

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.1065 of 2002

New Delhi, this the 30th day of October, 2003

22

HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)
HON'BLE MR.S.K. NAIK, MEMBER (A)

Shri K.N. Vohra
Assistant Director (Retired)
(Customs & Central Excise)
DDA MIG Flat No.309
Parshad Nagar,
New Delhi-110 005.

...Applicant

By Advocate: Shri M.K. Bhardwaj.

Versus

Union of India through

1. The Secretary,
Ministry of Finance,
Department of Revenue,
Central Secretariat,
North Block,
New Delhi-110 001.
2. The Chairman,
Central Board of Excise and Custom
North Block,
New Delhi-110 002.
Director General Preventive Operations
Customs and Central Excise.
3. The Director (Preventing Operation)
4th Floor, Lok Nayak Bhawan.
Khan Market,
New Delhi.
4. The Pay & Accounts Officer,
Central Pension Accounting Office,
Trikut-2 Complex,
Bhikaji Cama Place,
New Delhi-110 066. ..Respondents

By Advocate: Shri R.R. Bharati.

O R D E R

By Hon'ble Mr.Kuldip Singh, Member(Judl)

The applicant has filed this OA under Section 19 of the AT Act as he is aggrieved by the act of the respondents in not allowing him interest on his retiral benefits paid to him belatedly. It is submitted that the applicant retired from service on 30.9.94 and his retiral

16

benefits were released to him on 11.9.2001 as such it is submitted submitted that the retiral benefits were released to him belatedly so he is entitled to interest at the rate of 12% per annum.

2. The facts in brief are that while the applicant was working under the Directorate of Preventive Operation, the respondents proposed to hold an enquiry against him vide charge-sheet dated 21.9.94.

3. It was alleged against the applicant that when he was posted and working as Range Officer in Central Excise Division, MOD-II, New Delhi he failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Government servant inasmuch as he had colluded with M/s Sudarshan Industries, M/s West Air Industries and M/s Water Chillers in granting L-6 licences on the basis of fraudulent documents without verifying the authenticity of the said documents as such an enquiry was held. The Inquiry Officer gave his report holding Articles III and IV ^{as} proved and Articles I and II as not proved. Article I and II pertained to collusion with M/s Sudarshan Industries, M/s West Air Industries and M/s Water Chillers etc. and Article II was with regard to his failure to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Government servant whereas Articles III and IV was with regard to Supervisory duties of the applicant.

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4. However, respondents by an order dated 25.5.2001 conveyed the displeasure of the Government to the applicant but it is submitted that the order is void ab initio for the reason that the same is not signed by the disciplinary authority as the displeasure was not one of the punishment provided under the rules.

5. It is also submitted that since the displeasure is not a punishment so the respondents were unjustified in withholding the terminal benefits.

6. The applicant has also submitted that since the order of punishment had been issued after the retirement from service and enquiry was pending much prior to his superannuation so the department could not have continued the enquiry so the same itself is bad in law.

7. In support of his contention the learned counsel for the applicant has referred to a judgment of a Delhi High Court in O.P. Gupta Vs. U.O.I. and Another reported in 1981 (3) SLR page 778 wherein it has been held as under:-

" 17. In other words is the deeming provision in R.9 so unbridled? Can the provision be used to keep the inquiry alive for any number of years or indefinitely? Can it be deemed that even after 20 years the inquiry is still not concluded, as in the present case? Considering public interest and difficulties in Government administration, I am of the opinion that power to continue or to start a disciplinary proceeding after retirement may be necessary in certain cases. By itself the power is not arbitrary. It has a rational basis. But the power must be exercised, within a reasonable period and consistent with justice and public interest. In Mohambhai VS. Y.B. Zala 1980 (1) Ser L&R 324): Gujarat High Court held that starting of a departmental enquiry 1.1/2 years after the incident, was violative of natural justice. The court held that it was too much to expect that delinquent would be able to

