

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

original Application No.966 of 2002.

Allahabad, this the 16th day of December, 2004.

Hon'ble Mr. S.C. Choube, A.M.

Dr. S. Dubey son of late Bansraj Dubey,
resident of Village Kanui, Post Office
Darunaha, District Sant Ravi Dass
Nagar (Bhadohi).

....Applicant.

(By Advocate : Shri Sudhir Kumar)

Versus

1. The Commissioner,
Kendriya Vidyalaya Sangathan (H.O)
18, Institutional Area Saheed Jeet Singh
Marg, New Delhi-16.

2. Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office,
New Delhi.

....Respondents.

(By Advocate : Shri N.P. Singh)

O R D E R

The applicant, who retired on 31.5.2000 from the post of Principal, Kendriya Vidyalaya (in short K.V.) New Cantt., Allahabad has, through this O.A., sought payment of General Insurance Scheme, correct amount of G.P.F. with 11% interest, interest at the rate of 10% from the date of retirement to the date of sanction of commutation amount and 10% interest ~~ever~~ over the payment of DCRG from the date of retirement besides leave encashment.

2. The brief facts, as per the applicant, are that he was appointed as P.G.T. in Hindi in August, 1967 in K.V. and was promoted in the month of July, 1987 to the post of principal, where he worked till his retirement on 31.5.2000. He has been regularly contributing a sum of Rs. 120/- per month under the Group Insurance Scheme for the employees of K.V.S. from 1.1.1993 to March, 2000. Similarly, a sum of Rs. 467197/-

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was deposited in the G.P.F. of the applicant till 31.3.2000. The respondents withheld this amount till 27.10.2000 and paid Rs.7 472261, whereas the calculation with 11% interest the amount which comes to Rs.502564/- thereby causing the financial loss to the applicant to the extent of Rs.30000/-. He also opted for commutation of his pension to the extent of 40% of the pension. The office of the respondent no.1 vide letter informed the applicant/dt.20.9.2000 that a sum of Rs.296665/- has been sanctioned to the applicant. However, the said letter was kept pending for another one month and on 30.10.2000 again the Sr. Audit Officer under the Opp. party no.1 sent the Demand Draft and intimation of Rs. 296665-, but surprisingly, the demand Draft of Rs.296665/- issued in the name of the applicant on 30.10.2000, was actually handed over to the applicant on 7.2.2001 and thus, the amount was un-necessarily withheld for further eight months from the date of the intimation of the Senior Audit Officer .

3. The amount of Rs.286902 towards Gratuity was payable to the applicant just on date of retirement or immediately thereafter. However, the Opp. parties took 10 months time in sanctioning the gratuity of the applicant. The sanction of the amount of the gratuity was intimated to the applicant vide letter dated 20.9.2000. Further, an intimation for sending the Demand Draft of Rs.286902/- was sent to the applicant on 31.10.2000 by the office of the respondent no.1, whereas the actual payment of gratuity was made to the applicant on 31.3.2001. The respondents further took five months time in making payment of gratuity and, thus, the applicant is entitled to the interest on the amount of the gratuity @ 10% per annum. Thus, the loss of Rs.23908/- has been caused to the applicant due to negligence, slackness and malafide action of the respondents.

4. As regards payment of leave encashment to the applicant is concerned, the respondents have not given the leave account

of the applicant, but have sanctioned leave encashment for 227 days, whereas infact the applicant is entitled for 267 days of leave encashment by the respondents.

5. The respondents, on the other hand, have admitted that the applicant superannuated as principal, K.V., New Cantt., Allahabad on 31.5.2000. During his aforesaid tenure as principal information was received by the respondents about the illegalities being committed in K.V. New Cantt. Allahabad by the applicant and accordingly the Internal Audit party was deputed to conduct an enquiry during the period from 13.4.2000 to 19.4.2000. It was alleged that newly constructed Vidyalaya buildings were taken over from the Construction agency without inspection of the Committee constituted by the Chairman despite shortcomings. It was also alleged that the serious financial irregularities were committed in making purchase of furniture, sports items etc. for the Vidyalaya on very high rate per item without inviting quotations/invitation. Thereafter, a full fledged enquiry was conducted by Administrative Officer alongwith the Audit Assistant to investigate the irregularities in the matter of purchase during the period 24-26.4.2000. The investigation reports revealed serious financial and administrative irregularities, violation of K.V.S. Rules and Regulations for taking over newly constructed school building without inspection by the Committee, allotment of residential accommodation to the staff of K.V., New Cantt. Allahabad, declaration of admission list without approval of the Executive Committee and purchase of furniture and sports items on high rates without inviting quotation as well as improper payment of CCA and special pay in respect of the staff of the Vidyalaya Committee by the applicant. A detailed report of irregularities particularly financial was furnished to the Sangathan vide Asstt. Commissioner, K.V.S., Regional Office, Lucknow, letter dated 3.5.2000. Meanwhile, the service book of the applicant was sent to KVS (HQ), New Delhi by the KVS, Regional office, Lucknow for fixation of pay of the applicant as

Principal in the revised pay-scale under CCS (Revised Pay) Rules, 1997. The same was ^{purportedly} returned back to the Regional office, Lucknow vide letter dated 25.2.2000 alongwith the pay fixation order. However, it was not received by the addressee.

