

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, JAIPUR

O.A. No. 307/2003  
T.A. No.

198

DATE OF DECISION

19/12/03

Dr. M.K. Srivastava

Petitioner

Mr. C.B. Sharma

Advocate for the Petitioner(s)

Versus

UOI and two others

Respondent

Ms Shalini Sheron for

Advocate for the Respondent(s)

Mr. Bhanwar Bagri

CORAM :

The Hon'ble Mr. J.K. Kaushik, Judicial Member.

The Hon'ble Mr. A.K. Bhandari, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *yes*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *yes*

*A.K. Bhandari*  
( A.K. Bhandari )  
Administrative Member

*J.K. Kaushik*  
( J.K. Kaushik )  
Judicial Member.

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH; JAIPUR.**

*19<sup>th</sup> day*  
**Of December two thousand three.**

**O.A. No. 307/2003.**

The Hon'ble Mr. J.K. Kaushik, Judicial Member.

The Hon'ble Mr. A.K. Bhandari, Administrative Member.

Dr. M.K. Srivastava  
S/o late Shri Pratap Narayan Srivastava,  
R/o 1-B Anant Kuti, Kabir Marg,  
Bani Park,  
Jaipur.

: Applicant.

Rep. By Mr. C.B. Sharma, Counsel for the applicant.

**Versus**

1. Union of India through its Secretary  
To the Government of India,  
Ministry of Health and Family Welfare,  
Nirman Bhawan,  
New Delhi.
2. Director General of Health Services,  
Nirman Bhawan,  
New Delhi.
3. Pay & Accounts Officer,,  
Pay & Accounts Office,  
M/o Health and Family Welfare,  
NICD, 22, Sham Nath Marg,  
New Delhi.

: Respondents.

Ms. Shalini Sheron proxy counsel for  
Mr. Bhanwar Bagri, Counsel for the respondents.

*[Signature]*

**ORDER****Per Mr. J.K. Kaushik, Judicial Member.**

Dr. M.K. Srivastava has filed this OA for seeking the following reliefs:-

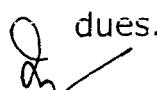
- "(i) That the respondents may be directed to release Pension Payment Order for Pension and Amount of gratuity/leave encashment and commutation alongwith interest @ 18% p.a. w.e.f. 1.2.2002 till payment treating the period of suspension as spent on duty.
- (ii) That the respondents may be further directed not to recover any amount from the applicant in pursuance to letter dated 27.09.2002 (Annexure A/6) and the same may be quashed and set aside with all consequential benefits.
- (iii) That respondents be further directed to treat the period of suspension as spent on duty for all purposes by quashing order dated 27.11.2000 (Annexure A/1) with the further any order passed by the respondents.
- (iv) That respondents be further directed to allow interest on Rs. 2,74,582/- of GPF amount for the year 1998-99 onwards and interest for two months on whole amount of GPF Rs. 6,09,853/- on account of delayed payment and also to pay other allowances to the post."

2. The abridged facts which are considered to be relevant for resolving the controversy involved in the instant case are that the applicant was initially appointed as Medical Officer in the year 1965 and enjoyed his further promotions in due course and finally became Senior Regional Director. He completed his service by discharging duties efficiently and satisfactorily and



never faced any unusuality except just at the verge of his retirement. While working at Chandigarh, the applicant made sincere efforts to save the department from mis-happenings in purchase of the various items including medicines which caused certain resentment and the applicant was placed under suspension on the ground of contemplation of disciplinary proceedings on 27.11.2000. He represented against the same and challenged the competence of the authority who had signed the suspension order.

3. It has been averred that the applicant was neither paid subsistence allowance nor the suspension order was reviewed. He requested the competent authority either to revoke the suspension order or to intimate the reasons for placing him under suspension. The suspension order was revoked on 4.9.2001 and the applicant came to be posted in Super Time Grade at Jaipur after a period of about two months vide order dated 1.11.2001. He was made victim by the malafide attitude of the respondents. He retired on attaining the age of superannuation on 31.12.2001 after handing over his charge. The applicant was neither paid his retiral benefits nor sanctioned any pension. He was asked to submit his explanation against certain irregularities vide letter dated 27.09.2002 and it is only on 27.09.2002 after nine months of the retirement of the applicant some shortcomings have been pointed out just to find out a justification for his suspension and withholding of retiral dues.



