

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**



O.A. No. 060/1125/2019

(Order reserved on 08.02.2021)

Chandigarh, this the 9th day of February, 2021

HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)

Mahender Kumar Garg, aged 62 years, Assistant Director (Retired) S/o Sh. Kundan Lal Garg, resident of H. No. 134, Sector-13, HUDA, Bhiwani, Haryana.

.....Applicant

By Advocate: Mr. A.K. Ghosh

Versus

1. Union of India through Secretary, Ministry of Labour, Shram Shakti Bhawan, New Delhi-110 001.
2. Director General ESI Corporation, CIG Marg, New Delhi – 110 002.
3. Regional Director, Regional Office, ESI Corporation, Sector-16, Panchdeep Bhawan, Faridabad (Haryana).

.....Respondents

By Advocate: Mr. K.K. Thakur

ORDER

AJANTA DAYALAN, Member (A):

1. The present OA has been filed by the applicant Mahender Kumar Garg seeking quashing of Memorandum of Charge dated 18.04.2017 (Annexure A-4). The applicant has also sought either cancellation of disciplinary proceedings, if initiated in pursuance of this Memorandum of Charge or directions for timely completion of the same. Besides, the applicant has also sought issuance of directions to release his



gratuity and leave encashment along with interest on delayed payment.

2. The applicant was working in the Employees State Insurance Corporation (ESIC) as Assistant Director, Audit at Regional Office, Faridabad before his retirement on 30.04.2017. The applicant had initially joined as a Clerk in the Organization in 1981 and got his promotions to higher posts in time. He was finally promoted as Assistant Director (ad hoc) from the post of Social Security Officer (SSO)/Branch Manager in 2016.

3. Just prior to the retirement of the applicant on 30.04.2017, the respondents issued a Memorandum of Charge on 18.04.2017 (Annexure A-4). These charges related to the period when he was posted as Social Security Officer/Branch Manager. The applicant was to reply to the Memorandum within ten days. The applicant admitted the charges vide his letter dated 20.04.2017 (Annexure A-5). After retirement, the applicant made several representations in 2018 and 2019 (as given in para 3 of the written statement of the respondents), the last being on 22.07.2019. However, he has not yet been released his gratuity and leave encashment. The above facts of the case are undisputed.

4. The applicant has contended that the charges made in the Memorandum of Charge are false and nowhere has it been specified as to how much of loss has been caused due to his mistakes.

5. The case of the applicant is that the Memorandum of Charge was issued on 18.04.2017 – that is 12 days prior to his



retirement. He admitted the charges on 20.04.2017. Even though more than three years have elapsed since then, but no order has been passed by the Disciplinary Authority. As such, he is being deprived of his rightful claim to gratuity and leave encashment.

6. The applicant has also pleaded that his ACRs for the period 2014-15 and 2015-16 are all very good and on this basis, he was promoted as Assistant Director (ad hoc) in November 2016 whereas the period for which the charges have been framed are for the years while he was still working as Social Security Officer prior to his promotion. This is inconsistent with the fact of his promotion as the promotion was based on his good record of that very period.

7. The respondents have contested the claim of the applicant. They have stated that gratuity and leave encashment have been withheld due to pending disciplinary case against him and non-issuance of Vigilance Clearance Certificate. They have also stated that the respondent department has the right to withhold the pension or gratuity or both if the pensioner is guilty of grave misconduct or negligence during the period of service in terms of Rule 9 of CCS (Pension) Rules, 1972. They have also relied upon Rule 39(3) of CCS (Leave) Rules, 1972 vide which leave salary encashment can be withheld till conclusion of the proceedings against the charged officer. The respondents have also quoted number of judicial pronouncements to show that the pension and gratuity can be withheld when disciplinary proceedings are pending.



8. In view of pending disciplinary proceedings, the respondents have stated that the applicant is not entitled to any relief till finalization of the departmental proceedings.
9. During arguments, the counsel for the respondents was asked to explain as to why the disciplinary proceedings are still pending when the Memorandum of Charge was issued on 18.04.2017 (Annexure A-4) and the charges were admitted by the applicant on 20.04.2017. It is now almost four years since the admission of the charges by the applicant, but the disciplinary proceedings are still kept pending. The counsel for the respondents was not able to explain this delay.
10. At this stage, both the counsel for the applicant and the respondents agreed that a direction may be issued by this Tribunal to get the disciplinary proceedings finalized in a time-bound manner.
11. Considering that the applicant had already admitted the charges – for whatever reasons, I observe that the delay of almost four years in finalization of disciplinary proceedings cannot be explained. Besides, it is also observed that the applicant had admitted the charges – though the applicant is now saying that this was because he was about to retire and did not want the case to come in the way of settlement of his retiral benefits. However, even ignoring this plea of the applicant and considering that he has already admitted the charges, one can expect a sympathetic consideration from the disciplinary authority. In any case, the delay in settlement of disciplinary



proceedings and consequential delay in release of retiral benefits to the applicant cannot be justified.

12. In view of the above, I direct the concerned Disciplinary Authority to decide the disciplinary proceedings of the applicant, if not already decided so far, within a period of maximum three months from the date of receipt of a certified copy of this order. The retiral benefits of the applicant can then be settled in the light of the order passed by the Disciplinary Authority.

13. The OA is disposed of in the above terms. There shall be no order as to costs.

(Ajanta Dayalan)
Member (A)

Place: Chandigarh
Dated: February 9th, 2021
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