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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2465 of 1996

New Delhi, this the 23rd day of February, 1998

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

Shri K.K.Malhotra, S/o Shri  
B.R.Malhotra, aged about 60 years and  
R/o 12/30B, Moti Nagar, New Delhi and  
retired as Technical Supervisor,  
T.V.Branch, Directorate of Education,  
N.C.T. of Delhi, Defence Colony, New  
Delhi.

- APPLICANT

(By Advocate Shri Gyan Prakash)

Versus

Lt. Governor - through :

1. Chief Secretary, National Capital Territory of Delhi, Shamnath Marg, Delhi.
2. Director of Education, National Capital Territory of Delhi, Shamnath Marg, Delhi.
3. Dy. Director of Education, T.V. Branch, Directorate of Education, Defence Colony (Varun Marg), New Delhi.
4. Pay & Accounts Officer, Delhi Administration, R.K.Puram, New Delhi.

- RESPONDENTS

(By Advocate Ms.Jyotsna Kaushik)

O R D E R (O R A L)

By Mr. N. Sahu, Member (Admnv) -

This Original Application filed on 22.11.1996 seeks a direction to the respondents to pay the applicant Rs.25,000/-, the withheld amount of gratuity, with interest.

- Insolvency*
2. The brief facts are that the applicant was issued Pension Payment Order (in short 'PPO') on 9.1.1995 and in this the amount of retirement gratuity was mentioned as Rs.54,900/- along with

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other retirement benefits. On 7.7.1995, however, all the retirement benefits as per the PPO were paid but when it came to DCRG, the applicant was paid only Rs. 29,500/-. Thereafter the applicant had sent a representation dated 8.8.1995 and it was followed by another representation dated 28.9.1995. The representations were not responded to till date and hence the present O.A. There is no question of limitation involved in this case, firstly on the ground that the applicant was deprived of his retiral benefits and secondly on the ground that he waited for a reasonable time for his representations to be answered.

3. The facts are in a brief compass. The applicant was unofficially kept incharge of stores of the Delhi Rural Broadcasting Scheme (hereinafter referred to as 'the DRB Scheme') in 1970 on the death of the then Store Keeper late Shri Padam Singh. He offered to hand over the same by a letter dated 26.10.1994 addressed to the Deputy Director of Education. Several reminders were issued later on. The respondents state that the material has not been verified even till date. Therefore, admittedly, there is no quantification of the missing or unaccounted portion of the material. The respondents state that 14 months before the applicant's retirement, he was informed about the accountability of the stores but the grievance of the respondents is that he woke up before his retirement and volunteered to account for the

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stores. The most amusing part of the entire episode is that on 23.1.1996 vide Annexure-A-12 the applicant was invited to see the Deputy Director, which is one year after his retirement.

4. The learned counsel for the applicant has cited the celebrated decision of the Hon'ble Supreme Court in State of Orissa Vs. Dr.(Miss)Binapani Dei & Ors., AIR 1967 SC 1269 and a full Bench decision of this Court in the case of Wazir Chand Vs. Union of India & others, CAT (FB) Vol.II 287. He particularly draws my attention to para 12 of Wazir Chand's case. Dr. Binapani's case is an authority for the proposition that before any action resulting in civil consequences enure to a citizen, a show cause notice should be issued and he be heard thereon before orders are passed.

5. The applicant was in the service of the respondents for a period of 30 years. He joined as a Technical Supervisor on 2.12.1964 and retired as Technical Supervisor on 31.12.1994. The DRB Scheme was closed in the year 1970. As the applicant was in-charge of the stores of the DRB Scheme by an informal assumption of the charge, he could have been asked to account for the same during his service. There was plenty of time. He could have been proceeded against either for contumacy or insubordination if he did not properly account for the stores and a proper punishment could have been awarded to him. The respondents have allowed a pretty long time to lapse, allowed the applicant to

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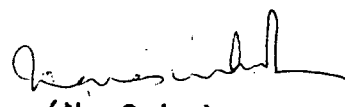
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retire, and issued him a PPO. What is more important there is also a no dues certificate which was issued before he was allowed to retire on 30.12.1994. (Annexure-A-9). In spite of this, the action to withhold the gratuity has been resorted to.

6. After notice, the respondents state that the applicant was fully aware of the stock verification pending against him and he had not handed over the stores of the DRB Scheme under his custody. He has admitted to the same by a letter just before his retirement. It appears that the Dy. Director formed a committee on 17.11.1995 to oversee and to witness the opening of the sealed room containing the articles of the DRB Scheme, located at the Science Branch, Link Road. The applicant was asked to come to the office to finalise the opening of the sealed room by an order dated 22.12.1995 and later by another order dated 23.1.1996. There was no response from the applicant. It is also stated by the respondents that the applicant had handed over the charge of the VDO Workshop only but he did not hand over the charge of stores of the DRB Scheme. Even so, the respondents are not powerless to enforce any of the disciplinary provisions either for failure to account for goods under his charge or for insubordination during his service. There is no point in locking the stable after the horse had fled. The respondents have allowed the applicant to retire honourably and allowed him also complete retirement benefits. No withholding of his

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retirement benefit, which is a right to property as per **State of Kerala Vs. M. Padmanabhan**, AIR 1985 SC 356 be done without following the due procedure prescribed in law. The only recourse the respondents could have was Rule 9 but then that rule required a reasonable belief of grave misconduct or negligence on the part of the applicant during service. If it is a case of pecuniary loss, there should have been a recorded finding about the said pecuniary loss after proper procedure. The record shows that there was no such finding and no proceedings were initiated before retirement. The withholding of Rs.25,000/- cannot be supported by any of the legal provisions and, therefore, the respondents are directed to release the same with interest at 12 per cent per annum within four weeks from the date of a receipt of a copy of this order. With regard to the anticipated loss the respondents are free to initiate any proceedings available under the ordinary law and they are free to recover the same in any civil court. The O.A. is disposed of. No costs.

  
(N. Sahu)  
Member (Admnv)

rkv.