy of the said order to the Respondent by a letter dated 12th March, 2008 and renewed his request for commutation of pension and interest on retiral benefits. He pointed out in the said letter how notwithstanding the CAT's order dated 20th April 2006, in view of the Petitioner's acquittal in the criminal case, there was no justification for not commuting his pension and paying him interest on the retiral benefits. Several reminders followed and finally a legal notice was served on the Respondent on 12th December, 2013.

16. Thereafter, the Petitioner filed OA No. 1610/2015 in the CAT *inter alia* praying for a direction to the Respondent to pay the Petitioner the commutation of pension amount of Rs.4,45,303.86 and treat it as a fixed deposit with effect from 1st November, 1996; to treat the residual monthly pension (after adjusting the commuted amount of pension) as recurring deposit with effect from 30th November, 1996. The Petitioner also prayed as under:

“Arrears of pension have been paid as under:

(i) Rs.6,27,575.00 on 20.06.2003

(ii) Rs.1,46,047.00 on 29.04.2004

These two payments be deducted from Recurring deposit amount due on these respective dates and balance amount be treated as fixed deposit w.e.f. 29.4.2004 till date of payment.”

17. Further, residual pension from 1st May, 2004 was also asked to be treated as “recurring deposit”. He also sought a direction to the Respondent to treat the payments towards TA/DA, refund of CGEGIS, earned leave

encashment, gratuity and GPF amount as on 1st November, 1996 till the date of their payment as fixed deposit. Finally, a prayer was made for a direction to the Respondent to pay to the Petitioner interest at 18% per annum on all fixed and recurring deposits compounded half yearly. The Petitioner also prayed for damages.

18. The Petitioner before the CAT in the second round *inter alia* placed reliance on the decisions in ***Smt. S. R. Venkatraman v. Union of India AIR 1979 SC 49***, ***Vijay L. Mehrotra v. State of U.P. JT 2000 (5) SC 171***, ***Dr. Uma Agarwal v. State of U.P. 1993 (3) SLJ 212 (SC)***. As regards his plea for damages, he sought to place reliance on the decision ***Lucknow Development Authority v. M. K. Gupta JT 1993 (6) SC 307***.

19. Counsel for the Respondent before the CAT resisted the above OA by referring to the fact that the Petitioner had earlier filed OA No. 768/2005 before the CAT seeking the prayer of deletion of the word “discipline” from column 8 in the PPO dated 4th March, 2003, commutation of pension and payment of gratuity. He submitted out that by the order dated 20th April, 2006, the relief of commutation of pension had been rejected by the CAT. It was accordingly submitted that the second OA was barred by *res judicata*.

20. The Respondent’s plea of limitation and *res judicata* was accepted by the CAT in the impugned order dated 8th July, 2016. The CAT *inter alia* observed that the Petitioner did not take any action between the 2008 and 2015. It accordingly held as under:

“Thus, as regards commutation of pension and payment of

interest, the matter has already been raised before the Tribunal and rejected and the applicant now cannot raise the same issue again. The prayer for commutation of pension was rejected after examining the rule position. Though the applicant tried to argue that the Tribunal's order is wrong, since he has not challenged the said order in a higher forum, this order has attained finality. Therefore, the applicant cannot now raise the issue of commutation of pension and payment of interest again in this OA. As a consequence, prayer 8.1, 8.2 and 8.4 are disallowed.”

21. As regards payment of interest on the gratuity amount, it was held that he was entitled to interest at 12% per annum under Rule 68 of the CCS (Pension) Rules. The prayer for damages was held to be beyond the purview of the CAT and the Petitioner was given an opportunity to raise it at an appropriate forum. While rejecting the prayer for costs to the tune of Rs.10,000/-, it was observed as under:

“There was a CBI case against the applicant from which, he was acquitted only on 31.07.2007. The applicant himself did not take action between 2008 and 2015. In 2008, he was asked to undergo medical examination which he did not on a very flimsy ground of not having been sent the right form and as per provisions, of Rule 4 of CCS (Commutation of Pension) Rules 1981, his case for commutation of pension, if at all, does not survive. Therefore, since the respondents cannot be blamed for this litigation, I see no reason to award cost on the respondents.”

22. This Court has heard the Petitioner who appeared in person and Mr. Rajesh Kumar, learned counsel appearing for the Respondent.

23. The Petitioner, at the outset, submitted that Rule 4 of the CCS

(Commutation of Pension) Rules referred to Rule 9 (3) of the CCS (Pension) Rules, which in turn envisaged pendency of judicial proceedings as on the date of his deemed retirement. In other words, Rule 9 (3) clearly stated that no judicial proceedings could be instituted against a retired Government servant “in respect of a cause of action which arose, or in respect of an event which took place more than 4 years before such institution”. Once this Court had accepted that the Petitioner had deemed to have retired on 31st October, 1996 and no judicial proceeding was pending on that date, the question of denying to the Petitioner commutation of pension by applying Rule 4 of the CCS (Commutation of Pension) Rules, did not arise.

