

(8)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

* * *

Date of Decision: 25.09.1992

OA 725/92

R.C. ARORA

... APPLICANT.

Versus

UNION OF INDIA & ORS.

... RESPONDENTS.

CORAM:

THE HON'BLE SHRI J.P. SHARMA, MEMBER (J).

For the Applicant

... SHRI J.C. JETLI.

For the Respondent No.1

... SHRI P.H. RAMCHANDANI.

For the Respondent No.2

... SHRI A.K. SRIVASTAVA.

1. Whether Reporters of local papers may be ^{Yes} allowed to see the Judgement ?
2. To be referred to the Reporters or not ? ^{Yes}

J U D G E M E N T

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J).)

The applicant is retired I.A.S. Officer and was working as Land Reforms Commissioner, Govt. of Bihar. He applied for voluntary retirement on 11.3.91 though his normal date of superannuation was 30.9.91. He also requested for relaxation of three months notice in view of the fact that the applicant contested the election of the Lok Sabha in the last general election. His request for voluntary retirement u.e.f. 31.3.91 was considered

9

and his request for relaxation of three months notice was also considered. He was granted voluntary retirement w.e.f. 15.4.91.

2. The grievance of the applicant is that his retirement terminal benefits have not been paid. In the application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has claimed the following reliefs :-

- (a) Payment of Cash equivalent of leave salary already sanctioned by Government of Bihar vide letter No.1/Li-107/87 Ka - 7298 dated 21st May, 1991. The applicant is entitled to this payment under Rule 20 B of the AIS (Leave) Rules, 1955. On retiring from service in accordance with sub rule (1) of the Rule 16 of the AIS (Death-cum-Retirement Benefits) Rule, 1958.
- (b) Sanction and payment of pension and issue of authority slip for payment of the same to the Applicant's through his S.B. Account No.633 in The Punjab and Sind Bank, 7, Siddhartha Enclave, New Delhi-110014. The applicant is entitled to sanction of Pension under Rules 16, 17, 18 of the AIS (Death-cum-Retirement Benefits) Rules, 1958.
- (c) Sanction and payment of commuted amount of 1/3rd pension and credit of the same to the Applicant's S.B. account No.633 in The Punjab and Sind Bank, 7, Siddhartha Enclave, New Delhi-110014. The applicant is entitled to this payment under Rule 25 of AIS (Death-cum-Retirement Benefits) Rules, 1958.
- (d) Payment of one-day's salary for 15.4.91 which could not be paid to the applicant for lack of authority from A.G. Bihar. The applicant is entitled to this payment under Rule 8 and 9 and 9A of the AIS (Pay) Rules, 1954.

Le

- (e) Sanction and payment of Gratuity. The applicant is entitled to get this amount under Rule 16, 17 and 18 of the AIS (Death-cum-Retirement Benefits) Rule, 1958.
- (f) Payment of T.A. bill of the applicant on retirement for the journey from Patna to New Delhi. The applicant is entitled to this payment under Rule 3 of the AIS (TA) Rules, 1954 read with Government of India M.H.A. letter No.16/15/60 AIS(II) dated the 27th October, 1960 and 3rd February 1962 and Govt. of India M.OF D.M. No.5(109)-E IV/57 dated the 11th July, 1960.
- (g) Payment of balance of Provident fund in Account No.IAS-64 BHR standing in the name of the applicant. The applicant is entitled to this payment under Rule 29 of the AIS (Provident Fund) Rules, 1955.
- (h) Payment of amount due under Group Insurance Scheme held in the account of the applicant. The applicant is entitled to this payment under All India Services (Group Insurance) Rules, 1981.
- (i) Payment of the T.A. Bill of Rs.942.85 paise which was credited to the Revenue Deposit because the Government had no funds in the month of March, 1991. The applicant is entitled to this payment under Rule 3 of AIS (TA) Rules, 1954.

3. When the case was taken up for hearing and arguments on 12.8.92, the applicant submitted a note regarding the outstanding retirement dues/terminal benefits, which remains still unpaid, which are as follows:-

<u>S.No.</u>	<u>TYPE OF DUES</u>	<u>SANCTIONED</u>	<u>PAID</u>	<u>REMARKS</u>
2.	Commutation of Pension	No	No	Rs.1333/-ie 1/3rd Pension was to be commuted.
3.	D cum R Gratuity	No	No	Total DCRG ie Rs. 1 Lac has been withheld without any valid order.

Le

....4.

4. Cash equivalent of leave salary Yes No Rs.71997/33 paisa has not been paid.
5. One day's salary for 15.4.91 and arrears due to sanction of a new slab of DA. Yes No A.G. Bihar issued the Authority Slip but Govt. of Bihar has not yet drawn and paid the amount which is approximately Rs.1757/-
6. Payment of TA Rs.942.85 Yes No The amount was credited in the treasury for lack of funds in March 91 and has not yet been paid.
7. TA Bill on Retirement Yes Yes
8. Group Insurance No No Govt. of Bihar had sent a wrong statement to GOI but vide letter No.7860 dated 21.7.92 sent the correct details. GOI has not yet paid.
9. Provident Fund(final) Yes No Copy of the sanction order said to have been issued as stated in the rejoinder by Respondent II not yet received nor the money.

