

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2026/1995

New Delhi this the 2nd day of February, 1996.

HON'BLE SHRI A. V. HARIDASAN, VICE CHAIRMAN (J)
HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

M. L. Bhatia,
Retired Statistical Officer,
Transport Department,
Govt. of National Capital
Territory of Delhi,
R/O H-477, New Rajender Nagar,
New Delhi.

... Applicant

(By Shri H. B. Mishra, Advocate)

-Versus-

1. Govt. of National Capital Territory of Delhi through Lt. Governor, Raj Niwas, Delhi.
2. The Chief Secretary, Govt. of National Capital Territory of Delhi, 5, Shamnath Marg, Delhi.
3. The Commissioner-cum-Secretary, Transport Department, Govt. of N.C.T. of Delhi, 5/9 Under Hill Road, Delhi.
4. Shri S. K. Malhotra, Inquiring Authority, Deputy Commissioner, Sales Tax Department, Govt. of N.C.T. of Delhi, Bikrikar Bhawan, New Delhi.
5. Shri R. P. Aggarwal, Presenting Officer, Deputy Director (Transport), Transport Department, Govt. of N.C.T. of Delhi, Inspection Unit, Burari, New Delhi.

... Respondents

(By Shri Rajender Pandita, Advocate)

O R D E R (ORAL)

Shri A. V. Haridasan, V.C.(J) —

In this application filed under Section 19 of the Administrative Tribunals Act, Shri M. L. Bhatia who retired from service of the Transport Department of N.C.T. of Delhi, on attaining the age of

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superannuation on 31.7.1994, has prayed for the following reliefs :

- (a) Issue of a writ of certiorari or any other appropriate writ(s) quashing the awards of "Censure" as contained in Annexure A-3(a) & A-3(b), Memorandum of explanation as contained in Annexure A-6, issued in the alleged matter of non-est ration card's verification at the time of issuing the renewed driving licence to Shri Vikram Singh, Memorandum with Articles of Charge dated 8.6.1993 in the alleged matter of non-est ration card's verification as on 3.8.90 at the time of issuing the said renewed driving licence to the said Vikram Singh as contained in Annexure A-8 (Copy) the appointment of the Inquiring authority and the Presenting Officer as contained in Annexure A-13 & A-14 respectively much against the well settled principles of law, the notice dated 15.2.1995 for first appearance at the preliminary hearing on 22.3.95 as contained in Annexure A-20 which all are causing factors against release of the regular pensionary benefits and other accruals after the normal retirement of the applicant w.e.f. 1.8.94 after about 36 years of service and therefore, the release of the provisional pension as contained in Annexure A-2 with total exclusion of gratuity, commutation money, leave salary for a period of 240 days, and Insurance Fund, being very arbitrary, wrongful and injurious;

(b)

(b) Issue of writ of mandamus or any other writ(s) against the respondents, commanding them to drop the illegal, wrongful, arbitrary and vitiated inquiry proceedings and to release the regular pension, gratuity, commutation money, leave salary for a period of 240 days and Insurance fund with compound interests thereon for period of such withholding, calculable till the date of such payment;

(c) Issue any other order(s) or/and direction(s) directing the respondents to refrain from any more harassments and embarrassments to the handicapped retired applicant whose service for about 36 years in the Union Territory of Delhi as Statistical Govt. servant need to be appreciated and not condemned as being obliquely done which, otherwise, does not serve any public purpose and the same are certainly not in public interest, rather, are opposed to public policy and against public good, so as to allow the applicant to enjoy his retired life peacefully and in a state of mind to look after himself and his ailing wife at about his sixty years of age and further so as not to leave the applicant repent to have served the Union Territory of Delhi wherein he is being injured and humiliated in such manner for no good cause, at all, in any view of the matter.

2. In the voluminous application, it has been alleged that while the applicant was deputed to work in the Transport Department, as Statistical Officer

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in the Poloroid Branch, he was falsely implicated in an alleged misconduct in connection with verification and renewal of driving licences; that on the same issue, the applicant was awarded two Censures, one by order dated 31.12.1992 and the other by dated 13.12.1993; that though two officers who were working with him were proceeded with separately in a departmental proceedings on accepting the enquiry report, they were exonerated, finding that there was no irregularity in the grant of licences, the respondents have issued a memo of charges dated 28.9.1990 to the applicant on which enquiry is still pending, whereby the applicant is deprived of his terminal benefits as also encashment value of his earned leave. It is under these circumstances, the applicant has filed this application.

3. The respondents have filed a detailed reply statement. As the counsel agreed that the matter can be disposed of at the admission stage itself and as the applicant is a retired officer, we decided that the matter should be disposed of at the earliest at the admission stage itself. Accordingly, we perused the material on record and also heard Shri H. B. Mishra, counsel of the applicant and Shri Rajender Pandita, counsel of the respondents.