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25

remember and narrate the old incident. We have here the lapse of more than 20 years. If R.9 is to be saved from the attack of arbitrariness it must be read in a reasonable and just manner. A guideline is available in R.9(2)(b). A fresh inquiry cannot be started in respect of any event which took place more than 4 years before such institution. This statutory limitation embodies sound principle of equity and justice. It also recognises the principle of finality and repose. I do not find any difference in principle from the point of view of public interest. In continuation of pending proceeding and starting a fresh proceeding. I, therefore, hold that in case of an event more than four years old on the date of retirement, a department proceeding cannot be continued after retirement under R.9(2) of the Pension Rules, 1972. It is well settled that requirement of natural justice can be read in a Rule even if the Rule is silent about it, particularly, in a Rule concerning quasi-judicial proceeding. In this view of the matter I hold that the departmental proceeding, if any, pending against the petitioner after 30.3.1975 is bad in law. The same is hereby set aside (emphasis supplied)".

8. So the learned counsel for the applicant on the strength of this judgment submitted that the applicant had retired from service on 30.9.94 and the order in the enquiry was passed by showing displeasure only on 25.5.2001 which means that the enquiry continued from 30.9.94 till 25.5.2001 and even 7 years after his retirement which in the light of the judgment, as submitted, cannot be sustained.

9. As against this the learned counsel for the respondents submitted that since displeasure note was issued so the Government was within their right to withdraw the retirement benefits and since the applicant was not exonerated fully so he is not entitled to interest.

10. We have considered the contention of the parties and gone through the record.

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11. As per the law laid down by the Hon'ble Delhi High Court in the judgment cited by the learned counsel for the applicant we find that the enquiry could not have been continued if it was more than 4 years prior to retirement as per the judgment in the case of O.P. Gupta (Supra) so in view of this, we find that the order conveying of displeasure note is also bad and the same is liable to be set aside and it has been so held that the retiral benefits cannot be withheld after retirement.

12. In this case enquiry was initiated vide charge-sheet dated 21.9.1994. Applicant retired on 30.9.1994. Thus it is clear that enquiry was pending much prior to 4 years of retirement.

13. Accordingly, the OA is allowed. As the respondents have released the retiral benefits late so they are liable to pay interest to the applicant on the retiral benefits. As the interest rate have gone done so we direct that interest be paid at the rate of 6% per annum from the date the retiral benefits has become due till the date of payment. These directions may be complied with within a period of 3 months from the date of receipt of a copy of this order. No costs.

S.K. HATK
(S.K. HATK)
MEMBER (A)

Kuldeep Singh
(KULDIP SINGH)
MEMBER(JUDL)

/Rakesh

11
28
BEFORE THE HIGH COURT OF DELHI, NEW DELHI
(CIVIL APPELLATE JURISDICTION)

W.P.(C) NO. OF 2004

IN THE MATTER OF :

UNION OF INDIA & ORS. 4194

PETITIONERS

VERSUS

SHRI K.N. VOHRA

RESPONDENT

MEMO OF PARTIES

1. Union of India, through
Secretary, Department of Revenue,
Ministry of Finance,
North Block, New Delhi-110001.
2. Chairman,
Central Board of Excise & Customs,
Department of Revenue,
Ministry of Finance, North Block,
New Delhi-110001.
Director General Preventive Operations
Customs and Central Excise.
3. The Director (Preventive Operation),
4th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi-110003.
4. The Pay & Accounts Officer,
Central Pension Accounting Office,
Trikut-2 Complex, Bhikaji Cama Place,
New Delhi-110066.

PETITIONERS

VERSUS

Shri K.N. Vohra,
Assistant Director (Retired),
(Customs & Central Excise),
DDA MIG Flat No.309, Parshad Nagar,
New Delhi-110005.

.. .. RESPONDENT

FILED BY

[Signature]
(R.V. SINHA)
Central Govt. Counsel
540-541, Lawyers' Chambers
Patiala House Court
New Delhi.

Date : 12 August, 2004

