

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH.

Original Application No.139/2001.

Tuesday, this the 21st day of August, 2001.

The Hon'ble Shri Justice Ashok Agarwal, Chairman,
The Hon'ble Shri G.C.Srivastava, Member (A).

D.C.Das,
Meghdoot,
Flat A-62/301,
Anand Nagar,
Dahisar (E),
Mumbai - 400 068.
(By Advocate Shri G.S.Walia)

...Applicant.

v.

1. Union of India, through
Ministry of Communications,
Department of Telecommunications,
West Block 1, Wing 2, Ground Floor,
R.K.Puram,
New Delhi.

2. Chief General Manager,
M.T.N.L., Mumbai,
Telephone House,
Prabhadevi,
Mumbai - 400 028.

(By Advocate Shri V.S.Masurkar)

...Respondents.

: O R D E R (ORAL) :

Shri G.C.Srivastava, Member (A).

The applicant is aggrieved on account of the action of the respondents in withholding his Death-cum-Retirement Gratuity (D.C.R.G), Commutation Value of Pension (CVP) and regular Pension vide order dt. 31.1.2001 (Annexure A-1). According to the applicant, he retired from service on superannuation on 31.1.2001. The Respondents issued an order dt. 29.1.2001 placing him under suspension which was received by him on 1.2.2001 (Annexure - A-2). The applicant contends that the

...2.

order of suspension cannot have retrospective effect as the applicant had in the meantime retired on superannuation on 31.1.2001, and the order of suspension is to take effect from the date it is received by the employee. Since he had already retired on 31.1.2001 the order of suspension dt. 29.1.2001 received by him on 1.2.2001 does not have any effect and hence he is eligible to receive all retiral benefits including DCRG, CVP etc. as per Rules.

2. The Respondents in their reply have stated that serious lapses committed by the applicant came to the notice of the Government and it was decided to take appropriate action against the applicant. It was accordingly decided by the Competent Authority to place the applicant under suspension on 29.1.2001. The order dt. 29.1.2001 duly approved by the Disciplinary Authority was sent to the Chief General Manager, M.T.N.L., Mumbai. It was learnt that applicant was on leave on 29th and 30th January, 2001. On 31st January, 2001, the applicant was not available either at his residence or in the office. According to them he was avoiding as he must be expecting some order passed by the Competent Authority. Hence the said order was pasted at his residence in the presence of independent witnesses. They contend that the suspension order was passed by the Competent Authority on 29.1.2001 and conveyed to the Chief General Manager, MTNL, the same is to be treated to have been communicated to the applicant on the same date. In support of their contention they have relied upon Judgment of the Supreme Court in the case of S.Pratap Singh Vs. State of Punjab (AIR

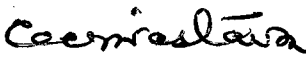
1964 SC 72), State of Punjab Vs. Khemi Ram (1969 SLR 838 (SC), AIR 1970 SC 214) and Umansankar Chattarjee Vs. Union of India (1982) 86CW 248).

3. The question for consideration here is whether the order of suspension passed on 29.1.2001 by the Competent Authority should take effect from the date of issue of the order or the date on which the same is received by the applicant. Shri G.S.Walia, the Learned Counsel for the applicant contends that the order since the order of suspension was received by the applicant only on 1.2.2001, by which time he had already superannuated i.e. on 31.1.2001, the question of the suspension order received by him on 1.2.2001 having any effect does not arise and accordingly the order of suspension does not exist on a date after he had retired from service and therefore, the respondents are not entitled to withhold the DCRG, CVP etc. On the other hand, Shri V.S.Masurkar, the Learned Counsel for the Respondents has relied on the Judgment quoted above (in para 2 supra) and has argued that the order of suspension takes effect from the date when it is passed by the Competent Authority and and since the order was passed on 29.1.2001 the same should be deemed to have been effective from the same date. He also relies on Rule 30 of the CCS (CCA) Rules which deals with service of orders, notices etc. in case of Disciplinary Action against Government servant. According to him, since the applicant was on leave for two days on 29th and 30th January, 2001 and was neither available in the office nor at his residence, the order was pasted at his residence in the presence of independent witnesses. Therefore, he contends that the order of suspension took effect from the

