

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA No.1182 of 1997

New Delhi, this the 3rd day of February, 1998

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

Kamla Dhingra  
Ex Dy. Manager (Distt.)  
R/o D-704, Plot No.54,  
Prince Apartment,  
I.P. Extension,  
Delhi- 110 092

...Applicant

(By Advocate : Mrs. Avnish Ahlawat)

Versus

Union of India: through

1. The Secretary to the  
Govt. of India  
Ministry of Agriculture  
(Deptt. of Agriculture & Dairy  
Development)  
Krishi Bhawan  
New Delhi- 110 001

2. General Manager  
Delhi Milk Scheme  
West Patel Nagar  
New Delhi- 110 008

...Respondents

(By Advocate : Shri S.M. Arif)

ORDER (ORAL)

By Sh. N. Sahu, Member (A) -

Heard.

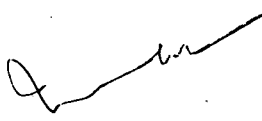
2. The only prayer in this OA is to direct the respondents to pay to the applicant her pension, gratuity, commutation of pension, leave encashment and other pensionary benefits with 18% interest from 30.04.1996 till the actual date of payment. It is admitted that the applicant had been paid provisional

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pension under Rule 69 of the Pension Rules amounting to Rs.1810/- per month from 27.06.1996. Payment of Rs.17,556/- has been made towards CGEIS and payment of Rs.3,54,242/- at her credit towards GPF has been made. The admitted position is that gratuity amounting to Rs.15,830/- (quantification is disputed) and leave encashment of Rs.17,440/- are still to be paid to the applicant besides regular pension and commutation of pension.

3. The undisputed facts leading to this case are in a short compass. The applicant was promoted as a Milk Distribution Officer on 24.07.1980. She was next promoted as a Dy. Manager(Distribution) on 20.09.1990 and was further promoted as Manager (Distribution) on ad-hoc basis till the date of her superannuation on 30.04.1996. Learned counsel for the applicant has drawn my attention to the fact that there was an inquiry about her vigilance status by the respondents by a letter dated 16.02.1996 in response to which by a letter dated 09.07.1996 the Govt. clarified "no disciplinary/vigilance case is either contemplated or pending against the applicant who retired as Dy. Manager(Distribution), DMS on 30.04.1996".

4. After notice, the respondents stated that the applicant was allegedly responsible for the loss of two files as a result of which recovery worth lakhs of rupees could not be effected. At page 2 of the counter affidavit, they have listed as to how there



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was a discrepancy between the demand raised and the amount received on various dates from October 1986 to December 1988 amounting to Rs.74,058/-. The next point made by the learned counsel for the respondents is that she was allegedly remiss about her responsibility in vigorously making efforts to collect a very substantial amount of Rs.31,48,743/. This is an aggregate of the amounts owed to the respondents by Controller of Defence Accounts, Indian Dairy Corporation, Fruit Juice Bottling Plant, Modern Bakeries etc. The file relating to recovery of these debts was acknowledged but not returned by the applicant. Learned counsel for respondents has also placed before me some papers showing that the authorities became alert about these instances of showing no zeal to collect the amounts only after her retirement because the files were not made available by her. After scrutiny at various levels, the departmental authorities have decided by a note during January-February 1998 to initiate disciplinary proceedings. Learned counsel also stated that the department is serious to process the case about the alleged misdemeanors of the applicant or alleged lack of devotion to duty and they are very keen to bring her to book.

