

Central Administrative Tribunal
Principal Bench

O.A. 1397/98

New Delhi this the 4th day of April, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

B.R. Sharma,
S/o late Shri Ahant Ram Sharma,
R/o B-2/25, Janakpuri,
New Delhi-58.

... Applicant.

(By Advocate Shri Deepak Verma proxy for Shri G.D. Bhandari)

Versus

1. Union of India through
The Secretary,
Ministry of Urban Affairs & Employment,
Nirman Bhawan,
New Delhi.
2. The Director General of Works,
CPWD Nirman Bhawan,
New Delhi-11. ... Respondents.

(By Advocate Shri Anil Singhal proxy for Shri K.C.D.
Gangwani, Sr. Counsel).

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has impugned a number of orders passed by the respondents as set out in Paragraph 1 of the O.A. He has prayed that the order dated 9.6.1992 whereby the respondents have ordered cancellation of the Special Seal Authority dated 23.11.1990 along with the order for grant of provisional pension issued by them dated 5.11.1990, should be quashed and set aside. He has further prayed that in the facts and circumstances of the case, the respondents should be directed to grant interest @ 24% per annum on all retiral dues paid to him after inordinate delay and also revision of pension amounts in accordance with the recommendations of the 5th Pay Commission's Report. He has also prayed for costs for filing this O.A.

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2. This case was listed at Serial No.4 under Regular matters today. As this is a case which has been filed in 1998 and a number of adjournments have also been sought by the learned counsel for the applicant earlier, the pleadings in the case have been perused carefully. I have also considered the submissions made by the learned proxy counsel for the parties.

3. The brief facts of the case are that the applicant, who was working as Executive Engineer with the respondents retired from service on superannuation on 30.11.1990. According to him, on his retirement he should have been paid all retiral benefits, including pension, gratuity, provident fund and other benefits, like CGEIS and leave encashment. The applicant submits that the respondents had sanctioned all the retiral amounts due to him by Special Seal Authority's orders dated 23.11.1990 and 1.12.1990. He has stated that in terms of the authority of sanction of his pension, he started receiving his pension from the month of December, 1990 in the bank and continued to do so till March, 1991. He has stated that sometime in April, 1991, he was informed by the bank that his account was closed and no reasons were given for it. Thereafter, he received the impugned letter dated 9.6.1992 (Annexure A-1) cancelling the Special Seal Authority letter dated 23.11.1990. According to him, the letter dated 9.6.1992 has been issued without any application of mind and by an authority who was not competent to do so. He was also directed to surrender half the PPO, so that the necessasry authorisation for payment of provisional pension can be issued. The applicant has also referred to the fact that the respondents had issued a Memorandum dated

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9.11.1990 in which certain charges have been allegedly made against him for misconduct and misbehaviour relating to the certain past incidents. The applicant has also submitted that he had contested the version of the Superintending Engineer (DCC -VI) that as a vigilance case was pending against him, how the pension papers were submitted to the PAO (FZ), CPWD. The applicant has stated that he had submitted a representation on 28.2.1991 regarding non-payment of his retiral benefits. He has submitted that he had received amounts due to him on retirement, for example, GPF, Leave Encashment and CGEIS after inordinate delay which has resulted in serious financial loss to him. In this connection, he states that he had made representations to the respondents dated 8.7.1991 and 15.7.1991. Thereafter, he was informed that his pension and gratuity have been withheld due to a vigilance case pending against him. The applicant has stated that although the disciplinary proceedings have been concluded/dropped against him, the respondents have failed to expedite taking further decision in the matter and have unnecessarily delayed making payments of his retiral benefits.

xxxxxxxxxx. He had filed an earlier Original Application (OA 2374/92) which was disposed of by Tribunal's order dated 27.8.1997. In that Order, it was observed that the grievance of non-payment of final pension and DCRG will automatically be settled once the disciplinary proceedings are concluded. It was also held by the Tribunal that the respondents have a statutory right to with-hold the DCRG, and pay provisional pension till the disciplinary proceedings are not concluded, but the grievance was that there has been undue delay of seven years to conclude the proceedings against the applicant and accordingly four months' time was granted to the respondents for this purpose. According to the applicant,

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all the relevant documents had been submitted by him to the respondents and they were available with the concerned authority, namely, the PAO. The applicant has claimed interest on the delayed payment of his retirement dues on the allegation that the respondents have, with a view to harass him, unduly delayed the payments even after the disciplinary proceedings were dropped and he was exonerated of the charges levelled against him on 9.11.1990.

4. The respondents in their reply have submitted that after receipt of the aforesaid decision of the Tribunal dated 27.8.1997, the disciplinary authority had taken a decision to drop the proceedings on 21.11.1997. According to them, all the retiral benefits, such as DCRG and commutation of pension have already been released by the respondents even before filing of the present O.A. They have also stated that the applicant has been regularly paid Provisional pension upto April, 1998. Regarding the release of final pension, they have stated that the competent authority, i.e. PAO (FZ) has already initiated action in the matter. According to them, while there has been some delay in issuing the PPO for release of his retiral benefits, which is because of the non-cooperatioon of the applicant with the authorities, they have themselves stated that they have requested the applicant to submit three copies of the joint photograph and original PPO half by their letter dated 13.4.1998. This shows that there has been delay on the part of the respondents also, as the decision and letter to ask for the necessary papers could have been done soon after 21.11.1997, and in any case at least within one month thereafter.

