

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.2081/2014

Order Reserved on: 06.02.2017
Order pronounced on 10.02.2017

Hon'ble Shri V. Ajay Kumar, Member (J)

Sh. Raj Mal Khokhar [Aged about 61 years, Asst. Divi. Officer(Retd.)]
S/o Sh. Mange Ram Khokhar
R/o H.No.1282, Sector-3
Rohtak, Pin-124001. ... Applicant

(By Advocate: Shri Ajesh Luthra)

Versus

1. Govt. of N.C.T. of Delhi
Through the Chief Secretary
5th Floor, Delhi Sachivalaya,
New Delhi.
2. The Director
Delhi Fire Service
Connaught Place
New Delhi. ... Respondents

(By Advocate: Ms. Harvinder Oberoi)

ORDER

The applicant, a retired Assistant Divisional Officer from the respondent-Delhi Fire Service, filed the OA, seeking the following relief(s):

"(a) declare that the respondents have wrongly withheld the retiral benefits and other dues of the applicant.

(b) direct the respondents to release all withheld benefits of the applicant including retiral benefits.

(c) direct the respondents to pay interests @ 15% p.a. to the applicant on the

(d) award costs of the proceedings and

(e) pass any other order/direction which this Hon'ble Tribunal deem fit and proper in favour of the applicant and against the respondents in the facts and circumstances of the case."

2. Brief facts of the case are that while the applicant was working as Assistant Divisional Officer, a case bearing No.RC-DAI-2012-A-0027 dated 07.08.2012 under Section 7 of the Prevention of Corruption Act, was registered against him. He was arrested on 07.08.2012 and was released on bail on 27.08.2012. Though he was suspended w.e.f. 07.08.2012, but the same was revoked on 27.02.2013. When the applicant was retiring, on attaining the age of superannuation, on 30.04.2013, the respondents issued a Charge Memorandum dated 30.04.2013, and not released any of his retiral benefits. The applicant also made representations dated 26.08.2013 and 30.12.2013 (Annexure A5) but the same have not been disposed of till date.

3. Heard Shri Ajesh Luthra, the learned counsel for the applicant and Mrs. Harvinder Oberoi, the learned counsel for the respondents, and perused the pleadings on record.

4. When this matter is taken up for hearing the learned counsel for the applicant submitted that the applicant has been receiving the provisional pension. He was also paid the Insurance and GPF amounts. However, the amounts of Gratuity and Leave Encashment and regular pension were still withheld, illegally.

5. Shri Ajesh Luthra, the learned counsel for the applicant, while drawing our attention to Rule 9 of the CCS (Pension) Rules, 1972 submits that to withhold Gratuity or Pension, a specific order is required to be passed by the President and since no such order was passed, the applicant is entitled for release of the same with interest.

6. The learned counsel further submits that the Leave Encashment amount can be withheld under Rule 39(3) of the CCS (Leave) Rules, 1972, only if in the view of the authority there is a possibility of some money becoming recoverable from the charged officer on conclusion of the proceedings against him but in the present case, the charge levelled against the applicant does not attribute any financial loss to the respondents, and that no specific opinion or order was passed by the authority indicating that there is a possibility of some money becoming recoverable from the applicant, and hence, the applicant is entitled for payment of Leave Encashment amount with interest for the delayed period.

7. Smt. Harvinder Oberoi, the learned counsel appearing for the respondents, would submit that Rule 9 empowers the President to withhold Pension or Gratuity or both either in full or in part but does not contemplate to pass any specific order in this regard. Since criminal proceedings are pending against the applicant and that a departmental chargesheet is also pending, there is no illegality in withholding the Gratuity, Pension and Leave Encashment amounts.

8. In so far as withholding the Gratuity and regular Pension, we do not find any illegality in the action of the respondents, as a departmental chargesheet is pending against the applicant, as provided under Rule 9 of the CCS (Pension) Rules, 1972.

9. Rule 39 (3) of CCS (Leave) Rules, 1972 read, as under:

"39. Leave/Cash payment in lieu of leave beyond the date of retirement, compulsory retirement or quitting of service.

xxxx x xxxx xxxx xxxx

(3) The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any]."

(Emphasis supplied)

10. It is true that disciplinary and criminal proceedings are pending as on the date of the retirement of the applicant, but the competent authority is under obligation to express a specific view that there is a possibility of some money becoming recoverable from the concerned officer on conclusion of the proceedings against him, to withhold the Leave Encashment amount. In the absence of the same, the respondents cannot withhold the Leave Encashment amount of the applicant, even under the aforesaid Rule. The respondents instead of considering the representation of the applicant in terms of Rule 39(3) of the CCS (Leave) Rules, 1972 ibid, withheld the Leave Encashment amount without passing any orders on the said representation.

11. In the circumstances and for the aforesaid reasons, the OA is partly allowed, and the respondents are directed to release the Leave Encashment amount along with interest for the delayed period, i.e., from the date of retirement to the date of actual payment, at the GPF rate of interest, to the applicant within 90 days from the date of receipt of this order. No costs.

(V. Ajay Kumar)
Member (J)

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