6. In view of the aforesaid facts, it took time for locating the Service book and providing the service book to K.V.S. (HQ) for finalization of the pension case of the applicant. The K.V.S. immediately settled the pension case of the applicant on priority basis in September, 2000 after receiving the service records in the month of August, 2000. Further on account of discrepancies in pension papers submitted by the applicant, some delay has been caused. Ultimately the case of the applicant was forwarded to the Headquarters who is competent authority, vide letter dated 7.4.2000. The K.V.S. released the commutation of pension and D.C.R.G. vide Demand Draft no. 348193 and 348194 dated 13.10.2000 respectively for Rs.296655/- and Rs.286902/- subject to adjustment/recovery of dues in respect of the applicant vide letter dated 29.12.2000. The amount of commutation was immediately paid to the applicant at his home address. Since there were gross irregularities and serious lapses committed by the applicant with regard to purchase of furniture, sports items on very high side without inviting quotations as well as irregular payment of CCA and Special pay in respect of employees etc. the amount of D.C.R.G. had been deposited in K.V.S. Fund Account by Regional Office, Lucknow, pending decision from the K.V.S. (HQ) New Delhi whether the full DCRG should be paid to the applicant or ~~it should be paid to the applicant~~ or the same be withheld till the finalization of the case vide letter dated 7.2.2001 under intimation to him. The amount of D.C.R.G. has been released subject to the condition that the same be paid to him after adjustment/recovery of dues including other dues in the audit inspection report of K.V. New Cantt., Allahabad against the applicant.

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7. The respondents have further stated that since the instructions were received from K.V.S. (HQ), the amount of D.C.R.G. has been paid to the applicant and he is himself responsible for delay on account of his involvement in uncalled for activities as stated above. Accordingly an amount of Rs.53700/- i.e. 23600 for moulded chair and Rs. 30100 for purchase of Sofa Set and double bed ordered vide KVS (HQ) New Delhi letter dated 9.5.2001 to be withheld, is to be recovered from the applicant. The amount of D.C.R.G. had already been paid to the applicant on 23.3.2001. The respondents have further contended that the applicant violated the rules of K.V.S. and appointed his daughter Miss. Saroj Dubey to the post of P.G.T. (Bio.) on adhoc basis while acting as Member/Secretary of the Vidyalaya Appointment Committee. It is alleged that the applicant installed a new telephone at his rented residence at Milanpur and Panigaon while functioning as Principal without obtaining the permission from the competent authority. He has alleged to have undertaken journey during the period from 9.4.1995 to 14.4.1995 and preferred a wrong T.A. claim amounting to Rs.833/-.

8. During the internal audit inspection of account of K.V. New Cantt., Allahabad from 13.4.2000 to 19.4.2000, a number of irregularities came to the notice, some of which are as under:

(a) Newly constructed Vidyalaya building were taken over from the Construction agency without inspection of the Committee constituted by the Chairman despite short comings.

(b) Admission list were declared without getting approval of the Executive Committee.

(c) Staff quarters were allotted by the applicant without any approval of the Chairman, V.M.C.

(d) Serious financial irregularities in making purchase of furniture, sports item etc. for the Vidyalaya on very high rate per item without inviting quotations as a result of

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which an amount of Rs.53700 i.e. Rs.23600 for moulded Chair and Rs.30100/- for purchase of Sofa Set and double bed was be ordered to withheld vide Education Officer (Vig.), K.V.S. Headquarters, New Delhi letter dated 9.5.2001. It is stated by the respondents that the case of the applicant regarding payment under the KVS Employees Group Insurance Scheme 1993 has been considered by the competent authority and the claim of Rs. 9545/- has been paid to the applicant vide letter dated 28.11.2002 through Demand Draft no. 494415 dated 23.11.2002. It is further stated that prior to January 2000, the provident Fund establishment was being centrally maintained by Headquarters office of K.V.S, New Delhi. The said establishment was decentralized and shifted to respective Regional offices with the powers of maintenance/disposal w.e.f. 1.1.2000. Since the system itself was shifted, it was bound to face certain practical problems involving time factor i.e. transferring of opening balance from KVS (HQ) for about 3000 subscribers, preparing/getting printed new ledgers for P.F. entering all these balances in new ledgers, completing all accounts on account of transfer and finally reconciling the closing balance of all P.F. accounts. It is further submitted that the payment of the total dues including the interest upto date of retirement was made through Principal, K.V. New Cantt., Allahabad on 25.10.2000. This was further remitted to the applicant vide another Draft of the Vidyalaya dated 4.11.2000 and handed over to the applicant in person. As per the respondents, therefore, there is no delay on their part.

