

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1511/2000

New Delhi, this the 30th day of April, 2001

HON'BLE MR. S.A.T.RIZVI, MEMBER (A)

~Shri R.B.L. Gupta son of Shri Pyare Lal Gupta,
Retired Voluntarily as Vice Principal from
Government Boys Senior Secondary School,
Badar Pur, New Delhi under the Government of NCT, Delhi.
... Applicant
(By Advocate: Shri B. Krishan)

V E R S U S

1. Government of National Capital Territory of
Delhi Through
Director of Education,
Directorate of Education, Govt. of NCT,
Old Secretariat,
Civil Lines, Delhi-110 007.

2. The Director of Estates,
Directorate of Estates,
4th Floor 'C' Wing, Nirman Bhavan,
New Delhi-110 011.

... Respondents

(By Advocate: Mrs. Meera Chibber for Respondent
No.1 and Shri R.N. Singh, proxy for Shri R.V. Sinha
for Respondent No.2)

O R D E R (ORAL)

By S.A.T. Rizvi, Member (A):

Delayed payment of retiral benefits has been made
the principal subject matter of grievance disclosed in
the present OA. At the same time, the applicant has
assailed the in-action on the part of the respondents in
the matter of non-fixation of his pay in terms of the
5th Central Pay Commission's (5th CPC) recommendations
and grant of consequential pensionary benefits to him
w.e.f. 1.1.1996. Again the applicant also assails the
recovery of damages made from his DCRG in respect of the
period government accommodation remained in his
possession even after his voluntary retirement.

2

7

Accordingly, the following reliefs have been sought by the applicant:-

1. direction to fix the pay and allowances as per the 5th CPC's recommendations,
2. direct to treat the period of occupation of Govt. accommodation by him as authorised one and accordingly to charge normal rent from him,
3. direction to release final pension and other retiral dues taking into account the revision in his pay,
4. direction to pay interest at the rate of 24% per annum from 1.8.1988 till the date of final payment.

2. I have heard the learned counsel in this case at great length and have also perused the material placed on record and find that there is no force in the OA and the same deserves to be dismissed.

3. The applicant sought voluntary retirement while posted as Vice Principal and accordingly retired w.e.f. 1.8.1988. According to his version, the applicant submitted the pension papers in the School where he worked at the time of his retirement on 4th August, 1988 and the School level verification had been completed by 22nd September, 1988. His pension papers were, thereafter, according to the applicant himself, forwarded to the Dy. Director (Education) on 12th June, 1989. Those papers were, however, returned to the said School on 17th April, 1996 without any processing. When this happened, the applicant served a notice on the respondents on 1.8.1996 asking for payment of his

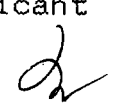
dr

(3)

dues with interest. Consequently, gratuity and the commuted value of pension were paid to him on 6th February, 1997. The damages in respect of the Govt. accommodation amounting to Rs.71,393/- were recovered from his dues on 7th February, 1997. His pay as Vice Principal had already been fixed on 22.10.1991. The arrears of his pension were also paid on 26.4.1997 though without interest. He has been representing in the matter ever since without any reply from the respondents.

4. By placing a series of documents on record, the applicant has sought to convey that the delay in the payment of his retiral benefits is entirely on account of the delay incurred in the Office of the respondents and insofar as he is concerned, the applicant has been pursuing the matter vigorously from time to time. To provide an instance, the applicant has placed on record the Vigilance Clearance Certificate issued in his case on 17.8.1988 together with a letter clarifying that vigilance clearance in his case had already been given at the time of his voluntary retirement on 1.8.1988 (PP 24-25 of the paper book).

5. In the reply filed by them, the respondent No.1, being Director of Education, has advanced the plea that the OA is bad due to non joinder of necessary parties. According to them, the Principal of the School or the School itself from which the applicant retired should have been made a party in



the present OA. The respondent No.1, according to them, is no doubt, the Head of the Department, but from the point of view of direct responsibility in the matter he is distantly placed and for this reason also it was absolutely necessary to implead the Principal of the School or the School itself. According to the same respondent, the delay has been occasioned due to the applicant himself tampering with his Service Book by making cuttings and over-writings therein at a number of places and blocking entries with regard to his leave account. According to the respondents, at the material time the applicant himself was discharging the duties and responsibilities of Drawing and Disbursing Officer in the very same School from which he retired, and in that capacity he had un-hindered access to his own Service Book. From the copy of a page of the Service Book placed on record by the same respondent, it is not difficult to see that an attempt has been made to make certain changes and to block certain portions perhaps by spreading ink. These allegations have not been challenged by filing a rejoinder and must therefore be presumed to have been accepted by the applicant.

