

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

TA 85/2013

New Delhi this the 6th day of October, 2015

**Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Mr. P.K. Basu, Member (A)**

Dr. Ishwar Saran Suri
Resident of : L-1/168-B
DDA Flats, Alaknanda,
New Delhi-110019 Applicant

(Through Shri Chandrachur Bhattacharya, Advocate)

Versus

1. The Central Bureau of Investigation
Through : Its Director
Head Office : Plot No.5-B, CGO Complex,
Lodhi Road, New Delhi-110003
2. State Council of Educational Research & Training, Delhi
Through : Its Chairman
Address : Varun Marg,
Defence Colony,
New Delhi-110024

(Through Shri Rajeev Kumar, Advocate for Respondent 1
Sh.N.K. Singh for Mrs.Avnish Ahlawat, Advocate for
Respondent 2)

ORDER

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

The applicant was appointed as Lecturer, District Institute of Education and Training (DIET) vide letter dated 22.05.1989. He was thereafter appointed as Senior Lecturer under direct recruitment quota on 1.09.1997. On attaining the age of superannuation i.e. 60 years, on 31.10.2008, the applicant retired from the services of SCERT. In this connection order

dated 21.05.2008 was issued by the respondents. However, in the meantime, on 13.10.2008 the governing body of SCERT decided to amend Rule 67 of Rules and Regulations of SCERT as follows:

"The terms and tenure of service of academic staff at the council shall remain the same as available for the academic staff of the National Council of Educational Research and Training (NCERT)."

2. The learned counsel for the applicant, therefore, argues that since the age of retirement of NCERT staff was 62 years, this notification implied that SCERT staff would also retire at the age of 62 years. On 31.10.2008, an office order was issued cancelling the superannuation notice of the applicant in the light of the notification dated 13.10.2008. However, on 24.04.2009, another office order was issued superannuating the applicant with effect from 31.10.2008 and vide order dated 27.04.2009, the period of service with effect from 1.11.2008 to 31.03.2009 rendered by the applicant was treated on contract basis subject to concurrence of the Finance Department, Government of National Capital Territory of Delhi (GNCTD). It was further stated in the order that remuneration for the period of contract appointment will be decided as per norms of the Directorate of Education, GNCTD.

3. The applicant claims that on basis of above amendment in Rule 67, he is entitled to pension also along with other employees of SCERT.

4. In the meantime, vide letter dated 16.06.2009 addressed to the Director SCERT, Shri Virender Kumar, Under Secretary to the Govt. of India, intimated that Central Bureau of Investigation (CBI), Anti Corruption Branch, Bangalore had registered a case of criminal conspiracy involving cheating, forgery and submission of forged documents on 22.12.2008 vide FIR No.RC-21(A)/2008-BLR u/Sec. 120 B r/w Sec. 417, 420, 468 and 471 of IPC and u/Sec. 13 (2) r/w Sec. 13 (1) (d) of the PC Act against the applicant and others. In this background, the CBI was requested to tender its advice whether the retirement benefits of the applicant could be released. The CBI vide its letter dated 23.03.2011 responded by stating that the department should await the outcome of the trial of the case in which the applicant was charge sheeted as an accused.

5. The applicant, in the meantime, made applications to the respondents from time to time regarding payment of his retirement dues and other dues pending with the SCERT. Vide memo dated 13.04.2011, the respondent-SCERT informed the applicant that the matter has been considered at the level of CBI authorities and it has been informed by CBI authorities "to wait for the outcome of the trial of the case in which Sh. I.S. Suri is charge sheeted as an accused." Being aggrieved by this order of the respondents, the applicant has filed this OA with the following prayers:

- (i) Direct Respondent No.1 to disclose authority under which it asked Respondent No.2 to withhold Petitioner's monetary dues.

