

**SUPREME COURT OF INDIA**

Chief General Manager Gujarat Telecom Circle, Bharat Sanchar  
Nigam Ltd.

Vs.

Manilal Ambalal Patel

C.A.No.1681 of 2019

(Ashok Bhushan and K.M.Joseph,JJ.,)

08.03.2019

**JUDGMENT**

**K.M.Joseph,J.,**

SLP(C) No.31739/2016

1. This appeal by special leave is directed against the judgment of the High Court in Special Civil Application filed under Articles 226 and 227 of the Constitution of India by the appellants wherein appellants challenged the order dated 29.10.2013 passed by the Central Administrative Tribunal (hereinafter referred to as the "Tribunal"). The Tribunal by the impugned order quashed order dated 12.03.2013 and directed the appellants to pay interest at the rate applicable to the Provident Fund deposits for the delay occurred in payment of DCRG and Commuted Value of Pension (hereinafter referred to as the "CVP") from 01.08.2008 till the date of payment.

2. The first respondent (hereinafter referred to as the "applicant"), who filed the application before the Tribunal was granted provisional pension by proceeding dated 04.08.2008. It reads as follows:-

"Sub: Retirement on superannuation of 31.7.2008 A/N- Cases of officers of STS of Executive Grade (Ad-hoc) Regarding. In accordance with BSNL New Delhi order No. 35/1/2007 Pers-1 date 3.7.2008 and on approval of the competent authority, the following officers of STS of Executive Grade) adhoc permanently abscribed in BSNL are permitted to retire from BSNL services on attaining the age of superannuation w.e.f. 31.7.2007 (A/N).

Sl. No.	Name of Officer	Staff No./ERP No.	Present working unit
1.	Sh. J.R. Sathwara, DE	10913/7005735	PGMTD Ahmedabad
2.	Sh. B.P. Mishra, DE	12277/7021009	PGMTD Vadodara
3.	Sh. P.P. Panchal, DE	11560/7016759	PGMTD Vadodara
4.	Sh.N.N. Chaniyara, DE	13808/7025957	GMTD - Rajkot
5.	Sh. M.A. Patel, DE	11719/7021051	PGMTD Surat

2. The BSNL C.O. ND has intimated that the vigilance clearance in respect of Shri M.A. Paatel, (SL. No. 5) DE, O/o PGMTD Surat has not received from Vigilance Cell of BSNL and therefore the officer shall be given only provisional pension and the DCRG and CVP shall be withheld till the conclusion of the vigilance/ disciplinary case as per CCS (Pension) rules 1972.

3. It may please be ensured that there is no Vig/ Disc case pending or contemplated against any of the above officer mentioned above as on the date of retirement. If any such case comes to notice, only provisional pension shall be granted to the officer (s) and his DCRG and CVP shall be withheld till the Vigilance clearance is accorded.

4. Copy of the charge relinquishing report may be sent to this office in respect of all concerned."

Though, the Anti-Corruption Bureau (hereinafter referred to as the "ACB") had registered a case against the applicant, the investigating officer, however, had found no evidence against him. Investigating officer had submitted A-summary before the Principal District Sessions, Judge, Banaskantha, Palanpur, who refused to accept the summary. The State of Gujarat thereupon challenged the order. On 30.03.2012 the criminal revision application, filed by the State, was allowed according sanction to the investigating officer to file A-summary report before the trial Court. The applicant applied for interest on pensionary benefits i.e. DCRG and CVP, which, was rejected, on the basis that the criminal revision petition, filed by the State, against the order of the trial Court refusing to accept the A-summary was disposed of and that after the order of the High Court and Vigilance clearance the amounts were paid. He approached the Tribunal and the Tribunal directed payment of interest. The High Court in the writ petition, filed by the appellants, has reasoned that on 01.08.2008 (the applicant was to retire on superannuation on 31.07.2008), there were no criminal proceedings against him. The High Court, inter alia, held as follows:

"We are unable to accept the said submission as narrated hereinabove. There were no criminal proceedings on 01.08.2008. All that the High Court in its order has

done directing the authority below, which is produced at page no.219 at Para 14, which read as under;

14. The report made to the Court below by the investigating officer was, therefore, made under Section 173 of the Code and the Court was required to pass an order under Section 173(4) of the Code, which the Special Court has failed to do. The order passed by the learned Principal District and Sessions Judge, Banaskantha at Palanpur, dated 03.05.2006 is, therefore, set aside. The prayer sought by the investigating officer for Summary "A" is allowed. Accordingly, present revision application is allowed. Rule is made absolute to the aforesaid extent. Muddamal currency note be confiscated to the State.

It will relate back to the date of filing of A-Summary, which is prior to the date when the respondent retired. More particularly, in the year 2007, when the Criminal Revision Application was filed before this High Court."

3. It was found that it related back to the A- summary, which is prior to the date, when the applicant retired, more particularly, in the year 2007, when the revision was filed in the High Court.

