

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 230/2015
MA 169/2015

Hon'ble Mr. P.K. Basu, Member (A)

Reserved on: 2.12.2016
Pronounced on: 6.12.2016

Jai Kanwar Tyagi S/o Shri Taj Singh Tyagi
Retired Chowkidar, Rajghat Samadhi Committee
Under M/o Urban Development, Govt. of India
R/o Mohalla Tyagi Wada, Village Badshshpur
Dist-Gurgaon, Haryana

....Applicant

(Through Shri Nasir Ahmed, Advocate)

Versus

1. Union of India
Through the Secretary
M/o Urban Development, Govt. of India
Nirman Bhawan,
New Delhi-110001
2. The Chairman
Rajghat Samadhi Committee
Ministry of Urban Development, Govt. of India
Nirman Bhawan,
New Delhi-110001
3. The Joint Secretary (Ceremonial)
Ministry of Urban Development, Govt. of India
Nirman Bhawan,
New Delhi-110001
4. The Secretary
Rajghat Samadhi Committee
Under Ministry of Urban Development, Govt. of India
Mahatma Gandhi Marg,
New Delhi-110002
5. The Secretary
Ministry of Finance,
Govt. of India, North Block,
New Delhi-110002

... Respondents

(Through Shri Ashok Kumar, Advocate for respondents 1,3 & 5)

and Shri Mukti Bodh with Shri Sudhir Kumar Singh, Advocates for respondents 2 and 4)

ORDER

Mr. P.K. Basu, Member (A)

The applicant is an employee of Rajghat Samadhi Committee (RSC) as a Security Guard. He took voluntary retirement from service on 8.01.2014. He claimed pensionary benefits in accordance with CCS (Pension) Rules. The Ministry of Urban Development informed the Secretary, RSC vide letter dated 21.11.2014 that since employees of RSC are governed by Contributory Provident Fund Scheme (CPFS), they are not eligible for pensionary benefits. Aggrieved by this order, the applicant has filed the present OA seeking the following reliefs:

- a) To set aside the order dated 21.11.2004 of the respondents and
- b) To allow the original application of the applicant and direct the respondents to grant all the pensionary benefits to the applicant in the interest of justice.
- c) To direct the Ministry of Finance to grant all the pensionary benefits to the applicant in the interest of justice.
- d) To pass any other further order/ direction as deemed fit and proper in the facts and circumstances of the case and

e) Besides costs of this application may be passed in favour of the applicant and against the respondents.

2. The respondents have clarified in their reply that RSC is a statutory body created under an Act of Parliament namely Rajghat Samadhi Act, 1951 and is governed as per this Act and the rules and bye-laws framed there under. Bye-law 35 of the Rajghat Samadhi pertaining to retirement and retirement benefits reads as follows:

"35. Contributory Provident Fund: (1) The Committee shall maintain and administer a separate fund to be known as Rajghat Samadhi Committee Contributory Provident Fund. Every employee, except probationer or a casual worker or a part-time worker, shall contribute to the Contributory Provident Fund at such rate as is contained in the Contributory Provident Fund (India) Rules, 1962, as amended from time-to-time. The contribution shall be realizable from each month's pay and allowances of the employees.

(2). The Committee shall contribute, from its own funds to the account of every employee in the Contributory Provident Fund on 31st March of every year, an amount equal to the total amount realized during the year from the employees concerned but not exceeding the rate contained in the Contributory Provident Fund (India) Rules, 1962, as amended from time to time.

(3). The Committee shall pay interest on the subscription made by an employee in accordance with the provision contained in the Contributory Provident Fund (India) Rules, 1962.

(4). The provisions of Contributory Provident Fund (India) Rules, 1962 shall also apply to the subscribers to the Fund, in regard to advances from the Fund, withdrawal from the Fund, final withdrawal of accumulations in the Fund etc."

3. It is their contention that since employees of RSC are covered by Contributory Provident Fund (India) Rules, 1962, there is no question of applicability of Central Government Pension Rules to the applicant. It is further informed that the applicant has been paid all his retirement dues, which have been accepted by him, as detailed below:

Sr. No.	Particulars	Date of payment	Amount
1.	CPF	09.01.2015	6,87,173.00
2.	Gratuity	21.01.2015	1,97,980.00
3.	EL Encashment	21.01.015	1,90,686.00
4.	CPF + Interest for March, 2014	13.05.2015	9,978.00
5.	Bonus for 2013-14	11.06.2015	3454.00
6.	Less subsistence allowance from the EL Encashment at Sr.No.3	21.01.2015	-31,260.00
7.		Total	10,58,011.00

4. The applicant has relied upon following orders/judgments in support of his claim:

- (i) OA No. 1619/2012 decided by the Principal Bench of the Central Administrative Tribunal;
- (ii) **Gorakhpur University & Others Vs. Dr. Shitla Prasad Nagendra and Others**, (2001) 6 SCC 591; and
- (iii) Civil Appeal No. 6770/2013 wherein the Hon'ble Supreme Court observed as follows:

"14. Article 300A of the Constitution of India read as under:

"300A Persons not to be deprived of property save by authority of law – No persons shall be deprived of his property save by authority of law."

"Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.

15. It hardly needs to be emphasized that the executive instructions are not having statutory character therefore, cannot be termed as "law" within the meaning of aforesaid Article 300A. On the basis of such a circular which is not having force of law, the appellant cannot withhold even a part of pension or gratuity."

5. The provisions of pension and retirement benefits for employees of RSC are clear. They are entitled to contributory provident fund and not pension and this is provided for in their bye-law which is notified under the Rajghat Samadhi Act, 1951. Orders/judgments cited will not apply in this particular case as in the case of the applicant and other employees of RSC, there is a specific provision for contributory provident fund under the bye-laws framed under the Rajghat Samadhi Act, 1951. The judgments cited by the applicant pertain to government servants who are entitled to pension as per rules unlike the applicant who is entitled to contributory provident fund as per the bye-laws of the Act of 1951.

6. The OA being completely misplaced deserves to be dismissed. It is, therefore, dismissed. There shall be no order as to costs.

(P.K. Basu)
Member (A)

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