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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 2374/97

New Delhi this the 5th Day of June 1998

Madan Mohan,
S/o Shri Kewal Ram,
R/o House No. R-2/125,
Raj Nagar, Ghaziabad
U.P.

Retired as

Cartoonist
Central Health Education Bureau,
Department of Health,
Ministry of Health & Family Welfare,
New Delhi.

(By Advocate: Shri B.B. Raval)

Petitioner

-versus-

1. Union of India,
Through the Secretary,
Department of Health,
Ministry of Health & Family Welfare,
Government of India,
Nirman Bhawan, New Delhi

2. The Director,
Central Health Education Bureau,
Kotla Road,
New Delhi-110 002.

3. The Pay & Accounts Officer,
Ministry of Health & Family Welfare,
7th Floor, Nirman Bhawan,
New Delhi.

Respondents

(By Advocate: Shri R.P. Aggarwal)

ORDER

The applicant had joined the service of the Respondent No. 2 in October 1972 as a Cartoonist and retired on the same post on 31.1.1995 on attaining the age of superannuation. Aggrieved by the respondents in not releasing his retiral benefits such as Gratuity, Pension, Leave Salary etc., he filed an O.A. No. 2029/95 which was disposed of on 1.11.1996. The operative part of the order of the Tribunal is reproduced below:

" Having regard to the above facts and circumstances of the case and also the judgement of the Tribunal in OA 2320/91 dated 1.9.92 since the respondents have to make recoveries from the applicant for his stay in the ALTTC quarter at Ghaziabad, after he was repatriated to his parent department, it cannot be stated that they cannot withhold the outstanding government dues in accordance with the rules till final adjustment. However, the respondents are directed to determine the licence fee/damage rent and other dues in respect of this quarter for the period from 1989 till he vacated it in accordance with the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971."

2. The applicant also filed a Contempt Petition No. 37/95 for non-compliance of the order of the Tribunal and the same was disposed of on 28.4.1997 discharging the notice issued by the respondents. The applicant also filed a Review Petition No. 145//97 which was disposed of on 4.7.1997 in the following terms:

"This RA has been filed against our orders dated 28.4.1997 in CP 37/97 in O.A. No. 2029/95. The Contempt Petition was disposed of on the basis that substantial compliance was reported. Review applicant has now submitted that the respondents have made certain illegal deductions not permissible under the Rules.

In view of the fact that we do not propose to deal with such dispute in the contempt proceedings, only order that we propose is to grant liberty to the petitioner to re-agitate, if so advised, in case any illegal deductions have been made from what is due to the petitioner."

3. The applicant has now come again in the present OA availing of the liberty granted to him as per order dated 4.7.1997 quoted above. The case of the applicant is that the respondents owe him payments as calculated at Annexure A-8 amounting to Rs. 3,73,591/- This is on account of non-payment of pension. From 1.3.1995 to

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31.5.1995, short payment of commuted pension amount, non-payment of gratuity, short payment of encashment of leave salary, interest on GPF and penal interest on all the short payments.

4. The respondents in their reply have denied these allegations. They say that on account of recovery of damage rent for unauthorised occupation of accommodation allotted by ALTTC, Ghaziabad and Scooter advance, an amount of Rs. 70.162/- has to be deducted from his DCRG. They further state that there is no short payment. It is their argument that the total qualified service rendered by the applicant is 22 ~~1/2~~ and a half years and all his retirement benefits including pension, gratuity etc. are being calculated on that basis. On the other hand, according to the respondents the applicant has wrongly calculated his qualifying service as 27 ~~1/2~~ and a half years service. They also say that pension has been also duly authorised by the Central Pension Accounting Officer and the Manager SBI, Extension Counter, ALTTC has been authorised to arrange payment vide Special Seal authority dated 20.3.1997.

5. I have heard Shri Raval for the applicant and Shri R.P. Agarwal for the respondents. Shri Raval has submitted that the applicant had made certain payments to ALTTC, Ghaziabad amounting to approximately Rs. 40,000/- and therefore even if damage rent was to be recovered from him, it had to be set off against the payments already made by the applicant. Further, he pointed out that that the relevant file has admittedly been lost by the respondents, CHEB, and the applicant is being made to

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suffer consequently. He also contended that the applicant had been given permission to continue in the accommodation at Ghaziabad by the Tribunal and therefore there can be no question of charging damage rent from him. He vehemently argued that the conduct of the respondents in not releasing the pension so far was itself indicative of their malafide and bias against the applicant and he prayed for an order imposing exemplary cost against the respondents.