4. This we understand to mean that the High Court takes the view that the investigating officer submitted A-summary report, which is initially not accepted by the District Court which on revision by the State was directed to be accepted by the High Court. The report submitted by the agency, finding no material against the applicant, would date back to the date on which the report was submitted which would further mean that as on the date when the applicant retired, there was no criminal proceeding against the applicant. Thereafter, the High Court reasoned that there is a delay of huge period and the applicant was given clearance by the Vigilance that there was no case pending as the State has already filed A-summary in the ACB trap case. There was no disciplinary action taken by the State. It was against Article 14 of the Constitution of India and the interest also was found not unreasonable. The High Court, in the petition filed under Article 227, found no infirmity in the order of the Tribunal and dismissed the same.

5. We heard the learned counsel for the appellants as well as the learned Additional Solicitor General. Though service is complete on the applicant, none appears on his behalf.

6. Learned counsel for the appellants drew our attention to the Central Civil Services (Commutation of Pension) Rules, 1981 (hereinafter referred to as the "Commutation Rules"). Therein he relied upon Rule 4 of the Commutation Rules.

7. It is his contention that in so far as judicial proceeding was pending against the applicant and the same came to be disposed of only in the year 2012, applicant cannot claim interest as the applicant is not even entitled to commutation of pension as is clear from Rule 4 of the Commutation Rules. He further submits that the District and Sessions Judge did not accept the A-summary report which led to the revision before the High Court in the year 2007 and the revision petition was pending as on 01.08.2008 when the applicant

superannuated. Therefore, there was a judicial proceeding and this disentitled the applicant to CVP within the meaning of Rule 4. It is the further case that due to the pendency of the vigilance clearance, DCRG and CVP was withheld and only provisional pension was granted vide order dated 04.08.2008 and later sanction was accorded for provisional pension vide order dated 02.09.2008. When the criminal revision was allowed by the High Court and the request for summary-A was allowed by judgment dated 30.03.2012, the respondent No.1 was accorded vigilance clearance and vide order dated 25.10.2012, approval was granted to regularize his pension and to release other retirement benefits. Thereafter, it is the case of the appellants that, as seen from the written submissions, by order dated 17.10.2012 the applicant was permitted to retire on attaining the age of superannuation w.e.f his date of retirement i.e. 31.07.2008. The said order was also produced before us. It is the further case that the applicant thereupon made an application dated 01.11.2012 under the Commutation Rules seeking commutation. The said application was also produced along with the written submissions. It is submitted that, accordingly, the applicant was paid the CVP and retirement gratuity vide revised pension calculation sheet dated 31.12.2012. It is the case of the appellants that the application made for commutation by the applicant was within the period of one year, as contemplated in Rule 13(1) proviso (a). CVP is only an advance payment of pension and does not accrue as of right and is governed by the relevant Rules. Applicant was paid provisional pension which is the maximum admissible pension since his retirement and there was no monetary loss.

8. The learned Additional Solicitor General made two further submissions apart from apparently adopting the arguments advanced by the learned counsel for the appellants. It is submitted that Court may notice that the applicant has been given provisional pension and provisional pension has been enjoyed by the applicant right from the beginning. Therefore, necessary adjustment would have to be made even if the arguments based on Rule 4 is not found acceptable. In other words, commutation of pension involves the payment of a lump sum in lieu of monthly payments in the future by way of pensionary benefits. When the applicant was in receipt of provisional pension, necessarily adjustments would have to be made by reckoning the amount and then calculating the CVP. Therefore, when the applicant was in receipt of the provisional pension, in the same breath ordering the appellants to pay interest would amount to conferment of double benefit on the applicant. In other words, applicant cannot on the one hand enjoy the provisional pension and also cannot be given interest on CVP. The second argument, which is pressed before us, was that there were departmental proceedings against the applicant. This is on the basis of the concept of departmental proceedings to be found in Rule 9 of the CCS (Pension) Rules, 1972 (hereinafter referred to as the "Pension Rules"). Rule 9(6)(a) of the Pension Rules reads as follows:

"9(6)(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

9. Learned ASG would point that the applicant has been placed under suspension and

therefore that would suffice to deny the benefit of commutation of pension in which case interest could not be ordered to be paid.

10. There is no dispute that CVP has been paid to the applicant after the conclusion of the vigilance proceedings, clearing the applicant, but the question to be considered by us as to whether the applicant was entitled to be paid interest for the period immediately after retirement till the date on which the CVP was actually paid to him. The scheme of the Pension Rules, inter alia, indicate that under Rule 59, the authorities are duty bound to set in motion, the proceedings for calculating and paying the pension by the due date. Rule 59 would indicate that the said procedure is divided into three stages; first stage - verification of service; second stage - making good omission in the service book; third stage - as soon as the second stage is completed, but not later than eight months prior to the date of retirement of the Government servant various steps are to be undertaken. Rule 61 contemplates that after complying with the requirement of Rules 59 and 60, pension papers are to be forwarded to the accounts officer. Rule 64 contemplates provisional pension being paid for reasons other than departmental or judicial proceedings.

