

29/09/2010

O.A. 210/2011

Mr. Virendra Lodha, Counsel for applicant.  
Mr. Mukesh Aggarwal, Counsel for respondents.

Heard.

The O.A. is disposed of by a  
separate order on the separate sheets  
for the reasons recorded therein.

14.8. Rathore  
[Justice K. S. Rathore]  
Member (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

Jaipur, this the 29th day of September, 2011

**OA No. 210/2011**

CORAM:

**HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)**

Harsh Vardhan Chauhan  
s/o late Shri Ram Singh,  
R/o D 68 -(B),  
Jawahar Lal Nehru Marg,  
Jaipur.

... Applicant

(By Advocate : Shri Virendra Lodha)

Versus

1. The Union of India  
through the Secretary (Revenue),  
Ministry of Finance,  
Department of Revenue,  
North Block, New Delhi.
2. The Chairman,  
The Central Board of Excise and Customs,  
Ministry of Finance,  
Department of Revenue,  
North Block,  
New Delhi.

... Respondents

(By Advocate : Shri Mukesh Agarwal)

**ORDER (ORAL)**

This is second round of litigation. Earlier the applicant preferred OA No.1229/2009 before the Central Administrative Tribunal, Principal Bench and the has been allowed by the Principal Bench vide order dated 21<sup>st</sup> January, 2010 observing as under:-

"21. On the basis of the above consideration, we find that the memorandum dated 16.01.2009 is totally misconceived, arbitrary and whimsical. The aforesaid memorandum of charge is, therefore, quashed and set aside. The Respondents would consider the recommendations of the Departmental Promotion Committee which met on 08.10.2008, and on the basis of which the orders of promotion dated 07.04.2008 were issued and, if the applicant has been considered fit for promotion by the DPC, he would be promoted from the date his immediate junior was promoted. Since the promotion of the Applicant was held up because of wrongful action on the part of the Respondents, following Union of India vs. K.V.Jankiraman, 1991 (2) SCALE 423, the Applicant would be entitled for the full back wages from 07.04.2009 till his retirement and his pension also would be recalculated on the basis of the above. The aforesaid directions would be complied with not later than 15.04.2010. The Applicant is also entitled to the costs of litigation, which we quantify at Rs. 20,000/-."



2. Since the applicant has been reinstated with full back wages from 7.4.2009 and retired on attaining the age of superannuation but the respondents have not given the retiral benefits to the applicant, therefore, by way of this OA, the applicant claims relief that the respondents be directed to make payment of retiral benefits to the applicant which includes gratuity, leave encashment and the accumulated balance in the Central Government Employee Insurance Health Scheme (CGEIS) alongwith interest at 18% per annum from the date of retirement i.e. 30.11.2009 till the date of actual payment. Further claims the relief that the respondents may be directed to pass the final Pension Payment Order finalizing the provisional pension, presently being paid to the applicant, indicating the final pension payable and the commuted value of pension.

3. The respondents have submitted that the final pension cannot be issued because charge memo dated 16.1.2009 for passing an adjudication order on the last day of his posting as Commissioner of Custom, Bangalore under Rule 14 of the CCS (CCA) Rules was served upon the applicant alleging to cause loss of Rs. 54 crores approx. to the Government exchequer in a case involving importation of more than 21400 Kg. of gold in violation of provisions of Customs Act 62 and notification issued thereunder.



3. It is not disputed that the applicant filed OA No.1229/2009 before the CAT-Principal Bench against the memorandum dated 16.1.2009 whereby the departmental proceedings for major penalty was initiated against the applicant. The CAT-Principal Bench allowed the OA vide order dated 21.01.2010 and the same has been challenged by the respondents before the Hon'ble Delhi High Court by way of filing Writ Petition (Civil) No. 5013/2010. During the pendency of the Writ Petition the applicant was promoted to the post of Chief Commissioner restoring his seniority subject to the outcome of the above Writ Petition. The Hon'ble High Court dismissed the Writ Petition vide judgment dated 24.11.2010.

4. Against the order passed by the CAT-Principal Bench dated 21.01.2010 and judgment of the Hon'ble High Court of Delhi dated 24.11.2010, the respondents have filed SLP vide Dy. No.18926/2011 and it is submitted that the matter is sub-judice before the Hon'ble Supreme Court. Regarding release of finalized pension/other benefits due to the applicant even after 16 months since the applicant's attaining the age of superannuation, it is stated that by the respondents that any officer who is not cleared from vigilance angle is not eligible to receive finalized pension/other pensionary benefits till such time he gets such clearance and it is strongly felt that a



finalized pension once granted cannot be revised to the disadvantage of a Government servant at a later date.

5. In response to the submissions made on behalf of the respondents, the applicant does not dispute so far as filing of SLP before the Hon'ble Supreme Court, but stated that it is lying in defect side and pending for about 6 months and until and unless the respondents pursue the matter the SLP is not likely to be decide in coming future. Therefore, in view of the CAT-Principal Bench order which was upheld by the Hon'ble Delhi High Court, the applicant is entitled to receive the pensionary benefits.

6. Having considered the rival submissions of the respective parties and upon careful perusal of the order passed by the CAT-Principal Bench and judgment rendered by the Hon'ble High Court, it is evident that the applicant would be entitled for full back wages from 7.4.2009 till his retirement and his pension would also be recalculated on the basis of above and the same view has been upheld by the Hon'ble Delhi High Court observing as under:-

"36. It is apparent that an adjudication order passed by the respondent while exercising quasi-judicial power was the foundation of the charge sheet and shorn of technicalities, at the heart of the charge was the allegation that the order was passed contrary to law to confer benefits upon the assesses. Meaningfully read,



the charge sheet seeks to inculcate the respondent with reference to his act performed on a quasi-judicial functioning and thus we hold that the Tribunal has returned a correct verdict.

37. In view of the above discussion, we uphold the impugned judgment dated 21.01.2010 passed by the Tribunal.

38. The petition is accordingly dismissed."

7. Thus, in view of the aforesaid judgment, in my considered view, the respondents are required to be directed to release retiral benefits, as admissible in accordance with the provisions of law to the applicant, subject to the decision of the Hon'ble Supreme Court in the SLP preferred by the respondents and if the applicant furnishes undertaking to the extent that if the retiral benefits are paid to the applicant and the Hon'ble Supreme Court decides against the applicant, in that eventuality, he shall return the excess amount so received from the respondents.

8. With these observations, the OA stands disposed of with no order as to costs.



(JUSTICE K.S.RATHORE)  
Judl. Member

R/