

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 300/2011

This the 17th day of February, 2012

Hon'ble Sri Justice Alok Kumar Singh, Member (J)

S.S.Arora aged about 61 years son of late Sri S.N.Arora, r/o Jagat Guru Sri Kripalu Ji Maharaj Kripalu Nagar, Vill and Post Mangarh, Kunda Harnamganj, Dist. Pratapgarh.

Applicant

By Advocate: Sri A.P.Singh

Versus

1. Union of India through the Secretary, Agriculture Department, New Delhi.
2. Indian Counsel of Agricultural Research (I.C.A.R.), Krishi Bhawan, New Delhi, through its Secretary.
3. Dy. Director General (Hort.) I.C.A.R., Krishi Anusandhan Bhawan II, Pusa, New Delhi-12.
4. Director, Central Institute of Subtropical Horticulture, Rehman Khera, Lucknow.
5. Deputy Secretary (S.M.D.), ICAR, Krishi Anusandhan Bhawan II, Pusa, New Delhi-12.
6. Dr. H.Ravi Shankar, Director, Central Institute for Subtropical Horticulture, Rehman Khera, Lucknow.

Respondents

By Advocate: Sri Neerav Chitravanshi

ORDER (Dictated in Open Court)

BY HON'BLE SHRI JUSTICE ALOK KUMAR SINGH, MEMBER (J)

This O.A. has been filed for the following reliefs:-

- i) Issuing/passing an order or direction setting aside the impugned order dated 23.7.2010 passed by respondent No.4 directing to withhold the disbursement of all pensionary benefits due to the applicant as contained in Annexure No.A-1 to the O.A.
- ii) Issuing/passing an order or direction directing the respondent to release all the retiral benefits to the applicant as allowed vide PPO dated 16.7.2010 w.e.f. 1.8.2010 along with interest @ 20 % per annum w.e.f. 1.8.2010 i.e. from the date when the same was due.
- iii) Issuing/passing an order or direction awarding Rs. 1,00,000/- as compensation against the respondent No.4 for his illegal and malafide action due to which the applicant and his family facing much hardship and suffering a lot till date.

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- iv) Issuing /passing an order or direction which this Hon'ble Tribunal may deem fit appropriate in the interest of justice.
- v) Allow this original application with cost.

2. The case of the applicant is that he was appointed as Junior Stenographer in the department on 25.4.1974. Subsequently, he was appointed as Senior Clerk in the same time pay scale through departmental competitive examination. Then, he was promoted to the post of Assistant and subsequently to the post of Superintendent in the pay scale of Rs. 1640-2900/- Ultimately, he superannuated on 31.7.2010. The Finance and Accounts Officer, Indian Veterinary Research Institute, Izatnagar also issued PPO No. 3187-I.V.R.I. and GPO No. 3187-I.V.R.I. dated 16.7.2010, vide which the pension and gratuity were sanctioned (Annexure 5) to him. Thereafter, all of a sudden, the impugned order dated 23.7.2010 was served upon the applicant from which it transpired that the alleged competent authority has decided to withhold the disbursement of all pensionary benefits due to him on the basis of some allegations in respect of which an enquiry has been ordered to identify the erring officers including the applicant. Then the applicant submitted a representation dated 29.7.2010 (Annexure A-6) followed by another representation dated 14.9.2010 (Annexure 7). He also moved an application addressed to Hon'ble Minister of Agriculture, New Delhi (Annexure 8) dated 16.6.2011 followed by another letter dated 8.7.2011 (Annexure A-9). But no heed was paid. Hence this O.A.