11. In the backdrop of these provisions, let us examine the scheme of the Commutation Rules. Rule 12 of the Commutation Rules declares who are the eligible persons to apply for commutation of a percentage of the pension without medical examination. In fact, Rule 11 provides that the Chapter applies to those who are eligible to commute their pension without medical examination. The person may be a person who is authorized to receive a superannuation pension under Rule 35 of the Pension Rules. Likewise, superannuation pension is defined in the Pension Rules and Rule 35 of the Pension Rules declares that superannuation pension shall be granted to a Government servant who is retired on attaining the age of compulsory retirement. Rule 12 of the Commutation Rules further renders eligible a person who has been given a retiring pension under Rule 36 of the Pension Rules. A retiring pension under Rule 36 of the Pension Rules is granted, inter alia, to a Government servant who retires or is retired in advance of the age of compulsory retirement. The next person who is declared eligible is a person to whom pension is authorized on his absorption in or under a corporation or company or body in terms of Rule 37 of the Pension Rules and who elects to receive monthly pension and retirement gratuity. The next category of persons rendered eligible to commute is a person authorized to receive compensation pension on abolition of a permanent post under Rule 39 of the Pension Rules. Finally, under Rule 12 of the Commutation Rules, a person authorized to receive pension in whole or in part on the finalization of departmental or judicial proceedings referred to in Rule 9 of the Pension Rules and issue of final orders is entitled to commute the pension.

12. Rule 13 provides for the application to be made for commutation of pension. We will advert to the Rule when it is found necessary at a later stage. Under Rule 14 of the Commutation Rules on receipt of application under Rule 13, the Head of Office has to take action as provided therein. Rule 15 provides for authorization of commuted value by the Accounts Officer. He is to verify whether the information furnished by the Head of Office is correct and applicant is eligible to commute a percentage of his pension without medical examination. Sub-rule (2) of Rule 15 provides that the Accounts Officer shall after

necessary verification issue authority for payment of CVP to the Disbursing Authority, inter alia.

13. Rule 18 of the Commutation Rules deals with another category of officers who are declared entitled to apply for commutation of their pension. The difference between Rule 12 which we have referred to and the persons mentioned in Rule 18 is that in the case of persons rendered eligible under Rule 18, they must undergo a medical examination whereas persons mentioned in Rule 12, as aforesaid, do not have to undergo any medical examination. Under Rule 18 of the Commutation Rules, the following categories of pension qualify:

- (1) Invalid pension under Rule 38 of the Pension Rules.
- (2) Pension granted under Rule 40 of the Pension Rules to a person who is compulsorily retired from service as penalty.
- (3) Compassionate allowance given under Rule 41 of the Pension Rules.

14. Be it noted that compassionate allowance under Rule 41 of the Pension Rules is contemplated in respect of a Government servant who is dismissed or removed from service. Rule 41 of the Pension Rules gives power to the authority competent to dismiss or remove a Government servant from service to sanction a compassionate allowance, if the case is deserving of special consideration and the sum is not exceeding two-thirds of the pension or gratuity or both which would have been admissible to him if he had retired on compensation pension. Compensation pension is dealt with in Rule 39 of the Pension Rules. It, inter alia, provides that if a Government servant is selected for discharge owing to the abolition of his permanent post then unless he is appointed to another post which is deemed equal to that of his own, the Government servant will have the option to take compensation pension for the service he had rendered. The last category of persons under Rule 18 of the Commutation Rules, who is declared eligible to commute after undergoing medical examination, is a Government servant who has retired from service on one of the pensions which are mentioned in Rule 12 but his application for commutation has not been received by the Head of Office within one year of his retirement. There are other provisions which deal with the action to be taken which include provision for medical examination of the applicant falling under Rule 18, appeal against the finding of medical authority, withdrawal of his application etc.

15. The above discussion relate to the persons who are eligible to commute and the pension which qualify. As we have noted ordinarily by the time the person is to retire, papers are to be got ready so that he becomes entitled to the CVP. Thus, if application is made and if all goes well, a person eligible, on his applying, as provided in the Rules, would become entitled to the pension without delay after the retirement.

16. There are two situations which may result in a Government servant not being sanctioned the final pension upon his retirement. Rule 3(1) of the Commutation Rules defines provisional pension to be the pension referred to in Rule 64 or 69 of the Pension Rules, as the case may be. Rule 64 of the Pension Rules provides for sanctioning

provisional pension in a case where there is no departmental or judicial proceeding. In other words, Rule 64 of the Pension Rules contemplates a situation where the pension is not finalized for reasons other than departmental or judicial proceeding. When a person is so granted provisional pension under Rule 64 of the Pension Rules then Rule 9 of the Commutation Rules provides for commutation of a fraction of the provisional pension which is to be subject to the limit specified in Rule

5. It may be noticed that Rule 5 of the Commutation Rules, inter alia, provides that a Government servant shall be entitled to commute for a lump sum payment of an amount not exceeding forty percent of his pension. Therefore, this limit is applicable in respect of full pension and also cases of provisional pension. Even if a person is in receipt of only provisional pension but which is granted under Rule 64, which as explained earlier, deals with a case which is not covered by a departmental or judicial proceeding, the Government servant is entitled to commute fraction of the provisional pension subject to the limit, as provided under Rule 5 of the Commutation Rules. Rule 31 of the Commutation Rules provides that when final assessment of the pension is done in regard to an employee to whom commuted value of the percentage of the provisional pension has been given under Rule 9, then he will be paid the difference of the amount between commuted value determined on final assessment of the pension and the commuted value already paid.