- (ii) Direct Respondent No.1 to disclose the contents of letter written by it to Respondent No.2 as claimed by Respondent No.2.
- (iii) Quash letter dated 13.4.2011 issued by Respondent No.2, ostensibly written under instructions from Respondent No.1 as claimed by Respondent No.2 itself.
- (iv) Direct Respondent No.2 to release the salary for the period from 1.11.2008 till 30.06.2009, salary arrears of sixth central pay commission, gratuity, leave salary, pension, ACP benefits under sixth central pay commission and interests on the said amount till the date of payment.

6. The learned counsel for the applicant relied on the judgment of the Hon'ble Supreme Court in **State of Jharkhand and others Vs. Jitendra Kumar Srivastava and another**, (2013) 12 SCC 210 and specifically to para 16 and 17 of the judgment, which read as follows:

“16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognized as a right in “property”. [Article 300](#) A of the Constitution of India reads as under:

“300-A Persons not to be deprived of property save by authority of law. - No person 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 300](#)-A 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.

17. It hardly needs to be emphasized that the executive instructions are not having statutory character and, 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. As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different."

7. It is argued that even if the respondents were to rely on CBI advice, its opinion was only advisory on the basis of which the respondents cannot withhold his retirement benefits. In fact, it is argued that the CBI in its letter 11.10.2013 to the applicant's counsel, has explained as follows:

"That the power of withholding of pension and other benefits are with in the purview of department of SCERT. The 1st Noticee CBI has nothing to do with the same and it has no role to play in it.

Therefore, it is requested that your client may be asked to approach the department for getting the pensionary benefits as per the prevailing rules and regulations."

8. It is thus stated that even the CBI has now denied that they have any role to play in withholding retirement benefits of the applicant and, therefore, this cannot be a ground to hold back his pension. It is further argued that the respondent-SCERT cannot take the plea that the period from 1.11.2008 to 30.06.2009 cannot be treated as re-employment on the ground that Finance Department approval has not been taken because

the Hon'ble Supreme Court in **Lt. Governor of Delhi & ors. Vs. V.K. Sodhi & ors.**, AIR 2007 SC 2885 has held as follows regarding SCERT:

“..... The State Government had no role to play on the administration of the Council or in the working of the Council or over its finances, once the grant was made.

11. The two elements, one, of a function of the State, namely, the coordinating of education and the other, of the Council being dependant on the funding by the State, satisfied two of the tests indicated by the decisions of this Court. But, at the same time, from that alone it could not be assumed that SCERT is a State. It has to be noted that though finance is made available by the State, in the matter of administration of that finance, the Council is supreme. The administration is also completely with the Council. There is no governmental interference or control either financially, functionally or administratively, in the working of the Council.....”

It is, therefore, held that since the administration is completely with the Council and there is no government control over it, the stand taken by the respondents that SCERT cannot by itself amend Rule 67 and introduce re-employment upto 62 years of age also is not valid.

9. The learned counsel for the applicant also relied on **Y.K. Singla Vs. Punjab National Bank and others**, (2013) 3 SCC 472 with specific reference to para 25 and 26 of the judgment where the Hon'ble Supreme Court held as follows:

“25. We, therefore, have no hesitation in concluding, that even though the provisions of the 1995, Regulations, are silent on the issue of payment of interest, the least that the appellant would be entitled to, are terms equal to the benefits envisaged under the Gratuity Act. Under the Gratuity Act, the appellant would be entitled to interest, on account of delayed payment of gratuity (as has already been concluded above). We therefore hold, that the appellant herein is entitled to interest on account of

delayed payment, in consonance with sub-Section (3-A) of [Section 7](#) of the Gratuity Act.

26. We, accordingly, direct the PNB to pay to the appellant, interest at "...the rate notified by the Central Government for repayment of long term deposits...". In case no such notification has been issued, we are of the view, that the appellant would be entitled to interest, as was awarded to him by the learned Single Judge of the High Court vide order dated 4.5.2011, i.e., interest at the rate of 8%. The PNB is directed, to pay the aforesaid interest to the appellant, within one month of the appellant's furnishing to the PNB a certified copy of the instant order. The appellant shall also be entitled to costs quantified at Rs.50,000/-, for having had to incur expenses before the Writ Court, before the Division Bench, and finally before this Court. The aforesaid costs shall also be disbursed to the appellant within the time indicated hereinabove."

