

Central Administrative Tribunal
Principal Bench
New Delhi

R.A.No.27/2015

In

O.A.No.2240/2013

M.A.No.555/2015

M.A.No.556/2015

Order Reserved on: 11.07.2016

Order pronounced on 13.07.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri V.N.Gaur, Member (A)

North Delhi Municipal Corporation

1. The Commissioner

The Secretary

North Delhi Municipal Corporation

Civic Center, New Delhi.

2. The Director (Vigilance)

North Delhi Municipal Corporation

Civic Center, New Delhi.

... Review applicants

(By Advocate: Shri R.N.Singh)

Versus

N.K.Gupta

S/o Sh. Ishwar Cahnd Gupta

R/o-22, Ishwar Colony

Near Rana Pratap Bagh

Delhi – 110 009.

... Review Respondent

(By Advocate: Shri M.K.Bhardwaj)

O R D E R

By V. Ajay Kumar, Member (J):

This RA has been filed by the respondents in OA No.2240/2013, seeking review of the Order dated 02.07.2014, passed in OA No.2240/2013.

2. The original applicant has filed the OA No.2240/2013 seeking the following relief(s):

- (i) to quash and set aside the impugned order dated 14.02.2011 and declare the applicant in service w.e.f. 14.02.2011.
- (ii) to declare the action of the respondents in not reviewing the suspension of the applicant before expiry of 90 days as illegal and arbitrary and reinstate the applicant in service with all consequential benefits including arrears of pay.
- (iii) to direct the respondents to release the retirement dues of applicant's i.e. gratuity, leave encashment, commuted value of pension along with 12% interest from 01.04.2011.
- (iv) to direct the respondents to release the retirement dues with interest OR treat the applicant in service for all purposes and release the consequential benefits i.e. subsistence allowances etc. with interest.
- (v) to allow the OA with cost.
- (vi) to pass such other and further orders which their lordships of this Hon'ble Tribunal deem fit and proper in the existing facts and circumstances of the case."

3. This Tribunal, after hearing both sides, allowed the OA by its order dated 02.07.2014, as under:

"12. In the circumstances and for the aforesaid reasons, the OA is allowed and the respondents are directed to release all the retiral benefits of the applicant, such as Gratuity, Leave Encashment, Full Pension, etc. within a period of eight weeks from the date of receipt of a copy of this order. However, this order shall not preclude the respondents from initiating any action either under CCS (Pension) Rules, 1972 or any other rule or law, if permissible, against the applicant, in accordance with law. No order as to costs."

4. This Tribunal while allowing the OA, by relying the decision of the Hon'ble Apex Court in **Union of India v. K.V.Jankiraman**, (1991) 4 SCC 109, to the effect that "unless a chargesheet is issued, it cannot be said that the disciplinary proceedings are initiated against a public servant", and since no chargesheet was issued against the applicant as on the date when he attained the age of superannuation, directed the respondents to release all the retiral benefits of the applicant such as Gratuity, Leave Encashment, Full Pension, etc.

5. The respondent-New Delhi Municipal Corporation (in short, NDMC), filed the present RA, mainly on the following grounds as stated in the R.A.:

- (i) Because the counsel for the parties could not bring to the notice of this Tribunal about the fact that since the applicant has superannuated while under suspension, he will have to be proceeded against under Rule 9 of the CCS (Pension) Rules, 1972.
- (ii) Because the direction contained in its Order/Judgement dated 02.07.2014 is contrary to Rule 9 read with Rule 69 of the CCS (Pension) Rules, 1972, as explained in the RA, and thus the said order/Judgment suffers from the mistake of law.
- (iii) Because in view of the position explained in the RA there is impossibility for the review applicants to implement

the order/Judgement of this Tribunal inasmuch as the respondents will be forced to act contrary to the Rule, which must not have been intended by this Tribunal.

6. The original applicant filed a counter in the Review Application, opposing the averments of the RA and the MAs.

7. Heard Shri R.N.Singh, the learned counsel for the Review Applicants and Shri M.K.Bhardwaj, the learned counsel for the Review Respondent, and perused the pleadings on record.

8. M.A.No.556/2015, filed for condonation of delay in filing the RA, is allowed in the circumstances and in the interest of justice.

9. Rule 9 of the CCS (Pension) Rules, 1972 reads as under:

“9. Right of President to withhold or withdraw pension

¹[(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement :

Provided that the Union Public Service Commission shall be consulted before any final orders are passed :

Provided further that where a part of pension is withheld or withdrawn the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy-five per mensem.]

(2)	(a)	The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his
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		re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service :
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Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

	(b)	The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment, -
	(i)	shall not be instituted save with the sanction of the President,
	(ii)	shall not be in respect of any event which took place more than four years before such institution, and
	(iii)	shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) ^{deleted}

(4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 69 shall be sanctioned.

(5) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule, -

(a)	<u>departmental proceedings shall be deemed to be instituted on the date on which the statement of charges</u>
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	is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date ; and
(b)	judicial proceedings shall be deemed to be instituted -
	(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made, and
	(ii) in the case of civil proceedings, on the date the complaint is presented in the court.

(Emphasis supplied)

10. As rightly pointed out by the learned counsel for the review applicants that at the time of hearing of the OA, none of the counsel, brought to the notice of this Tribunal about the said Rule 9(6) and the affect of a Government servant who was under suspension as on the date of his retirement, and since Rule 9(6) categorically provides that "departmental proceedings shall be deemed to be instituted on the date if the Government servant has been placed under suspension from an earlier date", the finding given by this Tribunal while allowing the OA, in respect of granting regular pension, without examining the said Rule 9(6) is an error apparent on the face of the record.

11. Similarly, since Rule 69 of the CCS (Pension) Rules, 1972 is also dependent on Rule 9, the finding given in respect of granting of Gratuity is also required to be reconsidered.

12. In the circumstances and for the aforesaid reasons, the review is allowed and the order dated 02.07.2014 in OA No.2240/2013 is

recalled and the OA is restored to its original file. **Registry** is directed to list the OA for fresh hearing on 26.07.2016.

13. MA 555/2015 accordingly stands disposed of, in view of the disposal of the RA.

(V. N. Gaur)
Member (A)

(V. Ajay Kumar)
Member (J)

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