5. Learned counsel for the applicant mentions that of the amounts due, two of the three companies are Govt. of India undertakings and there can possibly be no loss of money due from them. Government organisations by and large shall pay their debts; it is a question of time and not loss of

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money. The second point made by her was that the responsibility of collection is on the Accounts Department and not on the applicant. The third point made out is that Rule 9 of the CCS Pension Rules gives the right to the President of India to withhold a pension or gratuity or both in any departmental or judicial proceedings only if, the pensioner is found guilty of grave misconduct or negligence during the period of service. It is only when the conditions in Rule 9(1) are satisfied that the disciplinary proceedings initiated before retirement will be deemed to continue under Rule 9(2). As clarified by the learned counsel for the applicant as the vigilance clearance has already been obtained and the applicant had been allowed to superannuate honorably, there was no justification on the part of the respondents to withhold any part of the retirement benefits.

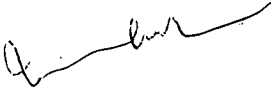
6. I have carefully considered the submissions of both the counsel. The law on the subject has been laid-down by the Supreme Court in P.R. Naryanan Vs. Union of India - 1972 SLR 219. - a disciplinary proceeding shall commence only when a chargesheet is issued. In this case there is not even an order of the disciplinary authority to frame a charge sheet before retirement. The vigilance clearance stares at the face and should have warned the respondents that this is not a fit case for withholding any part of the retirement benefits. This Tribunal has also held that issue of a charge sheet a day before retirement is not in accordance with law (K.C. Brahmachary Vs. Chief Secretary, Govt. of NCT Delhi & Ors. - OA No.126/97

decided on 11.07.1997). A fortiori in a case where the applicant already stood retired without even a charge-sheet issued to her, withholding of the retirement benefits is clearly not warranted by law.

7. Hon'ble Supreme Court had an occasion to interpret Section 9 of the CCS Pension Rules in D.V. Kapoor Vs UOI & Ors - (1996) 4 SCC 314 wherein it is held that the gravity of the misconduct must have a rational nexus with the decision to withhold pension or gratuity in departmental proceedings that the respondents are intending to initiate. As mentioned above, since there is no inkling of any charge sheet issued before the retirement, Rule 9(1) does not apply and there is no right on the part of the respondents to withhold any part of the retirement benefits.

8. I shall not enter into the dispute as to whether, in the facts and under the circumstances of this case, the respondents are competent or not competent to initiate disciplinary proceedings. There is, even after retirement, a certain time limit for this. There is no need to decide on this aspect in this OA.

9. Be that as it may, the respondents have shown the same attitude of laxity in enforcing discipline that is typical of the Govt. as a whole. There is no reason as to why they did not pull up the applicant for whatever deficiency they perceived was there in her work in the long career of her service. They want to save their face by withholding retirement

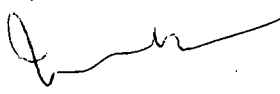


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benefits of a Govt. servant in the evening of her life. Very rightly it is pointed out that the discrepancies noticed at Page 2 of the comments for which applicant is hauled-up after retirement pertained to the period between 1986 to 1988. It ill-behaves the respondents to say after a decade that they have woken-up about the remissness of the applicant in enforcing recovery of this amount. Had they been vigilant they could have taken action in time against her, instead of promoting her and there would have been no need for them to <sup>contemplation</sup> issuing a charge sheet after her retirement or to withhold her pensionary benefits without any authority of law.

10. In the conspectus of the facts and circumstances stated above, I have no alternative except to allow the OA and direct the respondents to release to the applicant within six weeks from the date of receipt of a copy of this order, the entire amount of regular pension, commutation pension, gratuity and leave encashment.

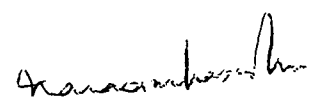
11. With regard to the payment of interest, I do not agree that the claim of 18% is justified. The Supreme Court has said that 12% interest is reasonable (O.P. Gupta Vs. Union of India & Ors. - 1987(5) SLR SC 288). I direct the respondents to pay 12% interest from two months after the date of superannuation till the actual date payment on the entire amount of retirement dues that are to be paid to the applicant.



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12. I also award a cost of Rs.500/- to be paid to the applicant by the respondents.



(N. Sahu)  
Member (A)

/Kant/