

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO. 1033 OF 1999

THIS THE 14TH DAY OF NOVEMBER, 2002

HON. MAJ. GEN. K.K. SRIVASTAVA, MEMBER-A

HON. MRS. MEERA CHHIBBER, MEMBER-J

Jai Ram Kamalyanshi,
s/o Late Sri Chhadi Lal,
r/o 128/813-D 'K' Block,
Kidwai Nagar,
Kanpur-208011 retired on 28-02-1998
as a Senior Scientific Assistant from
Controllerate of Quality Assurance Materials,
Kanpur, Ministry of Defence. Applicant.

((Applicant in person))

Versus

1. Union of India through Secretary,
Defence Production,
Ministry of Defence,
South Block,
New Delhi.
2. Director General of Quality Assurance,
Department of Defence Production,
Ministry of Defence South
Block,
New Delhi.
3. Director of Quality Assurance (Stores)
Department of Defence Production,
G - Block,
New Delhi.
4. Controller of Quality Assurance (Material)
Department of Defence,
Napier Road,
Kanpur.
5. Chief Controller of Defence Accounts (pension)
Allahabad. ----- Respondents.

(By Advocate:-Shri P.Mathur)

ORDER

HON. MRS. MEERA CHHIBBER, MEMBER -J

By this O.A the applicant has sought the following
relief(s).



1. "issue an order or direction in the nature of mandamus commanding these respondents to pay gratuity, leave encashment, benefit of pay commission including the extension of age from 58 to 60 years.
2. issue a writ, order or direction in the nature of mandamus directing the respondents to revoke the illegal deemed suspension order and allow to applicant to join his service and also to give all the promotions which are still pending.
3. issue a writ, order or direction in the nature of certiorari quashing this order dated 1.9.98 (Annexure A-2) pay gratuity with interest.
4. Award the cost of application to the applicant."

2. The brief facts as submitted by the applicant are that the applicant while working as Senior Scientific Assistant in Controllerate of Quality Assurance of petroleum, Kanpur, Ministry of Defence, was posted as an Incharge of the Grease Test House in 1989. On a complaint made by Association on 28.3.89 the applicant and Shri H.L. Gupta, Section officer were placed under suspension w.e.f. 12.9.1989. The grievance of the applicant is that when Shri Gupta superannuated on 31.10.1989 while he was still under suspension, he was released all the pensionary benefits like pension, gratuity, Insurance leave encashment etc., but the same has been denied to the applicant after he superannuated on 28.2.1998. Thus, he is being discriminated against. He was paid the pension only in January 1999 i.e. after 10 months to harass him. He has neither been given leave encashment, gratuity, nor benefit of pay commission as Pay Commission had recommended age should be enhanced from 58 to 60 years from 1.1.96. On the contrary, the letter dated 1.9.98 written by the CCDA to Bank of Baroda states that since the applicant is under deemed suspension, payment of DCRG is not to be paid (Annexure-8). It is further submitted by him that his suspension was revoked on 15.11.90 but after he and Sri Gupta were arrested on 3.4.91 by CBI on the allegation that they had changed the grease samples and had caused loss of Rs. 1.57 crores to the Government, he was placed under deemed suspension.

since 3.4.91. It is alleged by the applicant that CBI Inspector demanded money from him but he refused to give it, therefore, the CBI became prejudiced against him. Since his suspension was being prolonged unnecessarily, he filed O.A. no. 821/94, but the same was dismissed. Ultimately chargesheet was filed on 24.3.94 against 14 accused, out of which 11 were Government servants, but no other person was suspended and the respondents are trying to shield the actual culprits. Being aggrieved the applicant gave representation to release his retiral benefits (Annexure A-5), but till date no reply has been given.

3. His main grievance is when the retiral benefits of Shri H.L. Gupta have already been released and he is also involved in the same case, there is no justification to deny the same to the applicant as it amounts to violation of Articles 14 & 16 of the Constitution and he cannot be discriminated against.

4. The O.A. has been opposed by the respondents who have submitted that the O.A. is barred by rule 10-of CAT (procedure) Rules as he is seeking two totally independant relief(s) viz. extension of age from 58 to 60 years and revocation of suspension order.

