

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 12TH DAY OF DECEMBER, 2000

Original Application No.778 of 1995

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

Gyasi Ram, a/a 60 years
S/o Nakta Ram,
Retd.Labour(Token No.2213) at Central
Ordnance Depot at AGRA,
R/o Nagla Akbi, tehsil & district
Agra.

.. .. Applicant

(By Adv:Shri Anupam shukla)

Versus

1. The Union of India through
its Commandant Central ordnance
Depot at Agra.
2. The Chief Controller of
Defence Accounts(Pension)
at Allahabad.

.. .. Respondents

(By Adv: Shri Ashok Mohiley)

O R D E R(oral)

(By Hon.Mr.Justice R.R.K.Trivedi,V.C.)

By this application u/s 19 of A.T.Act 1985 applicant has prayed for a direction to the respondents to pay final pension with immediate effect with the arrears and an interest of 18% per annum. He has also prayed that the respondents may be directed to pay gratuity and leave encashment and other retiral benefits with interest.

The facts in short giving rise to this application are that applicant Gyasi Ram was serving as class IV employee in the office of Commandant Central Ordnance Depot at Agra. Applicant retired from service after completing the age of 60 years on 28.2.1995. The certificate of retirement has been filed as (Annexure 1). however, he has not been paid pension and other retiral benefits. Aggrieved by which he has approached this Tribunal.



In counter affidavit it has been stated that applicant was involved in a criminal case. He was detained in judicial custody for exceeding 48 hours hence he was put under suspension from 1.11.1978 to 16.12.1978 vide order dated 24.5.1979. The trial of the applicant was held in the court of III Additional Sessions Judge, Agra and he was convicted vide judgement dated 21.1.1981. he filed appeal in High court in which he was granted bail. The appeal is still pending and during pendency of appeal applicant has retired.

It has been further submitted that applicant is being paid a provisional pension of Rs.375/- per month but for regular pension no steps could be taken as appeal of the applicant is pending and the period of suspension can be regularised only after the appeal of the applicant is decided. Shri Amit Sthalekar has submitted that until the period of suspension is regularised applicant cannot be granted pension and other retiral benefits.

The learned counsel for the applicant on the other hand, submitted that as applicant has retired from service and he was not dismissed or removed he is entitled for pension which cannot be denied to him on the ground that period of suspension has not been regularised.

I have carefully considered the rival submissions made by the counsel for the parties. It is not disputed that no order was passed against applicant either dismissing or removing him from service and he was allowed to retire on 28.2.1995. No disciplinary proceedings were initiated against him which may be continued even after retirement.

The Department can initiate departmental proceedings against the applicant after retirement with the permission of Hon'ble the President of India under Rule 9(2)(b)(ii) of Central Civil Services (Pension) Rules 1972. However, ^{as per} the departmental proceedings so contemplated, ^{for} permission of

President should have been ^{obtained} initiated within four years. Admittedly, after retirement more than four years have already passed, the departmental proceedings cannot be initiated even after obtaining sanction of Hon'ble the President of India. Order of dismissal or removal cannot be passed with retrospective effect which is a settled legal position. In these facts and circumstances as no action is possible against the applicant with regard to his service which he ^{has} completed and retired, in my opinion he is entitled for the pension.


The respondents have raised that as the period of suspension has not been regularised he is not entitled for pension. In my opinion, this plea raised also cannot be accepted for the reason that suspension does not cause any discontinuation or break in the service. The legal consequence of the order of suspension is that applicant is not allowed to work on the post and he is paid suspension allowance as per rules which may vary from time to time. thus, even if the period of suspension remains unregularised, the pensionary benefits cannot be denied to the applicant. At the most, applicant could be deprived of the salary of the suspension period that too after full fledged departmental proceedings which had not been done in this case. In these circumstances in my opinion the stand taken by the respondents is not justified and there appears no legal hurdle in granting pension to the applicant with all retiral benefits for which he may be entitled.

Now the last question remains for awarding interest claimed by the applicant. However, as the applicant was involved in a criminal case u/s 147 IPC and has been convicted the delay on the part of respondents appears to be on the basis of their misconception ^{of legal position} mentioned above, and the delay is also not such that the interest may ~~not~~ be awarded to the applicant.

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The application is accordingly allowed. The respondents are directed to pay the applicant regular pension together with all retiral benefits within a period of four months from the date a copy of this order is filed before the Competent Authority. It is also made clear that the amount of provisional pension paid to the applicant shall be adjusted.

There will be no order as to costs.


VICE CHAIRMAN

Dated: 12.12.2000

Uv/