The applicant has also claimed interest on unpaid amount as per rules. The applicant has impleaded Govt. of Bihar, A.G. Bihar, and Union of India as respondents.

4. The Union of India has only filed a formal reply that various claims of terminal benefits are to be given by respondents No.2 to 4. The respondent No.2, Govt. of Bihar through the Resident Commissioner, New Delhi, has filed a reply and stated that the answering respondent has already done what was due on its part. However, certain other things are to be done by respondents No.3 and 4, i.e. the A.G. Bihar, and Principal A.G. Bihar, unless that is done by those respondents, it is not possible that the

applicant receives the pension and other payments. The provisional pension has been sanctioned vide order dated 6.3.92 and final withdrawal of GPF has also been sanctioned vide order dated 20.7.91. However, payment of gratuity is held up due to pendency of departmental proceedings against the applicant with regard to serious charges levelled against the applicant:-

While the applicant was posted as Land Reforms Commissioner in the year 1988, he arbitrarily settled 0.234 acres of Khas mahal land with Midway Apartment Private Cooperative Society against the recommendation of D.M. Patna, and the applicant has been called upon to explain his conduct in the aforesaid matter which is pending consideration before the concerned authority.

Secondly, when the applicant was posted as Secretary, Forest, he arbitrarily promoted 39 Rangars to the post of Assistant Conservator of Forest without obtaining clearance from the Vigilance Deptt. The explanation has been called for from the applicant which is pending consideration before the concerned authority. The amount of gratuity shall be paid to the applicant the moment he is cleared off the aforesaid two allegations. The other respondents have not filed any reply.

5. I have heard the learned counsel for the Union of India as well as the State of Bihar. The provisional pension 100% has been granted to the applicant, which he

↓

....6.

has been paid on 29.6.92 i.e. about one year after his retirement. The commutation of pension and the DCRG has not yet been sanctioned nor granted. The cash equivalent of leave salary, one-day's salary for 15.4.91 and arrears due to sanction of a new slab of DA, and payment of TA Rs.942.85 have been sanctioned but the amount or payment has not yet been paid to the applicant. The Group Insurance claim has not yet been sanctioned nor paid. The Provident Fund (final) though it has been sanctioned but the amount has not been paid. Thus, the payment by respondents No.3 and 4 of the claim of cash equivalent/salary and one-day's salary for 15.4.91 and arrears due to sanction of a new slab of DA and final payment of GPF has been sanctioned, so the respondents No.3 and 4 have no right to withhold the payment subject to adjustment of Govt. dues from that amount. This ^{was} also not in controversy during the course of the arguments. Regarding the payment of Group Insurance claim, there is no justification to withhold the same. There appears to be some wrong statement by Govt. of Bihar to Govt. of India and the correct statement appears to have been since sent so the amount also has to be sanctioned and paid to the applicant, if not already sanctioned and paid. The question remains of the payment of commutation of pension and death-cum-retirement gratuity. Though final payment in the case of the applicant has not yet been sanctioned and the DCRG has also been withheld because of certain

allegations of misconduct alleged against the applicant of 1988 as well as of still earlier period. When the applicant was Secretary, Forest, in the Govt. of Bihar, the learned counsel for the Govt. of Bihar argued that under rule 6 of the All India Services (Death-cum-Retirement Benefits) Rules, 1958, this amount can be withheld. The said rule is reproduced below:-

*6. Recovery from pension.--(1) The Central Govt. reserves to itself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from pension of the whole or part of any pecuniary loss caused to the Central or a State Government, if the pensioner is found in a departmental or judicial proceedings to have been guilty of grave misconduct or to have caused pecuniary loss to the Central or a State Govt. by misconduct or negligence, during his service, including service rendered on re-employment after retirement :

Provided that no such order shall be passed without consulting the Union Public Service Commission;

Provided further that -

- (a) such departmental proceeding, if instituted while the pensioner was in service, whether before his retirement or during his re-employment, shall, after the final retirement of the pensioner, be deemed to be a proceeding under this sub-rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the pensioner had continued in service;
- (b) such departmental proceeding, if not instituted while the pensioner was in service, whether before his retirement or during his re-employment;
 - (i) shall not be instituted save with the sanction of the Central Government;
 - (ii) shall be respect of an event which took place not more than four years before the institution of such proceedings; and
 - (iii) shall be conducted by such authority and in such place or places as the Central Government may direct and in accordance with the procedure applicable to proceeding on which an order of dismissal from service may be made;

- (c) such judicial proceeding, if not instituted while the pensioner was in service, whether before his retirement or during his re-employment, shall not be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution.

