

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 470/2004

New Delhi, this the 10th day of September, 2004.

Hon'ble Shri Sarweshwar Jha, Member (A)

Shri N.S. Kain,
S/o late Shri B. Singh
R/o 15, Delhi Admin. Officer Flats,
GK Part-I,
New Delhi-110048. ... Applicant

(By advocate Shri M.K. Bhardwaj)

Versus

Union of India & Ors. through

1. Secretary,
Govt. of India,
Ministry of Home Affairs,
North Block,
New Delhi – 11
2. Chief Secretary
Govt. of NCTD
5, Sham Nath Marg,
Delhi-54. ... Respondents

(By advocate Ms. Jyoti Singh)

O R D E R

Heard.

2. This OA has been filed with prayers that the respondents be directed to release the amount of DCRG and pension commutation due to the applicant with interest thereon @ 18 % p.a.

3. The facts of the matter, briefly, are that the applicant, a Grade-I (Selection Grade) Officer of DANICS, was Director (Slum & JJ) in Municipal Corporation of Delhi on deputation from the Government of NCTD w.e.f. 20-10-1995. While on deputation, he was placed under suspension on 19-5-1997. Working as Director (Slum & JJ) in

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MCD, he implemented and ordered for demolition, passed, by the Commissioner, MCD on 2-11-1995, of unauthorized construction of residential-cum-commercial building at Dakshinpuri, Delhi. Thereafter, the work relating to demolition was taken away from him vide an order dated 6-2-1997 and entrusted to one Shri Manjlt Singh, Joint Commissioner (Slum & JJ) and that the applicant was designated as Director (Administration). It transpires that the said demolition led to filing of a suit by one of the occupants of a unit no. 18/563 of the said building for a stay of further demolition in the court of Learned Civil Judge, but it was dismissed on 6.3.1997 for default on the part of the plaintiff in the said case. Apprehending further demolition, one of the occupants of the said building also filed an FIR with the CBI on 26-4-1997. The applicant has claimed that the said FIR was false, in which it had been alleged that one of the occupants in the said building had allegedly contacted him (the applicant) on 26-4-1997 at his residence. This led to the CBI attempting a trap case on the applicant on 26-4-1997, which however failed. The CBI is reported to have conducted another raid at his residence and bank lockers. While the applicant has claimed that he explained the source of the money which was found during the raid at his residence, as explained in paragraph 4.8 of the OA, he was arrested and kept under custody for more than 48 hours, which led to his having been placed under deemed suspension vide order dated 19.5.1997, which was made effective from 26-4-1997. Obviously, it was a case of possession of wealth by the applicant disproportionate to his known sources of income. While an appeal/representation was filed by him on 10.10.1997 against suspension and also against his involvement in a false criminal case, he had already been relieved and repatriated to Government of NCTD vide order dated 30-4-1997 (Annexure A-14). The applicant has, therefore, contended that, with his having been divested of the post of Director (Slum & JJ) in MCD on the date of the order of his suspension, it could not have been apprehended that he would have derailed any investigation. He has argued



that his deemed suspension could have been revoked with his repatriation to the Government of NCT of Delhi which took place on 19.5.1997. In any case, continued suspension of the applicant led to his family being subjected ^{to} untold financial hardship and mental agony. It also affected the education of children adversely and marriage of two daughters of marriageable age also being adversely affected. No doubt, his prestige in the society also suffered.

4. Accordingly he filed an OA 2081/1998 in this Tribunal seeking revocation of the suspension order and consequential reliefs. Filing of the said OA led to filing of a chargesheet by the respondents in the court of learned Special Judge, Delhi on 13.11.1998 under Section 7, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. While the respondents in reply to the said OA pleaded that it would not be appropriate to revoke the suspension of the applicant till the criminal case filed by the CBI against him was decided by the court, the Tribunal dismissed the OA, mainly relying the judgement and order in OA 1277/1998 passed on 13-5-1999, as interpreted by the applicant. According to him, his case was different from the case dealt with in the said OA. He has given details of the views taken by the respondents in the said case and also their having taken the position that he was likely to tamper with the evidence and also likely to influence the witnesses in case the suspension was revoked. He accordingly filed an RA in the Tribunal on 25-6-1999 making the said submissions. However the RA was dismissed on 13-10-1999 whereafter the applicant submitted a representation to the Joint Secretary (Union Territory), Ministry of Home Affairs, Government of India on 22-11-1999 against non-revocation of suspension and praying for his reinstatement in service. The representation also was rejected by the respondents vide a letter of the Ministry of Home Affairs dated 3-4-2000 conveyed to the applicant vide letter dated 17-4-2000. It has been alleged by the applicant that the respondents did not apply their mind to his representation before they rejected it. The



