

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

(26)

C.C.P. No.202/93
in
O.A. No.57 of 1992

New Delhi, dated the 16th April, 1996

HON'BLE MR. S.R. ADIGE, MEMBER (A)

HON'BLE Mrs. LAKSHMI SWAMINATHAN, MEMBER (J)

Smt. R. Balamma,
D/o late Shri Rajam Iyer,
R/o 1042/Sector-3, R.K. Puram,
New Delhi-110022.
C/o Shri B.B. Rawal, Advocate. APPLICANT
(By Advocate: Shri B.B. Raval)

VERSUS

1. Shri R.K. Takkar,
Chief Secretary,
Delhi Administration,
Delhi.

2. Shri Shakti Sinha,
Director of Education,
Delhi Administration,
Old Secretariat,
Delhi.

..... RESPONDENTS

(By Advocate: None appeared)

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

This is a C.C.P. bearing No. 202/92 filed by Smt. R. Balamma, alleging deliberate and wilful disobedience by the respondents of the Tribunal's order dated 27.2.92 in O.A. No.57/92 Smt. R. Balamma Vs. Delhi Admn. & Anr.

2. By the order dated 27.2.92 the respondents had been directed to dispose of the applicant's representations dated 12.7.90, preferably within three months.

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3. That representation dated 12.7.90 is on the subject of payments claimed by the applicant from 1974 with consequential benefits as per CAT judgment dated 19.1.87. That representation refers to earlier orders passed by the Tribunal on 2.5.90 and refers to the respondents' reply to M.P. No.1248/88. It also refers to 7 annexures filed by the applicant to C.C.P. No.39/88. Furthermore it refers to OA No.646/88 to which the applicant had attached 843 annexures which she states would help the respondents in working out all her dues. The representation ends by awaiting immediate action within a month upon the applicant's pension and gratuity, which she alleges have been wrongly calculated by the respondents, in the absence of all consequential benefits as per order dated 19.1.87, and the outstanding dues with reference to departmental orders dated 20.3.78 and 3.4.78, and true verification of dues with records.

4. The respondents in their reply have denied any deliberate and wilful disobedience of the Tribunal's orders. They state that delay in replying to the applicant's representation occurred because this matter has a long history. The applicant had filed a number of cases in the Tribunal in which different orders were passed on different dates, but in her representation she just referred to MPs in different cases without annexing the orders. It has also been stated that as she had worked in different schools, details had to be collected from all

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the schools from 1975. It has also been stated that as far as HRA is concerned, she has already been paid arrears of Rs.18,400/- vide cheque No.A-7932 dated 14.6.93. It is further stated that from 19.3.83 she absented herself unauthorisedly till she superannuated on 30.6.86, and as disciplinary proceedings were pending against her she was not paid her pension amount ~~Rs.18,400/-~~, but as per interim directions of the Tribunal dated 7.6.91 in O.A. No.2237/90 she was being paid Rs.500/- p.m. as provisional pension subject to adjustment after her pay and pension were finally determined. It is further stated that after the proceedings were dropped, she has been allowed to cross her E.B. at the stage of Rs.750/- in the pay scale of Rs.550 - 900 raising her pay to Rs.780/- w.e.f. 1.5.77 vide orders dated 28.1.93. After crossing of E.B. her pay has been fixed with increments at Rs.900/- at the time of her superannuation on 30.6.86. It has further been stated that applicant is not entitled to stagnation increment because she reached the maximum of the scale in May, 1981 and would have completed two years in May, 1983 but she absented herself before that from March, 1983 and did not join duty at all till she superannuated. Since she never completed two years after reaching the ^maximum of the scale, the respondents stated that she is not entitled to stagnation increments. The respondents further state that now ~~that~~ her E.B. has been crossed and her last pay drawn fixed at Rs.900/-

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but her final pension has not been worked out as ^{she} has not submitted all her pension papers till date, but in view of the instructions of the Govt. of India that a minimum of Rs.375/- should be paid to an individual by way of pension, her pension has been fixed at Rs.375/- p.m. w.e.f. 1.7.86. However, as she has been given Rs.500/- p.m. she has already been paid excess, which is recoverable from her. It is further stated that the statements are ready from all the schools, where she has worked, and her outstanding arrears have been calculated and these statements shall be given to her in Court, as she otherwise refuses to accept them. It is further stated that she is entitled to Rs.18,454/- on account of arrears of pay and allowances from 26.5.75 to 18.3.83 after crossing of E.B. plus Rs.350/- on account of insurance etc., but the amounts need to be adjusted against overpayments made to her. It is further stated that vide letter dated 16.11.93 the applicant was informed by the last school where she was posted about the position regarding her dues, but in her reply she has called the letter as unwarranted and informed the school in categorical terms that she will not receive any letter from them in future. It is further stated that the applicant's pay and allowances have rightly been calculated from 26.5.75, as the period from 9.5.75 to 25.5.75 has been treated as extraordinary leave without pay. Her E.B. is also rightly crossed w.e.f. 1.5.77 as per her own annexure with the representation. Hence it has been contended

that no contempt of court has been committed by the respondents.

