



**Central Administrative Tribunal  
Principal Bench, New Delhi**

**O.A. No. 2266/2021**

This the 09<sup>th</sup> day of April, 2024

**Hon'ble Mrs. Pratima K. Gupta, Member (J)**

Johri Mal,  
Aged 80 years,



... Applicant

(By Advocate: Mr. Asish Nischal)

**Versus**

1. Union of India,  
Through its Secretary,  
Ministry of Defence,  
South Block, New Delhi – 110011.
2. The Controller of Defence Accounts (Army),  
Belvedere Complex, Ayudh Path,  
Meerut Cantt.,  
Uttar Pradesh – 250001.

...Respondents

(By Advocate: Mr. H.K. Gangwani)



### **ORDER (ORAL)**

The applicant is aggrieved by order dated 13.08.2020 (Annexure A1) vide which his claim for gratuity has been rejected by the respondents. Ventilating his grievances, he has filed the present O.A. seeking the following relief(s):-

*“ a. Quash and set aside the Impugned Order dated 13.08.2020;*

*b. Direct the respondents to pay the Gratuity amount, as admissible to the applicant, as on 01.05.1973, along with interest, as applicable, till the date actual payment;*

*c. Pass any other relief that this Hon'ble Tribunal may consider fit in the interest of justice.”*

2. Brief facts of the case as explained by the learned counsel for the applicant are that the applicant joined the respondents as Upper Division Clerk (UDC) on temporary basis on 16.01.1961 and was regularized in the year 1965. However, he resigned from the said post on 01.05.1973 after submitting his technical resignation. For the first time, after 45 years, on 07.07.2020, he preferred a representation seeking release of his gratuity. The same has been was rejected by the respondents by way of the order dated 13.08.2020 impugned in the present O.A.



3. Drawing attention to the impugned order, learned counsel for the applicant submits that case of the applicant has been incorrectly rejected while applying the provisions of Rule 26(1) of the CCS Pension Rules, 1972. Rule 26 relating to Forfeiture of Service on Resignation reads as under:-

*“(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.*

*(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.*

*(3) Interruption in service in a case falling under sub-rule (2), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to him.*

*(4) The appointing authority may permit a person to withdraw his resignation in the public interest on the following conditions, namely :-*

(i)	<i>that the resignation was tendered by the Government servant for some compelling reasons which did not involve any reflection on his integrity,</i>
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	<i>efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation ;</i>
(ii)	<i>that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper ;</i>
(iii)	<i>that the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days ;</i>
(iv)	<i>that the post, which was vacated by the Government servant on the acceptance of his resignation or any other comparable post, is available.</i>

*(5) Request for withdrawal of a resignation shall not be accepted by the appointing authority where a Government servant resigns his service or post with a view to taking up an appointment in or under a private commercial company or in or under a*



*corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government.*

*(6) When an order is passed by the appointing authority allowing a person to withdraw his resignation and to resume duty, the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service.*

*<sup>1</sup>[(7) A resignation submitted for the purpose of Rule 37 shall not entail forfeiture of past service under the Government.]*

Learned counsel submits that the said rules relate to pension and in case of resignation the pension of past service would be forfeited. He adds that the said rule in no way deals with gratuity.

4. Mr. Asish Nischal, learned counsel for the applicant argues that since the applicant has served for more than five years, as stipulated in the provisions of the Payment of Gratuity Act, 1972, he is entitled to gratuity for the period he has served with the respondents. He draws attention to Section 14 of the Payment of Gratuity Act, 1972, which reads as under:-

*“Section: 14 Act to override other enactments, etc. The provisions of this Act or any rule made there under shall have effect notwithstanding anything*



*inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.”*

5. He draws strength from the judgment of the Hon'ble Apex Court in CA No. 1478/2004 dated 15.12.2009 in Allahabad Bank and Ors. Vs. All India Allahabad Bank Retired Emps. Ass. And Ors. The relevant para of the said judgment reads as under:-

