

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

O.A. No.2676/2015

Tuesday, this the 18th October, 2016

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

Vinod Krishan Agarwal
s/o Mr. Ram Saran Dass Agrawal
Retd. Assistant Fitter
B. No.7674
Pay Token No.35105

r/o 184 New Lahore
Shastri Nagar
Delhi – 31

Aged 61 years

(Mr. Ravinder S Garia, Advocate)

..Applicant

Versus

Delhi Transport Corporation
Through
Chairman, DTC
IP Estate, New Delhi - 1

(Mr. A.K. Roy, Advocate)

..Respondent

O R D E R (ORAL)

The applicant was working as an Assistant Fitter under the respondent-Corporation. On 19.11.2009, an FIR No.29 came to be registered against him under Sections 147/148/149/ 323/325/307/34 IPC. He has been charge-sheeted in the criminal case and the same is pending in the criminal court. Based on the registration of the criminal case, the applicant was placed under suspension by the respondent on 30.06.2010 and the disciplinary enquiry (DE) was started. He was reinstated in service on 16.07.2011. He retired on 31.07.2014.

2. Learned counsel for applicant submits that the enquiry officer has already submitted his report to the disciplinary authority (DA) but DA has not passed the

final order. Since the DE proceedings were pending, the respondent chose not to release the retiral benefits of the applicant, viz. leave encashment and gratuity. A communication to this effect has been sent by the respondent to the applicant vide impugned Annexure A-1 communication dated 28.07.2014.

3. Learned counsel for applicant drew my attention to Rule 9 of the CCS (Pension) Rules, 1972, which reads as under:-

“9. Right of President to withhold or withdraw pension

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.”

He submits that in the instant case, no pecuniary loss has been caused by the applicant to the respondent and as such no recovery is required to be made from the retiral benefits of the applicant. He contends that retiral benefits could be withheld only if the employee is found guilty of grave misconduct or has caused any pecuniary loss to the Government (in this case respondent). He further submits that the “misconduct” has been defined in clause 19 of the Standing Order Governing Conduct of Employees of D.T.C., which reads as under:-

“19. General Provisions:- Without prejudice to the provisions of the foregoing standing Orders, the following acts of commission and omission shall be treated as misconduct:-

- a) Wilful insubordination or disobedience by an employee individually or in combination with others, to any official order of a superior employee;
- b) Theft, fraud or dishonesty in connection with the Authority business or property;
- c) Wilful damage or loss to Authority's goods or property;
- d) Taking or giving bribe or any illegal gratifications; other than a complimentary present of flowers or fruit or similar articles of trifling value;

- e) Habitual late attendance without permission;
- f) Habitual breach of any rules, law, instructions, or orders etc. applicable to the employees of the Authority;
- g) Disorderly behaviour on the premises of the Authority;
- h) Habitual negligence of duties and lack of interest in the Authority's work.
- i) Striking work or inciting others to strike work in contravention of the provision of the law applicable to the D.T.S.
- j) Habitual in debtness, as evidenced by receipt of frequent 'Attachment' orders from the Court;
- k) Any offence involving moral turpitude which is punishable under the I.P.C.
- l) All employees who may be arrested for any reason shall intimate the fact of arrest to their official supervisor immediately, even though they might have subsequently been released on bail. Failure on the part of any employee to so inform his official superiors will render him liable to disciplinary action on this ground alone, apart from the action that may be called for on the out come of the police case against him.
- m) Any other activity not specifically covered above, but which is prima facie detrimental, to the interests of the organisation."

4. Learned counsel for applicant argues that the applicant has not committed any grave misconduct, nor has caused any pecuniary loss to the respondent and as such, the retiral benefits should be released notwithstanding the fact that a criminal case is pending against him.

5. *Per contra*, learned counsel for respondent argues that DE proceedings are still pending against the applicant. He further submits that as per Rule 69 (1) (c) of CCS (Pension) Rules, 1972, no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon. The said Rule reads as under:-

"(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."

6. I have gone through the records and have considered the arguments put-forth by the learned counsel for parties. I consider it appropriate to issue a time bound direction to the disciplinary authority to conclude the DE proceedings in view of the fact that the enquiry officer has already submitted his report.

7. In the conspectus of the discussions in the pre-paragraphs, the O.A. is disposed of with the following directions to the respondent:

- (i) The respondent shall conclude the DE proceedings and pass the final order in terms of the Delhi Road Transport Authority (Conditions of Appointment & Services) Regulations 1952, within a period of three months from the date of receipt of a copy of this order.
- (ii) The respondent shall release the leave encashment benefits of the applicant within a month from the receipt of a copy of this order, as there is no impediment in doing so in terms of Rule 9 of CCS (Pension) Rules, 1972.

No order as to costs.

(K. N. Shrivastava)
Member (A)

October 18, 2016
/sunil/