5. On merits, they have submitted that as per rule 7 of the CDS (RP) Rules 1997 note 3 clearly stipulates that in case of Government servant under suspension, he shall continue to draw subsistence allowance based on the existing scale of pay and his pay in the revised scale of pay will be subject to the final order on the pending disciplinary proceedings. They have further explained that as far as grant of provisional pension is concerned. **Rule 33 of the CCS (Pension) Rules Note-3**



clearly stipulates that in case a Government servant is under suspension immediately before his retirement, the period whereof does not count as service, the emoluments which he drew immediately before being placed under suspension shall be the emoluments for the purpose. As for as withholding of gratuity is concerned, Rule-69 (1)(a) clearly stipulates that no gratuity shall be paid to the Government servant until conclusion of departmental or judicial proceedings and the issue of final order thereon. In this regard, it will not be out of place to mention that the applicant had already been superannuated w.e.f. 28.2.98 on the contrary the notification extending the age of superannuation from 58 years to 60 years was issued vide notification no. 25012/2//97/Estat. (A) dated 13.5.98 and as such the same has no bearing on the cases of superannuation taking place prior to issuance of the aforesaid notification and as such no benefit whatsoever accrues to the applicant under ibid notification.

6. They have further explained that no leave encashment is payable under rule 39 (3) of CCS Leave Rules, thus, the O.A. is devoid of merit. They have given details as to how Shri Guptal's retiral benefits were released by mistake. They have submitted that a complaint was received in the department alleging that the departmental investigation is being made into a sub-standard supply of Greace worth Rs.1.5 crores were being sabotaged by change of standard check samples in the laboratory at CQA (P), Kanpur. The investigation into the matter further reveals that the samples had, in fact, been substituted and, thus, prima facie the applicant Shri Jairam Kamalvanshi and Shri H.L. Gupta were placed under suspension vide order dated 12.9.1989. The aforesaid suspension order was, however, revoked on 15.11.90 by the competent authority. Since the matter was serious and as such it was decided at the competent level for further examination of the case by transferring to the Central Bureau of Investigation for detailed investigation into the matter. In this regard, it will be relevant to point

out that the CBI had arrested the applicant on 3.4.91 and had detained him for more than 48 hours for the investigation and as such the applicant was again placed under deemed suspension vide order dated 18.4.91. In this regard, it will be relevant to reiterate that the applicant's involvement in the criminal Act since *prima facie* had been established during the departmental investigation coupled with the fact that he had been arrested by the Central Bureau of Investigation for further investigation and as such after due consideration of the certain incriminating evidence against the applicant, the CBI had sought a permission from the Government to sanction for launching a prosecution alongwith the others involved individuals to proceed with the case. The aforesaid sanction was accordingly accorded vide order dated 17.12.93.

7. As far as Shri H.L. Gupta's case is concerned, they have explained that since H.L. Gupta had been superannuated and he was under suspension for less than two months and as such inadvertently as per the procedure his pension paper were processed much before the date of his suspension. However, as per the rules, Shri H.L. Gupta was entitled for only provisional pension and no other benefit like Gratuity, computed/commuted value of pension, leave encashment etc. is payable to Shri H.L. Gupta and as such a communication was sent by the Establishment where he was working to the concerned Bank to pay only provisional pension. Since the information as sent from the office of the Establishment was not received by the concerned Bank and as such the payment of commuted value of pension and DCRG was made to Shri H.L. Gupta on 1.12.89. On the recovery made by the CGDAP, Allahabad of commuted value of pension and gratuity from the pension, Shri H.L. Gupta had approached this Tribunal by filing an original application which was registered as O.A. no. 1816/92 H.L. Gupta Versus Union of India and others against such recovery. However, in view of the provisions as contained under Rule-9 of the CCS (pension)Rules which specifically contemplates that "the

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President reserves to himself the right of withholding a pension or gratuity or both either in full or in part of withdrawing a pension in full or in part whether permanently or for a specified period and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if any, any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service including service rendered upon re-employment after retirement." In view of the legal proposition as enunciated above, the Tribunal had partly allowed the application filed by Shri H.L. Gupta giving a liberty to the administration to start the proceeding for making deductions from the amount of pension of the applicant as per the rules. In this regard, it will be relevant to clarify that the recovery of already drawn inadmissible benefit by Sri Gupta can only be recovered after due sanction of the President after/on completion of the criminal case pending in the court of law. They have further explained that his case was periodically reviewed as per rules and in consultation with the Central Bureau of Investigation at appropriate level. But it was decided not to revoke his suspension. His subsistence allowance was, however, enhanced to the maximum. The case for placing other officials of DGQA organisation under suspension was also examined at the appropriate level and it was decided not to resort to further suspension because these officers were not working in the posts where they were working at the time of alleged commitment of irregularities/offences in 1990 and a period of four years had elapsed since then, Central Bureau of Investigation had not recommended for their suspension. As regards delay in payment of his pension, it was absolutely due to late submission of requisite pension forms by him despite repeated reminders as may be observed from our letters dated 11.7.97 and 04.12.97 and a form of pension dated 21.1.98 submitted by the applicant. They have, thus, submitted that the O.A. may be dismissed.