17. Time is now ripe to notice Rule 4 of the Commutation Rules, which is relied upon by the appellant and the Government of India. The same reads as follows:

"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 percentage of his provisional pension authorised under Rule 69 of the Pension Rules or the pension, as the case may be, during the pendency of such proceedings."

18. Rule 4 deals with a case where provisional pension has been granted under Rule 69 of the Pension Rules. Rule 69 of the Pension Rules contemplates sanctioning provisional pension when there is a departmental or judicial proceeding against the Government servant. It is when provisional pension is granted under the said Rule on account of the fact that there is a departmental or judicial proceeding pending that Rule 4 declares that the Government servant will not be entitled to commute the provisional pension so granted under Rule 69 during the pendency of the proceeding.

19. In this case, admittedly the applicant was sanctioned a provisional pension under Rule 69 on the basis that there was a judicial proceeding pending. We have set out the broad scheme of the Commutation Rules. First we should ascertain what is the nature of CVP. Is there legal right to receive CVP? Can there be cases where for delayed payment of CVP, interest can be ordered? Is there any provision which provides for interest?

20 A scanning of the Commutation Rules reveals that there is no provision which

contemplates payment of interest. In fact, the appellants have produced Office Memorandum dated 05.10.1999 and the contention appears to be raised that it does not contemplate the grant of interest. We have gone through the said Office Memorandum. On the one hand the Office Memorandum does not contemplate grant of interest when CVP is paid belatedly. But on the other hand, we notice that the order does not declare that no interest shall be payable when CVP is paid belatedly.

21. The next exercise is to ascertain the true nature of CVP. As we have noticed from the Commutation Rules that CVP is inter-linked with pension. Pension is not a bounty. It is a legal as well as a fundamental right of a Government servant to receive his pension. It is not an act of grace by the employer but it is the right of the Government servant who has put in the required number of years of service. This is subject no doubt to Rule 9 of the Pension rules under which there is power to withhold and recover part or whole of the pension. In regard to pension, it is beyond dispute that for belated payment of pension, interest can be ordered to be paid. What is the position as far as CVP is concerned?

22. Commutation of pension is nothing but payment of a portion of the pension calculated on a formula provided in the Rules, the result of which is that the employer will be absolved from payment of the pension to the extent it is commuted and the employee will receive the value of commuted pension in a lump sum at one go. No doubt after a certain number of years (15 years) the full pension gets restored. Therefore, CVP flows out of his right to receive pension. In fact, it is a part of his pension which is paid in lump sum to the employee. Having culled out the essential nature of CVP, we must consider whether there is a legal right to receive the CVP or is it discretionary and it may be withheld.

23. It is undoubtedly true that it is entirely optional for the officer to commute a part of his pension. In that sense it can be said that without an application, he has no right to get commuted value. But that does it mean, when an application is made, as contemplated in the rules, no right is enshrined in the rules to get the committed value?

24. It is important to advert to Rule 13 in its entirety. Rule 13 provides for the application to be made by the eligible persons falling under Rule 12, whereas Rule 19 deals with the application, to be made by persons, who are eligible under Rule 18. It will be remembered that Rule 12 deals with persons who are eligible for commutation of their pension without medical examination, whereas Rule 18 deals with persons who are in receipt of pension or other amounts and who become eligible only on undergoing medical examination.

25. Coming to Rule 13 it reads as follows:

"13. Application for commutation of pension -(1) An applicant, who is in receipt of any pension referred to in Rule 12 and desires to commute a percentage of that pension any time after the date following the date of his retirement from service but before the expiry of one year from the date of retirement, shall-

(a) apply to the Head of Office in Form 1 after the date of his retirement;

(b) ensure that the application in Form 1, duly completed, is delivered to the Head of Office as early as possible but not later one year of the date of his retirement :

(a) referred to in Clause (iii) of Rule 12, where order retiring him from Government service had been issued from a retrospective date, the period of one year referred to in this sub-rule shall reckon from the date of issue of the retirement orders ;

(b) Referred to in Clause (v) of Rule 12, the period of one year referred to in this sub-rule shall reckon from the date of the issue of the orders consequent on the finalization of the departmental or judicial proceedings.

