

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 739/ 198 8.
~~T.A. No.~~

DATE OF DECISION November 14, 1989.

Mrs. R.K. Jain Applicant (s)

Shri B.B. Srivastava Advocate for the Applicant (s)

Versus
Delhi Administration & Anr. Respondent (s)

Shri B.R. Prashar Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. B.S. Sekhon, Vice Chairman.

The Hon'ble Mr. P.C. Jain, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

yes.
yes.
No
No.

JUDGEMENT

(Judgement of the Bench delivered
by Hon'ble Mr. P.C. Jain, Member)

This is an application under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicant, who retired from the post of Deputy Nursing Superintendent, G.B. Pant Hospital, New Delhi, with effect from 13.11.84 (F.N.), has prayed for the following reliefs: -

- "(a) Expeditious payment of pension, gratuity, commuted value, G.P.F. and other retirement benefits; and
- (b) Payment of interest at Bank lending rate from 13.11.84 till the date of actual payment of dues."

2. The facts of the case, in brief, are as under: -

The applicant joined as Nursing Sister in Safdarjang Hospital, New Delhi on 1.6.1955. She held various posts in different Hospitals under Delhi Administration, her last post being that of Deputy Nursing Superintendent in G.B. Pant Hospital. She sought voluntary retirement from service with effect from 12th

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November, 1984 (Afternoon) by her application dated 27th July, 1984, delivered on 9.8.84 (Annexure A-1 to the application), and simultaneously requested for grant of earned leave or leave of the kind due upto 11th November, 1984 to cover concurrently the period of three months notice required for seeking voluntary retirement. Formal orders of her voluntary retirement were, however, issued by the Medical Superintendent, G.B. Pant Hospital on 9.12.1987 notifying her voluntary retirement w.e.f. 13.11.84 (F.N.) - Annexure A-2 to the application. The main grievance of the applicant is that there has been abnormal delay in the issue of formal order of her retirement and the pensionary benefits have not yet been settled and paid to her.

3. On 17.5.1988, this Tribunal passed an order directing the respondents to pay the applicant provisional pension at the rate of Rs.500/- per month from the date of her retirement and continue to pay the same every month from then onwards.

4. In the counter-affidavit, the respondents have admitted the delay in processing the voluntary retirement of the applicant for non-availability of her Service Book from LNJP Hospital. They have also stated that the applicant did not vacate the Government accommodation on 13.11.1984, i.e., the date of her retirement from service, but continued to occupy the same upto 30.4.1988, and an amount of Rs.1,08,618/- is still outstanding against her on account of overstay in Government accommodation. They have stated to have made the following payments to the applicant: -

- (a) Rs.1,19,117/- vide cheque No.414823 dated 18.4.88, on account of final payment of GPF.
- (b) Rs.26,160/- on account of provisional pension w.e.f. 13.11.84 to 30.6.1988, in compliance with the order of this Tribunal dated 17.5.88 (supra).

It is further stated in the counter-affidavit that payment of gratuity and commuted value of pension are withheld for want of No Dues Certificate from the applicant.

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5. In the rejoinder, the applicant has stated that provisional pension at the rate of Rs.600/- per month, as directed by the Tribunal in its order dated 17.5.1988, has not been paid to her for the period after June, 1988. She has filed with the rejoinder copies of two orders dated 18.3.88 (Annexures R-I and R-II to the rejoinder), which show that the Pay & Accounts Officer XV (Hospitals) has authorised the Pay & Accounts Officer, Pay & Accounts Office No. 5, Tis Hazari, Delhi to pay pension in accordance with P.P.O. No.14672 to the applicant and authorised the Medical Superintendent, G.B. Pant Hospital, New Delhi for payment of gratuity of Rs.21,620/- after withholding an amount of Rs.1,000/-. The authorisation about pension payment is shown to have been not received by the authority, vide endorsement dated 9.8.88. No gratuity has also been paid so far. It was also stressed that the date of retirement of the applicant was not notified within a week as required under Rule 74 of the C.C.S. (Pension) Rules.