4. It is averred that the applicant sincerely performed his duties at Chandigarh and did not act against the norms of the Department for a period of one and half years. He was paid nothing except the payment of GPF which is also paid less in as much as the contribution for the year 1998-99 and the interest thereof had not been taken into account. The order of suspension was not revoked in spite of the fact that no action can be taken against his under CCS(CCA) Rules, 1965 as well as CCS (Pension) Rules 1972. His retiral benefits & dues including other benefits like TA, DA, telephone charges and certain payments have been with-held without any cogent reasons. The OA has been filed on diverse grounds narrated in para 5 and its sub-paras. We shall deal with them in the later part of this order as having stressed on behalf of the applicant.

5. The respondents have filed a detailed and exhaustive reply and resisted the claim of the applicant. It has been averred that number of complaints were received from the employees of the office against the applicant for not following the prescribed administrative and financial procedure in the office work and for alleged misbehaviour with the staff. The suspension order was revoked on 4.9.2001 and simultaneously he was transferred out of Chandigarh and posted at Jaipur. The transfer was necessary as Inquiry and Audit had not been completed. During the period of suspension, the applicant refused to give a certificate of non-employment which was essential for payment of subsistence allowance. The applicant committed misconduct hence full salary during the period of his suspension was not paid. A

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Special Audit was conducted which brought out a number of instances of omissions and commissions during his tenure in Chandigarh. Further inquiry had also brought out number of instances of the applicant's irrational behaviour.

6. The next ground of defence as set out in the reply is that the respondents processed the pension papers. It was considered that the applicant was not cleared from the vigilance angle and disciplinary proceedings were contemplated against him; regularisation of the suspension period was not done. The Government dues to be recovered from the applicant, was to the tune of Rs. Six lakhs and co-operation was sought from his to which no response was given. The applicant refused to accept the provisional pension and the Demand Draft was returned. The applicant was not replying to the communication sent to him. The applicant was issued noticed under FR 54 B as to why the period of suspension should not be restricted to the payment of subsistence allowance only and in absence of the reply, a decision was taken to restrict the same, as proposed.

7. The grounds raised in the OA have been generally denied in the reply and the respondents have submitted that the OA deserves to be dismissed with costs.

8. An exhaustive rejoinder was also filed by the applicant. The contents stated in the reply have been rebutted and certain additional instances have been brought on records.



9. We have heard the learned counsel for the parties at a considerable length and have earnestly considered the pleadings and records of this case.

10. The learned counsel for the applicant has submitted that the applicant has in fact been victimised by the respondents. He pointed out certain malpractices, which were practised in regard to the purchase by the officials at Chandigarh office of the respondents. He has submitted that as far as the question of treatment of period of suspension is concerned, period has to be treated on duty in as much as the applicant has not been issued with any charge sheet. The provisions of FP 54-B do not apply in this case. He has also contended that even in cases where the minor penalty is imposed in disciplinary proceedings, the suspension would be considered to be wholly unjustified. The instant case is on a better footing in as much as no charge sheet has been issued. In this way, the period of suspension has to be treated as period spent on duty for all purposes.

11. The next contention of the learned counsel for the applicant is that the applicant became entitled for all his dues on date of his retirement and the same have been withheld without authority of the law. In such situation, the applicant would be entitled for the interest for the delayed payment of pension and other retiral benefits.

12. As regards the stand of the respondent, there are lot of dues against the applicant and the amount is to the tune of Rs.

Six lakhs. The learned counsel for the applicant has submitted that as per the details given in letter dated 17.11.2003, which is produced on behalf of the respondents, the said dues relate to certain miscellaneous matters, some require sanction and other would require conciliation and they could not be said to be any deficiency or loss to the State. He has also submitted that all these dues have been calculated in the absence of the applicant. He has not been apprised or given any show cause notice regarding the same. He has submitted that the respondents have not co-operated with the applicant and they have chosen to withheld the amount out of the retiral benefits of the applicant without reasons. He has submitted that the applicant was hard-pressed to get his retiral benefits that he even paid Rs. Three lakhs to the respondents to get released his retiral dues. He has also submitted that the respondents instead of ascertaining the actual dues and justifying various items and giving sanction to the various transaction which requires administrative sanctions, resorted to the short-circuit method. The issue could have been settled amicably. It was expected from the respondents that they would sympathise for a person who has retired from service but in the instant case instead of sympathy, the respondents have resorted to victimise the applicant.

