

**Central Administrative Tribunal
Principal Bench**

OA No.1529/2014

New Delhi, this the 26th day of April, 2017

Hon'ble Mrs. P. Gopinath, Member (A)

Shri Chander Dev, Aged 63 years,
S/o Late Shri Makkhan Singh,
R/o House No. E-6/128, Sangam Vihar,
New Delhi-110 062
Working as a School Inspector.

...Applicant

(By Advocate : Shri Rama Shanker)

Versus

1. North Delhi Municipal Corporation,
Through its Commissioner,
Dr. S.P. M. Civic Centre,
Minto Road,
New Delhi-110 002.
2. Deputy Director of Education,
City Zone, Education Department,
North Delhi Municipal Corporation,
MLUG, Car Parking, Asaf Ali Road,
New Delhi-110 002.
3. Deputy Controller of Accounts,
City Zone, Accounts Department,
North Delhi Municipal Corporation
MLUG, Car Parking, Asaf Ali Road,
New Delhi-110 002.

...Respondents

(By Advocates : Shri R.V. Singh, Shri R.N. Singh and Shri Amit Sinha)

ORDER (ORAL)

The applicant was appointed to the post of School Inspector on 07.01.1983. He was proceeded against by issue of a charge-sheet for unauthorised absence. The applicant retired on 31.12.2010 as School Inspector from City Zone. The applicant was not paid provisional pension, GPF and leave encashment on the ground that RDA was pending. The applicant in the OA prays for payment of withheld gratuity and leave encashment.

2. The applicant brings to notice that he is covered by Municipal Corporation of Delhi, Control and Appeal Regulations, 1959. The respondents do not contest this but only bring to my notice that Rule 69(1) (a) of CCS (Pension) Rules, 1972, provides for payment of provisional pension and Clause 1(c) of the same Rule lays down that no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of the final orders thereon. The respondents also produced Appendix-1 of CCS (Commutation of Pension) Rules, 1981. The relevant Clause 4 of the said Rules is reproduced below :-

“4. Restriction on commutation of pension - No Government servant against whom departmental or judicial proceedings, as referred to in Rule 9 of the Pension Rules, have been instituted before the date of his retirement, or the pensioner against whom such proceedings are instituted after the date of his retirement, shall be eligible to commute a percentage of his provisional pension authorised under Rule 69 of the Pension Rules or the pension, as the case may be, during the pendency of such proceedings.”

3. The applicant cites the decision of the Hon’ble Apex Court in Civil Appeal No.6770/2013 ***State of Jharkhand and Others Vs. Jitender Kumar Srivastav*** wherein it has been held as under :-

“15. 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.”

4. The Hon’ble Apex Court has made the above observation in respect of cases where executive instructions not having a statutory character are concerned. However, in the case of the applicant, he is covered by the Commutation of Pension Rules

1981 and CCS (Pension) Rules, 1972, amended from time to time by subsequent Pay Commissions. Since these are statutory rules governing the applicant, the citation relied upon by him would not apply to his case. Moreso, the applicant has not contested the non application of these rules. The reliefs sought for in the OA, pertaining to gratuity and leave encashment, are thus not admissible under the statutory Rules. The OA is accordingly dismissed. No costs.

(Mrs. P. Gopinath)
Member (A)

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