6. We have carefully gone through the pleadings of the case and have also heard the learned counsel for the parties.

7. As regards the non-payment of provisional pension at the rate of Rs.600/- per month for the period after June, 1988, the learned counsel for the respondents stated at the bar that the cheques dated 7.9.88, 23.9.88, 12.10.88, 21.11.88, 15.12.88, 16.1.89 and 13.2.89, each for an amount of Rs.600/- were pending for collection by the applicant. However, the communication by which the applicant might have been asked to collect these cheques was not shown, nor reasons for non-payment for the remaining period were explained. He could not also explain the position about the two orders dated 18.3.88 about payment of pension and gratuity which were received by the applicant, but either not received by the authorities concerned and in any case not implemented so far.

8. The plea of the respondents that the payment of gratuity and commuted value of pension has been held up because of non-production of 'No Dues Certificate' by

the applicant is legally not tenable. Rule 71 of the C.C.S. (Pension) Rules, 1972 provides that "It shall be the duty of the Head of Office to ascertain and assess Government dues payable by a Government servant due for retirement." No such assessment is shown to have been made. This assessment has to be made in respect of the dues which remain outstanding till the date of retirement of the Government servant and are liable to be adjusted against the amount of Death-cum-Retirement Gratuity becoming payable. (emphasis supplied). Rule 72(4) provides that the Directorate of Estates shall also inform the Head of Office the amount of licence fee for the retention of Government accommodation for the permissible period of two months beyond the date of retirement of the allottee and the Head of Office shall adjust the amount of that licence fee from the amount of gratuity. According to sub-rule (5) of Rule 72, if in any particular case, it is not possible for the Directorate of Estates to determine the outstanding fee, that Directorate shall inform the Head of Office that ten per cent of the gratuity or one thousand rupees, whichever is less, may be withheld pending receipt of further information. Sub-rule (6) of the Rule *ibid* clearly lays down that the recovery of licence fee for the occupation of the Government accommodation beyond the permissible period of two months after the date of retirement shall be the responsibility of the Directorate of Estates. In view of these clear provisions in the statutory rules, the respondents can neither legally delay nor legally withhold, except to an extent of Rs.1,000, ~~xxxxx~~ the Death-cum-Retirement Gratuity, payable to the applicant, for the occupation of the Government accommodation from the date of retirement till the date of vacation.

9. During the oral submissions at the bar, the learned counsel for the applicant also gave to the learned counsel for the respondents, the details of missing credits in the G.P.F. account of the applicant and the payment for which,

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according to the applicant, has not been made to her so far.

10. In view of the above discussion, respondents are directed as below: -

- (1) To sanction final pension to the applicant and pay upto date arrears of pension, after adjustment of payments already made.
- (2) To sanction computation of pension as per request of the applicant and in accordance with the rules.
- (3) To pay to the applicant her Death-cum-Retirement Gratuity after withholding an amount of Rs.1,000/- for recovery/adjustment of the licence fee towards the period of retention of accommodation by the applicant after the date of retirement, i.e., from 13.11.84.
- (4) To trace out the missing credits, if any, in the G.P.F. Account of the applicant and make payment thereof along with interest as admissible as per G.P.F. Rules, till the date of payment of the amount of the missing credits.
- (5) To pay to the applicant the balance of the savings portion of her contribution to the Government Employees Group Insurance Scheme, if any, with interest as admissible under the rules of the Scheme on the said balance till the date of payment.
- (6) To pay interest at the rate of 12 per cent simple interest per annum from 1.1.1985 till the date of payment on the amounts under items (1), (2) and (3) above.

11. The Estate Officer may assess the liability of payment of licence fee/market rent/penal rent/damages etc., payable by the applicant for the period from 13.11.84 till 30.4.88 i.e., the date of vacation of premises by the applicant, within three months from the date of this order, in accordance with Rule 72 of the C.C.S. (Pension) Rules, 1972, read with the

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provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, and recover the same from the applicant in accordance with the provisions of the rules on the subject.

12. The other directions as given in para 10 above shall be complied with by the respondents within three months of the date of receipt of copy of this judgement.

13. The application is allowed in terms of the directions given above.

14. This is a fit case for awarding of some token costs to the applicant. The respondents are, therefore, directed to pay Rs.1,000/- as costs to the applicant.

14/11/89
(P.C. JAIN)
MEMBER(A)

I agree

Nov 14th, 1989 *R.V. Chhon*
V.C

Pronounced in the open court.

17/11/89
(P.C. JAIN)
MEMBER(A)