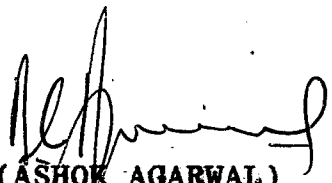
date when the order was passed i.e. on 29.1.2001 and in any case on 31.1.2001 when it was pasted at his residence. Shri Walia, Counsel for the applicant draws our attention to Rule 19 of the P&T Manual, according to which an order of suspension under Rule 10(2) of the CCS (CCA) Rules, 1965 will normally take effect from the date on which it is made and cannot be given effect to from a back date; in case the officer to be suspended is in station within Headquarters of the Competent Authority, the order cannot take effect from the date of issue of orders. Shri Walia accordingly argues that since in the instant case the order was passed by the Competent Authority in Delhi and the applicant was at Mumbai, his case is covered by the aforesaid Rule and hence the order of suspension takes effect from the date of its receipt by the applicant on 1.2.2001.

4. We have examined the rival claims and find substance in the argument of Shri Walia. We are accordingly of the considered view that the order of suspension in the instant case although passed by the Competent Authority on 29.1.2001 ~~it~~ came to be served on the applicant and also received by him only on 1.2.2001 and therefore, it is difficult to visualise as to how the suspension will take effect from the date of the passing of the order i.e. 29.1.2001. The cases relied upon by the Learned Counsel for the Respondents mainly relate to Rule 3.2 (6)(d) of Punjab Civil Services Rules and therefore, we do not think they are applicable in the instant case. Hence, we hold that the impugned order of the Respondents dt. 31.1.2001 withholding DCRG, CVP and Regular Pension cannot be sustained in law.

5. Accordingly, we quash and set aside the impugned order dt. 29.1.2001, as also the order dt. 30.1.2001 withholding the retiral benefits of the applicant. We further direct the Respondents to release the withheld dues to the applicant as per rules and also authorise the regular Pension w.e.f. the due date as per rules. This exercise shall be completed within a period of three months from the date of receipt of copy of this order. The Respondents are however, at liberty to take such action as may be considered necessary in regard to the disciplinary proceedings contemplated against him.
6. With the above directions, the OA stands disposed of. No order as to costs.


(G.C. SRIVASTAVA)
MEMBER(A)

B.


(ASHOK AGARWAL)
CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI

CONTEMPT PETITION NO. 15/2014
IN
ORIGINAL APPLICATION NO. 139/2001

CORAM: HON'BLE DR. MRUTYUNJAY SARANGI, MEMBER (A)
HON'BLE SHRI ARVIND J. ROHEE, MEMBER (J)

Shri D.C. Das ... **Petitioner/Applicant**

(Advocate Shri A.I. Bhatkar)

Versus

1. Shri M.F. Farooqui,
Secretary, Ministry of Communication,
Department of Telecommunication,
915, Sanchar Bhavan,
20 Ashoka Road, New Delhi.
2. Shri Peeyush Agarwal,
Chief General Manager
(Now Executive Director)
Mahanagar Telephone Nigam Ltd.
Telephone House, Veer Savarkar
Marg, Prabhadevi, Mumbai 400 028.

**Respondents/
Alleged Contemnors**

(Advocate Shri V.S. Masurkar)

TRIBUNAL'S ORDER

Dated: 12.06.2014

Contempt Petition was taken up today for hearing.

2. Reply has been filed by Respondent No.2, who was directed by this Tribunal to carry out its order. Respondent No.2 has informed that since the employee belongs to the DOT, it is the DOT who have to carry out the orders of this Tribunal.

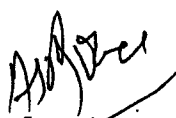
2. Learned counsel for the respondents brings to

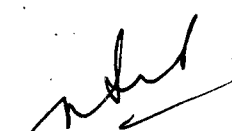
our notice that on 27.02.2014 the DOT has informed the MTNL that they are seized of the matter and it has been referred to the Department of Legal Affairs, Ministry of Law for legal opinion through the Legal Advisor of DOT.

3. Keeping this in view, Respondent No.1 is directed to expedite the opinion of the Department of Legal Affairs and implement the orders of this Tribunal within eight weeks without fail.

4. Contempt Petition is accordingly disposed of with liberty to the applicant to file a further Contempt Petition, if the orders of this Tribunal are not complied with.

5. Notice is discharged.


(A.J. Roha)
Member (J)


(Dr. Mrutyunjay Sarangi)
Member (A)

dm.