Explanation - For the purpose of this rule:-

- (a) a departmental proceeding shall be deemed to be instituted when the charges framed against the pensioner are issued to him or, if he has been placed under suspension from an earlier date, on such date and
- (b) a judicial proceeding shall be deemed to be instituted --
- (i) in the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to the criminal court; and
- (ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made, to a civil court.

(2). Where any departmental or judicial proceeding is instituted under sub-rule (1), or where a departmental proceeding is continued under clause (a) of the proviso thereto against an officer who has retired on attaining the age of compulsory retirement or otherwise, he shall be sanctioned by the Government which instituted such proceedings, during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceeding, final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service upto the date of retirement, or if he was under suspension on the date of retirement, or if he was under suspension on the date of retirement, upto the date immediately preceding the date on which he was placed under suspension; but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceedings and the issue of final orders thereon."

6. The perusal of the above rule shows that a departmental proceeding shall be deemed to be instituted when the charges framed against the pensioner are issued to him or, if he has been placed under suspension from an earlier date, on such date.

Je

....9.

it is not the case of the respondents that the applicant has been served with a charge-sheet. The respondent No.2 in the reply has only stated that while the applicant was posted as Secretary, Forest, he has committed misconduct of promoting certain Rangars without any specific sanction from the Government or the Ministry concerned. Another misconduct alleged to the applicant is of the year 1988 when it is said that the applicant as Land Reforms Commissioner had arbitrarily settled certain land with Midway Apartment Private Cooperative Society against the recommendation of D.M. but till the date of his retirement on 15.4.91 the applicant has not been served with any charge-sheet.

7. The learned counsel for the applicant has referred to the case of Chandra Shekhar Prasad vs. State of Bihar Patna Bench, reported in 1989 (9) ATC 13. Where it is held that mere existence of certain allegations without formal charges does not constitute such proceedings and as such the applicant is entitled to regular pension. In this authority, the case of State of Kerala vs. M. Padmanabhan Nair (1985 (1) SCC 429) has also been relied upon. In that case, the Tribunal has ordered the payment of pension as well as the gratuity with interest @ 15% p.a. The All India Services (Death-cum-Retirement Benefits) Rules, 1958

referred to above, laid down the full procedure where the gratuity or any portion of the payment of a retired IAS can be withheld. Thus, the careful reading of the said provision goes to show that mere existence of certain allegations or irregularities and corruption, no matter how serious they may be, cannot constitute sufficient ground for delaying the process regarding the sanction and payment of pension and gratuity. No one can be punished on mere suspicion howsoever strong it may be. The following paragraph of the judgement of Chandra Shekhar Prasad's case is referred to :-

"It is thus evident that the mere existence of "certain allegations or irregularities and corruption", no matter how serious they may be, cannot constitute sufficient ground for delaying the process regarding sanction and payment of pension and/or gratuity. It is nobody's case that any charges were framed against the applicant either before or after his retirement. The law of the land is that no one can be punished on mere suspicion, howsoever strong it may be. It is much worse if an officer, who had earned several promotions during his long service and was holding a post in the super time scale at the time of his retirement, is made to suffer on mere allegations. In any case, the scheme of things visualised under the rules and procedure dealt with above, which have statutory force, does not give sanction for such withholding of action nor does it provide for condonation of delay on such account. Therefore, it must be held that the State Government represented by respondents 1 and 2 were not right in delaying the issuance of sanction orders for payment of pension and gratuity to the applicant on the ground mentioned in their written statement and, therefore, the applicant is entitled to the relief claimed against them."

8. The Union of India has not taken any serious objection to the payment of all these amounts. Respondents

No. 3 and 4, A.G. and Principal A.G. Bihar have not filed any reply. Thus, there is no bar to the payment of pension and gratuity to the applicant when there are no disciplinary proceedings pending against the applicant. The respondents are free to proceed against the applicant even after the payment of all these retirement benefits as per extant rules.

9. In view of the above facts, the present application is disposed of with the direction to the respondents:-

- (a) to grant final pension to the applicant, and
- (b) also allow the commutation of pension as per extant rules,
- (c) the balance amount of DCRG after deduction of the admissible dues of the Government be paid alongwith 12% interest three months after the pay of retirement of the applicant till the date of payment,
- (d) cash equivalent of leave salary, one-day's salary for 15.4.91, payment of TA etc. which have already been sanctioned be paid to the applicant within a period of three months from the date of receipt of this order,
- (e) the amount of Group Insurance claimed by the applicant be also paid,
- (f) the balance of the provident fund which had already been sanctioned be paid to the applicant alongwith

interest, as per extant rules.

The respondents to comply with the above directions within a period of three months from the date of receipt of a copy of this order. The application is allowed leaving the parties to bear their own costs.

J. P. Sharma
(J.P. SHARMA 25.9.92
MEMBER (J)