(2) An applicant who applies for commutation of pension within one year of the date of his retirement but his application in Form 1 is received by the Head of Office after one year of the date of his retirement, shall not be eligible to get his pension commuted, without medical examination. Such an applicant, if he desires to commute a fraction of his pension, shall apply afresh in Form 2 in accordance with the procedure laid down in Chapter IV.

(3) Government servant who is due to retire on superannuation and desires payment of the commuted value of pension being authorized at the time of issue of the pension payment order, shall be eligible to apply for commutation of a fraction of pension along with pension papers prior to the date of retirement provided that –

(a) the Government servant retires on superannuation pension only;

(b) the application is submitted to the Head of Office in Form 1-A, so as to reach the Head of Office not later than three months before the date of superannuation ;

(c) no such application shall be entertained if the period is less than three months from the date of superannuation of the Government servant ; and

(d) the Government shall have no liability for the payment of the commuted value of pension if the Government servant dies before the date of superannuation or forfeits claim to pension before such retirement.

26. Rule 13(1) contemplates that the applicant for commutation may be a person who is in receipt of pension under Rule 12 and he is desirous of commuting a percentage of pension mentioned in Rule 12. The Rule further provides that in such a contingency he may at any time after the date following the date of his retirement from service but before the expiry of one year from retirement apply in Form 1 to the Head of Office. He must ensure that the

application duly completed is delivered to the Head of Office at the earliest but not later than one year of date of retirement. Sub-rule (3) of Rule 13 on the other hand picks out one out of the several categories falling in Rule 12, namely, a person who retires on superannuation pension for a special treatment. Sub-rule (3) of Rule 13 contemplates that the Government servant who is due to retire on superannuation and desirous that the payment of the CVP be sanctioned or authorized at the time of the pension payment order shall apply for commutation along with pension papers. He must apply prior to the date of retirement. The application is to be submitted in Form 1A. It is to reach the Head of Office not later than three months before the date of superannuation. Secondly, he must actually retire on superannuation pension only.

27. At this juncture, it is necessary to notice Rule Rule 6 provides for the time when the commutation of pension is to become absolute. It reads as follows:

"6. Commutation of pension to become absolute-

(1) The commutation of pension shall become absolute in the case of an applicant referred to-

(i) in sub-rule (1) of Rule 13, on the date on which the application in Form 1 is received by the Head of Office ; (i-a) in sub-rule (3) of Rule 13, on the date following the date of his retirement;

(ii) in Chapter IV, on the date on which the medical authority signs the medical report in Part III of Form 4;

Provided that -

(a) in the case of an applicant who is drawing his pension from a treasury or Accounts Officer, the reduction in the amount of pension on account of commutation shall be operative from the date of receipt of the commuted value of pension or at the end of three months after issue of authority by the Accounts Officer for the payment of commuted value of pension, whichever is earlier, and

(b) in the case of an applicant who is drawing pension from a branch of a nationalized bank, the reduction in the amount of pension on account of commutation shall be operative from the date on which the commuted value of pension is credited by the bank to the applicant's account to which pension is being credited.

(c)

in the case of an applicant governed by sub-rule (3) of Rule 13 in whose case the commuted value of pension becomes payable on the day following the date of his retirement, the reduction in the amount of pension on account of commutation shall be operative from its inception. Where, however, payment of commuted value of pension could not be made within the first month after the date of retirement, the difference of monthly pension for the period between the day following the date of retirement and the date preceding the date on which the commuted value of pension

is deemed to have been paid in terms of Rule 49 of the Central Government Accounts (Receipts and Payments) Rules, 1983, shall be authorized by the Accounts Officer]

(2) In the case of an applicant referred to in Rule 9 or Rule 10, the commuted value is paid in two or more stages, the reduction in the amount of pension shall be made from the respective dates of the payments as laid down in Clause (a) or Clause (b) of the proviso to sub-rule (1).

(3) The date on which the payment of the commuted value of pension was made to the applicant or the commuted value was credited to the applicant's account shall be entered in both halves of the Pension Payment Order by the disbursing authority under intimation to the Accounts Officer who authorized the payment of commuted value of pension."

(Emphasis Supplied)

28. Rule 6 declares that the commutation in regard to a person covered by Rule 13(1) is to become absolute when Form 1 is received by the Head of Office. In the case of application under sub-rule (3) of Rule (13), 26. it becomes absolute on the date following the date of his retirement. We are not to be detained by Chapter 4 which deals with cases where medical examination is necessary. It is important to notice Clause (c) to the proviso to Rule 6. It clearly contemplates that in the case of person who applied under Rule 13(3), the CVP becomes payable on the date following the date of his retirement. This interpretation is inevitable having regard to the express language of the said Rule. In fact, it contemplates that the reduction in the amount of pension on account of commutation shall be operative from its inception. This means that consequent upon commutation, the full pension which he would otherwise receive would suffer a diminution and it is to take effect from the very first day following his retirement. In fact, Clause (c) proviso to Rule 6 does contemplate a situation where the CVP is not made within the first month from the date of retirement as it provides that the difference of monthly pension for the period between the day following the date of retirement and the date preceding the date on which the CVP is deemed to have been paid in terms of the Central Government Account (Receipts and Payments) Rules, 1983.