*“19. This Court in Municipal Corporation Delhi vs. Dharam Prakash Sharma & Ors.,<sup>6</sup> observed: "the (1998)<sup>7</sup>SCC 221 mere fact that the gratuity is provided for under the Pension Rules will not disentitle him to get the payment of gratuity under the Payment of Gratuity Act. In view of the overriding provisions contained in Section 14 of the Payment of Gratuity Act, the provision for gratuity under the Pension Rules will have no effect. Possibly for this reason, Section 5 of the Payment of Gratuity Act has conferred authority on the appropriate Government to exempt any establishment from the operation of the provisions of the Act, if in its opinion the employees of such establishment are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. Admittedly MCD has not taken any steps to invoke the power of the Central Government under Section 5 of the Payment of Gratuity Act. In the aforesaid premises, we are of the considered opinion that the employees of the MCD would be entitled to the payment of gratuity under the Payment of Gratuity Act notwithstanding the fact that the provisions of the Pension Rules have been made applicable to them for the purpose of determining the pension. Needless to mention that the employees cannot claim gratuity*



*available under the Pension Rules" (emphasis supplied)."*

He reiterates that for the reasons stated above, the applicant is entitled for gratuity which has been illegally and arbitrarily withheld by the respondents.

5. Mr. H.K. Gangwani, learned counsel for the respondents vehemently opposes the O.A. He argues that the claim of the applicant is hopelessly barred by time as the applicant has approached the respondents after more than 45 years from the year 1973, when the cause of action arose. Hence, the O.A. cannot be entertained at this stage. He draws attention to Rule 26(1) of the CCS Pension Rules, 1972, and emphasizes that once the applicant has submitted his technical resignation the entire services of the applicant remain withdrawn. Accordingly, he is not entitled to the relief he has prayed for.

6. In rejoinder to the contentions made by Mr. Gangwani on limitation, Mr. Nischal, learned counsel for the applicant draws strength from the judgment of the Hon'ble Apex Court in Sualal Yadav Vs. State of Rajasthan and Ors. AIR 1977 SC 2050 dated 15.09.1975, wherein the Hon'ble Apex



Court has held that once an applicant has preferred a representation and the same has been decided by the respondents on merits, then the issue of limitation will not come in the way of the relief claimed by the applicant.

7. Heard the learned counsel for the parties.

8. The basic facts in the instant O.A. as recorded herein above are not disputed. The applicant has served the respondents for a total of 12 years, and as a confirmed employee for 8 years. Therefore, admittedly, he was not entitled for any pension. In my considered opinion, with respect to gratuity, Rule 26 of the CCS Pension Rules, 1972, does not come to the rescue of the respondents. In fact, it is the Payment of Gratuity Act, 1972, particularly, Section 4(1)(b) which makes it explicitly clear that any employee resigning from service would be entitled to gratuity subject to his completion of desired number of years, that is, five years. I have examined the case of the applicant in terms of section 4(1)(b). The said rule reads as under:-

*“4(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years, - (a) on his superannuation, or*





*(b) on his retirement or resignation, or*

*(c) on his death or disablement due to accident or disease:*

*Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:*

*Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.]*

*Explanation. : For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he, was capable of performing before the accident or disease resulting in such disablement.*

*(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days wages based on the rate of wages last drawn by the employee concerned:*

*Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account.:*

*Provided further that in the case of [an employee who is employed in a seasonal establishment and who is not so employed throughout the year], the employer shall pay the gratuity at the rate of seven days wages*



*for each season. Explanation: In the case of a monthly rated employee, the fifteen days wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.*

*(3) The amount of gratuity payable to an employee shall not exceed three lakhs and fifty thousand] rupees.*

*(4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.*

*(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.*

*(6) Notwithstanding anything contained in subsection (1), -*

*(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.*

*(b) the gratuity payable to an employee may be wholly or partially forfeited] –*

*(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or*

*(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.”*



The CCS Pension Rules, 1972, are rules defining the service conditions of an employee and the Payment of Gratuity Act, 1972, being an act of Parliament will have an overriding effect on the Rules. The case of the applicant is expressly covered in the said rules and does not fall in any of the provisions of non-obstante clause mentioned thereto.

9. In view of what has been discussed and detailed above, the O.A. is allowed. The respondents are directed to release the withheld gratuity of the applicant within a period of eight weeks from the date of receipt of a certified copy of this order. However, the applicant shall not be entitled to any interest.

10. There shall be no order as to costs.

**(Pratima K. Gupta)**  
**Member (J)**

/ad/