

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 4th day of February, 2009

ORIGINAL APPLICATION NO.115/2007

CORAM :

HON'BLE MR.B.L.KHATRI, ADMINISITRATIVE MEMBER

R.L.Baria
S/o Late Shri C.M.Baria,
R/o 226/11-A, New House No.409/47,
Mali Mohalla, Madar Tekri,
Kundan Nagar,
Ajmer.

... Applicant

(By Advocate : Shri Surendra Singh, proxy counsel for
Shri Man Singh Gupta)

Versus

1. Union of India through
Secretary to the Govt.,
Ministry of Defence,
New Delhi.
2. Director General of Military Training MT-15,
General Staff Branch (MoD),
Army Head Quarter, DHQ,
New Delhi.
3. Principal C.D.A. Pension,
Draupadi Ghat,
Allahabad (UP).
4. Principal,
Military School,
Ajmer.

... Respondents

(By Advocate : Shri Y.K.Sharma, proxy counsel for
Shri Sanjay Pareek)

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ORDER

PER HON'BLE MR.B.L.KHATRI

The applicant stood retired as UDC from the Military School, Ajmer, on 31.7.2006. He has filed the present OA praying for the following relief :

- "a) That by appropriate order, directions, mandate humble applicant be allowed the post retiral benefits viz Gratuity, Commutation, Medical Allowance @ Rs.100/- per month, GPF amount, CGIS, Leave encashment and other benefits w.e.f. 1.8.2006.
- b) That by appropriate orders, directions, instructions, respondents be directed to release all retiral benefits to the humble applicant.
- c) That by appropriate orders, directions, instructions, respondents be directed to release all the retiral benefits alongwith interest @ 18% per annum w.e.f. it became due till the payment is made to him."

2. By order dated 23.10.2008, this Tribunal had directed respondent No.4 i.e. Principal, Military School, Ajmer, to file an affidavit for reply to the following points with copy of the documents :

- "i) Due date of payment of retiral benefits such as pension, gratuity etc. Reasons for the delayed payment of such retiral benefits.
- ii) A copy of order for withholding of retiral benefits, if any, and rule under which the retiral benefits were withheld.
- iii) Furnish a copy of letter of the PCDA(P), Allahabad for release of retiral benefits.
- iv) Period of leave for encashment as per the service record of the applicant.
- v) A copy of the letter, if any, addressed to the applicant regarding his leave encashment and other retiral benefits."

3. In response to this direction of the Tribunal, an additional affidavit was filed by respondent No.4 stating inter-alia, as under :

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- i) That though the applicant retired from service w.e.f. 31.7.2006 yet much before it the office of respondent No.4 took steps to complete all paper works and formalities for retiring him. In this regard the applicant, vide letter dated 20.1.2006 (Ann.R/1), was asked to submit certain necessary documents including Passport size photographs, joint photographs, Bank Accounts, details of family etc.
- ii) That vide letter dated 18/22.4.2006 all the requisite documents were forwarded to the PCDA (P), Allahabad, by the office of respondent no.4. In the application for pension/gratuity ~~and DCRG~~, it was mentioned against column No.1 that the employee was awarded forfeiture of three increments with cumulative effect and against it the case is pending before CAT, Jaipur. This has caused some confusion and therefore vide letter dated 11.7.2006 PPO No.C/MISC./17596/2006 was issued, mentioning that nature of pension - "DISCIPLINE".
- iii) That on 17.7.2007 the applicant wrote a letter (Ann.R/2) to the PCDA (P), Allahabad, through proper channel and objected in respect of non-sanction of DCRG and commutation. The office of respondent No.4 forwarded the application dated 17.7.2006 of the applicant to the office of PCDA (P), Allahabad, vide letter dated 14.8.2006. On the same day the PPO was also forwarded to the Manager, Punjab National Bank, Ajmer.
- iv) That vide letter dated 1.9.2006 (Ann.R/3) the office of respondent No.4 requested the office of the PCDA (P), Allahabad, to release the benefits of gratuity and commutation of pension. Further, vide telegram dated 22.9.2006 the office of respondent No.4 once again, requested to release the said benefits.
- v) That vide letter dated 15.6.2007 (Ann.R/4) the office of respondent No.4 received a corrigendum PPO (Ann.R./5) No.C/Corr./Misc./ 07139/2007, wherein all the due

retirement benefits were notified. It is significant to mention here that the office of respondent No.4 came to know that Rs.4746/- were outstanding against the applicant in respect of rent and other charges, which is clear from perusal of letter dated 2.5.2007 (Ann.R/6).

- vi) That vide letter dated 3.7.2007 (Ann.R/7) respondent No.4 forwarded Corrigendum PPO to the concerned Bank and requested for payment of the due amount.
- vii) That at initial stage correct PPO could not be issued by the office of PCDA (P) due to some confusion, appeared because of the fact mentioned in the application in respect of punishment of forfeiture of three increments.
- viii) That so far as the benefit of leave encashment is concerned, the same could not be released as the applicant did not mark his attendance on 30.6.2006 to 29.7.2006. In fact, vide order dated 28.6.2006 (Ann.R/8), the applicant was suspended on account of contemplation of a disciplinary proceedings as the applicant had used threatening and derogatory language. Later on, the applicant had pleaded sorry and apprised the office that he would submit leave application for the period he did not join his duties. However, till date he has not submitted any such application, resultantly the period from 30.6.2006 to 29.7.2006 could not be regularized.
- ix) That all the aforesaid facts clearly reveal that the applicant has received all his retirement dues and delay, if any, is not intentional. So far as the benefit of leave encashment is concerned, the same could not be released as till date the applicant has not submitted his application.

