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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

....

O.A. No. 454/91 with
M.P. No. 1690/91
Shri H.R. Ghera

Date of decision: 14.8.91
Applicant

vs.

Union of India

Respondents

PRESENT

Shri S.S. Tewari, counsel for the applicant.

Shri P.P. Khurana, counsel for the respondents.

CORAM

Hon'ble Shri Justice Ram Pal Singh, Vice-Chairman
(J).

Hon'ble Shri D.K. Chakravorty, Member (A).

(Judgment of the Bench delivered by Hon'ble
Shri Justice Ram Pal Singh, Vice-Chairman (J).)

J U D G M E N T

The applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985 (hereinafter referred as 'Act') against the respondents to quash the order dated 29.8.90 passed by the respondents by which the applicant has been informed that a de novo enquiry under Rule 14 of the CCS (CCA) Rules 1965 is to be held against him.

2. The applicant was working as Senior Assistant Director of Accounts in Fertilizers Accounts Wing of the Department of Fertilizers under the Ministry of Agriculture, New Delhi. The applicant was issued a charge-sheet on 30.4.87 that there are certain irregularities in the bills of L.T.C. submitted by him for the year 1982-83 and in consequence of the enquiry, the applicant was compulsorily retired by way of penalty on 4.10.88. The applicant challenged that retirement before this Tribunal in O.A.No. 2149/88 which was allowed by the Tribunal and the penalty imposed was

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quashed. But while disposing of the O.A., observations were made that the disciplinary authority may, if so advised, start the enquiry afresh. The judgment delivered by the Bench on March 20, 1990 was implemented and the applicant was allowed to resume his duty and was given promotion retrospectively as Sr. Assistant Director of Accounts with effect from 10.4.86. He retired on attaining the age of superannuation on 31.8.90.

3. By the impugned order (Annexure A) de novo enquiry has been started, but the gratuity-cum-retirement benefits have not been given to the applicant. Hence this O.A.

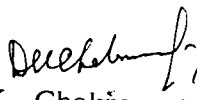
4. When the de novo enquiry started, the applicant participated in the enquiry and appeared before the Inquiry Officer, Shri R.K. Gaur, and raised an objection that the enquiry proceedings cannot be completed unless the material documents are produced. The Inquiry Officer directed the Presenting Officer to make available the relevant documents for the purpose of completing the enquiry, but the Presenting Officer was not in a position to make available the additional documents in view of their Confidential letter No. 1/2/86-Estt.(Vig) dated 2.4.91. Therefore, the Inquiry Officer decided not to hold any further hearing in the subject case. This order of the Inquiry Officer is at Annexure MP-II. This order has not been refuted by the respondents. In view of this order, there remains no enquiry pending against the applicant. The law on the point has been settled in the case of D.V. Kapoor vs. Union of India (AIR 1990 S.C. p. 1923). For convenience, the observations of the apex court are reproduced:

"R. 9 of the 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 employee's right to pension is a statutory right. The measure of deprivation, therefore, must be correlative to or commensurate with the gravity of the grave misconduct or irregularity as it offends the right to assistance at the evening of his life as assured under Art. 41 of

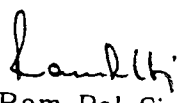
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the Constitution. The exercise of the power by the President is hedged with a condition precedent that a finding should be recorded either in departmental enquiry or judicial proceedings that the pensioner committed grave misconduct or negligence in the discharge of his duty while in office, subject of the charge. In the absence of such a finding, the President is without authority of law to impose penalty of withholding pension as a measure of punishment either in whole or in part permanently or for a specified period, or to order recovery of the pecuniary loss in whole or in part from the pension of the employee, subject to minimum of Rs. 60/-."

5. In the case of D.V. Kapoor the facts and circumstances were different from the facts of the present case, as in the present case the Inquiry Officer has closed the enquiry because the Presenting Officer refused to produce the confidential documents. It amounts to that no enquiry is pending against the applicant by virtue of order datd 22.4.91. It is thus clear that there was no finding that the applicant did commit grave misconduct so charged with. Therefore, the exercise of power by the President will be illegal in the absence of jurisdiction if the death-cum-retirement gratuity and pensionary benefits are withheld. It is settled that withholding of the gratuity payable to the employee after retirement will be a measure of punishment. Right to gratuity is a statutory right and the President is not empowered to withhold the gratuity after retirement. As the enquiry against the applicant is no more pending, the respondents are liable to make the payments of all pensionary benefits and gratuity amount to the applicant. Consequently, this O.A. and M.P. are allowed and the respondents are directed to make the payment of all the pensionary benefits and the entire amount of gratuity to the applicant according to rules within three months from the date of the receipt of this order. Parties are directed to bear their own costs.


(D.K. Chakravorty)

Member (A)


(Ram Pal Singh)

Vice-Chairman (J)