

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH,
CAMP AT NAGPUR.

O.A.211/00009/2018

Dated this Tuesday the 25th day of February, 2020

Coram: Dr.Bhagwan Sahai, Member (Administrative).

Kishore Sadashiv Wahane,
Pensioner,
R/o. 134, Vivekanand Nagar,
Nagpur - 440 015. .. Applicant.

(In Person).

Versus

1. The Secretary,
Ministry of Urban Development,
Nirman Bhawan, Wing 'A',
New Delhi - 110 011.
2. The Chief Controller of Accounts,
Central Public Works Department,
Nirman Bhawan, Wing 'A',
New Delhi - 110 011.
3. The Deputy Controller of Accounts,
Pay and Account Office,
18th Floor, CGO Annexe,
Mumbai - 400 020.
4. The Chief Engineer (WZ-II),
CPWD, Block 'A', CGO Complex,
Seminary Hills,
Nagpur - 440 006. .. Respondents.

(By Advocate Ms.Renuka Puranik Nalamwar).

Order reserved on : 19/21.02.2020

Order delivered on : 25.02.2020.

O R D E R

Shri Kishore Sadashiv Wahane has filed this O.A. on 11.01.2018. He seeks direction to the respondents to make payment to him of Rs.1,79,230/-

with 15% interest and also of Rs.51,883/-.

2. Summarized facts:

2(a). The applicant has stated that while working as Executive Engineer with the office of Chief Engineer (WZ-II), C.P.W.D., Nagpur, he retired on 30.06.2014. The Chief Engineer's office processed his DCRG, commutation of pension, leave encashment and monthly pension before his retirement as approved by the PAO, Mumbai and his provisional monthly pension was approved by the Sr. Accounts Officer, PAO, Mumbai as Rs.19,045/- from 01.07.2014 along with commutation of 40% of pension i.e. Rs.7,316/-. He was receiving provisional pension of Rs.44,184/- per month upto June, 2017 through State Bank of India, Nagpur but its payment was stopped thereafter i.e. for four months from 01.07.2017 till 31.10.2017 and for this period he was paid on 31.10.2017 reduced amount of provisional pension i.e. Rs.49,520/-. Thus from July, 2017 to 31.12.2017, an amount of Rs.1,79,230/- was not paid to him. Apart from following up on telephone, he also submitted his grievance online to Central Pension Accounting Office, New Delhi on 22.11.2017 but the grievance has not been resolved.

2(b). Smt.Vijayan S. Menon, PAO, Mumbai has harassed him by not attending his grievance properly and this was brought to notice of the higher authorities dealing with the pensions on 15.12.2017.

2(c). Withholding of 10% of his pension as penalty for two years issued by the Ministry of Urban Development, Government of India expired by 30.06.2016 but the PAO, Mumbai made recovery instead of withholding the pension and the penalty order was issued by PAO, Mumbai on 04.08.2017 (Annex-A-11).

2(d). After 30.06.2016, the withheld amount of his pension i.e. Rs.21,533/- should have been released to him but it has not been done by the PAO and he sanctioned amount of 40% commutation of pension of Rs.7,49,063/- on 05.06.2014 but the amount of commuted pension was subsequently reduced to Rs.7,18,713/-. He requested PAO with letter dated 18.11.2017 to release the difference of Rs.30,350/- in his commuted pension. Therefore, for the reliefs mentioned under para 8, the O.A. has been filed.

3. Contentions of the parties:

In the O.A. and during his submissions in person on 19.02.2020, the applicant has contended

that-

3(a) . he had requested in letter dated 15.12.2017 for release of Rs.1,79,230/- with 15% interest which had been deducted from his pension from 01.07.2007 up to 31.12.2017;

3(b) . he also requested the PAO on 18.11.2017 to release the difference of Rs.30,350/- which had been deducted from the amount of his commuted pension. The PAO Mumbai also deducted Rs.21,533/- from his DCRG on 04.08.2017 although the punishment order was not for withholding any amount of DCRG. Therefore, the two amounts should be released for which the OA be allowed.

In their reply filed on 29.11.2018, additional reply filed on 16.08.2019 and during arguments of their counsel on 19.02.2020, the respondents contend that-

3(c) . there is no substance in the OA filed by the applicant and this is liable to be dismissed. By letter dated 03.03.2017, he was sanctioned provisional pension of Rs.19,045/- and paid (R1). To his letter dated 27.02.2017, written to Vigilance Unit, New Delhi for payment of gratuity/commuted pension with interest, he was replied on 15.03.2017 (Annex R-2) informing about implementation of penalty issued vide order dated

27.01.2017 by Ministry of Urban Development (Vigilance Unit), New Delhi, receipt of which was acknowledged by him on 21.03.2017;