6. Insofar as the aspect of delay is concerned, the learned counsel appearing on behalf of the applicant has proceeded to rely on the averment made in the reply filed by the respondent No.1. In his reply, the respondent No.1 had merely stated as follows:-

d



"However, as the Head of an Institution after receiving the Notice in the OA he has already ordered an enquiry to find out why so much delay has taken place and to fix the responsibility."

According to me, the fact that the respondent No.1 has ordered an enquiry into the causes of delay cannot lead to the conclusion that he has owned up the delay on his behalf or on behalf of any other functionary in the set up. In fact, soon after, as stated above, the respondent No.1 has gone on to assert that the applicant himself is responsible for the delay as he had tampered with the Service Book by resorting to cuttings and over-writings at a number of places and also by blocking certain entries in respect of his leave account. This is a positive assertion, which has not been denied by the applicant by filing a rejoinder. I also find that after voluntarily retiring on 1.8.1988 the applicant suddenly woke up after a gap of 8 long years and issued a 14 days' notice on 1.8.1996 (Annexure A-1). He has, no doubt, in Annexure A-1 given the details of various stages through which his pension papers passed and has also indicated the respective dates, but quite clearly he has slept over the matter for 8 long years without any explanation from his side. In normal circumstances, a retired person would have approached the Tribunal much sooner than has been done by the applicant. The theory that his grievance constituted a continuous cause of action and, therefore, he was free to approach this Tribunal at any time will not work in this case. He

d

(16)

has acted in utter disregard of the law of limitation laid down in the Administrative Tribunals Act, 1985.

7. In relation to the proceedings undertaken against the applicant under the Public Premises (Eviction of Unauthorised Occupants) Act, 1970, suffice to say that I have no option but to accept the averment made on behalf of the respondent No.2 that action under the aforesaid Act was taken by them wholly in accordance with the aforesaid Act, and the recovery of damages could be made in terms of the provisions of the CCS Pension Rules. According to this respondent (respondent No.2), they cancelled the allotment of government accommodation w.e.f. 31.5.1994 without knowing that the applicant had voluntarily retired on 1.8.1988. The order of cancellation of allotment had, therefore, to be revised and the government accommodation allotted to the applicant had to be cancelled w.e.f. 2.12.1988. This led to the fixation of final demand of Rs.2,29,402/- by way of damages. Accordingly, a demand certificate of the aforesaid amount was issued by this respondent on 17.7.1996 covering the period from 3.11.1987 to 14.9.1995. According to this respondent's information, no recoveries have so far been made against the aforesaid demand certificate. This respondent has also contended that in respect of the proceedings taken under the aforesaid Act, this Tribunal has no jurisdiction. For this purpose, he has relied on the judgement

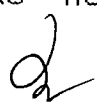
2

(2)

rendered by the Supreme Court in UOI Vs. Rasila Ram and Others decided on 6th September, 2000. Relying on the averment made by this respondent that he has proceeded in accordance with the provisions made in the aforesaid Act, I am inclined to agree with him that insofar as the question of recovery of damages is concerned, this Tribunal will not have jurisdiction in the matter, and further if the respondents have proceeded or intend to proceed against the applicant for recovery of the damages in accordance with the provisions made in the CCS Pension Rules, there is little that can be done to help the applicant. The applicant is free to agitate the matter concerning recovery of damages under the PP Act by filing an appeal before the appropriate forum/Court, if so advised.

8. At one stage, it was argued on behalf of the applicant that before proceeding under the PP Act, no notice to show cause was given. According to the respondents, if reliance is placed on UOI & another Vs. Wing Commander, R.R. Hingorani (Retd.) decided by the Supreme Court on 30.1.1987 [AIR 1987 SC 808], the liability to pay damages being an absolute (and not contingent) liability, no show cause was necessary, though the respondent No.2 has nevertheless issued notices wherever/whenever required in accordance with the PP Act.