6. I have considered the matter carefully. The first question is whether the applicant is entitled to 22 ~~20~~ and a half years qualifying service as contended by the respondents or is entitled to add another five years thereto under Rule 30 of the CCS (Pension) Rules 1972 which allow the addition of five years under certain conditions in respect of posts,

- (a) for which post-graduate research, or specialist qualifications or experience in scientific, technological or professional fields, is essential; and
- (b) to which candidates of more than twenty-five years of age are normally recruited:

Provided that this concession shall not be admissible to a Government servant unless his actual qualifying service at the time he quits Government service is not less than ten years:

Provided further that this concession shall be admissible only if the recruitment rules in respect of the said service or post contain a specific provision that the service or post is one which carried the benefit of this rule.

7. The applicant has not produced any material to establish his claim that his post falls within the purview of Rule 30. It has not been shown that the relevant

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recruitment rules contain a specific provision that it will be governed by Rule 30. Accordingly, I find that the applicant cannot add 5 years under Rule 30 to his actual qualifying service. That being so all the calculation which he has made in Annexure A-8 become subject to revision. I therefore, find that in so far as short payments are concerned, the applicant has no valid claim against the respondents.

8. It has also been urged on behalf of the applicant that under Rule 71 of CCS (Pension) Rules 1972 only an amount of Rs. 1,000/- can be withheld from the gratuity on account of dues pertaining to Government accommodation. I find no such provision in the CCS (Pension) Rules 1972 and therefore cannot consider his plea any further.

9. The applicant has contended that the Tribunal had while disposing of OA NO. 2029/95 directed the respondents to determine the licence fee for the quarter for the period from 1989 till he vacates that. According to Shri Raval licence fee means only normal licence fee. The operative part of the order has been reproduced above. It clearly speaks of the licence fee/damage rent " and the same to be determined in accordance with the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. There is thus no direction that damage rent cannot be charged from ~~you~~ the applicant.

10. Two issues, however, remain to be sorted out. The applicant claims that the licence fee was to be charged from him and the same has to be set off against the

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claim of damage rent. He also alleges that the respondents have lost the relevant file. Even if the relevant file is lost, it would be possible for the respondents to reconstruct the details of the payment, if any. The respondents have not come with ~~the~~ clear reply on this issue.

11. The second issue is regarding the payment of the pension. Shri Raval has submitted that the pension has been received for the period after the present OA was filed, but arrears of pension are still outstanding for the period 1995 to 1997.

12. Shri R.P. Agarwal, the learned counsel for the respondents, on the other hand, pointed out that necessary authorisations have been given to the Manager, SBI, Ghaziabad and the applicant should have contacted the Manager to find out as to why the amount has not so far been credited in his account. There has also been some mention by the respondents that the requisite life certificate has not been given by the applicant and hence the delay.

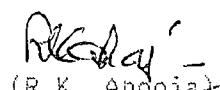
13. In the result while I do not accept the claim of the applicant in regard to short payment of dues on account of commutation of pension, leave encashment, gratuity etc., I consider that the respondents have to take an early action in respect of adjustment of licence fee already paid by the applicant and the release of the arrears of his pension. Accordingly I dispose of this OA with the following direction:

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- 1) The respondents will examine the claim of the applicant that he has paid certain licence fee which requires to be adjusted ~~against~~ the claim of the damage rent. This will be done if necessary by reconstructing the records. The respondents will complete this exercise within four months from the date of receipt of a copy of the order and pass a detailed and speaking order. If any money is found to be due to the applicant, the same will be paid to him within one month thereafter.
- 2) The respondents will ensure that the applicant is paid the arrears of pension within one month from the receipt of the copy of this order. The applicant will be entitled to 12% interest on these arrears from the date one month after the date of issue of letter of authorisation and the date of actual deposit in the account of the applicant.

There is no order as to costs.


(R.K. Ahuja)
Member (A)

Mittal