



Central Administrative Tribunal
Principal Bench, New Delhi

OA No.4131/2017

Reserved on: 14.01.2020
Pronounced on: 22.01.2020

Hon'ble Ms. Aradhana Johri, Member (A)

Sh. V.K. Madan, Head Clerk (Retd.) Gp. 'C',
(Aged about 60 years)
S/o Late Sh. H.C. Madan,
R/o 149/9, Shiv Puri,
Gurugram (Haryana)-122001. ...Applicant

(By Advocate: Sh. M.K. Bhardwaj)

Versus

The South Delhi Municipal Corporation through

1. The Commissioner,
SDMC, 26th Floor,
Civic Centre, JLN Marg,
Minto Road,
New Delhi – 110 002.
2. The Asstt. Commissioner,
DEMS, Ambedakar Stadium,
Delhi Gate,
New Delhi. ...Respondents

(By Advocate: Sh. Amandeep Joshi)

O R D E R

The applicant was appointed as Lower Division Clerk in Municipal Corporation of Delhi. He was caught red handed by the CBI and arrested on allegations of illegal gratification. Thereafter, he was convicted and sentenced by the Trial Court in a case under Section 7 and Section 13 (2) r/o 13(1) (d) of Prevention of Corruption Act, 1988 to undergo rigorous imprisonment for a period of three years

and to pay a fine of Rs.15,000/- vide order dated 09.06.2014. He filed a Criminal Appeal No.CRL.A.731/2014 before the Hon'ble High Court of Delhi. In the said Appeal, the Hon'ble High Court vide order dated 04.07.2014 did not stay the conviction but suspended the sentence during the pendency of the Appeal subject to depositing of fine and furnishing bail-bond of the sum of Rs.30,000/- with one local surety of like amount to the satisfaction of Trial Court. He was suspended w.e.f. 06.11.2012 vide order dated 08.11.2012 (Annexure A-3) but subsequently re-instated. He is said to have joined on 21.04.2014. He superannuated from service as Head Clerk on 30.06.2017.

2. This OA has been filed seeking the following reliefs:-

- (i) *To direct the respondents to pay the salary of the applicant for the period from 21.04.2014 to 30.06.2017, cash equivalent to leave in his credit (leave encashment), his salary for 16 ½ months (DCRG), commuted value of pension payable to him, the amounts of PF in his credit and GIS benefits admissible to him.*
- (ii) *To allow the OA with cost.*
- (iii) *Any other orders may also be passed as this Hon'ble Tribunal may deem fit and proper in the existing facts and circumstances of the case.*

3. It is the contention of the applicant that he is entitled to pay and salary for the period from 21.04.2014 to 30.06.2017, leave encashment, DCRG, commuted value of pension, amounts of PF in his credit and GIS benefits

admissible to him as per the relevant rules. As per the contention of the applicant, it is the duty of the employer to pay all his dues. He has cited several court rulings on the overall principle of payment of salary not being denied to an employee, the right of life, liberty, food, shelter and other basic amenities etc. He has cited several rulings which include ***Laxman Dundapaa Dhamanekar & Anr.***

Vs. Management of Vishwa Bharata Seva Samiti and Anr. [JT 2001 (8) SC 171]; ***Kapila Hingorani vs. State of Bihar*** [2003 (2) SCSLJ 205]; ***Chameli Singh & Anr. Vs. State of UP & Anr.*** [1996 (2) SCC 549]; ***Bahadur Sharma (Dead) through LRs vs. Union of India & Ors.*** [1998 (9) SCC 458]; ***Kerala State Road Transport Corporation vs. K.O. Verghese and Ors.*** [2003 (2) SCSLJ-25]; and ***DPO, Southern Railway vs. T.R. Chellappan*** [1976 (3) SCC 190]. He has also cited certain Office Memoranda.

4. The respondents have disputed the claim of the applicant and stated that when the applicant has been convicted in a criminal case, especially pertaining to corruption, the employer has full right as per CCS (Pension) Rules; CCS (Leave) Rules etc. to withhold these particular dues. They have also cited that as per Rule 3(C) of CCS (Conduct) Rules, 1964 it was the duty of the applicant to intimate the circumstances of his arrest etc. to his official

superior promptly even though he might have been subsequently released on bail and failure on his part to do so will be regarded as suppression of material information and will render him liable for disciplinary action. As per the respondents, the applicant did not follow Rule 3(C) of CCS (Conduct) Rules and did not inform the employer of his conviction. Therefore, he is liable to be proceeded against on this ground itself.

