

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 53/87  
T.A. No.

199

DATE OF DECISION 14.2.1992

Shri Durga Prasad Gupta Petitioner Applicant

(Through Smt. Kailash Vati, Legal Representative) Advocate for the Petitioner(s)

Shri Sant Lal

Versus

Union of India &amp; Others Respondent

Smt. Raj Kumari Chopra Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? / No
4. Whether it needs to be circulated to other Benches of the Tribunal?

(Judgement of the Bench delivered by Hon'ble Mr. P.K. Kartha, Vice-Chairman)

This application is being pursued by Smt. Kailash Vati, the widow of late Shri Durga Prasad Gupta, who had worked as Sorting Postman in the office of the respondents and who had filed it in 1987 seeking the following reliefs:-

- (i) To set aside the order of recoveries of the alleged over-payments from the DCRG and Pension D.A. reliefs;
- (ii) to direct the respondents for payment of DCRG with penal interest and monthly pension admissible under the rules from the date of expiry of the notice for voluntary retirement;

(iii) to set aside the award of penalty of compulsory retirement, reduction of pension and gratuity and treatment of period from 21.7.1981 to 11.11.1983 as 'non duty'.

(iv) to declare the applicant as retired voluntarily w.e.f. 31.12.1981 (A.N.) on the expiry of the period of notice;

(v) to grant such other reliefs as are deemed fit by the Tribunal, in the circumstances of this case; and

(vi) to award the cost of this application.

2. On 30.3.1991, the applicant died and MP-1823/91 filed by his widow for impleadment as the legal representative of the deceased Government servant was allowed by order dated 30.8.1991.

3. The sequence of events in this case indicated that this is an unfortunate case. While working as Sorting Postman, Safdarjung Enclave Post Office, New Delhi, the applicant served a notice ~~on~~ on the respondents on 31.8.83 for his voluntary retirement on account of his domestic circumstances with effect from 31.12.1981. On 5.9.1981, the respondents informed him that his request could not be accepted "due to pendency of a particular case in the Court" and that his case could be considered on receiving the final judgement by the Court. On 6.10.1981, the

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applicant again wrote to the respondents that there were no departmental proceedings against him and that his domestic circumstances did not allow him to attend his duty after 31.12.1981. He did not attend duty from 1.1.1982.

4. Suit No.309/81 filed by the applicant in the Court of the Sub-Judge, Delhi, was dismissed for default and non-prosecution on 8.2.1983. The learned counsel for the legal representative of the deceased stated during the final hearing that the Court case related to the L.T.C. claim of the applicant.

5. On 27/30.6.1983, the respondents initiated disciplinary proceedings against the applicant under rule 14 of the C.C.S.(CCA) Rules, 1965 alleging absence from duty without prior permission and information w.e.f. 1.1.1982. No enquiry officer was appointed. The charge was denied by the applicant.

6. The respondents advised the applicant to join duty and submit a fresh notice of retirement. Accordingly, he joined duty on 11.11.1983 and submitted another notice for voluntary retirement on 15.11.1983. The applicant has stated that the respondents induced him to admit the charge to close the disciplinary proceedings and to accept the notice for voluntary retirement w.e.f. 15.2.1984. Accordingly, he gave the statement of admission under duress on 14.2.84

to save himself from the constant harassment and mental torture he was facing for more than 2 years.

7. Ultimately, the applicant was relieved on 15.2.84 on voluntary retirement.

8. On 21.2.1984, the applicant received the impugned punishment order dated 15.2.1984 issued by the respondents imposing on the applicant the following penalties:-

"(i) Compulsory Retirement ;

(ii) Reduction of Pension & Gratuity to two-thirds; and

(iii) Treatment of period of alleged absence from 21.7.81 to 11.11.1983 as non-duty without pay and allowances even though the charge of absence from duty was from 1.1.1982.

9. The respondents paid to the applicant provisional pension upto 15.8.1986 at the rate of Rs.160/- per month and 75% relief at the rate of Rs.120/- per month. Thereafter, payment of pension was stopped till 11.11.1986, when the Pension Payment Order was issued to him. His pension has been fixed at Rs.95/- p.m. and Rs.100/- as D.A. relief w.e.f. 16.8.1986. No reason was given for reduction of the amount.

