

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Dated Wednesday the 3rd day of June Two Thousand And Twenty

PRESENT:

THE HON'BLE MR. P. MADHAVAN, MEMBER(J)
THE HON'BLE MR. T. JACOB, MEMBER(A)

O.A.310/1128/2018

H.K. Sharma,
Assistant Salt Commissioner (Retired),
Aged about 61 years,
Residing at Flat -103/3-B/Phase 6,
Sidhachal,
Thane (W)-400 610.Applicant

(By Advocate: M/s. Menon, Karthik Mukundan
& Neelakantan)

Vs.

1. Union of India Rep. by its
Secretary to Government,
Ministry of Commerce and Industry,
Dept. of Industrial Policy & Promotion,
Government of India,
Udyog Bhavan,
New Delhi-110 011;
2. The Salt Commissioner,
Government of India,
No.2-A, Lavan Bhavan,
Lavan Marg, Lavan Marg,
Jhalana Doongari,
Jaipur 302 004;
3. The Chief Controller of Accounts
Ministry of Commerce and Industries,
Udyog Bhavan,
New Delhi-110 011.

.....Respondents.

(By Advocate: Mr. M. Kishore Kumar)

O R D E R

(Pronounced by Hon'ble Mr. P. Madhavan, Member(J))

This is an OA filed seeking the following relief:-

- "(a) To set aside Order No. 18013/3/2018/SALT dated 09.05.2018 and consequently;
- (b) to direct the respondents to open the sealed cover of the applicant w.r.t. promotion as Deputy Salt Commissioner and grant the applicant promotion to the said post with effect from 22.07.2014 with full pay and allowance; and
- (c) to direct the respondents regularize the period of suspension from 1.8.2014 to 4.11.2014 as duty for all purposes; and
- (d) to direct the respondents to grant the 3rd Financial Upgradation under the MACP Scheme due from 31.07.2014; and
- (e) to direct the respondents to disburse leave encashment benefit for 300 days; and
- (f) to direct the respondents to re-fix the pension and re-compute the terminal benefits including gratuity accordingly; and
- (g) to direct the respondents to release the monetary benefits as detailed in relief (b) to (f) within a period to be stipulated by this Hon'ble Tribunal; and
- (h) pass such further or other orders as may be deemed fit and proper."

2. The brief facts of this case is as follows:-

The applicant was promoted as Dy. Salt Commissioner on adhoc basis on 1.8.2013. The DPC held on 22.7.2014 had recommended his name for promotion on regular basis. Before issuing the promotion order dated 1.8.2014, the respondents issued a suspension order dated 1.8.2014. So applicant's promotion was deemed to be kept under sealed cover procedure and not granted. His junior, Dr. R.S. Kashyap was promoted on 08.08.2014 w.e.f. 22.7.2014 that is the date of DPC held. The suspension of the applicant was revoked on 4.11.2014 on completion of 90 days. The applicant gave a representation to the Respondent No.1 on 26.09.2015 seeking promotion on par with his juniors. But it was rejected. The applicant thereupon filed OA 202/2016 before this Tribunal seeking a direction to open the sealed cover and grant promotion. It was allowed and the respondents filed W.P. 2684/2017 against the said order. Thereupon, the respondents issued a charge memo dated 12.08.2015 under Rule 14 CCS (CCA) Rules alleging dereliction of duty and lack of devotion to duty in the year 2013 while he was working as Dy. Commissioner of Salt (Ad hoc) Mumbai (Annexure A5). The applicant filed OA 375/2017 challenging the charge memo dated 12.08.2015 on the ground that approval of

the Hon'ble Minister of Commerce was not obtained in a proper manner relying on the decision of the Hon'ble Supreme Court in

B.V. Gopinath's case. The applicant attained superannuation on 31.08.2017 as Assistant Salt Commissioner. But his retirement benefits including gratuity was not settled stating that major penalty proceedings are pending. The Tribunal quashed the charge memorandum on 31.08.2017 the date on which he retired. The applicant was granted provisional pension but his other benefits were not given. His retirement benefits, promotion, MACP benefits, regularization of period of suspension were not given even though the charge memo was quashed. The denial of these benefits is illegal. The applicant again approached the Tribunal by filing OA 282/2018 seeking a direction to give the service benefits. The said OA was disposed of with a direction to pass a speaking order on 27.2.2018. On 09.05.2018, the respondents passed an order stating that the order of the Tribunal in OA 375/2017 is still under their consideration.

