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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI

O.A. No. 2014 of 1997 decided on 13. 1. 1998 .

Name of Applicant W. Chauhan

By Advocate : Ms. Jyoti Kalsra

Versus


Name of respondent/s Union of India

By Advocate : Shri Surat Singh

Corum:

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

1. To be referred to the reporter - Yes/No
2. Whether to be circulated to the other Benches of the Tribunal. - Yes/No

  
(N. Sahu)  
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA No.2014 of 1997  
MA No.2555 of 1997

New Delhi, this the 13th day of January, 1998

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

W. Chauhan  
Retd.Sr.Staff Officer  
(Civil Defence)  
S/o Late Sh.Rev.H. Chauhan  
R/o 2123, Type-IV  
Gulabi Bagh, Delhi

...Applicant

(By Advocate : Ms.Jyotika Kalra)

Versus

1. Union of India, through  
The Secretary,  
Ministry of Home Affairs,  
North Block, Central Secretariat  
New Delhi

2. State of Delhi  
through the Chief Secretary  
Govt. of NCT Delhi  
5, Sham Nath Marg  
New Delhi

3. Principal Secretary(Home)  
Govt. of NCT Delhi.

4. The Commandant General  
Home Guards & Director  
Civil Defence  
Govt. of NCT of Delhi  
Raja Garden, New Delhi

...Respondents

(By Advocate : Sh.Surat Singh)

ORDER (ORAL)

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

Heard.

2. The MA seeks interim relief. As the main OA is disposed of today, this MA has become infructuous.

3. The prayer in this OA is for a direction to Respondent No.1, Secretary, Ministry of Home Affairs, to release pensionary benefits including gratuity,

*Kaushik*

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leave encashment, commuted value of pension etc. and to award appropriate interest rate on the amounts so withheld from the date of retirement. There is also a claim for award of damages of a sum of Rs.2.00 lakhs.

4. The Hon'ble Supreme Court has already decided in Dr. H. Mukherjee Vs. S.K. Bhargava, (1996) 4 SCC 542 that this court is not competent to award any mandatory compensation by way of damages. Relief No.8(iii) therefore, cannot be allowed.

5. The facts with regard to the other grounds are briefly as under:

The applicant was an employee under Respondent No.4, Commandant General(Home Guards) & Director (Civil Defence) Govt. of NCT, Delhi from 20.05.1969 to 31.10.1996. During his service, he was promoted as Sr.Staff Officer in Civil Defence on 01.07.1991 and continued to work there till his retirement. There was a Special Audit in the department in which applicant worked under Respondent No.4 in the year 1990 and it appears that some 30 officers working in the said department were allegedly found to be remiss in the discharge of their duties. The special Audit was conducted in the year 1990 for alleged irregularities a decade earlier. On the day of his retirement, on 30.10.1996, the applicant received a memo asking him to explain within a period of three days the irregularity pointed out by the

*Enclosed*

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Audit. He faithfully complied with the same and sent his reply on 04.11.1996. As listed in Para 6, he thereafter filed 8 representations to Respondent No.4, Hon'ble Lt. Governor, Chief Secretary, Chief Minister, Hon'ble Minister of Finance, Union Territory, Delhi but to no avail. Till date, he has not been paid his retirement benefits so far. He sent a legal notice on 23.07.1997. We have an official letter dated 30.04.1997, relevant portions of which are extracted below:

"...The pensionary benefits of Sh. W. Chauhan were withheld in response to the instructions received from the Joint Secretary (Home), Govt. of NCT of Delhi vide his D.O. No.F.1/89/89-Home (Gen.)/Pt. File/7039 dated 30.10.1996.

.....Accordingly, the explanation of Sh.W. Chauhan was called and was sent to Home Deptt. with comments vide this office letter No.Estt.24(11)/Vig/96/CDHG/3564 dt. 8.11.96. In the comments, it was specifically mentioned that Sh. W. Chauhan was not found guilty of any serious misconduct which warranted withholding of his pensionary benefits. However, the matter is still pending with Home Deptt. and no decision has been taken so far. Several

*Handwritten signature*

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reminders have been sent to the Home Deptt. to convey the decision at the earliest.

It is a fact that the officer is facing financial hardships and he has also submitted two-three letters to this Deptt. for releasing his pensionary benefits. But in view of the instructions of Home Deptt., his pensionary benefits have not yet been released."

6. It was clearly mentioned therein that after going through the explanation of the applicant he was not found guilty of any of the alleged lapses and the department held that there was no justification for withholding his pension. Annexure A-14 is a letter dated 28.07.1991 addressed by Shri Ajay Kumar Singh, Commandant General (Home Guards) & Director (Civil Defence) to Shri K.S. Baidwan, IPS, Private Secretary(Home), Govt. of NCT, Delhi. As it comes from a senior and responsible officer, the entire letter is extracted herebelow:

"Please find enclosed herewith a Notice from Ms. Jyotika Kalra, Advocate.