4. In the counter-reply to the aforesaid additional affidavit, learned counsel for the applicant made the following submissions :

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- i) That the applicant was retired on attaining the age of superannuation on 31.7.2006. He ought to have been allowed all the retiral benefits on the basis of pay which he was drawing/getting as on 31.7.2006. Without any basis or material the applicant was awarded punishment of forfeiture of three increments (cumulative effect) against which an OA [No.45/04] was filed by the applicant. The said OA was decided by the learned Tribunal vide judgment dated 27.11.2008 and the punishment order was quashed and set aside. There is no connection with OA No.45/04 and the retiral benefits.
- ii) That the applicant is entitled to get the gratuity amount as on 1.8.2006 but the respondents deliberately and intentionally delayed the payment of gratuity and paid the gratuity amount to the applicant in the month of July, 2007, after a lapse of one year. The applicant is entitled to get interest @ 18% per annum on the delayed payment.
- iii) That without any material or basis the applicant was placed under suspension and his suspension was revoked and he was allowed to join the duties on 31.7.2006. He was also allowed the pay and allowances for the period 30.6.2006 to 31.7.2006, as such by no stretch of imagination it could be said that the said period i.e. 30.6.2006 to 31.7.2006 was not regularized. Applicant's suspension was revoked, he joined the duties in continuation of previous services and he was allowed full pay and allowances of the suspension period and there is no need to issue a separate order for regularization of the aforesaid period. The applicant never apprised sorry as there was no occasion to apprise sorry and he was suspended without any basis or material. No charge-sheet was ever served in respect of suspension order dated 28.6.2006. No question arises for regularizing the period w.e.f. 30.6.2006 to 31.7.2006 as the applicant joined his duties as on 31.7.2006 in continuation of

previous services and he was allowed pay and allowances for the aforesaid period. Applicant is entitled to get the benefit of P.L. encashment (300 days) alongwith interest. Moreover, the applicant has been allowed pension on the basis of his regular services. The respondents intentionally and deliberately with a view to harass and torture the applicant delaying the payment of P.L. encashment. As far as knowledge goes, 300 days P.L. is credited in applicant's P.L. account. The applicant has not been allowed the P.L. encashment (300 days) benefit till date. Applicant is entitled to get P.L. encashment benefit alongwith interest @ 18% per annum w.e.f. the date it becomes due till the payment is made to him.

iv) That the applicant is entitled to get interest @ 18% per annum on the delayed payment of gratuity w.e.f. 1.8.2006 till the payment is made to him and he is also entitled to get P.L. encashment benefit alongwith the interest @ 18% per annum w.e.f. 1.8.2006 to the date till payment is made to him.

5. I have heard learned counsel for the parties and perused the record. As regards release of pension, it was explained that delay was caused due to ambiguity on the point of disciplinary proceedings against the applicant and the delay was mainly caused by the office of PCDA (P), Allahabad, which was not intentional. After perusal of the record, I find that delay in grant of pension and DCRG was due to procedural lapses or confusion in the mind of the authorities. However, as regards leave encashment, it was submitted by learned counsel for the applicant that the applicant was allowed full pay and allowances for the period from 30.6.2006 to 31.7.2006, therefore, the said period stood regularized. The applicant was placed under suspension and his suspension had been revoked and he was allowed to join duty on 31.7.2006. Learned counsel for the applicant had rightly placed reliance on FR-55 which says that leave may not be granted to a government servant under suspension. He had also placed reliance on the case of **Zonal Manager, Food Corporation of India and**

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others v. Khaleel Ahmed Siddiqui [1982 (2) SLR 779],

wherein it was held that during the period of suspension an employee cannot be compelled to join office to mark attendance at the office daily during working hours. When the applicant was not required to submit any leave application or to mark his attendance and especially keeping in view the fact that full pay and allowances had been allowed to him for this period, the payment of leave encashment cannot be withheld by the respondents. In this case, the applicant has claimed that he had 300 P.L. in his leave account but encashment for the same has not been allowed by the respondents till date. Therefore, the respondents are directed that payment of leave encashment to the extent leave due should be allowed treating the period from 30.6.2006 to 31.7.2006 as having been regularized.

6. After appreciation of the facts of the case, I find that the respondents had not been in a position to give specific reasons for delayed payment of pension, DCRG and leave encashment. Therefore, having regard to the facts of the case, the respondents are hereby directed to make payment of interest on the amount of pension, DCRG and leave encashment from the date they became due till the date of payment @ 12% per annum.

7. With these observations, the OA stands disposed of. No order as to costs.

B.L.KHATRI
(B.L.KHATRI)
MEMBER (A)

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