3. The claim of the applicant has been contested by official respondents No.1 to 5 by filing a detailed C.A., saying that some gross irregularities were discovered in respect of maintenance of service records of some of the staff members of Central Institute of Subtropical Horticulture, Lucknow. Therefore, for this purpose, a single member committee was constituted to enquire the matter which submitted his preliminary report on 22.7.2010 (wrongly typed as 22.7.2011 in para 8 of the CA.). For this reason, the impugned order dated 23.7.2010 (Annexure 1) was passed. Thereafter,



another committee was constituted by the council on 17.8.2010. But it is not mentioned in the CA. as to whether or not any report was given by such another committee. It is said that thereafter, in furtherance of letter dated 14.9.2011 issued by the Under Secretary, Horticulture, a show cause notice dated 20.9.2011 was given to the applicant (Annexure CA-6). In compliance of the above show cause notice, till date, the applicant has not submitted any reply. It has been further said that meanwhile, a direction was granted by this Tribunal to dispose of the pending representation. In furtherance thereof, the representation was duly considered and rejected on 2.12.2011 on the ground that disciplinary proceedings are contemplated at the level of council and therefore no decision can be taken at this stage for releasing his pending pensionary benefits (Annexure CA-7). However, provisional pension is being paid to the applicant. Further, it has been said that final GPF amounting to Rs. 6146/- has also been paid on 20.9.2010.

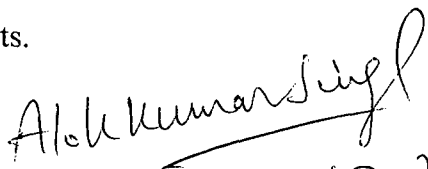
4. I have heard the learned counsel for the parties at length and perused the material on record.

5. The only point for adjudication before this Tribunal is as to whether or not the respondents have any authority to withhold the disbursement of pensionary benefits to the applicant. Concededly, the applicant superannuated on 31.7.2010 and even PPO dated 16.7.2010 was issued in his favour. But it appears that on the basis of the office order dated 23.7.2010 (Annexure A-1), the respondents have withheld the disbursement of all pensionary benefits on the pretext of pendency of proceedings of the enquiry committee. As far as the legal matrix is concerned, the pensionary benefits can be withheld only if a departmental enquiry is pending in accordance with Rules. The departmental enquiry can be said to be pending, only if a charge sheet has been served in accordance with the relevant Rules. In the present case, no charge sheet has been served till date. From the averment made in the C.A., it appears that only a fact finding/ preliminary enquiry was initiated and the single member committee

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comprising Sri Harkangi, SAO, Indian Institute of Horticulture, Bangalore has already submitted report. It is not clear from the entire CA. as to why then, another preliminary enquiry was ordered. It is also not ascertainable as to what happened to the report submitted by the first single member committee. Be that as it may. The pith and substance is that till date, no charge sheet has been served in accordance with the relevant disciplinary appeal rules which means, no departmental enquiry is pending against the applicant, hence on the pretext of pendency of only a fact finding or preliminary enquiry, the withholding of retiral benefits is manifestly illegal, unfair and grossly unjust. Therefore, the impugned order dated 23.7.2010 deserves to be quashed. An amount of interest @ 20% per annum w.e.f. 1.8.2010 has also been sought. Suffice is to mention in this regard that if any rate of interest is prescribed on account of delayed payment of gratuity or other retiral benefits under the relevant rules then interest will have to be paid accordingly on account of late payment. If no such rate is prescribed, then it would meet the end of justice if an interest @ 9.50% per annum is paid on all retiral benefits on account of delayed payment, w.e.f. the date(s) such retiral benefits became due according to relevant rules which have not been paid. An amount of Rs 1,00,000 have also been sought against the respondent No.4 for his illegal and malafide action. The learned counsel for applicant fairly concedes that since in the pleadings, contention of malafides could not be established and the respondent No. 6 against whom the allegation of malafide were made, has been deleted on his own request, there is no necessity to pass any order on this point.

6. In view of the above, this O.A. is allowed with cost. The impugned order dated 23.7.2010 is hereby quashed with a direction to make payment of retiral dues forthwith in favour of the applicant along with interest at the rate mentioned hereinabove. No order as to costs.


(Justice Alok Kumar Singh) 17.2.12
Member (J)