

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.352/2017

Order reserved on 11th December 2017

Order pronounced on 13th December 2017

Hon'ble Mr. K.N. Shrivastava, Member (A)

G Suresh
s/o K K Gopinathan Pillai
R/o C-3A/39-A
Janakpuri, New Delhi

(Applicant in person)

..Applicant

Versus

National Highway Authority of India
Through the Chairman
G 5 & 6, Sector 10, Dwarka
New Delhi – 110 075

(Mr. Rohit Sehrawat, Advocate for Mr. Hanu Bhasker, Advocate) ..Respondent

O R D E R

The applicant was working as General Manager (Financial Analyst) in National Highways Authority of India (NHAI) – respondent. On attaining the age of superannuation, he retired on 31.12.2015. Since his retiral dues were not released by the respondent, the applicant approached this Tribunal in O.A. No.2834/2016, which was disposed of vide order dated 23.08.2016 with the following directions to the respondent:-

“I find that representation made by the applicant on 19.07.2016 (Annexure A-6) to the Chairman, National Highways Authority of India, New Delhi to release the retirement benefits is still pending.

2. The O.A. is, therefore, disposed of at the admission stage itself without going into the merits of the matter with a direction to the

respondent to decide the aforementioned representation within a period of thirty days from the date of receipt of a copy of this Order.”

2. In compliance with the *ibid* order of the Tribunal, the respondent, vide Annexure A-1 order dated 04.11.2016, disposed of the representation dated 19.07.2016 preferred by the applicant. Relevant portion of the said order is extracted below:-

“No therefore, the terminal benefits withheld will be released once the above disciplinary proceedings are concluded and final orders are issued. Your representation dated 19.07.2016 is accordingly, hereby disposed off in pursuance to Hon’ble CAT (PB), New Delhi order dated 23.08.2016 in OA No.100/2834/2016 in the matter of Shri G. Suresh Vs. NHAI.”

Aggrieved by the Annexure A-1 order dated 04.11.2016, the applicant has filed the instant O.A. praying for the following reliefs:-

“a. Quash the impugned orders of the Respondent under their reference No.NHAI/11091/267/2000-Admn dated 04/11/2016.

b. Respondent be directed to make payment to the Applicant his Pension dues in accordance with CCS (Pension) Rules, 1972 from 01/01/2016, alongwith overdue interest for the period of delay till the date of actual payment.

c. Respondent be directed to make payment to the Applicant his Gratuity and Leave pay dues to the Applicant alongwith overdue interest for the period of delay till the date of actual payment.

d. Respondent be directed to make payment to the Applicant the differential of the 50% pay paid to him during his period of suspension from 23/06.2015 till 20/09/2015, alongwith overdue interest for the period of delay till the date of actual payment.

e. Respondent be directed to make payment of Rs.10 lacs as cost for having unnecessarily thrust this litigation on the Applicant, without even bothering to inform or give notice to him as to why the Respondent is doing so, and without affording him an opportunity to point out the illegality of the Respondent’s action.

f. Direct the Respondent to make additional payment to the Applicant equivalent to 27.75% for each 1% drop in bank interest

rates, on amounts finally assessed as due to the Applicant as retirement benefits, for the yield loss the Applicant has been put to on account of the delay in paying his dues and the consequent erosion in the future yield he will continue to suffer.”

3. Pursuant to the notice issued, the respondent – NHAI entered appearance and filed its reply, in which it is stated that a major penalty charge sheet under Rule 14 of CCS (CCA) Rules, 1965 was issued to the applicant on 20.06.2015, to which he applied on 26.06.2015. On consideration of applicant's reply, the respondent has decided to drop the charges, and accordingly an order dated 20.03.2017 has been passed, which reads as under:-

“Whereas a Memorandum No.NHAI/11019/267/2000-Admn. Dated 20.06.2015 under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules 1965 was issued to Shri G. Suresh, the then CGM (Financial Analyst) in NHAI. Wherein, he was directed to submit a written statement of his defence and also to state whether he desires to be heard in person.

And whereas he was also placed under suspension vide order No.C-13019/46/2012-Vig. Dated 23.06.2015 for a period of 90 days w.e.f. 23.06.2015.

And whereas Shri G. Suresh vide letter dated 26.06.2015 submitted reply to the memorandum and representation for withdrawal of his suspension orders.

And whereas the reply of Shri G. Suresh has been examined. Considering all facts and material of records, and in consultation with MoRT&H and CVC, it has been decided to drop the disciplinary proceedings initiated against Shri G. Suresh vide above referred Memorandum dated 20.06.2015, it has also been decided to allow Shri G. Suresh full pay and allowances during the period for which he was under suspension i.e. from 23.06.2015 to 20.09.2015, considering the entire period of suspension “on duty” for all purposes.

