

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 557 OF 1987.
~~T.A. No.~~

DATE OF DECISION 26.4.91

S.C.Srivastava Petitioner

Shri G.R.Matta Advocate for the Petitioner(s)

Versus

1. Chief Secy., Delhi Admn., Delhi Respondents

2. Principal, Delhi College of Engg. Delhi.

Mrs. Avinash Ahlawat Advocate for the Respondent(s)

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The Hon'ble Mr. B.N.Jayasimha, Vice-Chairman (A)

The Hon'ble Mr. J.P.Sharma, Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement? y/s
2. To be referred to the Reporter or not? y/s
3. Whether their Lordships wish to see the fair copy of the Judgement? ^
4. Whether it needs to be circulated to other Benches of the Tribunal? ^

{ Judgement of the Bench delivered by Hon'ble Mr. B.N.Jayasimha,
 Vice-Chairman(A) }

The applicant who retired as a Librarian in the Delhi College of Engineering has filed this application seeking the following directions:

- (1) To declare that the Applicant is entitled to retire on attaining the age of 60 years and that he is deemed to be in the service of the Delhi Administration from 1.7.1986 with all the back wages and other consequential benefits.
- (2) In the alternative to direct the Respondents to pay the Applicant the due pension and other pensionary benefits with interest at 18% from 1.7.1986 till payment on arrears of pension and pensionary benefits.
- (3) Any other relief as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.

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2. The applicant states that he was appointed as Librarian in the Delhi Administration on 19.5.52. He was selected by the U.P.S.C. for the post of Librarian in the scale of Rs.350-575 in the Delhi College of Engineering and he joined the post on 11.10.1965. The Delhi College of Engineering is affiliated to the University of Delhi and all orders and rules governing the University also apply to the Delhi College of Engineering, even though it is run by the Delhi Administration. The age of superannuation of the Librarian in the Colleges affiliated to the University of Delhi is 60 years and ^{not} 58 years. In a statement on 3.1.1984 the Chief Secretary told the Members of the Staff Association that the Central Government had accepted the demand of the employees for raising the age of superannuation to 60 years. The applicant submitted a representation on 24.6.1986 to the Chief Secretary requesting that an early decision be taken on the age of superannuation. Ignoring the assurance given by the Chief Secretary, the Principal, Delhi College of Engineering issued Office Order No.4186 dated 10.1.1986 directing that the applicant shall retire on 30.6.1986 after attaining the age of 58 years. The Principal who is inimically disposed towards him, relieved the applicant without settling the pension and other pensionary benefits

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due to the applicant, ^{The appl. sent} submitted his pension papers in

February, 1986 but no action was taken. Later, the applicant submitted another application in December, 1986. Even then, even provisional pension has not been sanctioned.

3. In the meantime, the Principal instituted disciplinary proceedings against him through his letter dated 11.4.1986. This cannot be a ground for not sanctioning him the pension. Aggrieved by the action of the Principal, he has filed this application.

4. In their reply, the respondents say that the Delhi College of Engineering is a Government Institution under the control of the Delhi Administration and is affiliated to Delhi University for academic purposes only. All the orders/directions/rules issued by the Delhi University for the faculty of technology are applicable to the Delhi College of Engineering for the academic purposes only. All the employees are Central Government employees working in the Union Territory of Delhi and they are governed by the service regulations of the Govt. of India as extended to Delhi Administration. Although the proposal to raise the age of retirement to 60 years has been sent to the Govt. of India, no orders have been issued by the Govt. of India in this matter.

No representation made by the applicant in regard to the

13

age of retirement as stated by him has been received by the respondents. The applicant was directed to contact the Head Clerk (Pension) for getting his pension papers prepared but he did not contact in spite of reminders sent to him. A complete set of pension papers were sent to him on 15.5.86 and in spite of further reminders, the applicant did not submit the pension papers. He was called to the office on 10.12.86 and another set of papers were given to him which he submitted on 24.12.1986. He was thereafter sanctioned provisional pension in view of pending disciplinary action. The disciplinary case is in process before the Commissioner for Departmental Enquiries of the Central Vigilance Commission. The delay in granting provisional ^{pension} / was due to the fact that there were many shortcomings and errors in the papers submitted by the applicant and he was personally informed a number of times to rectify the same. In the meantime, it was decided that all pension cases of employees retiring after the implementation of the recommendation of the IV Pay Commission were to be submitted in accordance with the new Pension Rules which were received in the office of the respondents in the first week of May, 1987 and accordingly the pension papers according to the new rules could be sent

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- 5 -

to the Pay & Accounts Officer in June, 1987.

5. We have heard the learned counsel for the applicant and the learned standing counsel for the respondents.

The first point for consideration is whether the applicant

BNI ^{is to} ^{continue in service} until he attains the age of 60 years. Admittedly the applicant is governed by the service rules applicable to the employees of the Delhi Administration and no orders have been issued enhancing the age of retirement to 60 years as in the case of the employees under the Delhi University. Merely because the Delhi College of Engineering is affiliated to the Delhi University, it cannot be said that the service conditions applicable to the employees of the Delhi University are also applicable to the employees of the Delhi College of Engineering. We, therefore, see no merit in the case ^{point} and reject it accordingly.

6. The next point is about the delay in sanctioning the provisional pension. In the course of the argument the learned counsel for the respondents had stated that provisional pension has been sanctioned by an order issued on 28.8.1987. The learned counsel for the applicant however stated that the gratuity has not been released *BNI* to the applicant and it has been held by the Supreme Court

that gratuity cannot be withheld. Although there is no specific prayer in the application seeking release of the gratuity, he seeks a direction to the respondents to pay him the gratuity immediately. The Supreme Court in the case of D.V.Kapoor Vs. Union of India & others ((1990) 4 Supreme Court Cases 314) observed that Rule 9 of the Pension Rules empowers the President only to withhold or withdraw pension permanently or for a specified period in whole or in part or to order recovery of pecuniary loss caused to the State in whole or in part subject to minimum. The right to gratuity is also a statutory right and no provision of law had been brought to notice under which the President is empowered to withhold gratuity as well, after retirement as a measure of punishment. A similar view was taken in F.R.Jesuratnam Vs. Union of India & others (1990 (Supp) SCC 640). Applying these decisions we find that the gratuity payable to the applicant cannot be withheld on the ground of pending disciplinary proceedings. We accordingly direct that the gratuity amount should be paid to the applicant within a period of three months from the date of receipt of this order.

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- 7 -

7. The application is disposed of with the above directions with no order as to costs.

J. P. Sharma

(J.P.Sharma)
Member(J).

B.N. Jayasimha
(B.N.Jayasimha)
Vice-Chairman(A).

26-4-21