applicant filed a CWP in the Hon'ble High Court of Delhi on 31-3-2000 seeking quashing of the impugned judgement and orders of the Hon'ble Tribunal dated 19-5-1999 dismissing the OA 2081/98, quashing the order of the respondents placing him under deemed suspension and further directing the respondents to revoke the order dated 19-5-1997 placing the applicant under deemed suspension w.e.f. 26-4-1997, with all consequential benefits. The writ petition was disposed of by the Hon'ble High Court vide their order dated 31-7-2002 (Annexure-A17) observing that the order continuing the suspension of the applicant can be impugned before the Central Administrative Tribunal and that the applicant shall be at liberty to approach the Hon'ble Tribunal in this regard in accordance with law.

5. The applicant accordingly approached the Tribunal with OA 2012/2000 making the prayers as explained in paragraph 4.35 of the OA. The OA was disposed of by the Tribunal with a direction to the respondents to review the suspension of the applicant having regard to the rules and also after granting a hearing to the applicant within one month from the date of service of the order. As per the directions of the Hon'ble Tribunal dated 28-3-2001, the applicant filed a representation dated 10-5-2001 with the respondents. While so doing, the examples of Ms. Runu Ghosh and Shri Virender Singh, IAS were specifically given, seeking the same relief. But this time again the representation was rejected vide an order dated 23-5-2001. The applicant again submitted a representation dated 9-11-2001 against non-revocation of suspension and for his reinstatement in service. This was also rejected vide order dated 20-2-2002. Then came OA 1107/2002 with similar prayers. This OA was allowed by the Tribunal vide their order dated 31-12-2002 whereby order of suspension and subsequent order passed on review were quashed and set aside. The applicant was treated as on duty from 2-5-1997 till date and entitled to all consequential benefits, including pay and allowances, excluding subsistence allowance paid to him. This was not to preclude the

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respondents, if so advised, from passing appropriate order in accordance with law. The respondents, not being satisfied with the said order, filed a WP 2430/2003 before the Hon'ble High Court, in which, on 7.4.2003, the following order was given:-

"Mr. Tikku who has put in appearance on behalf of the respondents prays for some time to file reply to the application. Let him do so within three weeks Rejoinder affidavit, if necessary, maybe filed within a week thereafter.

List the application for hearing on 22-5-2003.

In the meanwhile, the operation of the impugned order is stayed to the extent it seeks to direct that the respondent shall be treated on duty from 2-5-1997 till the date of the impugned order. We, however, clarify that the respondent shall be paid within four weeks from today all the pensionary benefits, to which he is entitled to, as it is stated by Mr. Tikku and that the respondent has since retired."

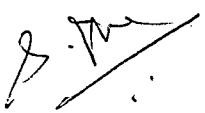
6. In its final order, the Hon'ble High Court on 16-10-2003, following the judgement of the Hon'ble Supreme Court in the case of UOI vs. Rajiv Kumar and Anr. (2003) 6 SCC page 516, remitted the OA back to the Hon'ble Tribunal to decide such cases which were not covered by the case of Rajiv Kumar, with the following observations/directions :-

"We feel that it may not be fair on our part to give any such direction. Nonetheless, in order to cut short the life of litigation, without commenting on the merits of the submission, we permit the respondent to bring to the notice of the Tribunal any events which have taken place during the pendency of this WP. We are confident that it considered relevant the same shall be taken into account by the learned Tribunal while taking a fresh decision on respondent's original application. We say no more on this aspect, except to add that the interim orders by this court will not preclude the respondent from seeking appropriate directions from the Tribunal.

The writ petition and the application for interim relief stand disposed of. Copies of the order be issued dasti to learned counsel for the parties."

