

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A.No. 147 /1997

Date of Decision: 18 - 8 - 1998

Shri Jagdish Prasad Sharma..

APPLICANT

(By Advocate Shri R. K. Sharma

versus

Union of India & Ors. ..

RESPONDENTS

(By Advocate Shri Raj Singh

CORAM:

THE HON'BLE SHRI

THE HON'BLE SHRI S.P. BISWAS, MEMBER(A)

1. TO BE REFERRED TO THE REPORTER OR NOT? YES
2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER BENCHES OF THE TRIBUNAL?

S. P. Biswas
(S.P. Biswas)
Member(A)
18.8.98

Cases referred:

1. R. Kapoor Vs. Director of Inspection (Painting) & Publication, Income Tax & Ors. JT 1994 (6) SC 354
2. State of Kerala & Anr. Vs. M. Padmanabha Nair (1985) 1 SCC 427
3. V.S. Challappal Vs. CAG of India & Anr. SLJ 1983 (2) 567

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 147/1997

New Delhi, this 18th day of August, 1998

Hon'ble Shri S.P. Biswas, Member(A)

Shri Jagdish Prasad Sharma
A-75, Jeevan Park
Pankha Road Post Office
Uttam Nagar, New Delhi .. Applicant

(By Shri R.K. Sharma, Advocate)

versus

Union of India, through

1. Commissioner of Police
Police Hqrs., MSO Building
New Delhi
2. Addl. Commissioner of Police
New Delhi Range
Police Hqrs., MSO Building
New Delhi
3. Dy. Commissioner of Police
North-East District
Seelampur, Delhi
4. Pay & Accounts Officer(IV)(Police)
Govt. of NCT of Delhi,
Tis Hazari, Delhi .. Respondents

(By Advocate Shri Raj Singh)

ORDER

The question raised in this OA is a short one. And this relates to whether the respondents are legally justified in asking the applicant to deposit Rs. 30,653/- before releasing his retirement dues and extending the benefit of revised pension.

2. To appreciate the question, brief facts are necessary which are as follows.

The applicant, a Sub-Inspector of Delhi Police, was due for normal retirement on 31.7.92 on attainment of 58 years of age. He was, however, retired compulsorily on 29.8.89 under 56(j). At

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the time of compulsory retirement on 29.8.89, applicant was paid Rs.30,000/- on account of gratuity and Rs.8004/- as three months salary in lieu of notice period for compulsory retirement. Applicant had no choice. He accepted the amount. But he also challenged the order of compulsory retirement in this Tribunal by filing an OA (No.1691/90) which was decided by the Tribunal on 30.9.94 with the following direction:

"The applicant shall be deemed to be in continuous service till the date of his superannuation i.e. 31st July, 1992 till he attains the age of 58 years. He shall be entitled to all consequential benefits including revised pension on the basis of his last pay which he would have drawn had he continued in service till the date of his superannuation. The respondent shall pay the aforesaid amounts within a period of three months from the date of receipt of the copy of this order."

3. But before the aforesaid order was made, applicant had retired on 31.7.92, pursuant to his normal date of retirement. These facts are not in dispute. Applicant is aggrieved by A-3 order dated 18.10.96 by which he has been asked to deposit Rs.30,653 before he could get the benefit of revised pension. Consequently, he is seeking relief in terms of issuance of directions to the respondents to quash the same and pay him all retiral dues as per the directions of the Tribunal dated 30.9.94.

4. Applicant claims the following retirement benefits since these dues have not been paid by the respondents.

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(i) Balance of gratuity amount .. Rs.1000

(ii) Amount of revised gratuity .. Rs.2970

(These two amounts are due to him on the basis of Rule 60(1)(a) read with Rule 32 of CCS(Pension) Rules, 1972)

(iii) Three months compensatory pay (He would have received this amount in the month of January, 1990, January, 1991 and January, 1992 had he not been illegally forced to retire on 29.8.89)

Compensatory pay for one month for every 12 months service rendered by the police officials is payable under OM No.F.14021/1/78-UTP/GOI/MOH/N.Delhi dt. 10.12.79

(iv) Revised pension w.e.f. 31.7.92

(Applicant claims that he is presently drawing a basic pension of Rs.934/- p.m. and as per his calculation revised basic pension on the basis of average pay works out to Rs.1021/- p.m. His claim is made on the basis of Rule 36 read with Rule 34 of CCS(Pension) Rules.)

(v) Interest @ 18% per annum on the with-held amount of gratuity, difference of pension and compensatory pay illegally and unjustifiably with-held by the respondents since 31.7.92.

5. Besides the provision of rules and regulations under CCS(Pension) Rules, applicant would heavily rely on the law laid down by Hon'ble Supreme Court and the ratios arrived at by this Tribunal in the following cases: R.Kapoor Vs. Director of Inspection (Painting) and Publication, Income Tax & Ors., JT 1994(6) SC 354; State of Kerala & Anr. Vs. M. Padmanabha Nair (1985) 1 SCC 427; and V.S.Challappal Vs. CAG of India & Anr. SLJ 1983(2) 567.