5. The respondents have also filed Office Order No.2410/SIO(P)/Vig./CBI/2012/79 dated 11.10.2018 issued by the SDMC, Vigilance Department by which the competent authority has imposed a penalty of 100% cut in pension as well as gratuity.

6. The respondents, in support of their claim, have cited several court rulings which include ***State of West Bengal & Ors. vs. Aswini Kumar Mahato*** [2017 (2) SLR 375 (SC)]; ***Rattan Lal Arora Vs. Delhi Vidhyut Board & Ors.*** [WP(C) No.4489/2001 decided by Hon'ble High Court of Delhi on 12.02.2015]; and ***H.R.K. Bhatnagar vs. Union of India & Ors.*** [TA No.31/2015 decided by Principal Bench of this Tribunal on 20.02.2018]

7. Heard Sh. M.K. Bhardwaj, learned counsel for the applicant and Sh. Amandeep Joshi, learned counsel for the respondents.

8. The main reliefs claimed are regarding pension and gratuity. These have been dealt with vide Office Order dated 11.10.2018 (supra), which states the following:-

"Whereas a RC bearing No.RC-DAI-2012-A-0040 dated 06.11.2012 under Section 7 of P.C. Act, 1988 was registered by CBI against Sh. V.K. Madan, Head Clerk, A&C Department/Central Zone and a SIO(P) No.2410/SIO(P)/2012 was registered in Vigilance Branch.

And whereas Sh. V.K. Madan, Head Clerk tried before the Hon'ble Court of Spl. Judge (PC Ac) CBI, Patiala House & he was convicted vide order dated 09.06.16.

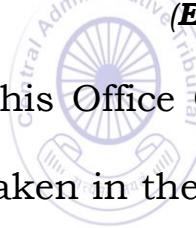
And whereas the case was placed before Commissioner/SDMC who after gone through the order dated 09.06.2014 passed by Hon'ble Spl. Judge (PC Act) CBI had recommended for imposing a penalty of forfeitures of 100% pension as well as gratuity upon Sh. V.K. Madan vide letter No.F.33/Vig./SDMC/420/C & C dated 21.03.18.

AND

Now, South Delhi Municipal Corporation, the Disciplinary Authority after considering the order of Spl. Judge (PC Act) CBI-3, Patiala House Court has resolved to impose the penalty of forfeiture of 100% pension as well as gratuity upon Sh. V.K. Madan, HC (Retd.) vide resolution No.89 dt.27.07.18 which is reproduced below:-

Having considered the inquiry report along with the reply annexed with the Commissioner's letter No.F.33/Vig./SDMC/420/C&C dated 21.03.2018 and recommended by the Special (Appointments, Promotions, Disciplinary & Allied Matters) Committee vide its Resolution No.3 dated 18.07.2018, resolved that a penalty of forfeiture of 100% pension as well as gratuity be imposed upon Sh. V.K. Madan s/o Sh. Hardayal Chand Madan, Head Clerk/ZI (Retd.), A & C Department, Central Zone/SDMC in SIO(P) No.2410/SIO(P)/Vig./CBI/2012.

The Competent Authority i.e. South Delhi Municipal Corporation after considering the Inquiry Report & Allied Record of the case has resolved vide Resolution No.89 dated 27.07.18 that the penalty of "100% cut in pension as well as gratuity" be imposed upon Sh. V.K. Madan, Head Clerk (Retd.).



This is issued and notified for information and necessary action by all concerned."
(Emphasis supplied)

This Office Order has been passed conveying the decision taken in the matter after institution of the OA, therefore, at this stage no orders require to be passed by this Tribunal on these two issues and it is for the applicant to challenge this order or otherwise.

9. As far as payment of salary to the applicant for the period from 21.04.2014 to 30.06.2017, leave encashment, PF and GIS benefits are concerned, no orders have been passed by the competent authority. Since these issues are related to the basic issue of what penalty is to be inflicted as per the rules and law, the respondents are directed to take a decision and pass a reasoned and speaking order as per the rules and law, within a period of six weeks from the date of receipt of certified copy of this order.

10. With the above directions, the OA is disposed of. There shall be no order as to costs.

(Aradhana Johri)
Member (A)