9. In view of the above facts, the respondents have contended that the applicant is himself responsible for delay on account of his involvement in uncalled for activities as narrated above.

10. I have heard the learned counsel for the parties and perused the pleadings on record.

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11. During the course of arguments, the learned counsel for the applicant has vehemently pleaded that even though the applicant superannuated on 31.5.2000 from the post of Principal, K.V., New Cantt., Allahabad, his retiral dues have not been paid to the applicant in time. Thus, while a sum of Rs. 120/- has been deposited from the salary of the applicant from 1.1.1993 to March, 2000 under Group Insurance Scheme, but the respondents have not paid the amount so deposited, which was payable to him on the date of retirement of the applicant. Similarly, a sum of Rs. 464197/-, which was deposited with the Opp. parties under G.P.F. of the applicant, the Opp. parties have illegally and malafide withheld the amount till 27.10.2000 and passed Rs. 472261/- only, whereas on calculation with 11% interest the amount would come to 502564/-. Thus, the applicant has suffered a clear loss of Rs. 30000/- caused by the Opp. parties by withholding the amount of G.P.F. for seven months. As regards commutation of 40% pension, the applicant was informed on 20.9.2000 that the amount of Rs.296665/- has been sanctioned. However, the said letter was kept pending for another one month. According to the applicant, surprisingly, D.D. of Rs.296665/- issued in the name of the applicant on 30.10.2000, but the same was actually handed over to the applicant on 7.2.2001. Thus, the amount was un-necessarily withheld by the Opp. parties for further 08 months.

12. As regards, D.C.R.G. an amount of Rs. 286902/- was payable to the applicant on the date of retirement, but the Opp. parties took 10 months time in sanctioning the gratuity of the applicant. A intimation of sending the D.D. of Rs.286902/- was sent to the applicant on 30.10.2000 by the office of the Opp. party no.1, but the actual payment of the gratuity was made to the applicant on 31.3.2001.

13. The applicant has also challenged the calculation

of leave encashment by the opp. parties falling due to the applicant.

14. The respondents, on the other hand, have taken the plea of various administrative enquiries against the applicant including his involvement in the financial irregularities such as purchase of furniture and Sofa set etc. without calling the tender and thus, causing the delay in payment of some of the post retirement benefits to the applicant. They have also pleaded that due to loss of service book of the applicant in postal transit, the pay fixation of the applicant was delayed. This caused delay in finalizing the pension case of the applicant as a whole. The respondents have also admitted that the amount of commutation of pension and D.C.R.G. were released vide D.D. nos. 348193 and 348194 dated 30.10.2000 respectively for Rs. 296665 and Rs. 286902/- subject to adjustment/recovery of dues in respect of the applicant vide letter dated 29.12.2000.

15. The learned counsel for the applicant has pleaded that no show-cause notice was issued to the applicant by the opp. parties before effecting the recovery from his post retirement dues. The contentions of the respondents are un-clear about issue of any show-cause notice to the applicant, before effecting recovery from his post retirement dues.

16. As already observed by the Hon'ble Supreme Court, the necessity for prompt payment of the retirement dues to a Government servant immediately after retirement cannot be over emphasised and it would not be un-reasonable to direct the respondents to pay penal interest on these dues at current market rate, which should commence at the expiry of two months from the date of retirement (State of Kerala Vs. Padmanabhan Nair 1985(1) SLJ 106 (SC). The learned

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counsel for the respondents has raised the plea of limitation against the applicant. However, the same is not acceptable as it is improper for Government to raise the plea of limitation where the retirement benefits and other claims of a retired employee were wrongly withheld despite several representation. Again the Hon'ble Supreme Court has observed that the right to receive pension is 'property' and grant of pension is not a bounty, but is a vested and valuable right. Further, denial to pension affects fundamental right and the petitioner cannot be deprived of it except in accordance with law. Right to pension is a valuable right and it accrues as soon as a Government servant retires from service (Jeenabhai Bawabhai Patel Vs. Union of India & ors. 1993(3) S.L.J. 169 (CAT Ahmedabad Bench)).

17. In view of the peculiar facts and circumstances of the case and the case law cited above, the respondents are directed to re-calculate the pensionary benefits ^{of the applicant} pertaining to General Group Insurance, G.P.F., amount of commutation of pension, D.C.R.G. and the amount of leave encashment of the applicant and pay 10% interest where ever the payment of retiral dues has been delayed for more than three months. The respondents are further directed to issue a show-cause ^{noti} to the applicant before effecting the recovery of dues as a result of financial irregularities committed by him during his tenure as Principal, K.V., New Cantt., Allahabad. The above exercise shall be completed within a period of six months from the date of receipt of copy of this order. If the applicant still feels aggrieved, he will be at liberty to seek the ~~legal~~ remedy available to him.

18. The O.A. stands disposed of as above with no order as to costs.


MEMBER (A)

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