

Two

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.561/1994

New Delhi, this 24th day of May, 1995

Shri P.T.Thiruvengadam, Hon'ble Member(A)

Shri R.P. Singh
58, Savera Apartments
Plot No.5, Sector 13, Rohini, Delhi-10085 .. Applicant

By Shri Gyan Prakash, Advocate

versus

1. Chief Secretary
Delhi Administration
Old Secretariat, Delhi
 2. Director of Education
Deptt. of Education
Delhi
 3. Pay & Accounts Officer No.VII
Delhi Admn. Delhi
 4. Principal
Govt. Boys Secondary School No.2
Mangolpuri, Delhi
- .. Respondents

By Shri Arun Bhardwaj, Advocate (not present)

ORDER(oral)

This case was taken up on second call. No one appeared on behalf of the respondents. I therefore proceed to dispose of the case based on the submissions made by the learned counsel for the applicant and the material available on record.

2. The applicant retired as Vice-Principal on 31.7.88. It is his case that on the date of retirement there was neither a departmental proceeding nor judiciary proceeding against him. Yet, retirement dues were not paid to him in time and only provisional pension was allowed at a late stage. This OA has been filed for a direction for payment of the remaining retirement benefits, namely gratuity, leave encashment, insurance
- A

amount, provident fund, commutation of pension and dearness relief on pension. Relief has also been claimed with regard to alleged incorrect salary after 1.5.88 since the increment dues as on 1.5.88 were not allowed.

3. MA 3023/94 in the OA was filed seeking certain interim reliefs. This MA was disposed of on 31.1.95 as under:

"MA has been filed praying for a direction to the respondents to pay dearness relief (Pensioner's relief) to the applicant since filing of the OA from 14.2.94 and for the release of the PF money alongwith interest thereon to meet the medical expenses of his ailing wife.

The ld. counsel for the applicant relies on the orders passed by the Tribunal on 15.12.92 in OA 1915/91 (attached as Annexure A-1 to the MA). In this order one of the reliefs granted is with regard to relief on pension. The relevant part of the order is as under:.

"As regards the grant of relief on pension, it has been held that relief for pension is a part of pension (RD Sharma Vs. UOI 1989(1)(CAT)/61). Therefore, if rule 69 of the Pension Rules authorises the payment of provisional pension, equal to the maximum pension, as admissible, we direct that the relief of pension should be released during the pendency of the proceedings in the present case, more so when the cases have been unduly prolonged."

With regard to release of PF amount, Govt. of India's decision No.1 and 4 under Pension Rule 31 (reference Swamy's compilation of GPF rules, 1994 Edition) were referred to. Under decision 1 below Rule 31, it has been mentioned that recovery of government dues and final payment of GPF are not to be mixed up as it would be inconsistent with Clause 3(i) of the Provident Fund Act, 1925. Decision 4 under the same rule conveys that an amount misappropriated shall not be adjusted from GPF. In the reply filed, the only ground advanced is the amount stated to have been embezzled is to the extent of Rs.4.53 lakhs and by release of various amounts like pensioners relief and PF money, it would be difficult for the respondents to realise the

dues when the criminal proceedings were completed and the responsibility of the pensioner is established.

This stand of the respondents is not acceptable in view of the order passed by this Tribunal with regard to release of pensioner's relief (order quoted above). Similarly, on the aspect of release of PF money, the decision of the Govt. of India stated above has to be followed.

Accordingly, the MA is disposed of with a direction to release pensioner's relief with effect from 14.2.94 as prayed for. The amount standing to the credit of the PF account of the applicant should also be released alongwith interest upto the time of release of this amount. The above direction should be carried out within a period of 3 months from the date of receipt of this order."

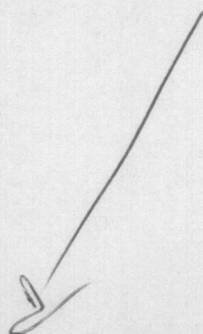
4. During arguments, the learned counsel for the applicant mentioned that dearness relief on pension has since been sanctioned for the period from 14.2.94. It is also conceded that the PF amount standing to the credit of the applicant has been paid.

5. As regards commutation, in view of the court proceedings initiated in 1989, the issue does not arise now.

6. Accordingly, the surviving grievances are only with reference to the following:

Payment of gratuity, payment of insurance amount, payment of leave encashment, payment of relief on pension from the date of retirement till 13.2.94 and refixation of salary from 1.5.88.

7. GRATUITY, LEAVE ENCASHMENT AND GROUP INSURANCE:



The learned counsel argued that on the date of retirement no proceedings, either departmental or judiciary, were pending against the applicant and as such the above settlement dues should have been released in favour of the applicant. However, in the reply by the respondents, I note that the stand taken is that pension papers were received only in 1991. Annexure A-4 is a copy of the representation of the applicant dated 23.12.91. In this, the applicant has stated that he is enclosing the pension papers. Thus it would appear that pension papers were submitted in the year 1991. It is however argued on behalf of the applicant that the papers had been submitted well in time and the pension papers referred to in Annexure A-4 relate to the papers in connection with provisional pension. It is difficult to accept the contention of the applicant, since the papers to be submitted for provisional pension and regular pension have not been established to be different. If the pension papers had been submitted only in the year 1991, by which period the FIR dated 23.1.89 regarding alleged embezzlement of Rs.4.53 lakhs by the applicant had been filed, the withholding of the above dues can not be held to be illegal. On the other hand if the pension papers had been filed with the respondents prior to the lodging of the FIR in January, 1989, it would not have been correct to withhold the gratuity, leave encashment and insurance amount. In the interest of justice, the respondents are directed to check whether pension papers complete in all respects had been received by them prior to lodging of the FIR. If the papers had been received prior to that date, then the gratuity, leave encashment and insurance amount, as due, should be released to the applicant within 3 months

15

D

from the date of receipt of a copy of this order. On the other hand, if the pension papers complete in all respects had not been received prior to lodging of FIR, the applicant should be suitably advised within the same period of 3 months. 16

8. RELIEF ON PENSION

Eligibility for relief on pension has already been dealt with while disposing of MA 3023/94. Having held that such relief on pension can not be denied on provisional pension during the pendency of the proceedings, the respondents are directed to release pensionary relief from the date of retirement, i.e. from 1.8.88 to 13.2.94. This payment should be made within 3 months from the date of receipt of a copy of this order.

9. REFIXATION OF SALARY WITH EFFECT FROM 1.5.88:

The applicant claims that increment fixing his pay from Rs.3125/- to Rs.3200/- due as on 1.5.88 had not been granted to him. Reply by the respondents does not dispute this fact and it is stated in para 4(ii) that the case of fixation will be processed as per rules after the finalisation of criminal case/departmental case against the applicant. I do not see any valid grounds for non grant of increment as on 1.5.88. No rules denying such fixation have been quoted. In the circumstances, the respondents are directed to refix the pay of the petitioner with effect from 1.5.88 and grant him the benefit of increment as per rules, including arrears.

The provisional pension should also be recast taking into account the refixed pay from 1.5.88 to 31.7.88, when the applicant superannuated. Arrears of salary and provisional pension consequent to the above should be paid to the applicant within 3 months from the date of receipt of a copy of this order.

17

/o. The OA is disposed of with the above directions as in paras 7, 8 and 9. There shall be no order as to costs.

P. T. Thiruvengadam

(P.T.Thiruvengadam)

Member(A)

24.5.1995

/tvq/