The Hon'ble Tribunal heard the said OA, namely, 1107/2002 on 29-1-2004, on which date the counsel for the applicant withdrew the OA with liberty to file a fresh application taking all legal and factual pleas available in law pertaining to the controversy as raised in the OA including the suspension order.

7. In the meantime, the applicant had retired on superannuation w.e.f 31-3-2003. The respondents having not released the full retiral benefits of the applicant due to him and there being no disciplinary enquiry pending against him nor a criminal case



Involving any allegation of causing pecuniary loss to Government, the applicant has contended that the gratuity cannot be forfeited/stopped as a penalty. In this regard, he has referred to the decisions of the Hon'ble Supreme Court in the case of D.V. Kapoor vs. UOI & Ors. (AIR 1990) SC page 1923, in which the following observations have been given by the Hon'ble Apex Court :-

"Rule 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 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 the Constitution. The impugned order discloses that the President withheld on permanent basis the payment of gratuity in addition to pension. The right to gratuity in addition to pension. The right to gratuity is also a statutory right. The appellant was not charged with nor was given an opportunity that his gratuity would be withheld as a measure of punishment. Therefore, the order to withhold the gratuity as a measure of penalty is obviously illegal and is devoid of jurisdiction."

The respondents, in reiterating some of the things relating to the facts of the case as already submitted by the applicant, has submitted that the CBI had registered a case against the applicant on the basis of the recovery made at the time of searches at his residence, which led to recovering assets disproportionate to his known sources of income. That led to detention of the applicant in police/judicial custody from 26th April to 1st May 1997, for a period exceeding 48 hours and he was thus deemed to have been placed under suspension w.e.f. 26-4-1997 in terms of Rule 10(2) of CCS(CCA) Rules 1965. Chargesheets were filed against the applicant in the competent Court by the CBI on 13-11-1998 and the 24-12-1999. According to them, the trial in both the cases is in progress. Suspension of the applicant was reviewed by them from time to time in accordance with the instructions of the Government on the subject and was continued through speaking orders referring to the decisions of the Tribunal in OA 1107/02 dated 31.12.2002 whereby the order of suspension and subsequent orders passed on review

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were quashed and to the decisions of the Hon'ble High Court of Delhi in CWP 2430/03 dated 7-4-2003 whereby the respondents were directed to pay pensionary benefits as were payable to him, the respondents have submitted that they have sanctioned provisional pension @ Rs.9760/- per month to the applicant w.e.f. 1-4-2003. Other retiral benefits, namely, Group Insurance, Leave Encashment and balance amount in the GPF account were also paid to him. However, he could not be paid gratuity and commutation of pension in view of the restrictions laid down in Rule 69(i)(c) of the CCS(Pension) Rules, 1972 and Rule 4 of CCS (Commutation of Pension) Rules, 1981. When the matter was remitted vide orders of the Hon'ble High Court in the writ petition on 16-10-2003 after receiving a report from the respondents on payments having been made, as submitted above, the present OA was filed by the applicant. Commenting on the merit of the case, the respondents have referred to the provisions under Rule 69 of the CCS(Pension) Rules 1965 which provides for payment of provisional pension in the event of departmental or judicial proceedings pending consideration/decision and also no gratuity being paid to Government servant until the said proceedings have been concluded and final orders given. There is a provision for releasing these payments subject to certain conditions. Reference has also been made to Rule 4 of the CCS(Commutation of Pension) Rules 1981 in regard to the restrictions on commutation of pension in the following words :-

"No Government servant against whom departmental or judicial proceedings as referred to in Rule 9 of the Pension Rules, have been instituted before the date of his retirement, or the pensioner against whom such proceedings are instituted after the date of his retirement, shall be eligible to commute a fraction of his provisional pension authorized under Rule 69 of the Pension Rules or the pension, as the case may be, during the pendency of such proceedings."

8. Learned counsel for the applicant in his written submissions submitted after the final hearing, as per the liberty given to him, making a copy of the same available to



the other side, has referred to some cases decided by the Hon'ble Tribunal as well as the Hon'ble Apex Court on the subject.

