

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO.674/2001

Date of decision : 24.2.2003

Kashinath Dhanu Patil	Applicant
Shri S.P. Saxena	Advocate for Applicant

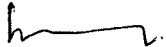
Versus

Union of India & Ors.	Respondent(s)
Shri R.R. Shetty	Advocate for Respondents

CORAM :

Hon'ble Shri Justice D.N. Chowdhury, Vice-Chairman
Hon'ble Smt Shanta Shastry, Member (A)

- (1) To be referred to the Reporter or not? } yes
(2) Whether it needs to be circulated to }
other Benches of the Tribunal? } h
(3) Library.


(D.N. CHOWDHURY)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO: 674/2001
DATED THE 24th DAY OF FEB. 2003

CORAM: HON'BLE SHRI JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN
HON'BLE SMT SHANTA SHASTRY, MEMBER (A)

Kashinath Dhanu Patil,
Executive Engineer (Retd),
9/11, Pleasant Park,
Sholapur Road, Pun 411 013.

...Applicant

By Advocate Shri S.P. Saxena

V/s

1. Union of India,
Through the Secretary,
Ministry of Defence,
New Delhi- 110 011.
2. Engineer-in-Chief,
Army Headquarters,
Kashmir House,
New Delhi- 110 011.
3. Chief Engineer(Navy),
26, Assaye Building,
Colaba, Bombay - 5.

...Respondents

By Advocate Shri R.K. Shetty

(ORDER)

Per Shri D.N. Chowdhury, Vice-Chairman

This is an application under Section 19 of the Administrative Tribunals Act 1985 assailing the action of the respondents in withholding the full amount of Gratuity amounting to Rs.6,08,127/- from the Bank Account.

2. The applicant is a civilian Group 'A' employee under respondents. He was initially appointed as Superintendent Gr.I under respondents. Subsequently, he was further promoted to the post of Executive Engineer in October 1989. While he was posted as an Executive Engineer, a show cause notice dated 16.10.2000, was served

on him by the office of C.W.E., Ferozpur, whereby the applicant was informed that during the period 8.10.1989 to 27.7.1993, certain Steel items were missing from the store dump from the office of G.E.(W) Ferozpur. In the show cause notice the applicant was informed that a Staff Court of Inquiry was held to investigate into the matter and to pin point the responsibility of loss of steel items by Station HQ Ferozpur. On the basis of the findings of Staff Court of Inquiry, recommendations given by Station Commander Ferozpur, a sum of Rs.9,730/- was to be recovered from him to make good a part of loss. Vide telegram dated 14.11.2000 the applicant had intimated CWE Ferozpur that the applicant did not accept the action of the respondents and requested that reply to show cause notice would be furnished after inspecting all relevant documents/files and on receipt of SCOI proceedings. The applicant has submitted his reply to GE(West) Ferozpur on 13.12.2000 to the show cause notice and asked for some more information and finally he submitted his reply on 15.12.2000. On 26.3.2001, the applicant was served with the impugned notice issued by the respondents under Rule-14 of CCS(CCA) Rules 1965 for inquiry into the alleged misconduct cited in the impugned notice. The applicant replied to the charge sheet and requested for dropping of the charge. The aforesaid action took place just about a month before applicant's retirement and the applicant also mentioned that in the month of February 2001, respondent No.3 had addressed a letter to the Manager, State Bank of India, Pune under which various pension documents were forwarded by Department to the Bank relating to Pension of the applicant. The applicant also stated that without

finalising.....

finalising the chargesheet dated 26.3.2001 and without withdrawing or dropping the same, the respondents had issued another chargesheet dated 9.4.2001 to the applicant on same and similar charges appended to the chargesheet dated 26.3.2001. The applicant's grievance is now centred round as to the legality of the action of the respondents in withholding the Gratuity as well as the commuted pension of Rs.3,01,696/-. The applicant was paid an amount of Rs.6,01,648.00 towards Gratuity and Commuted value of pension through the Bank on 10.5.2001. Later on, without any notice of information to applicant, the State Bank of India, Pool Gate Branch, suo-moto debited the said amount from the applicant's bank account at the instance of the respondents as was contended by the applicant. The applicant contended that withholding of the entire pensionary benefits is arbitrary, illegal and bad in law.