5. In the rejoinder filed by the applicant, besides contending that the reply has not been filed by the alleged contemnor but by the Administrative Officer of South District who is not a party, it is alleged that the respondents have been disobeying the Tribunal's orders since 1986. It is alleged that her representations have gone unreplied to since 1974, and it is further alleged that by not making prompt payments since 1974 and withholding pension and gratuity for long the respondents have violated rules. It is further alleged that a CAT order dated 18.3.93 to pay the applicant cost of Rs.200/- has also not been implemented, on which interest @ 24% is claimed, together with interest @ 24% on HRA since 1974. The applicant has denied that she was even authorisedly absent, and hence contends that the question of unauthorised absence and treating the period as die non does not arise at all. It is contended that the applicant reached a basic pay of Rs.750/- p.m. in May, 1975 and not in 1977, and after crossing E.B. in May 1976 her pay should be raised to Rs.780/- in May, 1976. Stagnation increments have been claimed from 1980 itself and it is stated that her pension

should be calculated ~~from~~^{for} 24 years from July 1962 itself. Hence the pension calculated by the respondents is alleged to be untenable and unacceptable. Furthermore it is contended that the applicant's pay should be Rs.2900/- on 1.1.86 as per 4th Pay Commission. It is contended that O.A. No.2239/90 is still pending and it is further contended that arrears have to be calculated from 1.5.75 and not from 26.5.75 upto 30.6.86 and not 18.3.83. It is also alleged that the respondents have committed various acts against rules and principles of natural justice, thereby causing harm to the applicant.

6. On 20.2.96 when the matter came up for hearing applicant's counsel Shri Raval stated ~~that he~~^{did not intend to argue as he} had made written submissions on the C.C.P. None appeared for the respondents that day. We have gone through the written submissions and the materials on record.

7. We note that the Tribunal's order dated 17.2.92 was to direct the respondents to dispose of the applicant's representation dated 12.7.90 preferably within three months. For a petition under the Contempt of Courts Act to succeed the petitioner has to establish that there has not only been disobedience on the part of respondents, but such disobedience has been wilful and deliberate. We have referred to relevant portions of the respondents' reply in some detail to examine whether indeed there has been any deliberate defiance of the Tribunal's order dated 27.2.92, and we are satisfied that there is no such wilful and deliberate

disobedience of those orders. The respondents have admitted to some delay in view of the fact that the applicant's case has a long history and she worked in a number of schools during her extended career. In any case the orders dated 27.2.92 itself gave no mandatory direction to the respondents to dispose of the applicant's representation within a specified time limit, but only said that it be disposed of preferably (emphasis supplied) within three months which cannot be construed to be a mandatory direction. The reply further makes it clear that the respondents have calculated the arrears owed by them to the applicant, and are ready to make payment, provided the applicant cooperates and accepts payment. These calculations have been made by the respondents on the basis of the rules and instructions as interpreted by them. It is open to the ^{applicant} ~~applicant~~ not to agree with ^{and canvass her own interpretation of the} those interpretations ^{rules,} but those grievances have to be agitated separately in appropriate proceedings in accordance with law, in which a foundation will have to be laid for the basis of those interpretations; affidavits will have to be exchanged; pleadings will have to be completed; and each such grievance adjudicated upon. A CCP is not the appropriate instrument for such purpose.

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8. Before parting with the case, one or two points may be noted. In their additional affidavit, the respondents had stated that the applicant had not submitted her pension papers till date (25.2.94). In her reply affidavit the applicant has filed extracts of the Tribunal's order dated 4.7.88 in CCP No.125/87 which indicates that the applicant had filed pension papers in prescribed proforma but without photographs and she was directed to hand over the photographs to the court officer within four days. Extracts of further orders dated 27.8.86 reveal that payment of provisional pension had been finalised although gratuity had been withheld because of a departmental enquiry against her. In their reply to that the respondents stated that the applicant was not cooperating in as much as she had not filed all the papers particularly Form V and VII which had to be verified by the applicant after confirming the details given therein for revision of her pension case. They stated that all other papers had been completed by the office except Form V and VII. The respondents further state that CP No.125/87 was ultimately dismissed on the same ground that she had not complied with the directions to submit her pension papers vide judgment dated 12.4.91 (Ann. RA-II). To that the applicant has filed a rejoinder stating that she had handed over the pension papers to the respondents in the Court of Hon'ble Justice J.D.Jain and Hon'ble Shri Birbal Nath and the specimen signatures of photographs were also

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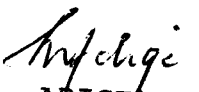
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handed over in open court which proves that Forms V and VII were also handed over. If indeed she has handed over the pension forms complete in all respects together with Forms V and VII duly filled in and the photographs, it is ~~open~~ to her to present herself at the office of the respondents during office hours on any date mutually convenient, invite their attention to those papers and accept payment of such sums as the respondents are willing to ~~release~~, and which are not in dispute, without prejudice to her claims for such additional sums which she feels are still owed to her, for which she may agitate separately through appropriate original proceedings in accordance with law, if so advised.

9. Subject to what has been stated above, this CCP No. 202/93 is dismissed and the notices against the respondents are discharged.


(LAKSHMI SWAMINATHAN)
Member (J)

/GK/


(S.R. ADIGE)
Member (A)