

Central Administrative Tribunal Lucknow Bench Lucknow

CCP No. 28/2007 in O.A.591/2001

This, the <sup>23<sup>rd</sup></sup> day of December, 2008

Hon'ble Mr. M. Kanthaiah, Member (J)

Hon'ble Dr. A. K. Mishra, Member (A)

Dr. Pyare Chandra Prasad aged about 73 years son of late Buddhadas  
resident of 538/64- Kha, Ahbaranpur, Sitapur Road, Lucknow.

Applicant.

By Advocate : Sri Shreesh Kumar

Versus

1. Sri Madhukar Gupta, presently posted as Secretary, Ministry of Homes, Govt. of India, New Delhi.
2. Sri Kunwar Fateh Bahadur Singh presently posted as Principal Secretary, Department of Home, Govt. of U.P., Civil Secretariat, Vidhan Bhawan, Lucknow.
3. Sri Vikram Singh presently posted as the Director General of Police, Govt of U.P., 1, Tilak Marg, Lucknow.
4. Sri Hawaldar Singh, presently posted as Director, Directorate of Pension, Govt. of U.P., Indira Bhawan, Lucknow.

Respondents.

By Advocate : Sri P. Awasthi for Sri A.K.Chaturvedi for R.No. 2 and 3  
Sri S.P.Singh for Respondent No. 1

ORDER

By Hon'ble Mr. M.Kanthaiah, Member (J)

The applicant has filed this contempt petition under Section 17 of the AT Act, 1985 read with Contempt of Court Act, 1971 to punish the respondent on the ground that they have willfully and deliberately disobeyed the orders of the Tribunal dated 19.5.2006.

2. The respondents No. 1,2,3 and 4 have filed their separate counter reply stating that <sup>authorities have</sup> ~~they have~~ complied with the direction of the Tribunal and not committed any disobedience of the order passed by this Tribunal.

3. Applicant has filed reply to the ~~counter~~ filed by the respondents.

4. Heard both sides.



5. The point for consideration is whether the applicant is entitled for the relief as prayed for.

6. The admitted facts of the case are that the applicant filed O.A. against the order dated 29.1.93 issued by respondent No. 4 and for finalization of his claim for full pension and other retiral benefits to him on superannuation.

7. After completion of the pleadings and on due contest, the said O.A. was allowed on 14.5.2006 with the following directions to the respondents:-

i) Respondents will finalise the monthly pension of the applicant taking into account the total length of qualifying service of the applicant w.e.f. 28.10.1957 to 30.6.1992. The intervening period of suspension w.e.f. May, 1971 to 6<sup>th</sup> February, 1984 will be treated as on duty and will be counted as qualifying service for the purpose of determination of final pension in case of the applicant.

ii) The applicant will also be entitled to full salary and other allowances during the intervening period of suspension as aforesaid. However, any subsistence allowance paid to him during this period will be deducted, while granting the aforesaid benefits.

iii) The applicant will be allowed payment of gratuity as admissible to him under the rules.

iv) Applicant will also be entitled to an interest @ 12% per annum, on arrears of pension and gratuity payable to him w.e.f. the relevant date when the payment of the same had become due to him as per rules.

v) The applicant will also be entitled to the benefit of commutation of pension as admissible to him under the Rules.

8. Aggrieved by the said judgment of this Tribunal, the respondents have filed Writ Petition No. 911/2007 (SB) on the file of Hon'ble High Court, Lucknow Bench and the Hon'ble High Court had passed the interim order on 13.8.2007 as follows:-

"In view of the aforesaid facts, the operation and enforcement of the impugned judgment and order dated 19<sup>th</sup> May, 2006 passed by the Central Administrative Tribunal in O.A. No. 591 of 2001 so far as it provides that the intervening period of suspension w.e.f. May, 1971 to 6<sup>th</sup> February, 1984 will be treated as on duty and

the respondent No.1 shall be entitled for the salary for the said period, shall remain in abeyance till further orders of this Court. The petitioners shall pay the amount against the remaining relief granted by the Central Administrative Tribunal in pursuance of the impugned order."

9. It is not in dispute that the applicant also filed CCP 2/2003 against the interim order dated 4.1.2002 in this O.A. but the same was dismissed on 11.2.2004 while recording the receipt of Rs. 59,475/- in respect of gratuity amount vide PPO dated 15.2.2003 by the applicant.