Based on this, the learned counsel claimed that the applicant should also be paid interest for the period for which payment has been delayed.

10. The learned counsel for the applicant also drew our attention to certain minutes of the meetings held in SCERT. In the meeting held on 18.08.2008 of the Executive Committee (Annexure 'A' to rejoinder), a decision was taken to put up a proposal on the lines of NCERT on the age of superannuation for consideration of the competent authority. It was again pointed out that in a meeting of the Executive Committee (Governing Body) held as far back as 21st January, 1989, it was decided that till such time the Service Manual of the SCERT, Delhi is finalized, the terms and conditions of service of the staff recruited directly will be the same as are applicable to the employees of the Central Govt./ Delhi Administration for similar category of posts. Again in a meeting of the Governing Body held on 19.08.2008, a

resolution was passed for amendment of Rule 67 to make terms and tenure of service of academic and other staff of SCERT at par with the NCERT and for this purpose creation of a corpus fund. However, the learned counsel did not place before us any orders issued as a consequence of these decisions. Therefore, we cannot rely on file notes and minutes in view of the judgment of the Hon'ble Supreme Court in **Union of India Vs. Ashok Kumar Aggarwal**, 2013 (14) SCALE 323.

11. The learned counsel for the respondents, first of all, raised a preliminary objection that multiple reliefs have been claimed in this OA which is not permissible as per Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987.

12. On merits of the matter, the learned counsel for the respondents stated that the CBI case is still pending against the applicant and, therefore, the retirement benefits have been withheld as per advice received from the CBI. Our attention was drawn to an order dated 16.03.2015 of this Tribunal in OA 4222/2010, **Mr. R.D. Saxena and others Vs. Govt. of NCT of Delhi and others** where the Tribunal had examined this very issue of grant of pension to SCERT employees and dismissed the OA holding as follows:

“....Even otherwise also, the observations made by the Hon'ble Supreme Court in paragraph 16 of the Order are binding on us and in the wake of such observations, no direction can be given to SCERT to incur financial burden to pay pension and pensionary benefits to the applicants herein, in terms of Rule 67 of the Rules and Regulations (ibid). Further, without consulting the Government of NCT of Delhi and Government of India, which is the major source for

its finance, the SCERT cannot create financial obligations for them. Had the Rule 67 (ibid) been incorporated in the Rules after due consultation with the Government of NCT of Delhi and Government of India, they could be bound by the same."

It is, therefore, stated that there is no question of payment of pension to SCERT employees and to the applicant as well.

13. Our attention was also drawn to the order of this Tribunal in OA 598/2013 titled **B.K. Kapoor Vs. GNCT of Delhi and others** where the Tribunal, relying on the judgment of the Hon'ble Supreme Court in V.K. Sodhi (supra) dismissed the OA holding as follows:

"8. However, it is also not denied that SCERT is a 100% Grantee institution of Govt. of Delhi. To that extent, it cannot claim to have full financial autonomy and is bound to follow the conditions imposed by the grantor while giving grant to grantee. Under the Pattern of Assistance issued vide Govt. of NCT of Delhi letter No. F.DE 18-14(6)/2002/Plg./17627-635 dated 23.03.2005 (Annexure-2) certain restrictions have been imposed. As per Clause-17(ii) of this Pattern of Assistance, it is laid down that the recruitment rules, terms and conditions of service, welfare schemes of the employee and other service related matters will be decided by the EC only with the prior permission of the Government of Delhi. The rationale behind this provision is clear. SCERT gets both recurring and non-recurring grant from Government of Delhi. Recurring grant covers amongst other things, expenditure on salaries and allowances of the staff. Further, the quantum of grant is on net deficit basis which would imply that the Government of Delhi is duty bound to meet the budgetary deficit of SCERT calculated by deducting all expected income of SCERT from its anticipated expenditure. If SCERT were fully autonomous to decide the service conditions of their employees then the Govt. of NCT would lose control over the expenditure of SCERT and will be liable to increase the quantum of grant as and when salary expenditure goes up. This would put burden on the finances of Govt. of Delhi, the quantum of which would not be in their control. This