9. The learned counsel appearing on behalf of the applicant has next proceeded to rely on New





Delhi Moly Vs. Kalu Ram and Another decided by the Supreme Court on 20th April, 1976 and reported in AIR 1976 SC 1637. I have perused the aforesaid judgement and find that there is substance in the learned counsel's contention that the amount of damages barred by the law of limitation cannot be recovered from the applicant. The relevant extract taken from the aforesaid judgement is reproduced below:

"When a duty is cast on an authority to determine the arrears of rent, the determination must be in accordance with law. Section 7 only provides a special procedure for the realisation of rent in arrears and does not constitute a source or foundation of a right to claim a debt otherwise time-barred. Construing the expression "any money due" in Section 186 of the Indian Companies Act, 1913 the Privy Council held in Hans Raj Gupta v. Official Liquidators of the Dehradun-Mussoorie Electric Tramway Co. Ltd., 60 Ind App 13 = (AIR 1933 PC 63) that this meant moneys due and recoverable in a suit by the company, and observed:

"It is a section which creates a special procedure for obtaining payment of moneys: it is not a section which purports to create a foundation upon which to base a claim for payment. It creates no new rights." We are clear that the word "payable" in Section 7, in the context in which it occurs, means "legally recoverable". Admittedly a suit to recover the arrears instituted on the day the order under Section 7 was made would have been barred by limitation. The mount in question was therefore irrecoverable."

10. If one has regard to the aforesaid finding recorded by the Supreme Court, the respondents will have to work out the amount which can actually be recovered from the applicant after applying the law of limitation. On consideration, I find that this much of relief can be given to the



applicant and in any case there is no ground for annulling the recovery by way of damages of the entire amount. I have every reason to expect that the respondents will consider the matter in accordance with the proposition of law laid down by the Supreme Court in the aforesaid judgement and given necessary relief to the applicant.

11. I will now take a look at how the matters have proceeded insofar as the payment of arrears of retiral benefit to the applicant is concerned. First, insofar as the revision in the pensionary benefits based on 5th CPC's recommendations is concerned, the applicant has not filled up the prescribed form to enable the respondents to fix his revised pension accordingly. The same will, therefore, await filling up of the prescribed form by the applicant. According to the applicant himself, the amount of gratuity and the value of commuted pension have already been paid to him on 6th February, 1997. His pay in respect of the post of Vice-Principal has also been fixed on 22.10.1991. The arrears of pension have also been paid on 26.4.1997. Two cheques relating to leave encashment and CGEGIS amounting to Rs. 2,624/- and Rs. 1,280/- respectively have also been made over to him by the Principal of the School. After verification/regularisation of his EOL, the arrears of increment found due are going to be paid to the applicant shortly. The related bill has been presented to the Pay & Accounts Office already. The



(2)

payment of arrears w.e.f. 26.9.1986 following fixation of his pay in the rank of Vice Principal is under process and the amount involved is likely to be paid to the applicant shortly. The emerging picture, I find, is quite satisfactory considering that it is the applicant himself who is primarily responsible for the delay caused in the payment of the retiral benefits to him. I have every reason to believe that the respondents will proceed to pay the remaining amount found due in the most expeditious manner.

12. In the above background, consistently with the issues raised by the respondents, I conclude that the present OA is bad due to non-joinder of necessary parties and also for multifariousness of the reliefs sought by the applicant. I also conclude that the OA is time barred. On merits also there is no ground to interfere with the action taken by the respondents and the further action being taken by them to secure the payment of the remaining amounts of retiral benefits in favour of the applicant. I have already observed in paragraph 10 that the respondents could consider granting relief to the applicant in accordance with the principle up-held by the Supreme Court in Kalu Ram's case (supra). I am, however, not inclined to give any direction to them to do so.

13. For all the reasons contained in the preceding paragraphs, the OA is dismissed. No order as to costs.



(S.A.T. RIZVI)
MEMBER (A)

/pkr/