3. The respondents filed reply admitting the recommendations of DPC, suspension order issued, revocation of suspension, issuance of charge memo and quashing of the charge memo in this case. But according to them, since the memo of charges

were quashed on technical grounds, the Dept. of Legal Affairs has decided to initiate fresh disciplinary proceedings under Rule 9 of CCS (CCA) Rules 1972 and it is under process and it will be issued after obtaining approval of competent authority. The respondents will take a decision on terminal benefits on getting the outcome of the proposed disciplinary proceedings.

4. The counsel for the applicant would contend that even-though the charge memo was quashed on 31.12.2017, the respondents had neither challenged the order of the Tribunal nor they could issue a fresh charge memo till date. The applicant has retired on 31.08.2017 and more than two years is over. The Apex Court in ***State of Jharkhand & Ors. v. Jitendra Kumar Srivastava & Anr. ((2013) 12 SCC 210)*** had held that Pension and gratuity are not a bounty and it is earned by an employee and such a benefit cannot be taken away without complying with due process of law.

5. Another aspect brought to our notice by the counsel for the applicant is that the alleged misconduct has taken place in the year 2013-2014 and it is now barred by limitation as the applicant has already retired in 2017. There is no valid charge memo in existence and no suspension order was passed on the

applicant. Rule 9 of Central Civil Services (Pension) Rules 1972 is the enabling provision for President to withhold pension.

"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."

The President has power to withhold pension if the pensioner is found guilty of grave misconduct or negligence during the period of service. In ***Union of India & Ors. vs. Anilkumar Sarkar (reported in 2013(4) SCC 161)*** the Apex Court had held that Departmental Proceedings commence only when charge sheet is issued to a delinquent employee. The Counsel for the applicant also invited our attention the decision of the ***Hon'ble Madras High Court in Union of India & Anr. V. Dr. M. . Dominic Savio Jegam & Anr. (W.P. 14965 of 2015 dated 05.08.2015)*** wherein a similar case, the High Court confirmed the order of this Tribunal in OA 349/2013 to release all the benefits.

6. The counsel for the respondents reiterated their stand stated in the reply.

7. We had carefully gone through the pleadings and various annexures produced. It seems that the respondents had suspended the applicant as per order dated 1.8.2014 (Annexure A12) and, thereafter, they revoked the suspension by order dated 07.11.2014 on completion of 90 days. Then, the respondent had initiated disciplinary proceedings as per charge memo dated 12.08.2015 for various lapses committed by the applicant in the year 2013-2014 and the said charge memo was quashed by this Tribunal as per order in OA 375/2017 dated 31.08.2017. The respondent had not filed any appeal and the said order has become final. Thereafter, even-though respondents would say that they are processing a 2nd charge memo against the applicant, till date nothing had happened and it is clear there is no major disciplinary action pending against the applicant for withholding the pensionary benefits of the applicant under Rule 9 of the CCS (Pension) Rules.

8. So, we find no reason even after the lapse of three years after retirement to withhold pension and other retiral benefits. Annexure A3 shows that the departmental promotion committee Chaired by UPSC held on 22.7.2014 had recommended the

promotion of the applicant's junior, R.S. Kashyap, Asst. Commissioner as Dy. Salt Commissioner. If the applicant is also recommended by the promotion committee, he is entitled to get the benefit of promotion also.

9. So we allow this OA.

**(1) The impugned O.M. NO.
18013/3/2018/SALT dated 09.05.2018 is
accordingly set aside.**

(2) The respondents are directed to consider the name of the applicant for promotion to the post of Deputy Commissioner of Salt w.e.f. 22.07.2014 if the DPC has recommended his name for promotion; (3) to consider regularization of the period of suspension from 1.8.2014 to 4.11.2014 as duty period.

(4) to give all other service benefits like fixation of pension, payment of gratuity, pension commutation; and

(5) to encash the permissible leave encashment and financial upgradation if he is eligible.

10. The respondents are directed to complete the exercise within a period of three months from the date of receipt of copy of this order. In the event of

failure to do so, the respondents will be liable to pay 6% simple interest till payment of the above benefits. OA is disposed of accordingly. No costs.

(T. JACOB)
MEMBER(A)

(P. MADHAVAN)
MEMBER(J)