is clearly not an acceptable position. In the case of V.K. Sodhi & Ors. (supra), the Hon'ble Supreme Court dealt with this issue and observed as follows:-

"16. It appears to us that in the case of bodies like SCERT, the court cannot ignore the financial implications of implementing the directions that it is called upon to issue. The object of SCERT is laudable and it has to coordinate and promote education in the State. Its resources are limited and the main income is by way of grant from the State Government. When SCERT pleads that it cannot spend the whole of the grant or a major portion of the grant in paying salaries and emoluments to its employees and if it does so, that may tend to frustrate the very object with which the society was formed, it is an argument that has to be considered weighty by a court called upon to exercise jurisdiction under Article 226 of the Constitution of India. A court cannot issue a direction which would tend to frustrate the very object with which a society like SCERT is formed or a body like SCERT is created. After all, there may be a point of time in a welfare State where the right of the employees must be subservient to the right of the society. In the matter of education, surely, the interests of the society at large should prevail and issue of any direction that may endanger such interests must be done with extreme caution and only after careful deliberation."

9. On the basis of the above analysis, we come to the conclusion that the Executive Council of SCERT was duty bound to obtain prior permission of the Govt. of NCT of Delhi before passing a Resolution amending the terms and service conditions of its employees. In the instant case, the Govt. of NCT of Delhi has stated that such permission was not taken. As such this Resolution cannot be binding on it and therefore, the claim of the applicant that he should be allowed to retire at the age of 62 years cannot be acceded to."

14. It is stated that the aforesaid order of the Tribunal has been upheld by the Hon'ble High Court in W.P. (C) No.3560/2013, **B.K. Kapoor Vs. Govt. of NCT of Delhi & ors.** It is, therefore, urged that amendment in Rule 67 of the

aforesaid Rules based on which the claim of re-employment as well as pension is being made by the applicant cannot be entertained as this was not a valid amendment.

15. During the course of arguments, the applicant also raised a dispute regarding emoluments of Rs.10000/- fixed per month by the respondents for the period on contract basis beyond his date of superannuation and claimed that he should be paid salary of Rs.54824/-, which was being paid to him before his retirement. Learned counsel for the respondents clarified that the Finance Department fixes the honorarium that is to be paid and the applicant cannot be paid at the rate what he was drawing before his superannuation.

16. Learned counsel for the respondents further clarified that no departmental inquiry has been started against the applicant on charges against him. We, however, find this rather inexplicable. We say this because the charges are very serious. We mention that in brief: The matter relates to according recognition for one Dr. Radhakrishna Teachers Educational Institution, Devanahalli, Bangalore (Karnataka) for conducting D.Ed. Course. This institution had applied for such recognition and three separate teams over a period of time were sent for inspection. However, the teams after inspection, noted various shortcomings in the physical/ educational infrastructure and did not recommend for recognition of the Institute and rejected the proposal thrice. Thereafter, at the instance of the then Chairman, National Council for Teachers Education (NCTE), New