At the time of retirement no criminal case or Departmental Enquiry was pending against Sh.W. Chauhan.

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In my opinion, the action of the Delhi Govt. is illegal and against the rules and it cannot be justified under any circumstances. The officer has suffered because of the inaction of some minor functionaries. The case may be contested at Govt. cost or he be paid the withheld pensionary benefits."


7. In spite of these clear reports, the Delhi Administration could not decide to pay the benefits. Admittedly, no charges were framed. A contemplated inquiry cannot be equated with an inquiry initiated by the issue of a charge-sheet (Narinder Dev Sharma Vs. State of Punjab(Pb. & Hry. - 1996(2) SLR) -

"While interpreting the provisions of All India Civil Service (Discipline and Appeal) Rules, 1969, their Lordships of the Supreme Court in P.R. Narayanan Vs. Union of India, 1972 SLR 219, held that an inquiry cannot be said to have been initiated against member of All India Service till the charge-sheet/statement of allegation has been issued to him. That was a case in which suspension of the petitioner was called in question on the ground that the Government had

exercised the power of suspension before the initiation of inquiry. While upholding the contention of the petitioner that suspension could not have been ordered without the initiation of inquiry, the apex Court held that mere contemplated inquiry cannot furnish basis for taking action for suspension of the employee."


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8. There is absolutely no justification to withhold pension or any other retirement benefits. The record shows that after the explanation was filed the department was satisfied that the applicant was not guilty of any alleged misdemeanor. All the eight representations for the release of his pensionary benefits elicited no response. In the evening of his life, the applicant states, he has several personal liabilities to discharge both as a retired Govt. servant, as a father and as a citizen. If a charge-sheet was issued before he retired, that too with the permission of the President, there was some justification to withhold pension or gratuity depending on the facts of the case. This court had held that even issuing a charge-sheet on account of disciplinary proceedings for the lapses allegedly committed a decade back on a day just before retirement, is an abuse of the process of law (K.C. Brahmachary Vs. Chief Secretary, Govt. of NCT Delhi & Ors. - OA No.126/97 decided on 11.07.1997).



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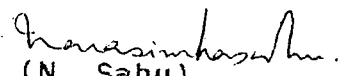
9. This was not a case of disciplinary proceedings or the issue of charge-sheet. Waking up just a day before his retirement and calling for his explanation itself smacks of a certain degree of casualness and arbitrariness. The applicant had immediately responded and cleared his stand and the respondents having been satisfied with that there is absolutely no justification for withholding pension and retirement benefits. I rely on the decision of the Hon'ble Supreme Court in State of Kerala Vs. M Padmanabhan Nair - 1985(1) SLR 758 SC wherein it is held that this is a case where there is absolutely no justification for the delay. I direct Respondent No.1 and 2 to ensure that within four weeks from the date of receipt, of a copy of this order all the retirement benefits shall be handed over to the applicant with the computation properly exhibited so that he can understand the ratio and the calculation for the amount that are to be paid to him under various heads. With regard to interest, I respectfully follow the decision of the Hon'ble Supreme Court in O.P. Gupta Vs. Union of India & Ors. - 1987(5) SLR SC 288 and direct the respondents to pay interest at the rate of 12% from 01.11.1996 to the actual date of payment. The interest shall be calculated and paid along with the retirement benefits under each head separately shown within four weeks from the date of receipt of a copy of this order.





10. Pension and gratuity payable to an employee have been recognised as his property right by the Apex Court Deokinandan Prasad Vs. The State of Bihar and Ors. - AIR 1971 SC 1409. No one can be deprived of his property except by due process of law. The instructions on the subject of payment of retirement benefits has been spelt out by the Ministry of Personnel [G.I. M.F. OM No.F.11(3)-E.V(A)/76 dated 28.02.1976 & dated 06.05.1976 and OM No.F.11(14)-E.V(A)/76 dated 30.10.1976] which are binding on the respondents where the retiree has a blemishless record. Learned counsel for the applicant states that he is the recipient of the President Medal for distinguished service and also several other merit certificates. The treatment meted out to him is simply unbelievable. I would direct Respondent No.2, Chief Secretary, Govt. of NCT, Delhi to conduct an inquiry within a period of 8 weeks from the date of receipt of a copy of this order as to who are the officials responsible for this ~~culpable~~ delay and if Respondent No.2 identifies such officials responsible for <sup>any culpable</sup> ~~such~~ delay, the interest paid to the applicant for the delay shall be recovered from their salaries. Adv. to Respondent No.2 shall send a compliance report in this regard to the Registrar of this Tribunal.

11. OA is disposed of as above. The respondents shall pay a cost of Rs.1,000/- to the applicant.

  
(N. Sahu)  
Member(A)

/Kant/