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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1434/2004

New Delhi this the 4th day of June, 2004

Hon'ble Shri Sarweshwar Jha, Member (A)

Shri S.C. Aggarwal,
Section Officer, Admin.I (Retd.),
H.No. 1/4918, Gali No.6,
Balbir Nagar Extension,
Shahdara, New Delhi.

..Applicant

(By Advocate Shri B.K.Berera)

VERSUS

1. Union of India (Through Secretary)
Ministry of Home Affairs,
New Delhi.
2. Director General, B,S,F,
Block No.10, 5th Floor, CGO Complex,
Lodhi Road, New Delhi.

..Respondents

O R D E R (ORAL)

Heard the learned counsel for the applicant.

2. It is observed that the applicant had retired on attaining the age of superannuation on 30.6.2003, but he was not paid his retiral dues, i.e., pension, DCRG, CGEGIS, Leave encashment, pension arrears and commuted value of pension. Hence this OA.

3. It is further observed that the respondents have since granted provisional pension to the applicant vide their order dated 4.4.2003 (Annexure A.1). They have also sanctioned, in the meantime, payment of Insurance and Pension Fund in respect of the applicant vide their order dated 12.4.2004 (Annexure A-IV). However, actual payment has not been made by the respondents against the sanction so far.

Sarweshwar Jha

As regards leave encashment, it is observed that the matter was held up for want of details of the number of days of leave that had been availed and the number of days standing at his credit. This information seems to have been furnished by the concerned section, as it is indicated in the Note placed at Annexure A-V. The respondents could now issue the necessary sanction and also release payment of the amount due to the applicant on account of leave encashment of the said number of days of earned leave standing to his credit. On the question of withholding gratuity which is yet to be paid by the respondents to the applicant, learned counsel for him has cited the decision of the Hon'ble Gujrat High Court given in Gujrat State Road Transport Corporation Vs. Devendrabhai Mulvantrai Vaidya (2004(2) ATJ 127) on 15.7.2003 in which, among other things, it has been held that "withholding of gratuity on the ground that services of the employee can be terminated on account of disciplinary action pending against him not sustainable". In this connection, the learned counsel for the applicant has submitted that while an FIR had been lodged against the applicant for unauthorised entry into Cashier's Room of Admn.III Section and for having stolen an amount of Rs.98,627 from the treasury chest and as result of which the applicant remained under Police remand for three days from 3.1.99 to 5.1.99 which led to his having been placed under suspension, is still pending before the learned Metropolitan Magistrate, Delhi, though he made a request for revocation of his

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suspension as explained in Para 4.7 of his OA, he retired in the meantime on 30.6.2003. The submission of the learned counsel for the applicant is that neither the chargesheet nor the disciplinary proceedings had been initiated against the applicant and accordingly, as held by Hon'ble High Court of Gujarat, the amount of gratuity could not have been withheld in his case. He has also cited the decision of the Hon'ble Allahabad High Court in Writ Petition No. 1189(S/B) of 2002 in the case of Bangali Babu Misra Vs. State of UP and Ors. (2004 (2) ATJ 63). decided on 5.12.2002 in which, among other things, it has been held that withholding of retiral benefits on account of pendency of criminal proceedings cannot be sustained if such proceeding has been pending against the applicant.

4. It is thus observed that while major part of the retiral benefits have already been processed and sanctioned, the position in regard to withholding of gratuity has been explained by the applicant as referred to hereinabove, in which connection reliance has been placed on the decision of the Hon'ble High Court as submitted above. Under these circumstances, the proper course would be that since the benefits have already been processed and sanctioned, the same be released to the applicant without any further delay. As regards release of amount of gratuity, the respondents could be directed to look into the matter with reference to the decisions of the Hon'ble High



Courts as relied upon by the applicant to resolve the matter in that light.

5. Under the facts and circumstances of the case, I am of the considered view that this OA can be disposed of at the admission stage itself without issuing notice to the respondents or awaiting reply from them with a direction to release the amount of insurance immediately to the applicant, as the same has already been sanctioned by them. They are also directed to release the leave encashment amount on the basis of the number of days available at his credit. As regards the amount of gratuity, the respondents are directed to refer to the decisions of the Hon'ble High Courts as mentioned above and dispose of the matter accordingly.

6. With these observations and directions, the OA stands disposed of.

 
(Sarweshwar Jha)
Member (A)

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