Delhi, a fourth team comprising of three experts, including the applicant, was sent. This team gave a favorable report in gross violation of the procedure and the CBI filed a charge sheet against the then Chairman, NCTE and three members of the team including the applicant. No doubt the charges are very grave and relate to a very sensitive issue in the education sector of the society. Scams after scam have come out over the years involving blatant use of money and political power in the education sector and how several sectors of this have drifted from being provider of learning to a new form of business. The present case is an example of that. Apart from criminal liability, there was clearly a departmental liability of those people in giving recommendations for recognition against the established rules. When three teams had visited and found deficiencies, if the department saw a criminal conspiracy and liability, we find it extremely strange that the department never thought of commencing a departmental proceeding against the applicant and others. Perhaps then they could have decided the departmental proceedings by now and passed some final order on his departmental liability. Why this was not done is not apparent from the records. On much lesser charges, the government proceeds against an employee in a departmental proceeding. The applicant has retired in 2008. The period of four years is over under Rule 9 of CCS (Pension) Rules and now the applicant emerges and claims his retiral benefits on the ground that because of pendency of criminal case, his retiral benefits cannot be withheld. This is a sad commentary in the

way administration has been run in the SCERT and the SCERT may like to fix responsibility why this matter was allowed to drift like this.

17. We have heard learned counsel for the parties, gone through the pleadings available on record and perused the judgments cited.

18. Learned counsel for the applicant argued that after amendment in Rule 67 of SCERT, the terms and conditions of the employees of SCERT should be at par with NCERT employees and, therefore, since the NCERT employees are entitled to pension, the applicant is also entitled to pension. However, we find that the Tribunal in OA 4222/2010 (supra) had examined the judgment of the Hon'ble Supreme Court in V.K. Sodhi (supra) as also the judgment of the Hon'ble High Court in B.K. Kapoor (supra) and then dismissed the OA. Clearly the ratio laid is that SCERT could not have *suo motu* gone ahead and amended Rule 67 of the aforesaid Rules introducing the new service conditions without prior permission of the GNCT of Delhi. Therefore, we hold that SCERT employees are not entitled to pension and as a result, the applicant is also not entitled to pension. For similarity of reasons and in view of the order of the Tribunal in B.K. Kapoor (supra), it is also clear that the period spent by the applicant beyond his superannuation at the age of 60 years cannot be treated as re-employment and has to be treated on contractual basis. Moreover, since it is the Finance Department which lays down at what rate persons can be engaged on contract, the

prayer of the applicant to pay him at the rate of Rs.54824/- cannot be accepted.

19. On the question of this OA being not maintainable there being multiple reliefs claimed, though we agree that there is merit in the objection raised by the respondents, we feel that at this stage it would not be fair to dismiss the OA on the ground of maintainability as the matter involves the period 1.11.2008 to 30.06.2009 as well as the fact that the applicant retired long back on 31.10.2008 and it is only fair and in the interest of justice that this matter is decided finally.

20. The applicant has claimed for release of the following:

- (i) Salary for the period from 1.11.2008 to 30.06.2009;
- (ii) Salary and arrears of Sixth Central Pay Commission;
- (iii) Gratuity;
- (iv) Leave Salary;
- (v) Pension;
- (vi) ACP benefits under Sixth Central Pay Commission;
- (vii) Interest on the said amounts till the date of payment.

21. As regards pension and payment of Rs.54,824/- per month on account of salary for the period of contract beyond his date of superannuation, which was being paid to him before his retirement, we have already clarified that the applicant is not

entitled to pension and neither is he entitled for payment at the rate of Rs.54,824/- since it is the Finance Department which decides the rate persons engaged on contract should be paid. As regards gratuity, Rule 69 (1) (c) of CCS (Pension) Rules provides as follows:

"69.(1)(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon:

Provided that where departmental proceedings have been instituted under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, for imposing any of the penalties specified in Clauses (i), (ii) and (iv) of Rule 11 of the said rules, the payment of gratuity shall be authorized to be paid to the Government servant."

As regards other claims i.e. salary for the period from 1.11.2008 to 30.06.2009 at the rate of contract employees, arrears of Sixth Central Pay Commission, Leave Salary, ACP/MACP benefits under Sixth Central Pay Commission, these would be governed as per the ratio in Jitendra Kumar Srivastava (supra).

