

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 2336 of 1998 decided on 3.6.1999

Name of Applicant : Shri Anand Sarup Gaur

By Advocate : Shri G.R.Matta

Versus

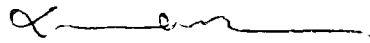
Name of respondent/s Govt. of N.C.T. of Delhi & ors

By Advocate : Shri S.K.Gupta

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes
2. Whether to be circulated to the other Benches of the Tribunal. -No


(N. Sahu)
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2336 of 1998

New Delhi, this the 3rd day of June, 1999

Hon'ble Mr. N. Sahu, Member(Admnv)

Shri Anand Sarup Gaur, S/o Pt. Jagan
Nath, R/o Guar Farm No.27, Bloom Field,
Shiv Ji Marg, Rangpuri, New
Delhi-110037

- APPLICANT

(By Advocate Shri G.R.Matta)

Versus

1. Govt. of N.C.T. of Delhi Through
Chief Secretary, 5 Sham Nath Marg,
Delhi-110054.
2. Secretary (Revenue), Govt. of N.C.T.
of Delhi, Tis Hazari, Delhi-110054.
3. Pay and Accounts Officer (GPF),
G.P.F. Cell, Govt. of N.C.T. of
Delhi, Old Sectt. Delhi-110054.
4. Pay and Accounts Officer No.VI, Govt.
of N.C.T. of Delhi, Tis Hazari,
Delhi - 110 054

- RESPONDENTS

(By Advocate Shri S.K.Gupta)

O R D E R

By Mr. N.Sahu, Member(Admnv)

The applicant seeks a direction to the respondents to release his regular pension along with arrears, commuted value of pension, DCRG, leave salary, amount of GPF, with interest at 18% per annum. He impugns the order dated 3.10.1998 authorizing the applicant to draw a provisional pension.

2. The facts in this case are in a brief compass. An earlier OA (No.1643/96) filed by the applicant was disposed of on 1.10.1997 and the direction given was to dispose of the notice of voluntary retirement and to pass orders on the leave

12

applied for. The applicant's notice of voluntary retirement dated 31.3.1995 was accepted with effect from 30.6. 1995 by an order of the competent authority dated 15.12.1997. Thereafter the leave prayed for by the applicant was decided by an order dated 8.1.1998. The applicant thereafter sent his pension papers by a letter dated 27.1.1998 and further particulars were also submitted by his letter dated 23.2.1998. The applicant admittedly received his GPF along with interest. Now his grievance is relating to non-payment of commuted value of pension, DCRG and regular pension.

3. A few background facts as mentioned by the applicant in the rejoinder can be narrated by extracting from the rejoinder itself -

"the CBI registered case No. 58/A/ 93/DLI dated 28.9.1993 for investigation. This case was then under investigation on 30.6.1995 when the applicant retired from the government service. The challan i.e., a report under Section 173 Cr.P.C. was filed by the CBI for the first time in the Court of Shri Ajit Bharhoke, Additional Sessions Judge, Delhi vide C.C.No. 35/98 dated 25.5.1998 on the basis of which the learned Judge took cognisance under Section 190 Cr.P.C. of the offence under Section 13(2) read with 13(1)(a) of the P.C. Act on 4.7.1998"

Annexure A - IX is a copy of the charge-sheet.
An extract of the charge-sheet is reproduced below -

"Sh. A.S.Gaur while working in different capacities in Delhi Administration has amassed huge assets including Flat at Vasant Kunj, Plot at DLF, Qutab Enclave, Farm House at Dera Mandi Road, Agricultural at Rajpur Khurd, house at

Mehrauli, Commercial Complex Shahapur Jet near Shree Fort and Bank balances in his own name and in the name of his family members by dubious means. It was also alleged he was in possession of other costly house hold articles and displays a lavish life style as public servant. The assets in possession of Sh. A.S.Gaur are disproportionate to his known sources of income.

After the registration of case, searches were conducted at the residential premises under occupation of Sh.A.S.Gaur and his family members and incriminating documents were seized. During the investigation large no. of documents were collected and witnesses were examined."

4. On 4.7.1998 the Special Judge stated that there was prima facie evidence to proceed against the applicant for the offence under Section 13(2) Read with Section 13 (1) (e) of the Prevention of Corruption Act. He took cognizance of the offence after perusing the report under Section 173 Cr.P.C.

5. The applicant claims that he stood automatically retired on 30.6.1995 and on that date no departmental or judicial proceedings were instituted against him or/were pending against him. The registration of the case by a CBI would not constitute judicial proceedings within the meaning of Rule 9(2) of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as "the Pension Rules"). He relied on a decision of this Court in this case of M.L.Malik Vs. Lt. Governor, Delhi and another, 1988 (5) SLR 777 wherein it was held that judicial proceedings commence only on the date when charge sheet under Section 173 Cr.P.C. is filed in

the Court and not on the date when F.I.R. is lodged. His claim is that there was no charge-sheet filed in the Court till he stood retired on 30.6.1995.

14

6. It is necessary to refer to certain relevant provisions of the Pension Rules. Rule 9 of the Pension Rules is important for our purposes because Rule 69 refers to Rule 9(4). Rule 9 authorizes the President to withhold or withdraw pension if in any departmental or judicial proceeding the pensioner is found guilty of grave misconduct or negligence during the period of his service. The Government has a clear option to institute departmental proceedings after his retirement with the sanction of the President. Rule 9(4) states that in the case of a person against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 69 shall be sanctioned. Rule 69(1)(c) states that no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceeding and issue of final orders thereon. I am unable to agree with the contention of the learned counsel for the applicant. I have no doubt in my mind after going through the charge-sheet that there are all ingredients in the allegation which constitute grave misconduct. It is not the applicant's case that the presidential sanction has not been obtained. In the case of Delhi Development Authority Vs. H.C.Khurana, (1993) 3 SCC 196 the Hon'ble Supreme Court has held that decision to issue a charge-sheet or register a

FIR constitutes the effective date on which departmental/ judicial proceedings should be deemed to have commenced. The registration of the case was as early as in 1993. No doubt the applicant stood retired with effect from 30.6.1995 but the orders of voluntary retirement were passed by the competent authority only on 15.12.1997. The investigation in a case of alleged disproportionate assets takes a pretty long time. The registration of the case in 1993; the searches conducted thereafter; and the investigations continued after scrutiny of the search papers, showed according to the allegation the amassing of substantial unaccounted for assets. In view of the decision in H.C.Khurana's case (supra) I hold that the registration of the case by the CBI constitutes sufficient satisfaction. Initial filing of criminal complaint against the applicant constitutes sufficient material for withholding regular pension, DCRG and commuted value of pension.

7. Rule 9(5)(b) of the Pension Rules reads as under -

"Judicial proceeding shall be deemed to be instituted -

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made, and

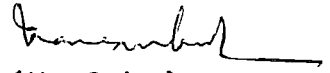
(ii) in the case of civil proceedings, on the date the plaint is presented in the court."

8. In this case cognizance may be taken later but once cognizance is taken it refers back to the date on which the complaint or report of a police

:: 6 ::

officer is made. Registration of a case amounts to such a complaint. Judicial proceedings must be held to have started by relating back to the date when the complaint was registered. In view of the above, the OA is dismissed. No costs.

16



(N. Sahu)
Member (Admny)

rkv.