

payment of DCPG

14

IN THE CENTRAL ADMINISTRATIVE TRAUNAL
AHMEDABAD BENCH

O.A. No. 101 of 1989
~~EX-NO. 2~~

DATE OF DECISION 21.4.1992

Shri Gul Mangharam Jhangiani Petitioner

Shri D.R. Chaudhari Advocate for the Petitioner(s)

Versus

Union of India & Ors Respondent

Shri Akil Kureishi Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C. Bhatt : Member (J)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Shri Gul Mangharam Jhangiani,
D-103, Shastri Nagar,
Rajkot.

(S)

: Applicant

(Advocate : Shri D.R.Chaudhari)

VS.

1. Union of India, through
Controller & Auditor General
of India,
Zafar Shah Marg,
New Delhi - 110 002.

2. The Accountant General (Audit) II,
Gujarat,
Rajkot- 360 001.

3. Pay & Accounts Officer,
Indian Audit Department,
Office of the Accountant General,
Rajkot,

4. The Accountant General (A&E)
Gujarat,
Multistoried Building,
Lal Darwaja,
Ahmedabad-380 001.

: Respondents

(Advocate : Shri Akil Kureshi)

O R A L - O R D E R

O.A. No. 101 of 1989

Date : 21.4.1992

Per : Hon'ble Shri R.C. Bhatt

: Member (J)

Heard Shri D.R. Chaudhari, learned advocate for the applicant and Shri Akil Kureshi, learned advocate for the respondents. This application is filed by a retired government servant against the respondents seeking relief that the order of the respondents dated 18.11.1988 issued by respondents i.e. annexure A/1, order dated 1.12.1988 i.e. annexure A/2, order dated 5.12.1988 issued by res-

pondent no.3, i.e. annexure A/3, and order dated 23.12.1988 issued by respondent no.4, i.e. annexure A/4, be quashed and it may be declared that the applicant is entitled to receive differential amount of DCRG and Dearness Relief/Interim Relief of his pension with effect from 1.2.1987 with 12% interest thereon and the respondents be directed to release that amount.

2. The applicant was serving in the office of respondent no.2, The Accountant General (Audit) II, Gujarat on the post of Senior Auditor and he retired from the said post with effect from 31.1.1987. It is alleged by him that his pension and Death-cum-Retirement Gratuity were required to be revised in accordance with the office memorandum dated 14.4.1987, but, there was delay on the part of the respondents without any just reason. Ultimately respondent no.2 passed orders of revised pension and DCRG vide letter dated 18.11.1988 addressed to respondent no.3 vide annexure A/1. But, in the said letter respondent no.2 advised respondent no.3 for withholding the payment of differential amount of DCRG and Dearness Relief/Interim Relief of his pension payable as per Rules on the ground that arrears of licence fee from April 1987 to September 1988 for unauthorised occupation of government quarter by the applicant was outstanding. It is alleged that on the strength of this advise of respondents no.2, respondent no.3 vide letter dated 1.12.1988 withheld the

payment of sum of Rs.3432/- towards the differential amount of DCRG vide annexure A/2, and vide letter dated 5.12.1988 annexure A/3, addressed to respondent no.4 advised for withholding Dearness Relief/Interim Relief on pension, and hence, the respondent no. 4 vide letter dated 23.12.1988, annexure A/4, advised the Treasury Officer, Rajkot that no relief was payable on pension. It is alleged by the applicant that the respondents action of withholding the payment of Gratuity and Dearness Relief is baseless because there is no licence between the applicant and the respondents for the quarter No.103 that the said quarter is the property of State Government, that the eviction order passed by respondent no.2 is challenged by the applicant before the appropriate forum and that the Dearness Relief is a part of pension, and hence, no recovery is permissible as per Rules. It is alleged that pension is a right and not a bounty.

3. The respondents have filed reply contending that the pension and gratuity benefits based on Government of India's Office Memorandum dated 14.4.1987, though revised, were not released to the applicant as he continued to occupy unauthorisedly the government quarter allotted to him while he was inservice beyond permissible period after retirement from government service. It is contended that gratuity and dearness allowance relief are not part of pension.

4. Learned advocate for the applicant referred to Rule 72 of CCS Pension Rules 1972 (5) and (6). He submitted that the applicant retired on 31.1.1987 and the respondents could withhold only Rs.1000/- as licence fees as per Rule 72 (5). He submitted that (6) of Rule 72 does not empower the respondents to withhold any amount of DCRG or pension, but, Director of Estate can take steps for recovery of licence fees beyond two months.

5. There is no dispute that the applicant is entitled to the amount of increase in dearness relief in his pension and also gratuity benefits based on office memorandum dated 14.4.1987, but the learned advocate Mr. Kureshi for the respondents submitted that the gratuity and dearness relief are not parts of pension and those amount could be withheld if the applicant did not pay the licence fees.

Learned advocate for the applicant submitted that apart from the fact that the question of recovery of licence fees is itself in dispute, the dearness relief and the gratuity amount are part of pension.

6. The Dearness Relief revised from time to time by the Government of India is part ~~and partial~~ of the pension allowed. I do not agree with the submissions of learned advocate Mr. Kureshi that the dearness allowance amount accrued to the applicant on revision of dearness allowance from 1.2.1987 could be withheld on the ground

(6)

that it is not part of pension. Therefore, the orders of the respondents in ^{not} releasing the payment of dearness relief/Interim relief on pension to the applicant with effect from 1.2.1987 deserves to be quashed and the respondents should pay that amount to the applicant. So far the question of gratuity is concerned, the respondents want to withhold that amount without hearing the applicant. The learned advocate for the applicant submitted that an opportunity **should** be given to the applicant to show cause about withholding his gratuity amount. I agree with the submission of learned advocate for the applicant that the action on the part of the respondents withholding gratuity amount is arbitrary and unjust and against principle of natural justice, because, decision cannot be taken without giving opportunity to the applicant to be heard. Therefore though that part of the order of withholding the gratuity amount is not entirely quashed by me, the respondents are directed to hear the applicant on that point and it would be open to the applicant to represent before the respondents that they are not entitled to withhold even gratuity amount. The respondents after considering the legal position may take appropriate decision. Hence following order is passed :-

O R D E R

The application is partly allowed. Orders annexure A/1 to A/4 so far they relate

to withholding of dearness relief/interim relief on pension of the applicant with effect from 1.2.1987 onwards is quashed and set aside and the respondents are directed to make payment of that amount to the applicant within three months of the receipt of this order. So far the withholding of the differential amount of gratuity of the applicant is concerned, the respondents are directed to give an opportunity to the applicant of being heard on the question whether the respondents in law are entitled to withhold that amount, and then the respondents to dispose of that question according to rules, within three months of the receipt of this order. The applicant, if feels dissatisfied by the ultimate order on the question of withholding gratuity, he would be entitled to approach this Tribunal according to law. The application is disposed of accordingly. No order as to costs.

R.C. Bhatt

(R.C. Bhatt)
Member (J)

*Ani.