13. Per-contra, the learned counsel for the respondents has vehemently tried to counter the submissions of the learned counsel for the applicant. She has submitted that the disciplinary Authority is competent to treat the period as per his discretion and treating the period as suspension for which the

applicant would be entitled to the subsistence allowance paid to him cannot be said to be in violation of any rule. She has submitted that issuance of the charge sheet or otherwise would make no difference. Therefore, no illegality can be found in the action of the respondents in treatment of the period of suspension. As regards the release of the other dues are concerned, the respondents tried to make payment of provisional pension but the applicant did not accept the same and for that respondents cannot be blamed. She has also submitted that since there was contemplation of the disciplinary proceedings against the applicant, the retiral benefits could not has been released in as much as the applicant has committed lot of misconducts and he should thank to himself for the delay in making the payment to him.

14. At the very out set there has been lot of deliberations regarding the treatment of the period of suspension and the learned counsel for the respondents has strived hard to justify the suspension of the applicant. We were taken through the various paragraphs of the reply and it was pointed out that the applicant himself is responsible for the delay in releasing the retiral benefits in as much as he did not give unemployment certificate. He did not follow the prescribed procedure. We think that at this stage the production of unemployment certificate is not so much relevant. The legal question involved in the instant case is as to whether the suspension could be said to be justified in a case where no disciplinary proceeding has been instituted against a delinquent employee. In various paras of the reply it

has been averred that the applicant committed certain misconducts. On the other had, it has been said that he has been exonerated. Admittedly, the applicant was placed under suspension for the reason that a disciplinary case was contemplated against him. That is the basis of the suspension order. Since the contemplation of disciplinary proceedings did not culminate into initiation of disciplinary proceeding, the irresistible conclusion would be that there is no basis for the suspension and the suspension in the instant case was without any basis and the same could be only construed as wholly unjustified. The applicant's case stood on a better footing than a case where one is suspended and disciplinary proceedings were initiated against him and minor penalty only was imposed on the individual. For such cases, specific instructions have been issued vide OM dated 3.12.1985 which is appended as instruction under FR 55 and the contents of the same is reproduced as under: -

**"(3) Period of suspension to be treated as duty if minor penalty only is imposed -**

Reference is invited to OM No. 43/56/64-AVD, dated 22.10.1964 (not printed), containing the guidelines for placing Government servants under suspension and to say that these instructions laid down, inter alia, that Government servant could be placed under suspension if a *prima facie* case is made out justifying his prosecution or disciplinary proceedings which are likely to end in his dismissal, removal or compulsory retirement. These instructions thus make it clear that suspension should be resorted to only in those cases where a major penalty is likely to be imposed on conclusion of the proceedings and not a minor penalty. The Staff Side of the Committee of the National Council set up to review the CCS (CCA) Rules, 1965, had suggested that in cases where a Government servant, against whom an inquiry has been held for the imposition of a major penalty, is finally awarded only a minor penalty, the suspension should be considered unjustified and full pay and allowances paid for suspension period. Government have accepted this suggestion of the Staff Side. Accordingly, where departmental proceedings

against a suspended employee for the imposition of a major penalty finally end with the imposition of a minor penalty, the suspension can be said to be wholly unjustified in terms of F.R. 54-B and the employee concerned should, therefore, be paid full pay and allowances for the period of suspension by passing a suitable order under F.R. 54-B.

2. These orders will become effective from the date of issue. Past cases already decided need not be reopened.

[G.I., Dept. of Per. & Trg., O.M. No. 11012/15/85-Est. (A), dated the 3<sup>rd</sup> December 1985]

15. Applying the aforesaid decision to the instant case we are left with no option except to subscribe with the views of learned counsel for the applicant that the whole suspension period in the instant case ought to have been treated as period spent on duty for all purposes. In other words, the grounds of defence of the respondents that the suspension was wholly justified and the disciplinary authority had power to decide it as per rule FR 54-B does not stand to the scrutiny of law and we find ourselves unable to agree. Therefore, we hold that the suspension of the applicant was wholly unjustified and he would be entitled to all benefits for the period of suspension by treating the same as period spent on duty for all purposes.

16. On the aforesaid analogy there would not be any difficulty in arriving at a conclusion that there was no disciplinary case pending against him at the time of retirement or subsequently as per rule 9 and 10 of CCS (Pension) Rules 1972, his retiral dues could not have been withheld and he became entitled to for the release of the same on the date of his retirement i.e. on 31.12.2001 itself. Consequently, he also became entitle for the payment of interest if there was any delay in releasing the any

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of the due amount. There was definitely delay in releasing the retiral benefits to the applicant. The delay has been attributable to the respondents except regarding the amount of provisional pension which was offered to him in July 2002 but he refused at that time and subsequently accepted the same on 15.09.2003, thus, during the period July 2002 to 15.09.2003 the delay is not attributable to the respondents and therefore there would not be any question of allowing any interest for this period.

