

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

O.A. No. 1376/1990  
T.A. No.

199

DATE OF DECISION 13.08.1990.

Shri K.K. Aggarwal Petitioner

Shri J.K. Nayyar, proxy Counsel Advocate for the Petitioner(s)  
for Shri M.L. Verma, Counsel  
Versus

Delhi Administration & Another Respondent

Shri A.K. Behra Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

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 ? *No*

### JUDGMENT (ORAL)

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

The applicant, who has retired from the service of the Delhi Administration on attaining the age of superannuation, filed this application seeking the following reliefs:-

- (i) for a direction to the respondents to release the gratuity and other retirement benefits to him within 2 months;
- (ii) for a direction to the respondents to give him the benefit of 5 years added service under Rule 30 of the CCS (Pension) Rules, 1972; and
- (iii) for a direction to the effect that the impugned order dated 25th July, 1989 passed by the respondents whereby they have turned down his request for permission to accept honorary

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position in the Deepak Memorial Hospital as Medical Superintendent, be set aside and quashed.

2. By way of interim relief, he has sought for a direction for interim payment of Rs.1 lakh to be adjusted against the final payments made to him in view of the impending marriage of his son. He has also prayed for an interim direction that he should be allowed to join as Medical Superintendent in the private Hospital.

3. The admitted factual position is that the applicant retired on 31.12.1988. At the time of hearing of this case today, the learned counsel of the applicant brought to our notice that the respondents have already taken a decision to release the final pension, retirement gratuity and commutation of pension to the applicant. This has not been denied by the learned counsel of the respondents. In view of this, the first-relief sought in the application has already been agreed to by the respondents.

4. With regard to the question of giving the benefit of 5 years added service under Rule 30 of the CCS(Pension) Rules, 1972, the learned counsel of the respondents stated that the particulars required to be furnished by the applicant are still awaited particularly the question whether the benefit is admissible in accordance with the Recruitment Rules as mentioned in the ~~sub-Rule (1A) of~~ <sup>2</sup> second proviso under Rule 30. The learned counsel of the applicant states that the particulars of the applicant as regards his Post Graduate Research are already available in his service record and that the Recruitment Rules will

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also be available with them.

5. After hearing the counsel of both parties, we direct that the respondents shall consider the case of the applicant for giving him benefit under Rule 30 of CCS (Pension) Rules, 1972, after obtaining the particulars, if any, from the applicant within a period of three months from the date of communication of this order. In case the applicant is found eligible for the benefit under Rule 30, the respondents are directed to revise the pension and the other retirement benefits admissible

to the applicant within one month thereafter <sup>and release the a</sup>  
<sup>same to him as</sup>

6. We are thus left with the third relief <sup>which is</sup> ~~that~~ is,

hotly contested between the two parties. The learned counsel of the applicant has drawn our attention to the language used <sup>on</sup> ~~under~~ Rule 10 of the CCS(Pension) Rules, 1972, <sup>which is</sup> According to which it is incumbent on the respondents to record the reasons for refusal "in the order". In the instant case, the respondents have informed the applicant to the effect that "his request for grant of permission to accept ~~xxxxxxx~~ position of Medical Superintendent in Deepak Memorial Hospital has been considered carefully in this Ministry. It is, however, regretted that his request cannot be agreed to".

(vide Annexure A-15, page 29 of the paper  
book)

7. It will be seen that no reasons for refusal to grant permission have been mentioned in the aforesaid letter. The

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learned counsel of the respondents stated that reasons have been recorded in the relevant file of the Department which he has volunteered to produce before us. According to him, there is some vigilance case pending against <sup>the applicant or</sup> him for some alleged irregularity in the matter of purchase of stores, while <sup>he is</sup> ~~the applicant~~ was in Government service. The learned counsel of the applicant stated that the reasons <sup>to be</sup> recorded in the file is not what is contemplated in sub-rule (2) of Rule 10 of the CCS(Pension) Rules, 1972.

8. After considering the rival contentions, we are not impressed by the arguments of the learned counsel of the respondents that the requirements of law would be met if the reasons are recorded in the file and it is not necessary to communicate the same to the applicant in writing. The language of sub-rule (2) of Rule 10 can be contrasted to the language contained in the second proviso(b) under <sup>& of the Constitution &</sup> Article 311(2) which refers to the requirement of recording reasons in writing. In that <sup>latter</sup> case, the department is not required to communicate the reasons to the person concerned and the reasons recorded in writing <sup>& in the departmental file &</sup> would meet the requirements of the law. As against this, in the instant case, the reasons recorded in writing <sup>are</sup> ~~are~~ required to be communicated in the order itself. The reason is that in case the person concerned is aggrieved by the refusal to grant permission, he can challenge the decision in a legal forum. If reasons are not set out in the order itself, he will be handicapped in seeking redress from a legal forum.

9. In view of the foregoing, we are of the opinion that the impugned memorandum dated 25th July, 1989 is not legally sustainable and it is accordingly set aside and quashed.

We, however, make it clear that the respondents will be at liberty to inform Deepak Memorial Hospital where the applicant has applied for an assignment, about the pendency of vigilance case <sup>against</sup> the applicant, if they so choose<sup>2</sup>.

10. The learned counsel of the applicant has also prayed that interest should be paid on the delayed payment of pension and retirement gratuity. We feel that the applicant should be given interest at the rate of 10% on the delayed payment of pension and other retirement benefits, ~~from~~ two months after the date of retirement.

11. The application is accordingly disposed of with the following orders and directions:-

(i) The respondents shall release <sup>or to the applicant</sup> the pension, retirement gratuity, commutation of pension and other retirement benefits, as expeditiously as possible, but in no event later than 2 months from the date of communication of this order. They shall also pay to the applicant interest at the rate of 10% on the retirement benefits from 1st March, 1989 till the date of payment.

(ii) The respondents are directed to consider the request of the applicant for giving him the benefit of added years of service under Rule 30 of the CCS(Pension) Rules, 1972. They may obtain any particulars required in this behalf including the relevant recruitment rules mentioned in Rule 30. The decision in this regard shall be

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taken within a period of three months from the date of communication of this order. In case he is found eligible for the benefit under Rule 30, the respondents shall revise the pension and other retirement benefits admissible to the applicant within one month thereafter and release the same to him.

(iii) The impugned order dated 25th July, 1989 is set aside and quashed. The applicant will be at liberty to seek employment in Deepak Memorial Hospital as Medical Superintendent or elsewhere without permission from the respondents and the respondents will be at liberty to inform them about the pendency of the vigilance case, if they so choose.

There will be no order as to costs.

Let a copy of this order be given to both the parties.

  
(D.K. CHAKRAVORTY)  
MEMBER (A)

  
(P.K. KARTHA)  
VICE CHAIRMAN (J)