

(93)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
CHANDIGARH**

O.A. No.060/01139/2014

**Date of filing: 19.12.2014
Date of decision: 21.04.2016**

Coram: HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER (J)

Harjit Singh s/o Late Sh. Chanan Singh, aged 65 years, R/o H. No. 325,
Phase VII, Mohali.

.....Applicant

Versus

Chandigarh Administration Chandigarh through Estate Officer U.T.
Chandigarh.

.....Respondents

Present: Mr. N.K. Nagar, counsel for the applicant
Mr. Rakesh Verma, counsel for the respondent

Order(Oral)

BY HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER(J)

1. Harjit Singh, applicant has filed this O.A. seeking the following relief:-

"It is therefore most respectfully prayed that this OA may kindly be accepted and to declare illegal the action of the respondents of i) of Non-release of superannuation pension of the applicant effective from 31.07.2014 to date ii) withholding of 10% pension w.e.f. 01.08.2008 and iii) withholding of Death-cum-Gratuity, with a further direction to the respondents to release these benefit to the applicant alongwith interest @ 12% p.a. from the date of his retirement till actual payment, in the interest of justice.

5) To quash with costs Annexure R-7 vide which whole pension of the applicant is withheld with all consequential benefits including a direction to the respondents to release all due arrears of pension to date alongwith interest @ 12% p.a. from the date of his retirement till actual payment, in the interest of justice."

2. Facts in the case are almost undisputed. The applicant joined service of the respondent Chandigarh Administration long time back. In the year 2004, while he was posted as Superintendent in the office of Estate Officer, FIR No. 2 dated 11.06.2004 was registered against him. Relating to the same allegations, disciplinary action was also initiated against the applicant by

issuing him charge-sheet. After holding regular departmental enquiry, penalty of stoppage of one increment with cumulative effect was imposed on the applicant vide order dated 04.02.20008 (Annexure A-13). The applicant retired from service on 31.07.2008 on attaining the age of superannuation. The applicant was sanctioned 90% pension as provisional pension for six months, which was extended from time to time and lastly upto 31.07.2014.

3. The applicant was convicted and sentenced in two cases arising out of the above mentioned FIR for various offences vide judgments of conviction dated 28.07.2014 and orders of sentence dated 31.07.2014. In Criminal Appeals preferred by the applicant, sentence has been suspended and he has been released on bail. The Criminal Appeals are still pending.

4. Pursuant to conviction and sentence of the applicant, the respondent vide order dated 9/14.01.2015 (Annexure A-14/R-7) ordered withholding of whole pension of the applicant w.e.f. the date of his conviction i.e. 31.07.2014. This order was passed during the pendency of the O.A. and has been challenged by amending the O.A.

5. Respondents, in their written statement, justified their action and raised various pleas. It is also pleaded that order dated 9/14.01.2015 (Annexure A-14) (also Annexure R-7) is appealable but the applicant did not prefer departmental appeal against the said order and, therefore, the instant O.A. is not maintainable.

6. No rejoinder was filed by the applicant.

7. I have heard learned counsel for the parties and perused the case-file.

8. According to Rule 9.14 of Punjab Civil Services Rules (Vol-II), as applicable to Chandigarh Administration, the provisional pension

(25)

has to be equal to the maximum pension which would have been admissible to the Govt. Employee on the basis of qualifying service up to the date of his retirement. Consequently, the applicant is entitled to full pension as provisional pension. Rule 2.2(c) of the Punjab Civil Services Rules relied on by learned counsel for the respondents to justify 90% provisional pension does not help the respondents in view of clear provision of Rule 9.14(1)(a) of the Rules *ibid*. Consequently, the applicant is entitled to relief (ii) reproduced above. The applicant is entitled to full provisional pension w.e.f. 01.08.2008 till 30.07.2014 where after the impugned order (Annexure A-14) for full pension cut has been made operative.

9. The applicant is also entitled to full Death-cum-Retirement Gratuity because admittedly no order denying or withholding the same has been passed by the respondent. No justification has either been advanced for not paying the gratuity to the applicant. Consequently, the applicant is also entitled to relief of grant of gratuity.

10. As regards non-release of superannuation pension w.e.f. 31.07.2014, the same has been cut in full vide impugned order (Annexure A-14). The said order is appealable under Rule 15 (v) (c) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, as applicable to the respondent-Chandigarh Administration. However, admittedly, the applicant did not prefer appeal against the said order. Consequently, the instant O.A. to challenge the said order is not maintainable because the applicant did not exhaust the remedy available to him before filing the O.A. (by amendment) to challenge the said order.

98

11. In view of the aforesaid, it would be just and appropriate to relegate the applicant to the departmental remedy of appeal against the impugned order (Annexure A-14).
12. Resultantly, the instant O.A. is allowed partly. The respondent is directed to pay the balance 10 % provisional pension to the applicant w.e.f. 01.08.2008 to 30.07.2014 and also to pay Death-cum-Retirement Gratuity to the applicant. Respondent shall also pay interest on the aforesaid amount @ 9% p.a. w.e.f. the due dates till the date of payment. Needful be done within three months from the receipt of copy of the order.
13. As regards non-release of superannuation pension to the applicant, which has been ordered to be cut in full vide impugned order (Annexure A-14), the applicant is relegated to the remedy of departmental appeal against the said order. If the applicant files any such appeal within four weeks from today, the same shall be decided by the Competent Authority on merits and shall not be dismissed on the ground of limitation.
14. There shall be no order as to costs.

(JUSTICE L.N. MITTAL)
MEMBER (J)

PLACE: Chandigarh
Dated: 21.04.2016

'mw'