

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.2017/2004

New Delhi this the 21st day of December, 2004.

HON'BLE MR. SHANKER RAJU, MEMBER (J)

Dr. C.P. Thapliyal,
Ex-Readr of A&U Tibbia College,
Govt. of N.C.T. of Delhi,
R/o A-93, Raju Park Devli Road,
Khanpur,
New Delhi-110062.

-Applicant

(By Advocate Shri S.D. Raturi)

-Versus-

1. Hon'ble Lt. Governor of Delhi,
Government of N.C.T. of Delhi,
Rajpur Road,
Delhi.
2. Government of N.C.T. of Delhi,
through Chief Secretary,
Government of N.C.T. of Delhi,
Delhi Secretariat, I.P. Estate,
New Delhi-110002.
3. Government of N.C.T. of Delhi,
through Principal Secretary,
Health and Family Welfare,
Government of N.C.T. of Delhi,
Delhi Secretariat,
I.P. Estate,
New Delhi-110002.
4. The Director (I.S.M. & H),
A&U Tibbia College Campus,
Govt. of N.C.T. of Delhi,
Karol Bagh,
New Delhi-110005.
5. Joint Director (I..M.&H),
Government of N.C.T. of Delhi,
A&U Tibbia College Campus,
Karol Bagh,
New Delhi-110005.

-Respondents

(By Advocate Shri Rishi Prakash)

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ORDER (ORAL)

Applicant impugns respondents' order dated 7.8.2004, whereby excess amount of gratuity is being recovered from him.

2. By an order dated 23.8.2004 operation of the impugned order was stayed.

3. Applicant was working as a Reader in the pay scale of Rs.3700-5000 in Tibbia College.

4. The aforesaid college was taken over by an Act No.6 of 1998 by the Government of N.C.T. of Delhi w.e.f. 1.5.1998 and applicant retired on superannuation on 31.8.1998.

5. Applicant has claimed grant of pensionary benefits with interest.

6. Learned counsel of applicant Shri Raturi contended that as per the Act of taking over, clause 16 whereby the Tibbia College Act was repealed envisages as a proviso, as under:

"Provided further that subject to the provisions of this Act the repeal of the principal Act shall not render invalid any order, notice, notification, recovery or other thing issued or effected thereunder, before the day coming into force of this Act, nor shall it affect the enforcement of any liability incurred thereunder before the commencement of this Act."

7. Having regard to the aforesaid it is stated that after the notification of 14.6.95 vide notification dated 21.7.97 an amendment to Resolution 15-C of the pensionary benefits, including gratuity to the employees of the Tibbia College was to be regulated at par with the employees of Delhi University and accordingly the gratuity sanctioned is in consonance with the gratuity of a Teacher of Delhi University and the recovery is not tenable.

8. Moreover, it is contended that having accrued a right of pension on qualifying service under the notification of 1997 as the

Tibbia College has been taken over by the Government of N.C.T. of Delhi would not affect the pensionary benefits of applicant.

9. On the other hand, respondents' counsel contended that after the Take Over Act of 1997 the retiral benefits to employees retired after taken over of the Tibbia College have not been released, as no formal order to make applicable the pension rules upon the erstwhile employees of the Tibbia College has been made and the issue regarding counting of past service is pending. However to mitigate the hardship caused Finance Department has released the gratuity of applicant which is in consonance with the rules. However, it is stated that a decision is likely to be taken.

10. After considering the rival contentions of the parties and with due regard to proviso to repealing clause *ibid*, any right accrued by virtue of 1997 notification where gratuity is to be paid at par with the Delhi University employees having paid the same by coming into operation of the Take Over Act and repeal of Tibbia College could not have affected the right accrued in favour of applicant and his gratuity is to be operated as per the aforesaid clause.

11. As regards determination of pensionary benefits, as the matter is pending consideration before the Government, I earnestly hope that the same would be expeditiously resolved so that retiree should not suffer on account of withholding of his retiral benefits to which he would have been otherwise entitled to under the Tibbia College Act, 1952.

12. In the result, for the foregoing reasons OA stands disposed of with a direction to respondents to expeditiously finalize the issue regarding pensionary benefits to the employees who had retired

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after Take Over Act of 1997 and also to examine the issue of gratuity already paid to applicant. Till then respondents are restrained from effecting any recovery on account of payment of gratuity to applicant. No costs.

S. Raju
(Shanker Raju)
Member (J)

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