10. It is also not in dispute that the applicant was sanctioned provisional pension through PPO dated 29.1.1993 which was later on revised through order dated 16.5.1994 keeping in view the Applicant's services from 28.10.1957 to 10.5.1971 and from 30.1.1985 to 30.6.1992 as the applicant was under suspension from 11.5.1971 to 29.1.1985. Annexures C-9 and C-10 enclosed to the C.A. filed by respondent No. 3 reveal the same. Annexure C-2 dated 10.2.2003 reveals that the applicant was paid gratuity amounting to Rs. 59,475/- as per interim order passed by this Tribunal on 4.1.2002. The amount of Rs. 41,155/- for the period from 11.5.71 to 29.1.1985 was withheld. The applicant was paid leave encashment for 240 days vide order dated 30.1.1993 (Ann.C-12) and he was also paid Group Insurance Scheme amounting to Rs. 14496/- vide order dated 5.6.1993 (Ann. No.C—13). The applicant was also paid Provident Fund amounting to Rs. 280527/- vide order dated 12.7.93 and Rs. 7773/- vide order dated 21.12.1993 issued by the office of the Accountant General (A&E), U.P. Allahabad. (Ann. C-14 and C-15)..

11. It is the contention of the Respondent that the applicant has been paid retiral benefits except final pension, commutation of pension and part of gratuity which can only be finalized after the period of suspension is decided as per the decision of the Hon'ble High Court in W.P. No. 911/2007 (SB).

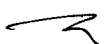
12. While allowing the claim of the applicant on 19.5.2006, this Tribunal issued direction to finalise the monthly pension of the applicant taking into account the total length of qualifying service of the applicant w.e.f. 28.10.1957 to 30.6.1992. The intervening period of suspension w.e.f. May, 1971 to 6<sup>th</sup> February, 1984 will be

treated as on duty and will be counted as qualifying service for the purpose of determination of final pension in case of the applicant. Basing on such findings, the Tribunal also granted other benefits i.e. full salary and other allowances during the intervening period of suspension as aforesaid by way of second direction and also payment of gratuity by way of direction No. 3 and also granted interest @ 12% per annum, on arrears of pension and gratuity payable to him w.e.f. the relevant date when the payment of the same had become due to him as per rules and by way of 5<sup>th</sup> direction the Tribunal granted that the applicant will also be entitled to the benefit of commutation of pension as admissible to him under the Rules.

13. But the Hon'ble High Court while granting interim relief on 13.8.2007, passed orders to the effect that the operation and enforcement of the impugned judgment and order dated 19<sup>th</sup> May, 2006 passed by the Central Administrative Tribunal in O.A. No. 591 of 2001 so far as it provides that the intervening period of suspension w.e.f. May, 1971 to 6<sup>th</sup> February, 1984 will be treated as on duty and the respondent No.1 shall be entitled for the salary for the said period, shall remain in abeyance till further orders of this Court in the W.P.

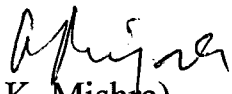
14. In view of such stay granted by the Hon'ble High Court determination of final pension of the applicant as granted by this Tribunal is not at all possible. Similarly in respect of second direction given by this Tribunal for payment of salary and other allowances for the intervention period of suspension and also for payment of interest on arrears of pension etc. granted by way of direction No. 4 and commutation of pension granted by way of direction No. 5 is also automatically stayed since they are inter linked with finalization of intervening period of suspension w.e.f. May 1971 to 6.2.1984. The respondents have stated that they have paid the gratuity to the applicant as admissible to him.

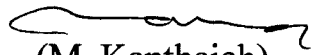
15. From the above circumstances, it is clear that there is no act of any willful disobedience on the part of the Respondents in complying with the direction given by this Tribunal in its order dated 19.5.2006 and they have also expressed their inability to render compliance to all the directions in view of stay granted by the Hon'ble High Court in respect of intervening period of suspension of the applicant w.e.f. May, 1971 to 6.2.84 to treat it as duty to count it as qualifying service for the



purpose of determination of final pension. Thus the applicant failed to satisfy the act of willful disobedience on the part of the respondents for taking action against him under contempt of court Act as such application is liable for dismissal.

16. In the result, CCP is dismissed with liberty to the applicant to file fresh after vacation of stay granted by the Hon'ble High Court dated 13.8.2007 or after dismissal of the writ petition. Notices are discharged.

  
(Dr.A.K. Mishra)  
Member (A)

  
(M. Kanthaiah)  
Member (J)  
23.12.08

HLS