

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

OA 537/03.

Allahabad, this the 2nd day of May 2003.

QUORUM : HON. MRS. MEERA CHHIBBER, J.M.

D.No. 4767 of 2002

Abdul Waheed S/O Shri Abdul Hameed R/O H.No.133/237 C-1,
Ratipurwa, Kanpur Nagar, Kanpur.

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.....Applicant.

Counsel for applicant : Sri D.B. Mukherjee.

Versus

1. Union of India through the Secretary, Ministry of Defence,
Government of India, New Delhi.
2. General Manager, Ordnance Paratute Factory, Kanpur Nagar,
Kanpur.
3. O.I.D.C. Ordnance Paratute Factory, Kanpur Nagar, Kanpur.

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.....Respondents.

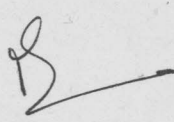
Counsel for respondents : Sri R.C. Joshi.

ORDER (ORAL)BY HON. MRS. MEERA CHHIBBER, J.M.

By this O.A., ~~the~~ applicant has sought quashing of the impugned order dated 31.8.2001 and a further direction to the respondents to disburse the entire post retiral benefit to the applicant within ^a ~~the~~ stipulated period and to pass such order that this court deem~~s~~ fit and proper in the circumstances of the case. It is submitted by the applicant that this is the second round of litigation as when he filed the first O.A. bearing No.847/01 for claiming the entire retiral benefits within time fixed by the Tribunal, this Tribunal had looked into all the points raised by the respondents including ^{the} one which is taken by the respondents ~~now~~ to reject his claim, once again, ~~and after~~ ^{after} giving a categorical finding ~~and~~ ^{after} discussing the ~~parties~~ ^{spirit} and object ^{of} ~~behind~~ Rule 69 of CCS (Pension) Rules, this Tribunal had held that the dispute is private, having no concern with the department. In these circumstances, there is no likelihood

that the department will initiate any disciplinary proceeding against the applicant as no misconduct is involved. It was further held that the purpose and object behind Rule 69 of CCS(Pension) Rules in prohibiting payment of retiral benefits, appears to protect the interest of Govt., if the concerned employee is facing criminal or disciplinary proceedings involving a misconduct as Govt. servant, which ^{may be} also resulted in monetary loss to ^{the Govt.} Govt. There appears no legal and valid reasons to extend the application of this Rule to a private dispute regarding property to which the employee is incidently a party. After holding that there appears to be no other impediment against payment of pension to applicant, the Tribunal had directed the respondents to pay entire retiral benefits of the applicant within a period of two months and in case the amount cannot be paid, Respondent No.2 will inform him in writing indicating the reason therefor.

2. Grievance of the applicant in this O.A. is that even though Tribunal had already given its finding and interpreted Rule 69, in the given circumstances of the case, yet respondents have rejected the claim of the applicant once again on the same said Rule 69 of CCS(Pension) Rules. He has, thus, prayed that this order is liable to be quashed and respondents be directed to make payment of the retiral benefits within the stipulated period. // It is unfortunate that inspite of giving several opportunities to the respondents, no counter has been filed by the respondents. Even though on the last date i.e. 29.4.03, counsel for the respondents had made statement that he shall be filing the same in the registry during the course of the day. The case was listed today for final disposal and since in this case the Tribunal had already adjudicated the matter and had interpreted the Rule 69 also, therefore, I am proceeding to decide this case on merits. Counsel for the respondents took only one objection that this case is barred by limitation, therefore, liable to be dismissed.




3. I have heard both the counsel and perused the record as well. A perusal of the earlier judgment at Page 49 shows that these very facts were already placed before the Tribunal, when applicant had filed earlier O.A. No.847/01 and Tribunal had already made observation that Rule 69 cannot be attracted in a case where a case is pending against the employee in his personal capacity which has nothing to do with the department and does not amount to misconduct. After observing the same, this court had given a direction to the respondents to pay retiral benefits in favour of the applicant within two months and in case there was some other legal impediments that was required to be informed to the applicant in writing. It is not understood that when Tribunal after considering Rule 69 of CCS(Pension) Rules had already held that the same cannot come in the way of applicant in the given facts of the case, how the respondents could have rejected the claim of the applicant on same ground. This action of respondents, in fact, amounts to contempt of court as officers cannot sit over the orders passed by the Tribunal even though it was open to them to challenge the same if they were aggrieved of it. Since the direction was already given by the Tribunal in first O.A. vide its judgment dated 20.7.2001 and the matter relates to release of gratuity and other retiral benefits, objection of limitation is not sustainable as this is continuous cause of action and as such, the objection is rejected. Even otherwise applicant has filed an application under section 5 of Limitation Act explaining therein that the applicant was sick and was admitted in the hospital suffering from chronic jaundice, therefore, he could not file this O.A. earlier. He has annexed the prescription of Doctors as well, along with the affidavit. In view of the facts explained above, I am satisfied about the justification given for delay, therefore, even if there is delay it is condoned. Registry is directed to give number to the O.A. I have already stated



above that the reasoning given by the respondents in rejecting the claim of the applicant by impugned order is not sustainable in law in view of the facts that this fact was already considered by the Tribunal in O.A. No.847/O1. When the Tribunal had given liberty to the applicant that he will be informed in writing if these amount cannot be paid to the applicant, it only meant that if there is some other impediment in the way of releasing the amounts that may be intimated, therefore, it was not open to the respondents to reject the claim of the applicant once again on same ground which was rejected by this Tribunal. Since the respondents have not taken any other ground for rejecting the claim of the applicant, the order dated 31.8.2001 is quashed and set aside. The respondents are directed to pay the retiral benefits including gratuity within three months from the date of receipt of a copy of this order.

4. With the above direction, this O.A. is disposed of with no order as to costs.



J.M.

Asthana/