6. Respondents, on the contrary, have made the following counter claims of amounts due to them:

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| (a) Interest on gratuity amount paid to the applicant .. | Rs. 7886 |
| (b) Pension equivalent to gratuity (PEG for short) for 35 months .. | Rs. 7910 |
| (c) 3 months salary paid to the applicant at the time of his compulsory retirement in lieu of notice .. | Rs. 8004 |
| (d) Interest on 3 months salary .. | Rs. 6853 |
| Total: | 30,653 |

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7. Respondents have submitted that the claims against the applicant for payment of interest @ 12% on Rs.31,020 on DCRG is covered under the order issued by the GOI/Min., of Finance vide OM No.F.4(12)-E-V (B)/76 dated 30.3.78 and Rule 11 of CCS(Pension) Rules, 1983. They would also contend that the refund of PEG amount of Rs.7910 is covered in terms of Rule 11(v) of Appendix 9 of OM dated 30.3.78.

8. The dispute is only with reference to respondents' claim for interest amounts against the applicant for Rs.7886 on DCRG and Rs.6853 on three months salary paid to the applicant and refund of PEG amount of Rs.7910. Applicant has however agreed that 3 months salary of Rs.8004 could be adjusted from the dues payable to him.

9. Shri Raj Singh, on behalf of the respondents, has tried to support the deduction of interest on the basis of two circulars dated 24.12.76 and 30.3.78. These two circulars deal with the cases of pre-mature retirement of government servants under 56(j) who are subsequently reinstated in service. When such employees are reinstated in

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service, government could ask them to refund the gratuity amount which they had received earlier at the stage of premature retirement. However, government servants continued expressing their inability to pay the entire amount at once. They had requested that they may be allowed to pay the amount due from them in instalments. The Ministry's OM dated 24.12.76 laid down instructions for recovery of DCRG in terms of instalments and in terms as stipulated therein. On 30.3.78, OM dated 24.12.74 was modified. Government servants were allowed to retain the amount of gratuity till the date of their final retirement. The balance, if any, Government agreed to pay to the government servants after adjusting interest amount due to them. These instructions are applicable in cases of recovery of DCRG and pension paid to government servants prematurely retired and subsequently reinstated under normal administrative orders.

10. I find that the present case is entirely different. Applicant herein was compulsorily retired in violation of provisions of law. He had challenged the action and this Tribunal found that the order of compulsory retirement of 29.8.89 was illegal. the case, therefore, is not a case of premature retirement where the government had asked to reinstate the employees on the terms agreed to by both parties. This is a case where the court held that the compulsory retirement was wrongful (emphasis added). The applicant here had never asked for compulsory retirement before the said

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order. The two OMs cited by the respondents' counsel do not cover such a case as the present one.

11. I also find that the applicant's case is covered on all fours by the facts and circumstances of the case in V.S.Challappal (supra). The action of compulsory retirement has been held to be wrong. Once that is so, no question of payment of interest arises. Government cannot be allowed to profit from its own wrong. If compulsory retirement was wrongful, deduction of interest is also wrongful. If the employer is found to be at wrong, it cannot insist on deduction of interest. Since the respondents had been held to be at fault in ordering compulsory retirement, the said order is considered to be as non-est in the eyes of law (emphasis added).

12. In terms of the law laid down by the Delhi High Court in the case of V.S. Challappal (supra), deduction of interest to the extent of Rs.7886 and Rs.6853 cannot be sustained.

13. The next question is about respondents' claim with reference to the amount pertaining to PEG. It is seen that as per instructions of DoPT's OM No.F.4(11)-PU/79 18.8.80, PEG is not to be recovered as interest on the amount of DCRG retained. It is therefore seen that the respondents had claimed refund of PEG amount based on instructions under 11(v) of OM dated 30.3.78. The said OM was modified by a subsequent one dated 18.8.80 as aforesaid.

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14. Government is the authority within the meaning of Article 12 of the Constitution. Their action has to be declared illegal if it is not in conformity with law. Compulsory retirement, in the present case, was declared to be illegal by the Tribunal vide its order dated 30.9.94 with the direction that the applicant would be entitled for all consequential benefits including revised pension. Respondents were also directed to pay the amount within 3 months from the date of receipt of the aforesaid order.

15. I find from the records that respondents had at one time decided to go in for an SLP but dropped the idea. If the action in deducting the amount of interest is illegal, this Tribunal could declare it to be so. We shall do well to remember the words of Lord Reading C.J.:

16. The only difference from the aforesaid position is that we have a democratic republic in place of the King. Once the law is declared by the competent judicial authority, respondents are bound to implement the same, particularly when the order was not challenged.

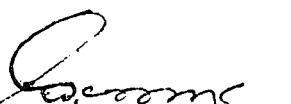
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"This is the King's court, we sit here to administer justice and to interpret the laws of the realm in the King's name. It is respectful and proper to assume that once the law is declared by a competent judicial authority it will be followed by the Crown" (Rex V. Speyer)"

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15. For the reasons aforesquoted, the OA is allowed with the following directions:

- (i) Order at Annexure A-3 dated 18.10.96 shall stand quashed; Respondents' action in claiming interest on gratuity and 3 months salary as well as refund of PEG amount are unsustainable in the eyes of law;
- (ii) Applicant shall be paid revised pension alongwith arrears w.e.f. 1.6.92 on the basis of re-calculation of the applicant's average pay vis-a-vis the basic pension of Rs.934/- p.m. he is drawing now;
- (iii) The amount of gratuity (with-held) of Rs.1000 and revised gratuity of Rs.2970/- due to the applicant shall be paid to him alongwith interest @ 18% from the date of retirement till the actual date of payment, within a period of three months from the date of receipt of a copy of this order. It is further provided that in case payment is not made, further interest @ 12% would be payable by the respondents to the applicant on interest amount till actual date of payment of interest as directed above.

No costs.


 (S. P. Biswas)
 Member (A)

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