24. The Court finds that this question need not be gone into at this stage for the simple reason that, undeniably, as on 31st July 2007, the Petitioner stood acquitted by the CBI Court. In any event, therefore, the question of denying commutation of pension to the Petitioner could not have arisen thereafter. The date on which the Petitioner was entitled to commutation of pension related back to the date he first became entitled to it i.e. 1st November, 1996. On that date no judicial or disciplinary proceedings were pending against him. Under CSR 439 (i) the Petitioner was entitled as a right to voluntary retirement subject to fulfilment of the conditions stipulated therein.

25. The CAT, in the considered view of the Court, fell into error in holding that its earlier order dated 20th April, 2006 barred the Petitioner’s claim to commutation of pension on the principle of *res judicata*. The CAT overlooked the fact that the subsequent acquittal of the Petitioner by the CBI Court on 31st July, 2007 gave rise to a fresh cause of action for him to seek

commutation of pension. The CAT had earlier denied this relief only on account of the pendency of the said case, which according to it precluded the grant of such relief to the Petitioner. In the second round before the CAT, with that hurdle no longer remaining, the Petitioner could not have been denied the relief of commutation of pension.

26. As regards the Respondent's plea of delay and laches, the CAT failed to note the averments in the Petitioner's application before it, which explained in detail how the Respondent kept driving the Petitioner from pillar to post on whether the Petitioner needed to undergo medical examination. In the counter-affidavit filed in this Court, the Respondent admitted that they were insisting on the Petitioner undergoing medical examination and that he had declined to do so. It is contended that since he failed to undergo the medical examination his commutation application was "deemed to have been withdrawn". According to the Respondent, even today, the documentary requirements stipulated in the Rules have not been met by the Petitioner.

27. The Court is unable to appreciate the above stand of the Respondent. As on 1st November, 1996 the Petitioner was entitled to commutation value of pension. After having failed to release such benefit to the Petitioner for more than 20 years now, the Respondent cannot possibly insist on the Petitioner having to undergo medical examination. The Respondent had to proceed on the basis that had the Petitioner been asked to undergo medical examination on 1st November, 1996 itself, there would have been no impediment in granting him the commuted value of pension.

28. In these 20 years, having been driven from pillar to post, the Petitioner has developed medical ailments that have deteriorated the quality of his life. In the circumstances, it is unfair for the Respondent to insist that he now undergo medical examination for the purpose of release of commutation of pension. This is apart from the fact that the Petitioner's case is that with their letter dated 4th December, 2008 requiring the Petitioner to report for medical examination, the Respondent had forwarded the application for commutation in form 1A, which is for commutation of pension without medical examination. Whereas, if the Respondents were interested in treating his case as one for which he needed to undergo a medical examination, he should have been sent Form 2.

29. It is contended by the Petitioner that the Respondents are attempting to make out an erroneous case that they had asked him to appear for a medical examination by forwarding to him Form 2, and that as he had not appeared in that medical examination, his request could be treated as withdrawn.

30. Indeed, the Court finds the attitude of the Respondent to be unacceptable. They ought not to have denied the Petitioner the benefit of commutation of pension by insisting that he undergo a medical examination. The Petitioner has in his rejoinder pointed out how consistently the CE Jabalpur had advised that the commutation value of pension be released to the Petitioner without medical examination and yet the Respondent was wrongly insisting on it.

31. For the aforementioned reasons the Court allows the prayer of the Petitioner for release to him of the commuted value of his pension, with the

amount being calculated as on 1st November, 1996 and the amounts being released to him after adjusting the part of the pension payments made to him in terms of the CCS (Commutation and Pension) Rules, read with CCS (Pension) Rules. The commuted value of pension so determined would be payable to the Petitioner together with simple interest at 6% per annum from the date it became due i.e. 1st November, 1996, till the date of payments, which should not be later than 12 weeks from today. If the payment is delayed beyond that period, the Respondent is liable to pay to the Petitioner an enhanced simple interest at 9% per annum for the period of delay. The necessary corrected PPOs be now issued by the Respondent in favour of the Petitioner within the same period of 12 weeks.

32. Undoubtedly, the Petitioner has suffered tremendous trauma and harassment for over 20 years having had to go from pillar to post, and during this time his health has also deteriorated. He has been made to suffer on account of the administrative incompetence of the Respondent. The Court is accordingly constrained to direct that the Respondent will pay to the Petitioner costs of Rs.50,000/- within the same period of 12 weeks. The petition is disposed of in the above terms.

33. A copy of this order be given *dasti* under the signature of Court Master.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JANUARY 16, 2020/tr