17. Now coming to the next question as per the pleadings, it has been averred that as sum of Rs. 6,00,000/- is due from the applicant, which has to be recovered. At the time of hearing it was stated that he had deposited a sum of Rs. 3,00,000/- and there was a balance of Rs. 3,25,000/- (with interest) to be recovered. But after about five minutes of hearing it was stated that no amount is due from the applicant after he has paid 3,00,000/- and this position has been subsequently ascertained. However, the learned counsel for the applicant only strived that his rejoinder may be taken into consideration and this Court may peruse the letter dated 17.11.2003 which has been produced by the respondents on the date of hearing. It indicates that there are 11 items, which have been said to be the heads relating to the giving rise to the outstanding amounts. Instead of going technicality of the rules as regards the admissibility of recovery of over dues amount deducted at the time of retirement against the employee we would resort to pragmatic approach and endeavour to impart substantial justice to the parties.

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18. The details of the dues outstanding indicated in the Annexure to letter dated 19.11.2003, is as under:-

S. No.	Item	Amount
1.	Interest on Motor Car Advance	Rs. 36,220/-
2.	Interest on HBA	10,805/-
3.	Transfer TA Advance	50,000/-
4.	LTC Advance	8352/-
5.	Cost of Brief Case	2450/-
6.	Cost of Store Items	36,334/-
7.	Costs of Books	4,085/-
8.	Licence Fees/damage charges quarter	15,460/-
9.	TTA Allowance advance	35,000/-
10.	Telephone : official	5,437/-
11.	Overdrawn Salary	1,20,616/-

After our specific findings regarding the treatment of the suspension period as spent on duty for all purposes, there would be left no amount of overdrawn as i.e. Rs. 1,20,616/- item No. 11. The other items like telephone bill may need administrative sanction. The applicant may return the books and stores items and submit the bills for TA etc. Regarding brief case, we do not think that it is to be returned on retirement. On the left out items, the applicant should submit explanation.

19. From the arguments, from the side of the respondents, it was looking as if the applicant is adamant and has committed something big and we frankly confess we felt dismayed but when we came to know the correct position that there is nothing as such and the version of the respondents that there was recovery worth Rs. 6 lakhs, was false and only a precarious assertion and it inevitably caused sensation in our mind regarding the way and carelessness, the case of the applicant was being dealt with. We started thinking for ordering a detailed inquiry. We can very

safely assert that a copy of the letter dated 17.11.2003 has not been even been endorsed to the applicant and question of asking any explanation from him regarding the due does not arise. This really causes further anxiety and doubt regarding irresponsible attitude of the functionaries dealing with the settlement dues of the applicant. We can also infer that the peculiar way the respondents have treated the case of applicant, would have perturbed the applicant who remitted a cheque of Rs. 3 Lakhs to the respondents without knowing any details. However, all that we can say is that applicant's case for the settlement has been dealt with neglect and we hope and trust that at least now the same shall be dealt with fairly and diligently. The applicant is also expected to adopt pragmatic approach and submit the explanation/clarification to the various items indicated above as taken from letter dated 19.11.2003, taking the letter as addressed to him.

19. In the result the Original Application merits acceptance and the same stands allowed in the following terms :-

- (i). The respondents are directed to treat the period of suspension from 27.11.2000 to 03.09.2001 as spent on duty for all purposes including pay and allowances.
- (ii). The applicant shall be entitled for payment of all retiral dues, including final pension, DCRG, GPF, etc on the date of his retirement but the commutation of pension, if any, from the actual date of payment of commuted value. The respondents shall also pay interest on the amount delayed payments @ 8% p.a. from the date of retirement till the date of payment except

on the pension amount for the period from July 2002 to Sep 2003.

(iii). The amount of Rs. 1,20,616/- withheld on account of overdrawn of salary shall be released within a period of one month from the date of receipt of this order.

(iv). For other dues listed at item No. 1 to 10 in para above, the applicant shall submit the details/explanation and complete the requisite formalities and submit a representation accordingly to respondent No. 2, within a period of one month from the date of receipt of this order, who shall decide the same by passing a speaking order within a period of two months thereafter. The applicant would be at liberty to file a fresh OA if he is still aggrieved by the such order, if so advised.

(v). The parties shall bear their own costs.

~~( A.K.Bhandari )~~  
~~Administrative Member~~

~~J.K.Kaushik~~  
~~( J.K.Kaushik )~~  
~~Judicial Member~~

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