4. The respondents oppose the grant of reliefs on the ground that the impugned censures were awarded to the applicant under justifiable circumstances and that there is no bias or illegality in the manner in which the enquiry proceedings are being held. However, they have indicated that the enquiry officer has already

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submitted his report and the same is pending consideration for issuance of a final order.

5. As far as relief of quashing the impugned orders dated 31.12.1992 and 13.12.1993 is concerned, we are of the considered view that the same has become barred by limitation. The applicant, it is alleged, has filed an appeal against the order dated 31.12.1992 (Annexure A-3) on 19.1.1993. If he had not received any order on this appeal till 19.7.1993, he should have moved an application before this Tribunal for having this order quashed latest before 19.7.1994. This application has been filed only in the month of October, 1995. Hence, the same is clearly barred by limitation. Similarly, on the order dated 13.12.93 (Annexure A-3(b)), the applicant should have filed an application by 13.12.1994. Therefore, this relief is also barred by limitation. Now, the order impugned orders are Annexure A-6 chargesheet dated 28.9.1990 and Annexure A-8 memorandum of article 6f charge dated 8.6.1993, and other orders in connection with the departmental proceedings. Another order the applicant wants to set aside is dated 28.9.1994. This is a show-cause notice. A show-cause notice is only a notice calling upon the applicant to give his explanation on why action could not be taken by the respondents. Such a show-cause notice need not be assailed. However, if the applicant wanted to assail it, he should have done it latest by 28.9.1995. So this relief also has become barred by limitation. The next order which the applicant seeks to set aside is the chargesheet dated 8.6.1993. He has also sought to set aside several other orders which had been issued

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during the course of the enquiry under rule 16 of C.C.S. (C.C.A.) Rules. We will now consider whether the applicant is entitled to have the enquiry set aside. Shri H. B. Mishra, learned counsel for the applicant argued that while in earlier enquiry held under Rule 14 against two of the colleagues of the applicant, it was held by the enquiry officer that the licence in question was renewed after verification of relevant documents and that it could not be held that the persons who were chargesheeted against have committed any irregularity and were absolved of the charges, there was no justification for the respondents to have initiated disciplinary proceedings against the applicant. This may be probably a good defence for the applicant in the disciplinary proceedings but that does not vitiate the disciplinary proceedings. The evidence considered by the enquiry officer and the disciplinary authority in the enquiry against two of his colleagues may not be the same as the evidence which may be adduced against the applicant. Therefore, the fact that in the enquiry against two of his colleagues it was held that they were not guilty itself may not absolve the applicant. Learned counsel for the applicant argued that with a view to harass the applicant, the respondents have chosen to examine totally new witnesses in the case of the applicant and have also relied on rule which was amended subsequent to issue of the chargesheet. This may be ground which the applicant may take in his defence before the disciplinary authority and if he failed to impress the disciplinary authority, before the appellate authority. He will also be at liberty to take these grounds before the Tribunal in case a

litigation would become necessary. Therefore, on an anxious consideration of the various aspects of the case, we are not convinced that interference with the disciplinary proceedings is called for.

5. We note though the chargesheet was issued as back as in the year 1993, even now a final order has not been passed by the disciplinary authority. The applicant is being paid provisional pension under Rule 69 (1) (a) of CCS Pension Rules. The order to pay provisional pension under the rule cannot be faulted because while the retired officer is facing a disciplinary proceeding, he can be paid provisional pension. However, it is expedient that disciplinary authority takes a final decision in the matter without any further delay. Now that the enquiry report has already been received by the disciplinary authority, it should not take more than three months for the respondents to pass a final order in the matter.

6. There is the case for the applicant that he has not been given the encashment value of eligible earned leave on his retirement. Pendency of the disciplinary proceedings against the applicant should not have stood in the way of release of encashment value of leave salary to the applicant on his retirement because, admittedly, there is no case that any financial loss has been caused by the applicant, leaving the same to be recovered from out of his retiral benefits. The respondents are obviously wrong in not releasing the leave encashment. Therefore, we find that the applicant is entitled to encasement value of the leave along with interest at 12% per annum from the date it became due to the applicant as per the rules.

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Similarly, the group insurance fund money which is due to the applicant has also not been paid to the applicant by the respondents immediately on his retirement. Therefore, we find that the respondents have to pay the applicant the group insurance money due to him from the date it became due with interest at the rate of 12% per annum.

7. In the result, the application is disposed of with following directions :-

(a) The respondents shall finalise the disciplinary proceedings against the applicant and issue a final order on it within a period of three months from the date of communication of this order.

(b) The respondents shall pay the applicant the leave encashment due to him as also group insurance fund money with interest at 12% per annum from the date it became due to him under the rules. The applicant is not entitled to any other reliefs prayed for. The payments as aforesaid shall be made within three months from the date of communication of this order.

No costs.



(K. Muthukumar)
Member (A)



(A. V. Haridasan)
Vice Chairman (J)

/ashraf/