29. We have noticed the Rules. We have found out that the Rules declare the categories of pension which would qualify for commutation. In other words, those persons who fall in Rule 12 of the Commutation Rules, without undergoing any medical examination can apply for commutation, as provided in Rule 13, which includes a person who receives superannuation pension. If such a person applies under Rule 13, well within the time, he is indeed conferred a legal right under the Statutory Rules to receive commuted pension. It does not lie in the mouth of Government which is expected to act as a model employer to sit over the papers and delay the sanctioning or the payment of the CVP.

30. Therefore in a case where Rule 13(3) applies and the Government servant who is due to retire on superannuation applies for getting CVP along with pension papers, prior to the date of his retirement as provided and he actually retires on superannuation and his application is within time, the CVP must be paid immediately after the retirement. It may

be true that in the case of a person covered by Rule 18 which deals with the cases, which we have mentioned, like invalid pension, pension under Rule 40 of the Pension Rules on being compulsorily retired by way of penalty or compassionate allowance on being dismissed or removed he must undergo a medical examination. Therefore, applications by a person covered under Rules 12 and 18 stand on a different footing. As far as application by a person governed by Rule 12, provided he makes an application as contemplated under Rule and the application gives details of the amount of percentage of commutation which he requires subject to the maximum of forty percent, he is entitled to demand the payment of CVP. We have already noticed that the Rule does not provide the payment of interest. The Office Memorandum dated 05.10.1999 does not prohibit payment of interest. The question would then arise on what basis the Government servant can seek interest.

31 In *S.K. Dua Vs. State of Haryana and another*<sup>1</sup>, this Court was dealing with a case where the appellant was paid provisional pension but other retirement benefit were not given including CVP, leave encashment, gratuity etc. There was a disciplinary proceeding and ultimately the appellant was found exonerated from all the charges. In the said circumstances, the benefits were given after four years. As regards the question, as to on what basis interest would be granted for delayed payment, we notice the following statement of law made by this Court:

"14. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well- founded that he would be entitled to interest on such benefits. If there are Statutory Rules occupying the field, the appellant could claim payment of interest relying on such Rules. If there are Administrative Instructions, Guidelines or Norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence Statutory Rules, Administrative Instructions or Guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 o the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of bounty is, in our opinion, well-founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents."

(Emphasis Supplied)

32. Coming to the facts of this case, we notice that the applicant was given provisional pension under Rule 69 of the Pension Rules. This immediately attracts Rule 4 of the Commutation Rules prohibiting commutation of the provisional pension. In fact, Rule 69 of the Pension Rules contemplates sanctioning of provisional pension which is to be equal to the maximum pension which would have been admissible on the basis of the qualifying service upto the date of retirement of the Government servant or if he was under suspension on the date of retirement upto the date immediately before being placed under suspension. This brings us to Rule 9(4) of the Pension Rules, which is the basis for applying Rule 69. Rule 9(4) reads as follows:

”9(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.

33. To fully appreciate the scheme of the Rules, we may also refer to Rule 9(6), which reads as follows:

(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 9(6)(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."

34. The learned counsel for the appellants and the learned ASG are no doubt correct in contending that there is prohibition against commuting of pension but we must notice one aspect. What Rule 4 taboos is commutation of provisional pension which is granted under Rule 69 during the pendency of the proceedings.

35. As we have noticed, there are three situations. The first category is where the pension is finalized immediately upon retirement and on the basis of the application, the commutation as permissible subject to the limit of forty percent, is ordered. The second category is where there is provisional pension granted under Rule 64. In such a case also commutation is permissible but of the provisional pension again subject to the limit under Rule 5. In the third category where provisional pension is sanctioned on account of pendency of judicial or departmental proceeding Rule 4 applies and it forbids the commutation of "the provisional pension" granted under Rule 69. Since, in this case the applicant was admittedly sanctioned provisional pension, while the provisional pension was in place, the applicant could not have sought commutation of the provisional pension granted under Rule 69 in view of the embargo against such commutation contained in Rule 4.

36. On 17.10.2012, the following order was passed:

"Subject: Retirement on superannuation on 31.07.2008 (A/N) - Case of officers of STS of Executive Grade (Adhoc) - Regarding. In continuation to this office Order No.354- 1/2007-Pers-I dated 31.07.2008, the following officer of Adhoc STS of Executive Grade (Telecom/TTS/TFS) permanently absorbed in BSNL is permitted to retire from BSNL Services on attaining the age of superannuation w.e.f. the date indicated against his name.