10. The Death-cum-Retirement Gratuity has not yet been paid to the applicant. A sum of Rs.3846.75 towards DCRG admissible has been adjusted towards over-payment on account of pension and commutation and a sum of Rs.2841.92 has been adjusted in the D.A. relief. Accordingly,

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the applicant was to draw his pension of Rs.64/- only each month (Rs.95 minus Rs.31-pension commuted). The applicant has stated that there are no orders from the pension sanctioning authority, i.e., the Senior Superintendent about the cause of reduction of the provisional pension, detailed particulars of the so-called over-payments and resultant recoveries. He has also stated that the respondents have made unauthorised deductions of Rs.691.15 from the pay and allowances of the applicant on 13.5.1986 without assigning any reason.

11. The respondents have stated in their counter-affidavit that the Government have power to deny permission for voluntary retirement under Rule 48A of the C.C.S. (Pension) Rules, 1972. On merits, they have contended that the applicant remained absent with effect from 1.1.1982 without intimation, that he had admitted the charges brought against him and that there was overpayment of pay and allowances as well as pension which had to be recovered from him.

12. We have carefully gone through the records of the case and have heard the learned counsel for both the parties. The facts and circumstances of the case clearly indicate that the applicant was not dealt with fairly by the respondents. As per the instructions regarding voluntary retirement issued by the Government, acceptance

of such retirement "may be generally given in all cases except those (a) in which disciplinary proceedings are pending or contemplated against the Government servant concerned for the imposition of a major penalty and the disciplinary authority, having regard to the circumstances of the case, is of the view that the imposition of the penalty of removal or dismissal from service would be warranted in the case, or (b) in which prosecution is contemplated or may have been launched in a Court of law against the Government servant concerned". (Vide O.M. dated 26.8.1977, 28.7.1979 and 5.7.1985 issued by the Department of Personnel & Training).

13. The mere pendency of a civil suit filed by the applicant for his L.T.C. claim could not have afforded any justification for not accepting the request for his voluntary retirement w.e.f. 1.1.1982. There was no disciplinary proceedings or criminal proceedings pending or contemplated against the applicant on 31.8.1981, when he submitted his notice for voluntary retirement.

14. We are of the view that the respondents did not use the discretion conferred on them under Rule 48A of the C.C.S.(Pension) Rules, 1972 properly and this vitiates not only the validity of their decision to reject the request of the applicant on 5.9.1991, But all the subsequent actions taken by them. In our opinion, the

rejection of the request for voluntary retirement was arbitrary and untenable in law. The subsequent action taken by them, including the initiation of disciplinary proceedings and imposition of the penalty of compulsory retirement, ordering reduction of pension and gratuity, are also arbitrary, perverse and tainted with mala fides and legally unsustainable.

15. In the light of the above discussion, the application is disposed of with the following orders and directions:-

- (i) We hold that the applicant shall be deemed to have retired voluntarily w.e.f. 31.12.81(AN) on the expiry of the period of notice dated 31.8.1981.
- (ii) We set aside and quash the impugned order of penalty of compulsory retirement, reduction of pension and gratuity and treatment of period from 21.7.1981 to 11.11.1983 as non-duty.
- (iii) We set aside the order of recoveries of the alleged overpayments from the DCRG and Pension D.A. Relief. The amounts recovered shall be refunded to the legal representative of the deceased (Shri Kailash Voh)
- (iv) The respondents are directed to pay to the legal representative of the deceased Government servant (the applicant) the DCRG and Pension admissible under the rules from 31.12.81 (AN), i.e., the date of expiry of ~~the notice~~ <sup>the</sup>

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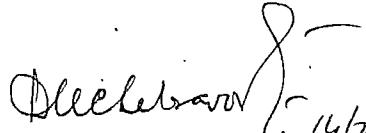
the notice of voluntary retirement to  
31.3.1991, when the applicant expired.

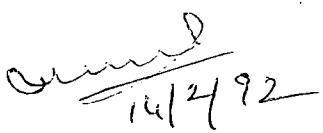
They shall also pay interest at the rate  
of 12 per cent per annum on the outstanding  
amounts towards DCRG and pension till the  
date of payment.

(v) The legal representative of the applicant  
(Smt. Kailash Vati) shall be given family  
pension admissible under the rules from  
31.3.1991 together with interest at the  
rate of 12% per annum till the date of  
payment. The respondents shall continue to  
pay family pension to her every month  
punctually.

(vi) The respondents shall comply with the above  
directions within a period of three months  
from the date of communication of this order.

There will be no order as to costs.

  
(D.K. Chakravorty) 14/2/92  
Administrative Member

  
(P.K. Kartha)  
Vice-Chairman(Judl.)