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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.2617/2000

New Delhi, this the 29th day of May, 2001

Hon'ble Shri S.A.T. Rizvi, Member (Admn)

Shri Gurdhayal Sharma
S/O Shri Behari Lal Sharma
R/O H-56, Mansarovar Park,
Shahadara, Delhi-32.

..Applicant

(By Advocate: Shri V.K. Malhotra)

Versus

1. The Lt. Governor,
16, Rajpur Road,
Delhi (Raj Niwas).
2. The Director of Education
Old Secretariate, Delhi Administration,
NCT Delhi.
3. The Deputy Director (North-East),
B-Block, Yamuna Vihar,
Delhi.
4. Principal
Charak Govt. Saryodaya Kanya Vidyalaya,
DDA Flats, East of Loni Road,
Delhi-93.

..Respondents

(By Advocate: Shri George Paracken)

O R D E R

Heard the learned on either side and perused the material placed on record.

2. The applicant in this OA impugns a host of orders passed and letters issued by the respondents in relation to his service matters. Five of these letters are cumulatively placed at Annexure-A (pages 17 to 21 of the paper book). These are public hearing notices issued to the applicant for redressal of his grievance relating to the grant of pensionary/retiral benefits. The applicant besides challenges a host of other orders as well. It is not necessary to recall all such orders/letters for the

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purpose of arriving at a decision in the present OA. Suffice it to say that the applicant retired on superannuation on 31.12.1999. For various reasons, some of which will be mentioned in the following paragraphs, all the retiral benefits have not accrued to him so far and that is why this OA.

3. On 16.12.1999, the respondents notified that the applicant had preferred a bogus LTC claim. Accordingly, the Vice Principal of the school in which he was then working was directed to recover the amount with the penal interest. The applicant received intimation about the same on 22.12.1999 and without demur proceeded to deposit the amount of the LTC with interest the very next day. A sum of Rs.23,786/- was thus deposited by the applicant. The applicant as well as two others, also teachers, had deposited the respective amounts under protest as would appear to be the case from the letter jointly filed by them on 23.12.1999 with the Vice Principal of the school. That very day, the applicant and the others also filed a report with the SHO, PS Mansarovar Park contending therein that M/s. Amit Travels, a travel agency had cheated them all by playing fraud on them and that they were innocent. The respondents in turn filed a FIR, being FIR No.365 of 1999 under Sections 420/468/471 IPC at the same PS against the applicant and two others. By a court order dated 19.1.2000 (Annexure-H), the applicant as well as the others were admitted to anticipatory bail. Meanwhile, the applicant had already superannuated on 31.12.1999.

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4. The applicant's prayer is three-fold. Firstly, he prays for the payment of all the retiral benefits such as gratuity, pension, commutation account, leave encashment, CGIES amount, GPF etc. At the same time, he prays for payment of interest @ 18% for the period of delay that has taken place in the payment of retiral benefits, or which may take place in future. He has next asked for payment in lieu of the extension/re-employment for a period of three months which was denied to him in consequence of the aforesaid action taken against him by the respondents.

5. To begin with, I would deal with his prayer for extension/re-employment after attaining the age of superannuation on 31.12.1999. I find that his case for extension/re-employment for three months from 1.1.2000 to 31.3.2000 was sent up for the approval of the respondents on 31.8.1999. Clearly before the applicant attained the age of superannuation, and before the aforesaid approval was granted the aforesaid case of fraud came to light on 16.12.1999. The fact that the applicant proceeded to deposit the entire amount of LTC claim with interest without any objection the very next day on receiving intimation in respect thereof, clearly shows that, prima facie, at least there was substance in the charge of fraud levelled against him. The fact that he deposited the aforesaid amount under protest cannot materially alter the situation. The further contention that he did so on the ground that he did not want his post-retiral benefits to be delayed also in my view fails to lend support to the theory of innocence on his part. As an

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experienced teacher, he should have known that post
retirement benefits could well be withheld for reasons such
as these. In any case, the applicant's conduct had come
under a cloud before reaching the age of superannuation.
In the circumstances, I cannot find fault with the
respondents' decision not to consider his case for grant
of extension/re-employment.

6. The learned counsel appearing on behalf of the
respondents submits that criminal proceedings are still
going on against the applicant as well as the other two
teachers. At the same time, disciplinary proceedings
have also been initiated against the applicant and the
others under Rule 14 of the C.C.S. (CCA) Rules, 1965
vide respondents' order dated 29.12.1999. The said
departmental enquiry is also going on. Irrespective of
the action taken by the respondents, as above, the final
amount of the applicant's GPF was withdrawn by the
respondents from the PAO VIII amounting to Rs.1,72,972/-
and paid to the applicant on 8.2.2000, i.e., within two
months after his retirement. Provisional pension has
also been fixed by the PAO with the usual stipulation
that the applicant will submit non-employment
certificate. Despite repeated reminders, the applicant
has failed to submit non-employment certificate and it is
for this reason that provisional pension could not be
drawn in time. On the matter being clarified by the
Vigilance Department to the effect that non-employment
certificate might not be required, the respondents
immediately proceeded to arrange payment of provisional
pension for the period from January, 2000 to November,

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2000. Accordingly a cheque of Rs.75,886/- was delivered to the respondent-school on 1.12.2000. Repeated efforts have been made thereafter to have the aforesaid cheque received by the applicant. The applicant has been insisting on receiving the full and final amount at one go preferably in the Court itself and that is the reason why the payment of provisional pension could not be made so far. Further, since departmental proceedings are still going on, gratuity and the other pensionary benefits have not been finalized nor paid to the applicant in accordance with the relevant rules.

7. Insofar as the payment of gratuity and pension is concerned, the learned counsel appearing for the respondents has drawn my attention to Rule 9 (1) of the CCS (Pension) Rules wherein a provision has been made to the effect that the President has the right to withhold pension or gratuity, in full or in part and of ordering recovery from either of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service. The learned counsel has also drawn my attention to Rule 69 (1) (c) of the same Rules which clearly provides that "No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon."

11 Provisional pension having been sanctioned already, the learned counsel has not been able to place before me any rule or instruction which would enable the respondents to withhold the payment of post retiral benefits such as



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leave encashment and CGIES. He has accordingly fairly conceded that it should be possible for the respondents to arrange the payment of the amounts relating to leave encashment and CGIES to the applicant without loss of time. I find that similarly in the absence of any definite rule or instruction with regard to withholding of payment of commuted value of pension, the amount in respect thereof should also be allowed to be paid to the applicant without loss of time.

8. In result, the OA partly succeeds. The respondents are directed to make arrangements for paying to the applicant without loss of time the amounts due in respect of leave encashment, commuted pension and CGIES. They may in accordance with the relevant rules and judicial pronouncements continue to withhold the amount of gratuity until the departmental/criminal proceedings underway against him are finalized. However, the payments aforesaid will be made within a maximum period of three months from the date of receipt of a copy of this order.

9. The OA is partly allowed in the aforesated terms without any order as to costs.



(S.A.T. Rizvi)
Member (A)

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