9. Gratuity can be withheld if disciplinary/criminal proceedings are pending against the Government servant. But at the same time it has to be borne in mind that a statutory provision is made with a certain objective. The objective of sub-rule (c) of Rule 69 has been, according to the applicant, considered by the Hon'ble Tribunal and the Hon'ble Apex Court in *catena* of cases. Relying on what has been held by Hon'ble Supreme Court in the case of D.V. Kapoor vs. UOI & Ors. in which it has been observed that the President has no power to withhold the gratuity as well as retiral benefits after retirement and that order to withhold gratuity as a major of penalty is illegal, a question has been raised by the applicant that when gratuity cannot be withheld as a major of penalty how it can be withheld during the proceedings. A reference has also been made to the need for production of two sureties to be able to get gratuity and leave encashment, as held in R.K. Gupta vs. UOI and Anr. in OA 1832/98 by the Hon'ble Tribunal dated 6-4-1999. A reference has also been made to the decisions of the Tribunal in OA 3157/2001 decided on 24.4.2002 with directions to the respondents to release leave encashment and DCRG to the applicant on production of two sureties. Similarly reference to OA 158/2003 having been decided on 17-3-2004 has been referred to by the applicant with a submission that the said OA was allowed by the Hon'ble Tribunal by relying upon the judgement of D.V. Kapoor vs. UOI & Ors. 1990 Vol.III SLR page 5. Decisions of the Hon'ble Supreme Court in F.R. Jesuratnam vs. UOI and others (1990 SCC page 640) have also been referred to to drive home the point that the Government has no right to withhold or forfeit the gratuity of Government servant.

10. It has been submitted by the applicant that the charge of having disproportionate assets which was the basis for launching prosecution, has been

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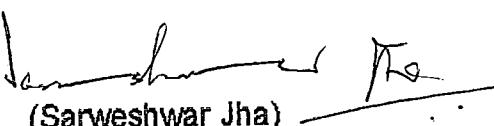
decided in favour of the applicant by the Income Tax Appellate Tribunal. It has been further contended by the applicant that as the Hon'ble Apex Court as well as the Hon'ble High Court have held that judicial decorum should be maintained by the Courts while deciding cases, the applicant is entitled to the relief as granted by them to similar cases.

11. Essentially, this case is founded on the fact that while the applicant has retired on superannuation while there was a departmental/criminal proceeding initiated against him and which has led to withholding of his gratuity and commutation of pension under the relevant rules of the CCS(Pension) Rules. The applicant has cited a number of decisions, as referred to hereinabove, in support of his claim and prayed that the gratuity and commutation of pension may be released to him as the said proceedings are still not concluded. His citing the decisions of the Hon'ble Apex Court to assert that the respondents have no right to withhold his gratuity and commutation of pension even under the rules and also in the light of the decisions of the Hon'ble Tribunal as well as the Hon'ble Apex Court has not been disputed by the respondents, even though the written submissions have been filed by the applicant on 12-8-2004 making available a copy to the learned counsel for the respondents. It is also quite surprising that though Rule 69 of the CCS(Pension) Rules 1965 provides for situations in which payment of gratuity 'shall be authorized to be paid to the Government servant, the respondents have not applied their mind to the question of releasing the gratuity amount to the applicant. The matter becomes all the more serious and painful when it is observed that both the departmental proceedings and the communal proceedings were inconclusive on the date of retirement of the applicant. While it is not abundantly clear from the written submissions made by the applicant whether the said proceedings have since been concluded, although it gives an impression that the same have been concluded in the meantime, I fail to understand how such a matter which had no end in

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sight could not have been resolved by the respondents under the provisions of the relevant rules and also in the light of the decisions of the Hon'ble Courts.

✓ 12. Having regard to the facts and circumstances of the case and also that the applicant has already retired on superannuation and further that there is no clarity in these submissions on whether the departmental/criminal proceedings have been concluded on the subject, I am inclined to dispose of this OA, keeping in view the decisions of the Hon'ble Courts,/Hon'ble Apex Court as referred to hereinabove, with a direction to the respondents to release the gratuity of the applicant and also the commutation of pension on production of two sureties by the applicant as allowed in the case of R.K. Gupta vs. UOI and Anr. in OA 1832/98 decided on 6-4-1999. The respondents shall ensure that the matter is disposed of as directed above within a period of three months from the date of receipt of a copy of this order. No costs. ✓


(Sarveshwar Jha)
Member (A)

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