S. No. Staff No./ HR No. Name/Desgn. of the officer Circle DOB Date of Retirement

1 11719 Shri M.A. Patel, DE GUJ 01.08.48 31.07.2008 (A/N)

2. It has been certified that retirement order is being issued on the basis of Vigilance Clearance received from the CVO, BSNL.
3. This has the approval of the Competent Authority.
4. Copy of Charge Relinquishing report may be sent to this office in respect of all concerned."

37. On the basis of the same, apparently the applicant moved application on 01.11.2012 where he sought commutation of pension without medical examination. He showed his date of retirement as 31.07.2008. He sought the maximum admissible fraction as the proposed commutation. On the basis of same, the appellant was admittedly sanctioned CVP in December, 2012. If the application dated 01.11.2012 is taken as the basis of sanctioning of the CVP then there can be no ground at all to give any interest as CVP has been given within a reasonable time.

38. The question, however, arises whether as has been found by both, the Tribunal and the High Court, this should be treated as a case where the applicant should be granted interest from the date of his retirement on account of the fact that on the date of his retirement there was neither the departmental proceeding nor a judicial proceeding.

39. As far as the argument of the learned ASG that there was a departmental proceeding pending by virtue of the fact that an order of suspension was passed within the meaning of Rule 9(6), which we have already referred to, we are of the view that there is no merit in the said contention. While the applicant was placed under suspension, in the year 1997, it is equally indisputable that the said suspension was revoked in the year 1999 well before the date of superannuation of the applicant. It is not the law that to constitute a departmental proceeding that a Government servant has been placed under suspension at some point of time of his career. What is contemplated is that there must be a suspension when the applicant would have otherwise retired on superannuation. In this case the suspension stood revoked several years prior to his date of superannuation. Therefore, the suspension which was subsequently revoked cannot constitute suspension within the meaning of Rule 9(6)(b) of the Pension Rules and we have no hesitation in repelling the argument of learned ASG.

40. A case under the Prevention of Corruption Act was lodged against the applicant. However, the ACB, in the course of investigation apparently was not able to muster enough material to prosecute the case. This resulted in the agency filing what is described as A- summary. The A-summary came to be dealt with in the following manner by the Sessions Judge:

"Heard.

Accused is traceable. There is no question of granting "A" Summary. it is nobody's

case that accused is absconding. If at all, I.O. fact that evidence is not sufficient to prosecute the accused. He may apply under Section 169 of Cr.P.C. Hence rejected as it is not tenable at law."

41. This order was passed prior to the date of superannuation of the applicant. It is, therefore, that Criminal Revision Application No.52 of 2007 came to be filed before the High Court of Gujarat. By order dated 30.03.2012, the revision came to be allowed. It is noticed that the applicant opposed the revision. The A-summary was to be given in a case where the case is found to be true but the accused is absconding. Further, if the evidence against the accused is not sufficient to prosecute the accused, also A-summary could be given. The High Court took the view as follows:

"The report made to the Court below by the investigating officer was, therefore, made under Section 173 of the Code and the Court was required to pass an order under Section 173(4) of the Code, which the Special Court has failed to do. The order passed by the learned Principal District and Sessions Judge, Banaskantha at Palanpur, dated 03.05.2006 is, therefore, set aside. The prayer sought by the investigating officer for Summary "A" is allowed. Accordingly, present revision application is allowed. Rule is made absolute to the aforesaid extent. Muddamal currency note be confiscated to the State."

42. It is true that well before his retirement the agency which had no doubt conducted a trap against the applicant, had itself found that there was no material in view of subsequent developments. It could be said that this is a case where the applicant was exonerated by the agency well before the date of his retirement. No doubt this is not a case where the applicant has been acquitted honourably after trial. In fact, there was never a trial and the case was not sent up for trial in view of the submission of A-summary.

43. The other question also must be considered and that question is whether there was a judicial proceeding pending at the time of the retirement. A perusal of Rule 9 of the Pension Rules would show that Government had a right to withhold the pension or gratuity or both either in full or in part or withdraw a pension in full or in part either permanently or for the specified period. Government is also authorized to order recovery from pension or gratuity of the whole or in part of any pecuniary loss caused, if in any departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service which includes service after reemployment. Thereafter, sub-rule 9(6) deals with what constitutes when a departmental or a judicial proceeding will be deemed to commence. Judicial proceedings are divided into two categories. First category is a criminal proceeding. Second category is civil proceeding. As far as civil proceeding is concerned, it is deemed to be instituted when a plaint is presented. In other words, upon presentation of a plaint in a civil case judicial proceeding commences. In the case of a criminal proceeding by the deeming provision, it is deemed to have been instituted for the purpose of Rule 9 when the complaint or report of a police officer is made, but that is not sufficient. In a case where a complaint or a report of a police officer is made to a Court, it should culminate in cognizance being taken by the Magistrate, for the department to contend that the date of the complaint or report is to be the date of institution of the

proceedings.

