

**Central Administrative Tribunal
Principal Bench**

OA No.2004/2004

New Delhi this the 1st day of June, 2006.

Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Mrs. Chitra Chopra, Member (A)

Raghubar Dayal,
S/o late Shri Ant Ram,
R/o D-16, West Jyoti Nagar Extension,
Street No.8,
Delhi-110094.

-Applicant

(By Advocate Shri None)

-Versus-

1. N.C.T. of Delhi,
through the Chief Secretary,
Secretariat, I.P. Estate,
New Delhi-110094.
2. The Director of Education,
Directorate of Education,
Old Secretariat,
Delhi.

-Respondents

(By Advocate Ms. Simran, proxy for Mrs. Avnish Ahlawat,
Advocate)

ORDER (ORAL)

Mr. Shanker Raju, Hon'ble Member (J):

By virtue of this amended OA, applicant who retired on superannuation on 31.5.2003 has impugned a memorandum issued under Rule 14 of the CCS (CCA) Rules, 1965 post retirement on 19.10.2004 as well as withholding of his retiral benefits.

2. Applicant who has been served two show cause notices earlier to his retirement for initiating an action under CCS (CCA) Rules,

1965 had retired on superannuation on 31.5.2003. A memorandum had been issued to him on the ground that he filed bogus LTC claim while availing LTC from 23.5.1998 to 11.6.1998. As a result of above, apart from provisional pension all retiral benefits due and admissible to applicant have been withheld.

3. None appeared for applicant even on the second call. We, therefore, invoke Rule 15 of the Central Administrative Tribunal (Procedure) Rules, 1987.

4. We have perused the pleadings in the OA, where it is stated that initiation of the proceedings against applicant was on 19.10.2004 on the charges pertaining to the year 1998 and 1999, which are more than four years old from the date of institution. Accordingly, post retirement enquiry for penalty of pension cut etc. is without jurisdiction. As such, withholding of retiral benefits is illegal and applicant is entitled to be disbursed his retiral benefits with interest.

5. On the other hand, learned proxy counsel appearing for respondents vehemently opposed the contentions and stated that appropriate steps are being taken by the Department to rectify the order issuing chargesheet subsequent to retirement without obtaining prior approval of the competent authority. Moreover, it is stated that applicant has been accorded provisional pension and as per rules on account of pending proceeding his retiral dues are withheld.




6. As per Rule 9 (2)(b) of the CCS (Pension) Rules, 1972 where the departmental proceedings are not instituted against a pensioner before his retirement the pre-conditions are institution with the sanction of the President and the proceedings should not relate in respect of any event which took place beyond four years before such institution. Rule 9 (6) of the Rules *ibid* provides initiation as deemed date when statement of charges is issued or government servant has been placed under suspension.


7. By way of implication of the Rules as applicant was not placed under suspension before his retirement the deemed date of institution of disciplinary proceedings would be the date when statement of charges is issued, i.e., 19.10.2004. It is admitted by respondents that the chargesheet was issued without approval of the President and the charges relate to the vacation when LTC was availed by applicant from 23.5.98 to 11.6.98, are clearly beyond four years of the date of institution. Accordingly, when pre-conditions are not satisfied the disciplinary proceedings instituted against applicant are *non est* in law and are without jurisdiction. As such, there is no reasonableness or occasion for respondents to have withheld the retiral dues of applicant.

8. In the result, for the foregoing reasons, OA is allowed. Impugned memorandum is set aside. Respondents are directed to calculate and disburse to applicant his unpaid retiral benefits with simple interest of 10% per annum after three months from the date of

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retirement till it is actually paid, within a period of two months from the date of receipt of a copy of this order. No costs.


(Chitra Chopra)
Member (A)


(Shanker Raju)
Member(J)

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