

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 07.01.03

OA No. 242/2001

S.S.Tripathi aged about 60 years s/o Shri Govind Tripathi
r/o A-12, Van Vihar Colony, Tonk Road, Jaipur

.. Applicant

Versus

1. Union of India through the Secretary, Ministry of Personnel, Public Grievances and Pension, Government of India, North Block, New Delhi.
2. State of Rajasthan through Secretary, Department of Personnel, Secretariat, Jaipur
3. Director, Pension Department, Rajasthan, Secretariat, Jaipur

.. Respondents

Mr. R.N. Sharma - counsel for the applicant

Ms Shalini Sheoran, proxy counsel to Mr. Bhanwar Bagri, counsel for respondent No.1

None present for other respondents

CORAM:

HON'BLE MR. H.O.GUPTA, MEMBER (ADMINISTRATIVE)

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

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Per Hon'ble Mr. H.O.Gupta, Member (Administrative)

In this OA, the applicant has prayed for the following reliefs:-

"(i) By issuing order or directions or in the nature thereof, the memorandum dt. 31.5.2001 be quashed with all consequential benefits;

(ii) The amount of post retiral benefits, if any,

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withheld by the respondents, be released to the applicant with interest @ 18% p.a.

(iii) Any other appropriate order or direction which the Hon'ble Court deems fit and proper in the facts and circumstances of the case may also be passed in favour of humble applicant.

(iv) Cost of the O.A. may also be awarded in favour of humble applicant."

2. Briefly stated, the facts of the case, as made out by the applicant, are that:-

2.1 He was appointed in Rajasthan Administrative Service (RAS) and thereafter he was promoted to the Indian Administrative Service (IAS) in 1995 with 1989 as the year of allotment. On reaching the age of superannuation, he retired on 31.5.2001. On 21.5.01, the Department of Personnel of the State Govt. issued a certificate to the Director, Pension Department informing them that no departmental/preliminary enquiry/complaint is pending against the applicant. No Dues Certificate was also enclosed.

2.2 On the day of retirement, a memorandum dated 31.5.01 alongwith articles of charge was served on him. All the charges levelled against the applicant related to a decision taken by him in judicial/quasi-judicial capacity during the period 21.4.97 to 23.4.99 when he was District Collector, Kota.

2.3 The chargesheet issued in the afternoon of the day of his retirement, is with the sole purpose to harass him and to postpone his retiral benefits. Being aggrieved of the issue of chargesheet after retirement and also of

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the subsequent action of respondent Nos. 2 and 3 withholding pension and other post-retirement benefits, this OA has been filed on the following grounds:-

2.3.1 The chargesheet issued to the applicant is wholly illegal, arbitrary and unjustified and deserves to be quashed since the same has been issued in a case which does not fall within the definition of misconduct. The charge levelled against the applicant relate to the work performed by him in judicial capacity. The chargesheet was issued without application of mind and with wholly extraneous purposes and considerations.

2.3.2 The respondents are estopped to issue a chargesheet when they had already issued a certificate that no DE/PE or complaint is pending vide their letter dated 21.5.2001. The chargesheet does not relate to any matter or development which might have taken place after 21.5.01. Hence the action of the respondents in issuing the chargesheet to the applicant is per-se malafide and with oblique motive to harass the applicant after retirement.

2.3.3 The applicant had outstanding record of service and even in IAS cadre he was promoted on merit basis. The chargesheet issued to the applicant is contrary to the set principles of jurisprudence. The chargesheet dated 31.5.01 is also self contradictory on account of the fact that the Collector, who has been made a witness, has himself taken a decision to release the amount as per the judgment given by the applicant and has in his order accepted that the order passed by the applicant was correct.

2.3.4 The chargesheet issued to the applicant for not following the principles of Section 89 (7) of the Act of

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1956, is on a personal opinion of the Disciplinary Authority.

2.3.5 The applicant is protected under the Judicial Officers Protection Act, 1850 and under Section (1) thereto when the applicant as a Collector passed any order judicially that the same cannot be challenged on any count and he cannot be liable ~~to~~ for the same.

2.3.6 The applicant is entitled to get post-retiral benefits as the chargesheet issued is wholly vague, baseless and illegal. The chargesheet issued cannot be said to have been issued under Rule 9 of the Pension Rules, 1972.

3. The respondents have contested this application and, inter alia, stated that the provisional pension was sanctioned to the applicant vide order dated 30.6.2001 and that other retiral benefits shall be released on conclusion of the departmental enquiry and issue of final order thereon in accordance with rules.

