

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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O.A. NO. 241 /1998

DATE OF DECISION : 27.11.98

HON'BLE SHRI JUSTICE K. M. AGARWAL, CHAIRMAN

HON'BLE SHRI R. K. AHOOJA, MEMBER (A)

Dr. R. C. Gupta ... Applicant(s)

-Versus-

Govt. of N.C.T., Delhi & Ors. ... Respondent(s)

Advocates :

Mr. ~~xxx~~ D. R. Gupta for Applicant(s)

~~xxx~~ / Ms. Jyotsna Kaushik by for Respondent(s)
Shri Ajesh Luthra, Proxy

✓ 1. Whether to be referred to Reporter? yes

2. Whether to be circulated to other Benches?

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(K. M. Agarwal)
Chairman

Central Administrative Tribunal
Principal Bench

O.A.No.241/98

New Delhi, this the 27th day of November, 1998

HON'BLE MR. JUSTICE K.M.AGARWAL, CHAIRMAN

HON'BLE SHRI R.K.AHOOJA, MEMBER(A)

Dr. R.C.Gupta
117, Kapil Vihar
Pitampura
Delhi.

.... Applicant

(By Shri D.R.Gupta, Advocate)

Vs.

1. Director of Education
Government of N.C.T. of Delhi
Old Secretariat
Delhi - 110 054.

2. Dy. Director of Education (Sports)
Chhatrasal Stadium
Directorate of Education
Model Town
Delhi - 110 009.

..... Respondents

(By Shri Ajesh Luthra, proxy of Ms. Jyotsna Kaushik,
Advocate)

ORDER

Hon'ble Shri R.K.Ahooja, Member(A)

The applicant seeks a direction to the respondents to release his retiral benefits which have been withheld on the ground that disciplinary proceedings are pending against him.

2. The facts of the case briefly are that the applicant who was recruited as Yoga Coach was promoted on ad hoc basis as Project Officer in the scale of Rs.2000-3500 w.e.f. 3.11.1983 and continued as such till 18th September, 1995 when he sought reversion to the substantive post of Yoga Coach and retired on 30.10.1997 on attaining the age of sixty years. While in service the applicant had been served with a Charge Memo dated 27.12.1993 but claims that he has been exonerated though

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the formal orders of disciplinary authority are still awaited. Another charge sheet dated 28.10.1997 was also served upon him, which, according to the applicant, discloses no misconduct and hence cannot stand in the way of release of his retiral benefits.

3. The respondents in the reply have stated that the disciplinary enquiry has not reached a finality since the orders of the disciplinary authority have not been pronounced. The second enquiry has also been initiated and is pending against the applicant. Regarding the non release of retiral benefits, the respondents say that this delay has been caused by the failure of the applicant in filing the necessary pension papers till April, 1998. Shri D.R.Gupta, learned counsel for the applicant argued vehemently that the respondents have not completed the first enquiry initiated in 1993 deliberately even though the enquiry officer has found that the charges against the applicant are not established. As regards the second enquiry he submitted that it should be struck down by the Tribunal as the chargesheet was served only two days prior to the date of superannuation of the applicant, the charges were frivolous and in any case apart from the DCRG, the respondents could not withhold the other retiral benefits even in the case of pending disciplinary proceedings.

4. We have considered the matter carefully. The first enquiry has undoubtedly continued for too long a period. Since it has not been denied on the part of the respondents that the enquiry officer has long ago submitted his report, disciplinary authority should have

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passed orders by now. As regards the second enquiry, we are not in agreement with the learned counsel for the applicant that on the face of it, no misconduct is disclosed in the chargesheet. The allegation against the applicant is that he filed an affidavit in this Tribunal in his personal capacity renouncing official policies without seeking permission from the department or without intimating the department. Whether the applicant was justified in doing so can only be ascertained by the enquiry. We also find that the applicant had admittedly submitted his pension papers as late as in April, 1998 though he claims that he could not do it earlier as the department had not issued his final pay fixation order.