44. From the order of the Sessions Judge which alone is produced, it is not clear that cognizance was taken. The criminal revision is a criminal proceeding. But the case was about the 'A' diary not being accepted. If the criminal revision was dismissed then the matter would have been proceeded with by the Sessions Judge. It is in the region of conjecture as to what would have followed suit. At the time of the retirement, the authorities could not have divined what would happen in the revision. No doubt, the purport of the revision petition was that the State wanted the 'A' Summary to be accepted. The acceptance of 'A' Summary which, in fact, was ordered by the High Court would have brought the litigation as against the applicant to an end. In so far as, we later propose to render our finding on the effect of no application being filed under Rule 13(3) and also keeping in mind that the applicant did not take steps to challenge the order dated 04.08.2008, we would think that much may not turn on our even accepting the view of the High Court, that there was no criminal proceeding as on the date of the retirement. It also must be noted that the present is not a case where the authorities acted without any material at all even. We proceed on the basis that the criminal revision petition is not criminal proceeding under Rule (9) of the Pension Rules. A view was taken by the authorities regarding the same at the point of time which could not be said to have been taken without any basis at all. This, we say as the basis for interest on CVP can only be state action which is arbitrary. It is relevant to note that both sides proceeded on the basis that there was a proceeding within the meaning of Rule 9 and 69 of the Pension Rules. Further, even at the time when the order dated 04.08.2008 was passed it was open to the applicant to complain that there was no judicial proceeding, having regard to the nature of the proceeding pending in the High Court. The applicant instead chose not to question the sanctioning of provisional pension under Rule 69 and continued to receive the provisional pension. We will notice the consequences of the said order on his right to apply under Rule 13(1).

45. We have noticed that a claim for interest in regard to CVP may lie when an application has been made in time under rule 13(3) and the payment is delayed. But in a case where application is made under Rule 13(1) which can be made within a period of one year from the date of retirement, the same would have to be processed and undoubtedly at the earliest it must be brought to its logical culmination as per the rules. But certainly, in a case falling under Rule 13(1) there can be no question of paying interest from the date of retirement as the application itself is predicated after the date of retirement. No doubt the question as to payment of interest even in such cases would arise based on the date of application and the reasonableness of the time taken in processing it and the arbitrariness in a particular case in delaying the matter. This we say for the reason that as held in by this Court in S.K. Dua (supra) the premise on which interest can be granted in the case of CVP also is the breach of Articles 14 and 21 and it is a matter to be decided on the facts of each case.

46. It is significant to note that in this case the applicant has no case even that he made an application within the meaning of Rule 13(3) of the Commutation Rules as contemplated before three months of his retirement. Nothing stood in the way of the applicant applying under Rule 13(3) apparently. If on the other hand, there was any legal impediment which

stood in the way, then also he cannot claim the CVP on retirement. Without having made such an application under the Commutation Rules, it is clear that there can be no question of even becoming entitled to commute pension w.e.f. first day following his retirement. The Tribunal and the High Court have completely overlooked the conspectus of the Rules. The Tribunal, in fact, has proceeded to consider the matter from the standpoint of interest payable on gratuity which also was claimed by the applicant and has not focused on the question relating to the point of time when CVP becomes payable, and that the nature of CVP being one dependent entirely on an application from the Government servant and therefore we have no hesitation in coming to the conclusion that the direction to pay interest on the CVP, as ordered by the Tribunal, from the date of retirement from 01.08.2008 is clearly erroneous. Now, as far as Rule 13(1) is concerned, it enables a person who is in receipt of a pension under Rule 12, to apply after retirement but within one year thereof for CVP. It is true that the applicant was not in receipt of any pension under Rule 12 and therefore, he could not have applied under Rule 13(1). This is for the reason that as per order dated 04.08.2008, he was to be given provisional pension which as we have noted was under Rule 69 of the Pension Rules. The applicant, however, proceeded to accept the provisional pension. It is true that the effect of the order dated 04.08.2008 of the sanctioning of the provisional pension under Rule 69, was that he was precluded from applying for commuting the provisional pension, in view of Rule 4 and on the other hand, as he was not in receipt of superannuation pension, he could not have filed an application under Rule 13(1). Thus, a question may arise. Having issued order dated 04.08.2008, the effect of which we have clarified, should interest be ordered on the basis that the applicant was prevented from applying for CVP under Rule 13(1) . We have already found that the applicant was not precluded from making any application under Rule 13(3). Had he done so, his claim for interest from the date of retirement could have been considered under Articles 14 and 21. We also take note of the fact that the applicant did not challenge the order dated 04.08.2008 and he continued to accept the provisional pension sanctioned thereunder. There could be no question of granting interest from the date of retirement in view of the absence of any application under Rule 13(3). We make it clear that we are not pronouncing about the liability to interest on DCRG amount which is not subject matter of controversy before us and the direction to pay interest on gratuity is not being interfered with.

47. In the light of this, we are of the view, the appeal is to be allowed as above. We do so. The impugned order will stand set-aside and the order of the Tribunal directing payment of interest on CVP shall stand set-aside. No order as to costs.

Judgment Referred.

<sup>1</sup>(2008) 3 SCC 0044