8. We have heard the applicant in person as well as the counsel for the respondents and have perused the record as well. At the outset, it would be relevant to mention here that after the objection was taken by the respondents regarding multiple relief(s), the applicant had not pressed the prayer 8(i) in this O.A. with regard to extension of superannuation of age and ~~had filed a separate O.A.~~ ^{1673/93} for that relief. That O.A. has been decided separately so in the present O.A., we only have to see whether his suspension was arbitrary and whether the respondents could have withheld his gratuity and leave encashment as per law or not.

9. As far as his suspension is concerned, the respondents have shown the applicant was arrested on 3.4.91 and remained in custody for more than 48 hours, so naturally rule 10(2) of CCS (gCA) Rules get attracted and he had to be put under deemed suspension. We do not find any illegality in the order by which he was put under deemed suspension. It is also stated by the respondents that his case was reviewed and the committee held that it was not a fit case for revocation of suspension as the charges against him were grave. Moreover, the applicant had already challenged his suspension by filing an O.A. no. 841/94 which was dismissed by the Tribunal on 28.7.95 (Annexure CA-IV) by observing as follows:

"The charges against the applicant are very serious as such we do not consider it appropriate to interfere with the order of suspension. We do not find from the record that the action is malafide, but the same is in keeping with public interest."

10. Once the Tribunal had already dismissed the O.A. of the applicant with regard to suspension, he cannot be allowed to reagitate the same issues again and again by filing different O.A.s. Even otherwise the scope for interference by the Tribunal in the matter of suspension is very limited. Admittedly, the CBI has filed chargesheet also against the applicant and the respondents had taken a decision to continue his suspension, therefore, no case has been made out to inter-



fere in the matter.

11. As far as withholding of his leave encashment, gratuity are concerned, we have seen rule 39(3) of CCS Leave Rules which for ready reference reads as under :

"The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any."

12. A perusal of same clearly shows that leave encashment could not have been paid, therefore, we do not find any illegality in the withholding of leave encashment. It would also be relevant to quote rule -7^{note-3} of the CDS (RP) Rules 1997 as well, which for ready reference reads as under:

"In the case of Government servant under suspension he shall continue to draw subsistence allowance based on the existing scale of pay and his pay in the revised scale of pay will be subject to to the final order on the pending disciplinary proceedings."

13. Since the rules are clear on this aspect also, no illegality can be said to have been committed by the respondents. As far as withholding of gratuity is concerned rule 69(ii)(c) of CCS (pension) rules is relevant, which for ready reference reads as under :-

"(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.

provided that where departmental proceedings have been instituted under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules 1965, for imposing any of the penalties specified in clauses (i), (ii) and (iv) of Rule 11 of the said rules, the payment of gratuity shall be authorised to be paid to the Government servant."

14. Admittedly the case is pending against the applicant, therefore, no illegality is committed by the respondents. *The pension was released immediately after he submitted the papers.*

15. As far as his comparison with Shri H.L. Gupta is concerned, the respondents have explained that since he was

suspended on 12.9.89 and had superannuated within two months the papers were already processed and he was given the retiral benefits by mistake as the communication could not reach in time. Thereafter, they tried to recover the same, but he challenged their action which was allowed by the Tribunal, therefore, the respondents hands were tied. We are satisfied with the explanation given by the respondents and simply because one person was given the retiral benefits by mistake, it would not attract the Articles 14 & 16 to claim the same treatment as no court can give direction to the respondents to commit a mistake knowingly.

16. His retiral benefits would depend on the outcome of the case. The case is still pending, therefore, no case has been made-out by the applicant for our interference. The O.A. is accordingly dismissed with no order as to costs.


MEMBER (J)


MEMBER (A)

GIRISH/-