5. While considering the allegation of delay in payment of post-retirement benefits, we recollected certain earlier litigations initiated by the applicant and accordingly requisitioned the various relevant records. We also directed further hearing of the case on 18.11.1998. It was revealed that in June 1992, the applicant had filed O.A. No. 1533/92 for directing the respondents to treat him as a regular Project Officer Yoga in the scale of Rs.2000-3500 w.e.f. the date of his ad hoc promotion, i.e., 3.11.1983, or with effect from 11.8.1986, when the Recruitment Rules were enforced. He was also successful in obtaining interim orders for payment of his arrears of salary as Project Officer Yoga till 31.1.1992 and, thereafter, for release of his salary since January 1992. Further interim relief given to him on 13.11.1992 was against his apprehended reversion to the post of Yoga Coach in the scale of Rs.1640-2900. Subsequently he got O.A. No. 1533/92 dismissed as

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withdrawn on 18.7.1995. It may be mentioned that the applicant was to attain the age of 58 years on 31.10.1995 and that of 60 years on 31.10.1997. As the retirement age of Project Officer Yoga was 58 years, ordinarily the applicant would have retired on 31.10.1995, but first he gave up his claim for the post of a regular Project Officer Yoga by getting his O.A. No. 1533/92 dismissed as withdrawn and then voluntarily sought and got reversion to the post of Yoga Coach with effect from 19.9.1995. (See O.A. No. 2138/97, decided on 10.2.1998). Soon thereafter he filed O.A. No. 1990/95 on 18.10.1995 for directing the respondents to extend the benefits of their order dated 23/24.1.1992, pertaining to Sports and Swimming Coaches, to the post of Yoga Coach held by the applicant. By this order of the respondents, the retirement age of Sports and Swimming Coaches was increased from 58 to 60 years. O.A. was allowed by order dated 16.2.1997 and, thus, the applicant continued in service as Yoga Coach till he attained the age of 60 years on 31.10.1997. However, it appears that in spite of his voluntary reversion to the post of Yoga Coach in the scale of Rs.1640-2900 from that of Project Officer Yoga in the higher scale of Rs.2000-3500, (obviously with a view to gain two more years of service), he was somehow successful in getting or drawing the salary of the post of Project Officer Yoga in the scale of Rs.2000-3500 till the date of his retirement. It further appears that with a view to get his post-retirement benefits calculated in the pay scale of Rs.2000-3500, he manoeuvred to file O.A. No. 2138/97 on 8.9.1997 with a prayer to direct the respondents to consider his claim for grant of Senior Scale of Rs.2000-3500 from the due date on completion of

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12 years of service in Yoga Coach in the scale of Rs.1640-2900 with all consequential benefits after declaring the inaction of the respondents so far as illegal and violative of Articles 14 and 16 of the Constitution. It may be reiterated that since 3.11.1983, the applicant had ceased to be Yoga Coach and was holding the post of Project Officer Yoga till the date of his voluntary reversion to the post of Yoga Coach w.e.f. 19.9.1995. He was, thus, not entitled to the relief claimed in O.A. No. 2138/97. The O.A. No. 2138/97 was, therefore, dismissed by order dated 10.2.1998, and a direction was made to notice the applicant to show cause why a Court complaint be not lodged against him in exercise of powers under Section 340 of the Code of Criminal Procedure for offences committed in relation to the proceedings of O.A. No. 2138/97. On 18.5.1998 in M.A. No. 447/98 pursuant to order dated 10.2.1998 in O.A. No. 2138/97, the following order was passed :-

"In view of the fact that the applicant is a retired gentleman and under some misconception he had laid certain untenable claim in OA 2138/97, we discharge notice directed to be issued against him after coming to the conclusion that it may not be just or expedient at this stage to lodge any court complaint under section 340 Cr.P.C."

The present O.A. No. 241/98 was filed on 27.1.1998 and pension papers were filed in April, 1998 by the applicant after the date of disposal of his O.A. No. 2138/97. All these facts are narrated with a view to demonstrate

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that the applicant himself was deliberately delaying finalisation of his post-retirement benefits by not filing pension papers in time.

6. In the facts and circumstances of the case, we consider it appropriate to dispose of this OA with the following directions:

- a) The respondents, i.e., the disciplinary authority, will pass the final orders in the first charge sheet of 1993 within a period of two months from the date of receipt of a copy of this order.
- b) The respondents will also complete and finalise the second chargesheet of 1997 within a period of six months from the date of receipt of a copy of this order.
- c) The respondents will finalise the provisional pension on the basis of the pay scale of Rs.1640-2900 admissible to the post of Yoga Coach held by the applicant on the date of his retirement and release of GPF, encashment of leave salary and other retiral benefits apart from DCRG within the next period of one month and pay the same to the applicant. No interest is payable to him as he

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himself was delaying the matter for certain ulterior motive hereinbefore mentioned.

The OA is disposed of, as above. No costs.

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(K.M. Agarwal)
Chairman

R.K. Ahooja

(R.K. Ahooja)
Member (A)

/rao/