

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No.660/1996

New Delhi, this the 15th day of the May, 2001

HON'BLE MR. KULDIP SINGH, MEMBER (J)

Shri M.R. Jain
S/o Late Shri Atma Ram Jain
R/o 3/72, J. Extension,
Laxmi Nagar, Delhi-110 092. ...Applicant

(By Advocate: Shri T.C. Aggarwal)

V E R S U S

1. Union of India,
through the Chief Secretary,
Government of National Capital Territory of
Delhi,
5, Sham Nath Marg,
Delhi-54.
2. The Commissioner of Sales Tax,
Government of NCT of Delhi,
Bikri Kar Bhawan,
I.P. Estate,
New Delhi.
3. Pay and Accounts Officer-17,
Government of NCT of Delhi,
Man Singh Road, New Delhi ...Respondents
(through Government counsel)

(By Advocate: Shri Vijay Pandita)

ORDER

Hon'ble Mr. Kuldip Singh, Member (J):-

The applicant has filed this OA under Section 19 of the Administrative Tribunal's Act, 1985. The grievance of the applicant is against the inaction on the part of the respondents for non-payment of pension and other retiral benefit.

2. The applicant claims that he retired from Government service on 30.6.92 on attaining the age of superannuation. He was sanctioned and paid provisional pension in the month of September, 1993,

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since then has been representing persistently for the release of regular pension and other retiral benefits but in vain. It is submitted that the respondents are not releasing his pension on a plea that the applicant has changed the date of birth in his service book from 14.6.1931 to 14.6.1934, thus the applicant got a chance to serve the department further for 3 years beyond his actual date of superannuation and has drawn salary for the same where he is liable to refund. No action has been taken by the department to conduct any enquiry nor they are releasing the pension amount.

3. Thereafter again the applicant has been making representations that his date of birth is in fact 14.6.34 and not 14.6.31 as pleaded by the respondents so it is prayed that the respondents be directed to accept the date of birth as 14.6.34 and they be further directed to release his retiral benefits.

4. The respondents in their counter-affidavit have taken a plea that the OA is barred by limitation. Besides that they have also taken a plea that on scrutinizing the pension case it revealed to the respondents that the date of birth of the applicant was changed from 14.3.1931 to 14.6.1934 in figures as well as in words on the first page of the service book volume I and statement of service of temporary servants maintained for the period from

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22.9.53 to 31.12.1958. Thereafter the applicant was asked to produce his matriculation certificate as a proof of date of birth, which he failed to produce.

5. It is further pleaded that the Dy. Commissioner of Sales Tax department from where the applicant had retired was apprised of the situation vide Annexure R-2 and was requested that it was a case of forgery and undue retention of the official in Government service beyond a period of 3 years from the actual date of retirement and he has also drawn monetary benefits. It was also requested to investigate in detail and fix the responsibility and the responsible person may be punished and the pay and allowances for the period of 3 years which had been paid to the applicant, be recovered from the official concerned. In reply to this, the Deputy Commissioner has submitted that the date of birth of the official is 14.6.1931 and not 14.6.1934.

6. The case has also been seen by the Finance Secretary, who has stated that an enquiry may be ordered to fix responsibility and sanction of the Government of India may be obtained to regulate the overstay of the applicant in service for a period of 3 years beyond his date of superannuation and pending completion of these instructions, provisional pension was sanctioned.

7. It is also pleaded that non-production of the matriculation certificate by the applicant

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✓ proves his mala fide intention of manipulating the service record as such it is stated that the applicant is not entitled to commutation of pension without medical examination.

8. Rejoinder to this was also filed by the applicant. The applicant submitted that he is not liable to be subjected to medical examination because it no fault on the part of the applicant that his pension has been delayed so respondents should be directed to pay the commutation of pension and other retiral benefits along with interest.

9. I have heard the learned counsel for the parties and gone through the records of the case.

10. Shri T.C. Aggarwal, counsel appearing for the applicant submitted that the date of birth of the applicant is in fact 14.6.34 and not 14.6.31 and as such he had been properly retired on attaining the age of superannuation and besides that he had raised a law point that merely because the Finance Secretary had issued directions to investigate the matter which cannot entitle the respondents to withhold the retiral benefits. To this extent, he has referred to a judgment reported in 2000 (2) CAT AISLJ page 400 Upendra Prasad Vs. U.O.I. & Others wherein the Patna Bench of this Tribunal has held as under:-

"Retiral Dues-Contemplation of Proceedings-Applciant retired on 31.7.97, retiral benefits not paid that he had sanctioned drawal of money without proper

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✓ approval of Government for which investigation is in progress-Found no proceedings at all pending at the time of retirement-Case law cited -Held the dues must be paid with 12% interest."

11. On the strength of this judgment the counsel for the applicant submitted that merely department is contemplating some proceedings that does not entitle the respondents to withhold the retiral benefits. The counsel for the applicant has also referred to another judgment reported in 2002 (2) ATJ page 482 entitled as Kirat Goyal Vs. Haryana Vidyut Parsaran Nigam Ltd. and Others wherein the Hon'ble Supreme Court has held as follows:-

" Constitution of India Article 300-A-Punjab Civil Services Rules, Volume-II, Rule 2.2 (b)-Retiral Benefits-Interest-Retiral Benefits cannot be withheld when no departmental enquiry is pending on the date of superannuation of the employee-In the present case show cause notice issued to the petitioner requiring his explanation on certain charges cannot be equated with the chargesheet-Directon given to pay interest @18% on the amount so withheld for the period of delay".


12. So referring to these judgments the counsel for the applicant submitted that in this case no charge-sheet has been issued to the applicant. No criminal proceedings have been filed against the applicant so the respondents are not entitled to withhold the retiral benefits of the applicant.

13. In reply to this Shri Pandita appearing for the department submitted that since the department is insisting upon the applicant to produce the matriculation certificate and the applicant

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is not producing the same with mala fide intention because the department wanted to satisfy themselves about the actual date of birth. To my mind, this contention of the learned counsel for the applicant has no merits because the reply filed by the respondents themselves suggest that they have almost reached to the conclusion that there is some forgery in the service book of the applicant because the date of birth of the applicant has been changed from 4.6.1931 to 4.6.1934. But still despite the fact that the Finance Secretary of the department has seen papers and had issued instructions but neither any charge sheet has been issued nor any FIR has been lodged against the applicant so in view of the judgments cited by the learned counsel for the applicant I find that the respondents are not entitled to withhold the pension of the applicant.

14. Hence, I am of the considered view that the applicant is entitled to all the retiral benefits and the same shall be paid within a period of 3 months from the date of receipt of copy of this order along with interest at the rate of 12% from the date they became due till the date of actual payment. No costs.


(Kuldip Singh)
Member (J)

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