22. On the question of payment of interest, the Hon'ble Supreme Court has laid the ratio in Y.K. Singla (supra) cited by the applicant. This judgment dealt with the case of a bank employee who faced a criminal proceeding and retired on 31.10.1996. On account of pendency of the criminal proceeding, his gratuity, leave encashment and commutation of permissible portion of pension were withheld. The appellant was acquitted of the charges on 31.10.2009. Based on his acquittal, the appellant addressed a letter dated 26.11.2009 to the Executive

Director of the bank seeking release of his retiral benefits along with interest from the date it became due to him, till the actual payment thereof. The Hon'ble Supreme Court held that non-release of gratuity to the appellant after his retirement on 31.10.1996 till his acquittal on 31.10.2009, cannot be faulted. But on the question of interest, it was held that because the appellant was acquitted, he cannot be held to be at fault. As the relevant Section 7 (3-A) of the Payment of Gratuity Act relating to payment of interest had a proviso that in case the payment was delayed because of some fault of the employee no such interest would be payable, the Court found that withholding of gratuity in view of continuation of criminal proceedings against the appellant caused delay in payment of the same and it held that delay in payment of gratuity would be deemed to be on account of employee's fault if criminal proceeding conclude in his conviction but would not be due to his fault if proceedings conclude in his acquittal and since in that case the appellant was acquitted, the Court ordered interest at the rate of 8%. Two things emerge from this: (i) that gratuity can be withheld in case criminal case is pending; and (ii) interest has to be paid on gratuity in case a person is acquitted.

23. Thus it is apparent from Rule 69 of CCS (Pension) Rules as well as judgment in Y.K. Singla (supra) that withholding of gratuity is permissible and the applicant cannot get any relief on this count till the final decision in the criminal case. Thereafter if he is acquitted, the respondents would have to consider his claim for interest as per ratio of this judgment. Y.K. Singla (supra)

speaks only of payment of interest in case of delayed payment of gratuity. There is no ratio laid down as regards other claims and from the facts of the instant case, it is seen that these payments have been withheld not without a reason but because of serious criminal acts as well as departmental lapses by the applicant. The learned counsel for the applicant also failed to place before us any Rule/ order which requires respondents to pay interest in claim other than in case of gratuity. In these circumstances, we are not persuaded to direct the respondents to payment of interest on the arrears of salary etc.

24. During the course of arguments, we had also asked the respondents to file an additional affidavit indicating the dues pending in respect of the applicant. Additional affidavit showing pending dues has been filed on 11.09.2015. However, the learned counsel for the applicant states that there are certain mistakes in it as gratuity and leave encashment have been wrongly calculated. Secondly, the arrears of MACP and Provident Fund also have been omitted from September 2007.

25. In view of above discussion, we dispose of this Application with direction to the respondents to release payment of salary for the period from 1.11.2008 to 30.06.2009 at rates applicable to contract employees, salary and arrears of Sixth Central Pay Commission, leave salary and ACP/ MACP benefits, if due under the ACP/MACP Rules (since he was facing a judicial proceeding) under the Sixth Central Pay Commission within a period of three months of receipt of a certified copy of this order. While

considering the claim of the applicant for ACP/ MACP benefits, the respondents would be guided by the terms and conditions of the schemes – for example, under ACP Scheme, para 6 of Annexure I of the Scheme and clarifications communicated vide DoP&T OM dated 10.02.2000. Similar provisions under MACP would be examined. While working out the amount due to the applicant, the respondents would take care to consider the claim of the applicant for upgradation under MACP, if due under the MACP guidelines, and work out leave encashment accordingly. We make it clear that the period from 1.11.2008 to 30.06.2009 will be treated on contract basis and payment will be made as fixed by the Finance Department for contract employees. No costs.

(P.K. Basu)
Member (A)

(Syed Rafat Alam)
Chairman

/dkm/