

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 197 OF 1992.

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DATE OF DECISION 17-8-1992.

J.I. Vasavada, Petitioner

Mr. M.L.Rana, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. Akil Kureshi, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. V. Krishnan, Vice Chairman.

The Hon'ble Mr. R.C. Bhatt, Judicial Member.



J.I. Vasavada,
residing at
3, Vaishalinagar,
Rajkot.

..... Applicant.

(Advocate: Mr. M.D. Rana)

Versus.

1. Union of India,
(Notice to be served through
the Chief General Manager),
Telecom, Gujarat Telecom Circle,
Ahmedabad.

2. The General Manager,
Telecom, Rajkot Telecom District,
Rajkot.

..... Respondent

(Advocate: Mr. Akil Kureshi)

J U D G M E N T

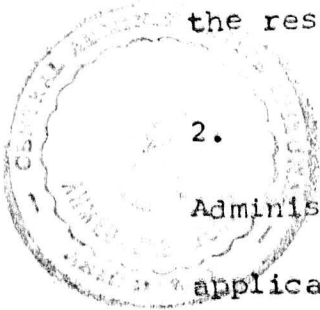
O.A.No. 197 OF 1992

Date: 17.8.1992.

Per: Hon'ble Mr. R.C. Bhatt, Judicial Member.

Heard Mr. M.D. Rana, learned advocate for the
applicant and Mr. Akil Kureshi, learned advocate for
the respondents.

2. This application under section 19 of the
Administrative Tribunals Act, 1985, is filed by the
applicant seeking the reliefs that the action of the
respondents in not releasing his retiral dues, more
particularly, the commuted pension and gratuity be
quashed and the same be paid to him. The applicant
has averred in the application that he was serving in
the telecom department, that the departmental enquiry
for which his retiral benefits are withheld, was
initiated by issuing the charge sheet on 20th September,
1988 for the allegations when he was functioning as



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DET Junagadh in the year 1981. It is alleged that the President of India has been given the power to withhold or withdraw or reduce the amount of pension when financial loss has occasioned to the Government in the discharge of the duties. It is alleged that the applicant is superannuated from the post of A.G.M. on 30th November, 1990 at GMTD, Rajkot and he is given the provisional pension under the Rules but the commuted pension and the gratuity is withheld under the guise of departmental enquiry. The charge sheet along with the statement of misconduct are given to the applicant on 20th September, 1988. It is alleged that after the charge sheet was issued to the applicant, the Inquiry Officer was appointed on 10th March, 1989 and the actual enquiry began against the applicant on 5th February, 1990. It is alleged that though four years have passed after the charge sheet was issued to the applicant, the departmental enquiry^{is} still not over. It is alleged that the charge is not on doubtful integrity against him. The applicant made representation for payment of his dues on 19th June, 1991 but the respondents gave reply that his DCRG could not be made final on account of the pending enquiry. The applicant has produced the said reply dated 8th August, 1991 at Annexure A-3. It is alleged that the action of withholding retiral dues is clearly arbitrary.

3. The respondents have filed reply contending that the applicant was granted provisional pension dated

29th November, 1990 vide Annexure A, but certain retirement benefits were withheld due to the disciplinary case against him in view of the provisions of Rule 69 (1)(c) of CCS (Pension) Rules, vide Annexure B. The respondents have denied the other allegations made against them. It is contended that the applicant is facing charge of acting in the fashion unbecoming of a Government servant and hence the action of withholding pension is legal and valid.

4. At the time of hearing of this application, the learned advocate for the applicant relied on the decision in R.D.Kathuria V/s. Union of India, reported in 1990, All India Administrative Tribunal Law Times, Vol.II, page 81, in which it is held that though the CCS(Pension) Rules empowers the respondents to withhold the gratuity etc. till the departmental enquiry is pending, there is a presupposition in the said rules that the proceedings pending against the officer concerned will conclude within a reasonable period. The rules do not envisage a case where there may be prolonged litigation for years before reaching the final outcome and therefore, such Rule should not be made applicable in full force and some portion of the gratuity etc. should be released. The same view has been taken by the Jodhpur Bench of C.A.T. in L.L. Mathur, V/s. Union of India, O.A.394/87 decided on 30th May, 1991 following the above judgment (supra) of R.D.Kathuria. In the instant case before us, the charge sheet was issued against the applicant on.

20th September, 1988, that he has retired from the post on 30th November, 1990 that though the enquiry has started in 1989 it has not been completed till today and hence following the ratio of the above decisions it would be proper in the interest of justice, equity and fair play to direct the respondents to pay atleast one-half of the gratuity and some portion of the commuted pension amount on certain conditions. Hence the following order:

O R D E R

The application is partly allowed. The respondents are directed to pay to the applicant atleast one-half of the gratuity normally payable to the applicant within a period of two months from the date of the receipt of this order subject to his executing a bond of indemnity with two sureties to the satisfaction of respondents and also the respondents are directed to allow the applicant to commute atleast one-half or one-third of the pension which a Government servant is entitled to commute under the CCS (Commutation of Pension) Rules, 1981, if permissible as per the Rules, subject to the conditions that the applicant will execute a bond of indemnity together with two sureties to the satisfaction of the respondents. The amount of commuted pension be released to the applicant within a period of three months from the date of the receipt of this order. Both the above payments be made on condition that the applicant will refund the amounts to the Government in

case the result of the enquiry case goes against him, ~~and~~ meaning thereby that the amount of gratuity and the amount of commutation of pension will be released to the applicant on condition that he will be liable to adjustment depending on the final result of the enquiry against him. Application is disposed of. No order as to costs.

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(R.C. BHATT)
Judicial Member

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(N.V. KRISHNAN)
Vice Chairman

Prepared by : H.P. Chokshi
Compared by : *[Signature]* 1978
TRUE COPY 1982

vtc.

[Signature]
Section Officer (i) 1982
Central Administrative Tribunal
Ahmedabad Bench