Now therefore, the undersigned, in exercise of the powers conferred by Regulations 21 (A) of National Highways Authority of India (Recruitment, Seniority & Promotion) Regulations 1995, as amended from time to time, hereby drop all charges framed against Shri G. Suresh vide memorandum dated 20.06.2015. The period of suspension of the officer from 23.06.2015 to 20.09.2015 shall be

treated as duty for all purposes as well as payment of full pay and allowances for the said period.”

4. The respondent – NHAI has further stated in its reply that in terms of its order dated 20.03.2017, following retiral benefits have been released to the applicant:-

“11. After conclusion of the disciplinary proceedings and issue of order dated 20.03.2017, he has been released following payment along with interest as per details given below:-

Sr. No.	Particulars	Amount Due	Status
(i)	Gratuity	Rs.10,00,000/-	Amount released vide Cheque No.116314 dated 18.04.2017 after deduction of tax as per rules.
(ii)	Leave encashment	Rs.15,38,480/-	
(iii)	Interest on delayed payment of gratuity	Rs.97,096/-	Amount released vide Cheque No.1217236 dated 22.05.2017 after deduction of tax as per rules.
(iv)	Interest on delayed payment of leave encashment	Rs.1,49,380/-	

5. In paragraph 12 of the reply, the respondent has stated that the NHAI is a non-pensionable organization and instead of pension, contributory provident fund (CPF) benefits are being granted to its employees. Accordingly, the NHAI’s contributions in EPFO towards CPF account of the applicant have been deposited.

6. Arguments of the applicant, as party in person and that of learned proxy counsel for respondent were heard.

7. The applicant acknowledged the receipt of retiral benefits as mentioned in paragraph 11 of the reply filed on behalf of the respondent. He, however, argued that since the disciplinary proceedings initiated

against him while in service have been continued, invoking the provisions of Rule 9 of CCS (Pension) Rules, 1972 even after his retirement, he is entitled for grant of regular pension in terms of the CCS (Pension) Rules.

8. *Per contra*, learned proxy counsel for respondent submitted that all the retiral benefits have been released to the applicant after the issuance of the order dated 20.03.2017 whereby the charges against the applicant have been dropped. He further stated that the NHAI is a non-pensionable organization and instead of pension, it grants CPF benefits to its employees, and hence pension under CCS (Pension) Rules, 1972, as claimed by the applicant, cannot be granted to him.

9. I have considered the rival arguments of the parties. Admittedly, all the retiral dues have been released by the respondent to the applicant, and the same has been acknowledged by him. As regards pension, it is not in dispute that the NHAI is a non-pensionable organization and thus its employees are not eligible for pension under CCS (Pension) Rules. It is also not in dispute that the employees of NHAI are covered under the CPF Scheme, and NHAI makes its contributions to the CPF accounts of its employees regularly. The applicant is not an exception to this Scheme. The logic of the applicant that since the disciplinary inquiry proceedings have been continued against him even after his retirement, invoking the provisions of Rule 9 of CCS (Pension) Rules and hence he is entitled to pension, is indeed bizarre, to say the least.

10. Pertinent to note that Rule 9 of CCS (Pension) Rules is basically an enabling provision for continuation of disciplinary inquiry proceedings

even after the retirement of the Government servant to ensure recovery of any pecuniary loss caused to the Government by him/her. Relevant part of Rule 9 is extracted below:-

“9. Right of President to withhold or withdraw pension

(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.”

11. Since the applicant was eligible for getting gratuity, in the event of disciplinary inquiry proceedings culminating in imposition of penalty of recovery of NHAI dues on him, such recovery could have been effected from the gratuity of the applicant in terms of the *ibid* rule. As mentioned hereinabove, the respondent have decided to drop the charges against the applicant vide order dated 20.03.2017, and hence there is no question of any recovery from the gratuity payable to the applicant. Accordingly, all retiral dues, including the gratuity, have been released to the applicant by the respondent.

12. The applicant has been a beneficiary of the CPF, to which regular contributions have been made by the respondent to his account. Since the NHAI is a non-pensionable organization, the question of grant of regular pension to the applicant simply does not arise.

13. In the conspectus of discussions in foregoing paragraph, the claim of the applicant for grant of regular pension is rejected. Taking cognizance of

the fact that all retiral benefits have already been released by the respondent to the applicant after passing the order dated 20.03.2017, no further action is needed at the end of the respondent.

14. The O.A. is accordingly dismissed. No order as to costs.

(K.N. Shrivastava)
Member (A)

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