3. The respondents contested the claim and in the written statement stated that the disciplinary proceedings are pending against the applicant, one for major penalty and the other for minor penalty. The Gratuity and commutation value payable to the applicant was withheld in view of the pendency of the proceeding. The respondents in the written statement stated that the applicant had superannuated on 30.4.2001 and on 25.4.2001 the respondent No.3 had issued letter dated 25.4.2001 to the Manager, State Bank of India ordering it to withhold the Capitalized Value of pension of Rs.3,01,952/- DCRG amount of Rs.3,00,696/- consequent upon involvement of the officer in a disciplinary case. By the same letter the Bank was however ordered to pay the residual pension for Rs.3,849/- (Rupees Three thousand eight hundred forty-nine only) from 01 May 2001 onwards. The Respondents also stated.....

stated that the inquiry officer was already been nominated in respect of the major penalty charge sheet dated 26.3.2001 by CE Western Command and forwarded to E-in-C's Branch. In the circumstances, the question of releasing retiral benefits on the face of disciplinary proceedings pending against the applicant did not arise, averred the respondents in its written statement.

4. We have heard the learned counsel for the applicant Shri S.P. Saxena and respondents' counsel, Shri R.K. Shetty at length. The issue is as to the legitimacy of the action of the respondents in withholding the full retiral benefits. Admittedly, the charges related to the period 1989-1993 and the Disciplinary proceedings started on 26.3.2001 and the chargesheet was issued on 9.4.2001, whereas the applicant was to attain the age of superannuation on 30.4.2001. The controversy is as to the legitimacy of the action of the respondents in withholding of the reitral benefits consisting of the capitalized value of pension of Rs.3,01,952/- and DCRG of Rs.3,00,696/-. The Commuted value of pension is referred to here as capitalized value of pension, on the score of pendency of the disciplinary proceeding that was initiated in the fag end of the career of the applicant.

5. We have perused the pleadings. The relevant statutory provisions on the subject [↓]was also placed before us by the Learned Counsel for the parties. Rule 69 of the CCS (Pension) Rules, 1972 [↓]that provides for provisional pension where departmental or judicial proceeding was pending. Rule 71 speaks about Recovery and adjustment of Government dues - entrusting Head of Office to ascertain and assess government dues payable to the government servant.....

servant due for retirement. Similarly, CCS (Commutation of Pension) Rules, 1981 also puts a restriction on the commutation of pension in respect of government servants against whom departmental or judicial proceedings had been instituted before the date of retirement. In the instant case, we are mainly concerned with the institution of the departmental proceedings at the fag end of the career of an officer. The departmental proceedings pertain to the period 8th October 1989 to 27th July 1993 while the applicant was serving as Executive Engineer, Ferozpur for the alleged negligence in performance of duty by not exercising proper command and control over his staff which led to the collapse of the system and resulted into the loss of stores worth Rs.1,45,944/- only. Admittedly, there was a Staff Court of Inquiry that was held to investigate the matter and pinpoint the responsibility vide order dated 24.3.1997. Certain recommendations were made by the Staff Commander which amongst others also opined recovery of a sum of Rs.9,730/- from the applicant to make good a part of the loss. That report was submitted long back and an explanation was sought for from the applicant on 16.10.2000 advising the applicant to submit his version by 31st October 2000 which the applicant also did. The Respondent authority was sitting over the matter and by the impugned notice dated 26.3.2001 and 9.4.2001 two departmental proceedings were initiated against the applicant, knowing it well that the applicant was to attain superannuation on 30.4.2001. No explanation, not to speak of any plausible explanation was forthcoming as to why the Respondents were sitting over the matter from 1988 to 1993 and woke up only few days ahead of retirement. Shri R.R. Shetty, learned counsel for the respondents contended.....

