

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

O.A. No.1425/2016

Tuesday, this the 6th day of March 2018

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

Gopal Krishan Gupta, Retd. Grade I (Dass)/Superintendent
Govt. of NCT of Delhi
Aged about 60 years
s/o late Shri M L Gupta
r/o R-10, R Block
Old Uttam Nagar, Delhi - 59

..Applicant

(Mr. E J Verghese, Advocate)

Versus

1. Govt. of NCT of Delhi
Through its Chief Secretary
Delhi Secretariat, IP Estate, New Delhi
2. Director of Education
Directorate of Education
Delhi Secretariat, IP Estate, New Delhi
3. Pay & Accounts Officer
PAO-III, Gaushala Road
Najafgarh, New Delhi

..Respondents

(Mr. K M Singh, Advocate)

O R D E R (ORAL)

The applicant was working as Superintendent in Directorate of Education (respondent No.2) and retired from the said post on 31.12.2015. His grievance is that on the day of his retirement, no disciplinary enquiry (DE) proceedings or criminal proceedings were pending against him, and in spite of that, the respondents have not sanctioned him the regular pension. They have also denied him the retiral benefits, viz. gratuity and commutation of pension. He has, however, been paid GPF, leave encashment and provisional pension has been sanctioned to him. Aggrieved by the action of the respondents in denying him the

regular pension and for not releasing his gratuity and commutation of pension, the applicant has filed the instant O.A. praying for the following main relief:-

- “1. To call for records of the case and direct the respondents to release Gratuity, Commuted Pension and Regular Pension with interest at the rate of 12% per annum w.e.f. 1.1.2016 to applicant at the earliest.”
2. In response to the notices issued, the respondents have filed their counter reply.
3. Arguments of learned counsel for the parties were heard today.
4. Mr. E.J. Verghese, learned counsel for applicant submitted that on the day of his retirement, i.e., 31.12.2015, there was no disciplinary proceedings or criminal proceedings pending against him, and as such the respondents were obliged to sanction regular pension and release all the pensionary benefits to him. The learned counsel also drew my attention to the averments made in paragraph 5.3 of the O.A. wherein several judgments of Hon’ble Supreme Court have been cited in support of applicant’s claim.
5. *Per contra*, Mr. K M Singh, learned counsel for respondents submitted that the applicant was never granted vigilance clearance and the respondents had contemplated to initiate these departmental proceedings against him. He further drew my attention to the averments made in the reply and said that the Vigilance Branch issued a direction in the month of February 2016 to lodge an FIR against him for embezzlement of government money through fake *challans* amounting to ₹1,11,341/-, which was detected during audit of the school in February 2016. He further stated that the applicant has taken leave encashment at his credit by forging the signature of Head of School to the extent of ₹5,49,030/-.
6. Mr. Singh further stated that as per the direction of the Vigilance Branch, an FIR No.146/2016 under Sections 420, 468, 471 IPC has been registered in

Police Station, Dwarka North and DE proceedings have been started under Rule 9 of CCS (Pension) Rules, 1972. He, thus, argued that under these circumstances, the respondents could have only sanctioned the provisional pension to the applicant, which has already been done.

7. I have heard the learned counsel for the parties and perused the pleadings and documents annexed therein.

8. From the records, it is quite evident that on the day of retirement of the applicant, i.e., 31.12.2015, there was no DE proceedings or criminal proceedings pending against him. Such proceedings have been started in February 2016 with the lodging of an FIR in the Police Station. The Hon'ble Supreme Court in the case of **Union of India etc. etc. v. K.V. Jankiraman etc. etc.**, (1991) 4 SCC 109 has laid down the law that government servant is not considered to be under cloud of vigilance unless and until a charge memo has been issued to him setting the DE proceedings in motion or a charge sheet is filed in a criminal court against him. In the present case, it is quite clear that on the day of his retirement, the applicant was not facing any such proceedings. Hence, I am of the view that the respondents were not justified in denying sanction of regular pension to the applicant and in not releasing the gratuity and commutation of pension to him. The DE proceedings and criminal proceedings have been started against him much later in the year 2016. The applicant has also been issued a charge memo in accordance with Rule 9 of CCS (Pension) Rules, 1972 by the respondents. Such an action of the respondents cannot be faulted upon, but this belated action will not come in the way of the applicant receiving regular pension and other pensionary benefits in view of the fact that on his retirement day, he was not facing any such proceedings. Needless to say that in case the applicant is found guilty in the DE / criminal proceedings, the respondents shall have full liberty to punish him according to law.

9. In view of the discussions in the foregoing paragraphs, I hold that the applicant was entitled for sanction of regular pension and for release of other pensionary benefits on the day of his retirement since he was not facing any DE or criminal proceedings as on that day.

10. Accordingly, this O.A. is allowed in the following terms:-

- i) *The respondents shall sanction and release regular pension to the applicant and also release gratuity and commutation of pension to him, within a period of three months from the date of receipt of a copy of this order.*
- ii) *The applicant shall not be entitled for any interest on the arrears of pension and other retiral benefits, which are going to be sanctioned and released to him by the respondents.*

There shall no order as to costs.

(K.N. Shrivastava)
Member (A)

March 6, 2018
/sunil/

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