

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No.2366 of 1994

New Delhi, dated this the 25 February, 1997

HON'BLE MR. S.R. ADIGE, MEMBER (A)

Shri S.N.Murthy,
S/o Shri N. Sundereswara,
R/o D-II/226, Kidwai Nagar West,
New Delhi-110023. APPLICANT

By Advocate: Mrs. Meera Chhibber

VERSUS

1. Govt. of N.C.T. of Delhi,
through Lt. Governor,
Raj Niwas,
Delhi.
2. The Chief Secretary,
Govt. of NCT of Delhi,
5, Sham Nath Marg,
Delhi.
3. Development Commission-cum-Secretary,
Irrigation & Floods,
Govt. of NCT of Delhi,
5/9, Under Hill Road,
Delhi.
4. The Director of Estates,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi. RESPONDENTS

By Advocate: Shri Arun Bhardwaj
On the Date of final hearing: Shri Pratap Bhan
Head Clerk,
Irrigation &
Flood Control
Dept., NCTD
appeared.

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

Applicant seeks pay fixation in the scale of Rs.5100-5700 w.e.f. 8.5.90 and benefits of increments in years 1991, 1992 and 1993 for computation of retiral benefits. He also seeks release of pension, gratuity and arrears of increments along with interest @24% p.a.

2. Applicant was promoted as Chief Engineer (Irrg. & Flood Control), Delhi Admn. in pay scale of Rs.5100-5700 on ad hoc basis for a period of one year from the date he took charge, or till regular appointment was made, whichever was earlier vide order dated 7.5.90 (Ann. P-1). Respondents do not deny (page 2 of their reply) that he continued to work as Chief Engineer. Eventually by order dated 14.7.93 (Ann. P-III) applicant was regularised as Chief Engineer (I&FC) in the pay scale of Rs.5100-5700 w.e.f. 28.7.92.

3. FR 26(a) provides that all duty in a post on a time scale counts for increments in that time scale. As respondents do not deny that applicant performed the duties of the post of CE (I&F) from 7.5.90 to 28.7.92, with effect from which date he was regularised on that post, he cannot be denied the annual increments that fall due during the above period. Under the circumstances respondents are directed to release applicant the annual increments that were due to him consequent to his promotion as CE (I&F) in pay scale of Rs.5100-5700 w.e.f. 7.5.90 onwards. Arrears of increments should be calculated and paid to applicant.

4. Applicant retired on superannuation on 31.3.94. As per respondents' reply, applicant could not be released his pensionary benefits because of (i) failure to submit his pension papers, in time, (ii) unauthorised retention by him of his Service Book, as a result of which his services could not be verified;

(iii) non-receipt of NOC from Dte. of Estates
(iv) Non-receipt of vigilance clearance from
Dte. of Vigilance.

5. Applicant has been permitted to draw only provisional pension vide Respondents order dated 31.3.95 (Ann. M-1). Admittedly on the date of applicant's retirement on superannuation on 31.3.94 charge sheet had not been served upon him. Under rule 9(1) CCS (Pension) Rules, the President reserves to himself the right of withholding pension or gratuity or both, either in full or in part..... if in any departmental/judicial proceedings the pensioner is found guilty of grave misconduct or negligence during the period of service. Under Rule 9(2)(a) the departmental proceedings referred to in Sub-Rule (1) above, if instituted while the Govt. servant was in service, whether before his retirement or during his re-employment, shall, after the final retirement of the Govt. servant, be deemed to be proceedings under this Rule, and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Govt. servant had continued in service. Under rule 9(6)(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Govt. servant or pensioner, or if the Govt. servant has been placed under suspension, from an earlier date, on such date.

6. Respondents have paid applicant only provisional pension under Rule 69(1)(a) CCS (Pension) Rules. They have not released him his gratuity on the ground that departmental proceedings are pending against him, and seek support from Rule 69(1)(C) CCS (Pension) Rules.

7. Applicant has contended in his rejoinder to respondents' reply to amended O.A. that till the filing of the same (30.5.96) no D.E. has been initiated against him, nor has any show cause notice been issued. Respondents have also not shown me any charge sheet issued by them to applicant, and as per Rule 9(6)(a) a D.E. shall be deemed to be instituted only from the date on which statement of charges is issued to the Govt. servant of pensioner.

8. Under the circumstances, as no charge sheet has been issued to applicant his retiral benefits cannot be restricted only to release of provisional pension under Rule 69(1)(a) CCS (Pension) Rules and non-release of gratuity under Rule 69(1)(C).

(3)

9. In the result this O.A. succeeds and is allowed to this extent that respondents are directed to calculate and pay applicant is arrears of increments as directed in para 3 above, and after accounting for those increments, calculate and pay applicant his retiral dues in full upon his furnishing the necessary pension papers duly completed, including copies of NOC from Dte. of Estates.

These directions should be complied with within three months from the date of receipt of a copy of this judgment. The prayer for interest is rejected, because non-release of applicant's retiral benefits was not because of any deliberate, malafide or wanton delay on respondents' part. Further more after the D.E. is concluded, nothing contained in this judgment will preclude respondents invoking the provisions of Rule 9 CCS (Pension) Rules in accordance with law, if so advised.

10. This O.A. is disposed of in terms of para 9 above. No costs.

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(S.R. ADIGE)
Member (A)

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