contended that the authority was charged with the power and discretion to invoke disciplinary jurisdiction in relation to its employees. But then, discretion has its own limit. There is no unfettered discretion in the Constitutional Scheme. In the instant case, the respondents even processed the pension and paid the cheques with all retirement benefits which was deposited against the Bank account of the applicant which was later on sought to be withheld by the Respondents as per the letter dated 25.4.2001. The letter dated 25.4.2001 itself refers to the Bank's letter dated 28.2.2001 for payment of the pension and gratuity etc. We have also perused the reply submitted by the applicant against the alleged charges wherein the applicant has stated that the custody of stores was not entrusted to him during his tenure as GE (W) as per the Staff Court of Inquiry which submitted its report. We have also noted the observations of the Staff Court of Inquiry as to the loss of the Stores involving 14 numbers of Army/Civilian Personnel were made responsible for the loss. According to the applicant, at best he can be made liable to pay a sum of Rs.9,730/- against the total loss for his lapses. These are the matters, no doubt, will be adjudicated by the respondents in due course. Here, we are concerned with the reasonableness in the action of the respondents on the fact situation. Needless to state that on attaining the age of superannuation, a government employee is to arrange and devise to adjust and reintegrate himself for his future course of action. Pension and Grartuity is not a bounty, but is a valuable right acquired and property of a Government Officer. Any delay in settlement of such claim is.....

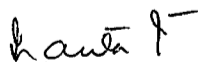
is to be viewed seriously. As alluded earlier no good reasons are forthcoming as to the reasons that prevented the respondents in resolving the issues earlier and had to wait for initiating the proceedings on the eve of his superannuation. In this proceeding, we are basically concerned with the withholding of retiral benefits of the applicant on the plea of the departmental proceeding. The applicant is agreeable to face the disciplinary proceeding and vindicate himself, but not at the altar of deprivation of the pensionary benefit. The applicant cannot be blamed for not initiating the proceeding. It was the respondents who were responsible in the matter of initiation of the departmental proceeding. They cannot now be allowed to profit from their own wrong - "nullus commodum capere potest de injuria sua propria". A cause of action cannot be based on wrong doing. It was aptly observed in *Buswel Vs. Goodwin*, (1971) All ER 418 421 - "The proposition that a man will not be allowed to take advantage of his own wrong is no doubt a very salutary one and one which the court would wish to endorse." In our considered opinion the impugned action of the respondents in withholding the retiral benefit in the facts and circumstances of the case is wholly unsustainable.

6. On consideration of all the aspects of the matter we accordingly direct the respondents to release full retiral benefit to the applicant, save and except a sum of Rs.9,730/- which the applicant volunteered in the light of the recommendations given by the Station Commander, Ferozpur, GOC 7 Inf Div., GOC II Corps and GOC-in-C Western Command and direct the respondents to pay the
retiral.....

retiral benefits in full extent, save and except the sum of Rs.9,730/-. The order should, however, not be construed as our expression on the merits of the disciplinary proceeding initiated vide Memorandum dated 26.3.2001. The respondents are, however, directed to conclude the departmental proceeding also with utmost expedition, preferably within six months from the date of receipt of the order.

7. Before concluding, we may, however, refer to a submission that was advanced by Shri R.R. Shetty as to the maintainability of the application. According to Shri R.K. Shetty, he was a personnel serving as Civilian in the Defence Pool and therefore, he is not entitled to claim protection of Article 311 of the Constitution and for that matter the Tribunal has also no jurisdiction. We are not inclined to entertain the said contention of Shri Shetty since the issue was not even raised in the written statement. That apart, the very disciplinary proceedings was initiated by the Deputy Secretary, Government of India, in accordance with the powers conferred on it under the CCS (CCA) Rules, 1965. Therefore, the contention as to the maintainability of the application is rejected.

8. The application is allowed to the extent indicated above. No order as to costs.



(SHANTA SHASTRY)
ADMINISTRATIVE MEMBER



(D. N. CHOWDHURY)
VICE-CHAIRMAN