4. The applicant has also filed rejoinder controverting various contentions of the respondents.

5. Thereafter the applicant filed a Misc. Application No.396/02 enclosing a copy of the order dated 5.9.02 (Ann.A9) whereby the Governor of the State has ordered for closing the disciplinary proceedings since his reply to the chargesheet was found satisfactory. It is further submitted that from this order it is apparent that the applicant has been unnecessary harassed and his post retiral benefits were withheld without any reason or

13

rhyme. He has prayed that he is not only entitled to receive interest @ 24% p.a. but also to receive compensation for the loss of prestige and great mental harassment and also the cost of the application.

5.1 The respondents have contested this MA stating rules with regard to pension, commutation of pension, gratuity and encashment of leave. It has further been stated that since the proceedings have been concluded with the issuance of the order dated 5.9.02, all his retiral benefits have since been paid to him in the month of September, 02. The applicant himself has admitted this fact vide his application dated 4.10.02 sent to the Secretary, Department of Personnel, Jaipur. They have also given details of release of payment of various amount. The respondents have stated that in this case interest of 18% on delayed payment, as prayed in the OA, is not payable and in support of their contention, they have cited the following judgments :-

- (i) Y.Lalithamba Vs. Union of India, 1996 (33) ATC 627
- (ii) R.Veerabhadram Vs. Govt. of A.P., 2000 SCC (L&S) 166

They have also submitted that the Hon'ble Tribunal has no jurisdiction to grant compensation/damage as held by the Hon'ble Apex Court in Maharashtra Public Service Commission Vs. Dr. Bhanumati Purushottam Rathore [1997 SCC (L&S) 1131].

6. Heard the learned counsel for the applicant,

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the learned counsel for respondent No.1 and perused the record. The learned counsel for respondent Nos. 2 and 3 was not present.

6.1 It was a no adjournment case and after waiting for the learned counsel for the State Govt., it was heard. The prayer No. (i) of the applicant with regard to quashing of the chargesheet has become infructuous, in view of the order dated 5.9.02 of the Governor of the State whereby the disciplinary proceedings have been closed. So far as the prayer with regard to payment of retiral benefits is concerned, it is seen from the reply of the respondents that the provisional pension was sanctioned within one month of the date of superannuation. In reply to the M.A., the respondents have submitted that the applicant is not entitled to commute any part of the pension during the pendency of the proceedings as per rules. While we agree with this contention of the respondents, but we find that there is no mention whether on conclusion of the proceedings, the applicant has been offered to commute a portion of pension as per rules.

6.2 The respondents have further stated that the applicant has been paid gratuity vide order dated 13.9.02 and also the leave eacashment amount vide letter dated 12.9.02. The fact remains that the applicant retired on 31.5.02 and the leave encashment and gratuity amounts were required to be paid within 3 months, had he not been proceeded against. Once, based on the representation of the applicant against the chargesheet, the proceedings have been closed, the applicant cannot be denied interest on the retiral benefits withheld on account of disciplinary proceedings. The respondents have not

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mentioned any rule of All India Service whereby the retiral benefits withheld due to pendency of disciplinary proceedings and after proceedings are closed, the interest is not payable. No reason has been shown by the respondents why the leave encashment amount was withheld. As per the Govt. of India decision No.2 under Rule 68 of the CCS (Pension) Rules, 1972 applicable to the Central Government employees, the employee, if on conclusion of proceedings is fully exonerated, he is entitled for interest on delayed payment of gratuity. Since no rules contrary to these orders issued by the DOPT have been shown to be applicable to the members of IAS, we find no reason as to why the orders of the DOPT should not be made applicable to the applicant. We are of the firm view that once the disciplinary proceedings are closed based on the reply to the chargesheet, the applicant shall be deemed to be fully exonerated of the charge. In the circumstances, we find no valid reason for not granting interest on the withheld amount of gratuity and leave encashment.

Lalithamba's case (supra) relied upon by the respondents has different facts and circumstances. In this case, some of the charges against the applicant were proved and while dropping the proceedings, the displeasure of the President was communicated to the applicant. In Veerabhadram's case (supra) also relied upon by the respondents, gratuity was withheld as per specific order of the Tribunal. More so, there are specific DOPT instructions for payment of interest when proceedings end in exoneration of the applicant.

7. In view of above discussions, this OA is partly

8

allowed with following directions to the respondents:-

(a) The applicant be given option to commute a portion of his pension as per rules within 30 days from today. In case the applicant applies for commuting a portion of pension, the commuted value of pension shall be paid to him within 30 days of receipt of the option by simultaneously revising his pension as per rules.

(b) The applicant shall be paid interest at the rate of 9 % p.a. from 1.9.01 (3 months after the date of retirement) till the date the amount is actually paid. This amount of interest shall also be paid within 3 months from today. In case of delay of interest beyond 3 months, the applicant shall be further entitled for penal interest at the rate of 4.5% p.a. for the period beyond 3 months from today and the date it is actually paid.

8. No order as to costs.


(M.L.CHAUHAN)

Member (Judicial)


(H.O.GUPTA)

Member (Administrative)