

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.2485/2001
with
O.A. NO.1433/2002

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This the 5th day of August, 2003.

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

Jai Ram Mishra S/O B.P.Mishra,
Retired Investigator,
Office of Development Commissioner
(Handicrafts), Govt. of India,
Ministry of Textiles,
West Block No.7, R.K.Puram,
New Delhi-110066..

... Applicant
(in both OAs)

(By Shri Gyan Prakash, Advocate)

-versus-

1. Union of India through
Secretary (Textiles),
Udyog Bhawan, New Delhi..
2. Development Commissioner (Handicrafts),
Government of India, Ministry of Textiles,
No.7, West Block, R.K.Puram,
New Delhi-110066. Respondents
(in both OAs)
3. Chief Pay & Accounts Officer,
Ministry of Textiles
{through C.P.A.O., O/O DC(M)},
7, West Block, R.K.Puram,
New Delhi-110066. Respondent
No.3 in OA-1433/2002

(By Ms. Avinash Kaur, Advocate)

O R D E R (ORAL)

These OAs being related matters have been taken up
together for disposal.

2. In OA No.2485/2001 applicant has challenged
respondents' decision contained in order dated 26.6.2001
(Annexure-I) to recover an amount of Rs.98,340/- from
applicant's salary from the month of June, 2001 onwards
stating that it was an irregular payment of pay fixation

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arrears. It is also stated therein that the remaining amount would be recovered from his DCRG. The learned counsel stated that while respondents have already recovered an amount of Rs.10,000/- from his salary, further recovery was stayed by this Court vide order dated 20.9.2001. While applicant retired on 30.11.2001, his annual increment was due on 1.4.2001 which too was not sanctioned. This too has been challenged by applicant in this OA. Applicant has sought setting aside of impugned order dated 26.6.2001 and direction to respondents to refund the recovery made from him as also to grant annual increment effective from 1.4.2001, with consequential benefits.

3. In OA No.1433/2002, it has been pointed out that about eight weeks before his retirement on 30.11.2001 applicant was issued Annexure-I dated 3.10.2001 regarding initiation of disciplinary proceedings against him under Rule 14 of the CCS (CCA) Rules, 1965. Consequently he was not granted either provisional pension or other retirement dues. Applicant has sought direction for sanction of provisional pension and also payment of all retirement dues as admissible, such as CGEGIS and leave encashment etc. He has also sought direction for payment of interest on the arrears of provisional pension for delayed payment, as also on delayed payment of GPF, CGEGIS and leave encashment.

4. The learned counsel of applicant relied upon FR-24 to contend that an increment has to be accorded unless it is withheld. The learned counsel stated that

there are no orders for withholding applicant's increment due on 1.4.2001. He also drew my attention to respondents' counter reply in paragraph 4.9 where respondents have admitted that delay in releasing the annual increment on 1.4.2001 has been due to administrative reasons only and would be taken up. FR-24 is reproduced below :

"F.R.24. An increment shall ordinarily be drawn as a matter of course unless it is withheld. An increment may be withheld from a Government servant by the Central Government or by any authority to whom the Central Government may delegate this power under Rule 6, if his conduct has not been good or his work has not been satisfactory. In ordering the withholding of an increment, the withholding authority shall state the period for which it is withheld, and whether the postponement shall have the effect of postponing future increments."

In the light of the provisions of FR-24 as also admission of respondents that there has been delay in sanctioning increment on 1.4.2001 due to administrative reasons, applicant's claim for grant of annual increment on 1.4.2001 is established without any doubt. Sanction of this increment will entitle applicant for payment of arrears on fixation of pay after grant of annual increment as also fixation of his provisional/final pension.

5. As regards recovery of Rs.98,340/- as also refund of Rs.10,000/- recovered from the salary of applicant, it has been pointed out that respondents have now issued chargesheet dated 3.10.2001 (Annexure-I in OA No.1433/2002) which relates to the same amount as ordered

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to be recovered by the impugned order dated 26.6.2001 (Annexure-I in OA No.2485/2001). Respondents have not denied that the amount of Rs.98,340/- is the same which is the subject matter of disciplinary proceedings ordered on 3.10.2001 against applicant. The learned counsel of applicant stated that while Rs.10,000/- have already been recovered from applicant, the balance amount of Rs.88,340/- is fully covered by gratuity of applicant (present basic pay of Rs.6200/- without taking into account the increment due on 1.4.2001 X 15 months), the gratuity may be withheld subject to the outcome of the disciplinary proceedings against applicant. However, applicant's leave encashment may be directed to be released. In this connection, the learned counsel relied upon Rule 69 of the CCS (Pension) Rules, 1972 to contend that while other dues including the provisional pension may be authorised for payment to applicant, only gratuity could be withheld until conclusion of the departmental or judicial proceedings and issue of final orders thereon. The learned counsel stated that while CGEIS, provisional pension and GPF have been paid/are being paid, there has been a delay in payment as follows :

"(i) His case of CGEIS was sent to CPAO for payment on 23.10.2002

(After 9 months 23 days of retirement)

(ii) His case for provisional pension was sent to CPAO for payment on 02.07.2002

(After 8 months of retirement)

(iii) His case for GPF was sent to CPAO for payment on 29.11.2001

(Before two days of retirement)"

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The learned counsel stated that applicant should be paid interest on these payments for the delayed periods. He stated that though under Rule 39 of the CCS (Leave) Rules whole or part of the cash equivalent of earned leave of a retiring Government servant can be withheld pending disciplinary or criminal proceedings against him, yet as the entire alleged amount of Rs.98,340/- has either been recovered or can be recovered from gratuity of applicant, the leave encashment should be released.

6. Respondents have not been in a position to satisfactorily counter the contentions raised by the learned counsel of applicant regarding full coverage of the balance amount of Rs.88,340/- from the gratuity amount and there being no necessity to withhold the leave encashment as also to sanction increment due on 1.4.2001 and revision of pension and consequential benefits.

7. Having regard to the reasons stated above, OA No.2485/2001 is partly allowed with directions to respondents to adjust the recovery of Rs.98,340/- against Rs.10,000/- already recovered from the salary of applicant and the gratuity amount. Such recovery shall be subject to the final outcome of the disciplinary proceedings against applicant initiated vide order dated 3.10.2001. Respondents are also directed to release the annual increment of applicant w.e.f. 1.4.2001 as the same has not been withheld by them by orders of a competent authority. The consequential revision of pension and arrears of pay on grant of increment and revision of pension shall also be effected/paid to

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applicant. The entire exercise shall be carried out by respondents within a period of two months from the date of communication of these orders.

8. OA No.1433/2002 is also partly allowed directing respondents to release the leave encashment due to applicant. Respondents shall pay to applicant interest at the rate of 6% per annum for seven months on CGEGIS and for eight months on the provisional pension. The above payments shall be made to applicant within a period of two months from the date of communication of these orders.

9. Both these OAs are disposed of in the above terms. No costs.

V.K.Majotra
(V. K. Majotra)
Member (A)

/as/