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6. The respondents have submitted that after 21.11.1997, they have initiated and finalised payment of DCRG and commutation of pension to the applicant and even in the normal circumstances, this takes about six to eight months. They have also submitted that since the case was somewhat complicated and they could not initiate action for releasing the pensionary amounts till the vigilance proceedings were decided on 21.11.1997, there has been no delay in making the due payments to the applicant. They have also stated that the DCRG, commutation of pension payments and even arrears of pension in terms of the 5th Central Pay Commission's Report have been paid to the applicant within a period of eight months as per the details given by them. They have stated that the Accounts Authority vide his letter dated 10.3.1998, had also called for certain documents for finalising the applicant's case and because of their efforts, these were also completed expeditiously and submitted to PAO on 20.3.1998. In the circumstances of the case, they have submitted that there has been no wanton delay on their part and have also submitted that initially the delay was also because of the action of the applicant in the capacity of EE (HQ)/DDOO, who had sanctioned the initial pension papers which he ought not to have done, in view of the pending disciplinary proceedings. The respondents have, therefore, prayed that the O.A. may be dismissed.

6. I have also seen the rejoinder filed by the applicant in which he has more or less reiterated the facts mentioned in the O.A. He has also submitted that the action of the respondents in cancelling the final pension papers which were initially issued to him and substituting it by a provisional pension order was wrong and uncalled for. He has

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also submitted that there has been no delay on his part and has prayed that as the respondents have harassed him, the interest on the delayed retiral benefits should be ordered against the respondents.

7. I have carefully perused the pleadings, the documents on record and considered the submissions made by the learned proxy counsel for the parties.

8. From the facts mentioned above, I am unable to agree with the contentions raised by the applicant that even though, admittedly he had been served with a charge-sheet on 9.11.1990, he was entitled for being sanctioned final pension at that time. The respondents have submitted that the applicant himself, who was the Executive Engineer (HQrs.) at that time, was aware of the charge-sheet, but did not inform the Pension Sanctioning Authority before sanction of the retiral benefits. Under Rule 69 of the CCS (Pension) Rules, 1972, no DCRG or commutation of pension can be paid to the Government servant where a departmental inquiry is pending against him. The applicant has not denied the fact that disciplinary proceedings were instituted against him which were finally dropped by the respondents on 21.11.1997, after the Tribunal's order dated 27.8.1997 in O.A. 2374/92.

9. In the facts and circumstances of the case, the relief claimed by the applicant for setting aside the order passed by the respondents cancelling the Special Seal Authority order dated 23.11.1990 is not supported by law or any Rules and is accordingly rejected. In other words, the action of the respondents in granting him provisional pension as substiutute for the earlier final pension order which was

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wrongly passed earlier cannot be faulted since admittedly disciplinary proceedings were pending against him and till the finalisation of the proceedings, the respondents could not have also issued the final pension order.

10. The other main relief prayed for by the applicant is the claim for interest for the inordinate delay on the part of the respondents in paying him the retiral benefits, which according to him, has been done in a manner to harass him.

11. From the pleadings, it is seen that the respondents have stated that after the decision was taken by the competent authority to drop the disciplinary proceedings against the applicant on 21.11.1997, they have paid the retiral benefits to the applicant as per the details given below:

- (1) Commutation of pension of Rs. 68,236/- on 18.5.1998;
- (2) DCRG of Rs. 68066/- on 22.6.1998.
- (3) Arrear of pension of Rs. 23191/- on 24.7.1998.

It is also noted that during the intervening period, the applicant was being paid provisional pension in accordance with the Pension Rules. In the circumstances of the case, the contention of the applicant that ~~in the~~ ~~circumstances of the case~~ there has been any deliberate delay on the part of the respondents cannot be accepted. The respondents themselves have stated that there has been some delay in issuing the order for final pension, which they have blamed was partly due to the non-cooperation of the applicant with the authorities.

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12. Taking into account the totality of the facts and circumstances of the case, and the fact that the respondents themselves i.e. the President has taken the decision to exonerate the applicant of the charges on 21.11.1997, the delay in making the final payment of the retiral benefits as mentioned above, has to be attributed to some extent to both the parties. It is also relevant to mention that the applicant has retired from service with the respondents on superannuation w.e.f. 30.11.1990. It is also relevant to note that the disciplinary proceedings were initiated against the applicant by a charge-sheet which was issued only a few days before his retirement, which had lingered on for nearly seven years and was disposed of only after the Tribunal's order dated 27.8.1997 in the earlier application filed by the applicant (OA 2374/92).

13. Therefore, taking into account the particular facts and circumstances of the case, while I find no merit in the other reliefs prayed for by the applicant in the O.A., the same is partly allowed to the following extent;

The respondents are directed to grant interest @ 10% per annum, on the final retiral benefits paid to the applicant from three months from the date of the Presidential Order dropping the charges, that is with effect from 21.2.1998 till the date of actual payment. This amount shall be paid to the applicant within two months from the date of receipt of a copy of this order. No order as to costs.

Lakshmi
(Smt. Lakshmi Swaminathan)
Member(J)