3(d) . after receipt of acknowledgment of the applicant, penalty of withholding 10% of his monthly pension for two years was implemented as per order dated 31.03.2017 of CPWD, Nagpur (Annex R-4) . Since Vigilance Clearance Certificate had not been issued to the applicant, provisional pension for April and May, 2017 was sanctioned to him on 12.05.2017 as per Annex R-5 and a corrigendum was issued on 17.05.2017 to cancel the provisional pension of April and May, 2017. But it was released to him subsequently. As per letter dated 07.07.2017 (Annex R-10) provisional pension of Rs.19,045/- was sanctioned for June, 2017;

3(e) . on 05.06.2017 the applicant was informed about commuted value of his pension i.e. Rs.7,49,063/- and gratuity of Rs.10 Lakhs with all documents (as per Annex R-7) was returned to PAO Mumbai;

3(f) . based on the Medical Fitness Certificate submitted by the applicant, finalization of disciplinary case and intimation from Central Vigilance Cell of the Department, the PAO issued fresh authorization to him for payment of commuted

pension of Rs.7,18,713/-;

3(g). a revised Pension Payment Order (as per Government orders on VII CPC implementation) was issued on 02.02.2018 and pension arrears from 01.07.2017 were to be paid to the applicant by Bank;

3(h). as per CCS (Commutation of Pension) Rules, 4, 5 and 9, if any departmental or judicial proceedings are pending against the Government servant, he cannot apply for commutation of pension till the proceedings are over. The final order of punishment against the applicant was issued on 27.01.2017 and on 28.10.2014 only report of the inquiry had been received. The amount of his commuted value of pension came to be worked out as Rs.7,18,073/- (instead of Rs.7,49,063/- worked out tentatively earlier based on his age as per the Medical Certificate issued by the Civil Surgeon Nagpur and commutation table. Thus, there is no pending payment of Rs.30,350/- as claimed by the applicant. The amount of Rs.21,533/- was not withheld and it was only the earlier tentatively worked out figure presuming imposition of 10% cut in his pension. But it was not recovered. Therefore, there is no substance in the OA and no amount is pending to be paid to him;

3(i). on conclusion of the disciplinary proceedings initiated against the applicant, order of punishment was issued dated 27.01.2017 by the Ministry of Urban Development, Government of India for withholding of 10% of the monthly pension for a period of two years and during the pendency of the disciplinary proceedings, the applicant had been paid provisional pension. In clearing his pension, there has not been any delay on part of the respondent No.3 i.e. Deputy Controller of Accounts, PAO Mumbai.

Since the punishment order dated 27.01.2017 of withholding of 10% monthly pension for two years has been implemented, the recovery has been made from his pension.

3(j). the applicant had filed another OA earlier i.e. 2093/2018 which was disposed of by the Tribunal on 25.07.2019 directing the applicant to make a comprehensive representation about his claims and direction to the respondents to decide such representation, if received, within six weeks after receipt of the copy and action would be taken accordingly. Therefore, the OA be dismissed.

4. Analysis and conclusions:

4(a). I have perused the O.A. memo filed by the applicant, reply and additional reply filed by the

respondents. Have considered the arguments advanced by the applicant and the respondents' counsel on 19.02.2020 and 21.02.2020. Based thereon analysis of the case is as under.

4(b). As explained by the respondents and the documents brought on record, the order of punishment of withholding 10% pension of the applicant was issued by the Ministry of Urban Development on 27.01.2017. Therefore, before this order was issued, there was no question of any recovery to be made from his pension or other retiral benefits. The respondents have explained that the recovery claimed by the applicant (Annex-A-10) was only tentative working of the recovery details and it was not implemented. Till this order was issued, the applicant has been sanctioned and paid provisional monthly pension.

4(c). As per DCRG Rules since disciplinary proceedings were pending against the applicant at the time of his retirement, the amount of commuted pension could not have been paid to him, so it was not paid. Based on his own medical certificate, age and the commutation table, the amount of commuted pension has been worked out for the applicant as Rs.7,18,713/-, instead of the earlier tentatively worked out amount of commuted pension

at the time of his retirement. In view of this, the amount of Rs.30,350/- i.e. the difference between the tentatively and finally worked out amount of commuted pension is not a recovery and it was not due to him. Hence his prayer for payment of this amount cannot be accepted.

4(d). The amount of Rs.1,79,230/- claimed by the applicant is also not due to him because this deduction was as part of the 10% withholding of pension as per the punishment order dated 27.01.2017. Therefore, neither this amount of withheld 10% pension can be refunded to him, nor any interest on that amount is payable to him. In view of the analysis of the case as above, the O.A. does not have any merit and deserves dismissal.

5. Decision:

The O.A. is dismissed. No costs.

(Dr. Bhagwan Sahai)
Member (A).

H/kmg.

*JD
27/02/2020*

