

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 2904/2016

New Delhi, this the 19th day of December, 2017

Hon'ble Mrs. Jasmine Ahmed, Member (J)

Ms. Anila Khrime (alias Anila Singh)
D/o Late Shri Sagar C. Jain
Aged about 62 years
Orchard Retreat, Village Kanyal,
P.O. Chhiyal, Manali,
District Kullu, Himachal Pradesh-175131 ... Applicant

(Through Shri Naresh Kaushik, Advocate)

Versus

1. Union of India through the Secretary
Ministry of Home Affairs,
North Block, New Delhi
2. Union of India through the Secretary
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training,
North Block, New Delhi.
3. Govt. of Arunachal Pradesh
Through its Chief Secretary
Itanagar-791111 ... Respondents

(Through Shri Amit Sinha for Shri R.N. Singh, Advocate)

ORDER (ORAL)

Mrs. Jasmine Ahmed, Member (J)

The applicant belongs to 1976 batch of AGMU Cadre. She was posted as Registrar of Cooperative Societies at Itanagar, Arunachal Pradesh during the period 1983 to 1985. From 1986 to 1993, she was posted as Secretary, Information and Public

Relation, Secretary Home and Secretary, Agriculture, Animal Husbandry, Fisheries and Horticulture, Govt. of Arunachal Pradesh. It is contended by the learned counsel for the applicant that the applicant was released from the Government of Arunachal Pradesh vide order dated 31.12.1993 without the necessary approval from the Home Ministry and was directed to report to the Ministry of Home Affairs. Thereafter, she was kept waiting for her posting as the Ministry of Home Affairs did not agree to the applicant's release from the Government of Arunachal Pradesh. In February 1997, the applicant was posted to Mizoram though, it is contended by the learned counsel for the applicant, that the applicant had already completed three years requisite tenure in the North-Eastern States and was eligible to be posted at Delhi as per extant rules. As such, when the applicant was posted to Mizoram, she protested on the basis of completion of hardship posting at Arunachal Pradesh but the same was not taken into account by the respondents i.e. the Ministry of Home Affairs.

2. It is contended by the learned counsel for the applicant that the applicant was compulsorily retired from service on 13.01.2004 on charges of major penalty. However, the order of compulsory retirement was never received by the applicant. After being compulsorily retired, the applicant made various representations to the respondents for grant of pension and pensionary benefits from the year 2013 but they failed to evoke any response. On 31.08.2014, the applicant made another representation seeking pension and other retirement benefits.

However, nothing was heard from the respondents side. Then the applicant made further representation dated 6.08.2015 regarding grant of pension and pensionary benefits and provident fund. However, it is contended that no action was taken by respondent no.1 on her representation. Being aggrieved, the applicant personally visited respondent no.1 on 6.05.2016 with regard to grant of pension and other pensionary benefits as she was facing financial hardship but her personal visit also did not yield any fruitful result. On 7.05.2016, the applicant filed an application under RTI seeking information with regard to the penalty imposed on the applicant as well as compulsory retirement order relating to disbursement of pension and gratuity. On 16.05.2016, the applicant received a reply from respondent no.1 that the information sought by her had been forwarded to Director (Services) of UT Division as the requested information pertained to the functions of the said division. The applicant further filed an application dated 1.06.2016 under RTI seeking similar information. On 20.06.2016, the respondent no.1 provided the applicant the compulsory retirement order dated 13.01.2004 but no action was taken to disburse the pension and pensionary benefits to the applicant, to which she was legally entitled to. The respondent no.2, in response to RTI application dated 7.05.2016, informed the applicant vide letter dated 25.07.2016 that the records concerning the applicant had been sent to the concerned State and the copy of RTI application also had been sent to the Government of Arunachal Pradesh. However, no pension or

pensionary benefits being granted, the applicant has filed the present OA seeking the following reliefs:

- “a. allow the present Original Application.
- b. issue appropriate directions/ orders to the Respondent to release the pension and the pensionary benefits i.e. gratuity at 10% per annum from the date the gratuity became payable till the date on which it is paid and GPF, leave encashment, arrears along with the interest for delay in payment;
- c. and pass such other directions and orders as deemed fit and proper in the interest of justice.”

3. It is further contended by the learned counsel for the applicant that the applicant who has been compulsorily retired, is entitled for pension and pensionary benefits and further that a person who was compulsorily retired on 13.01.2004, should have by this time released all the benefits she was legally entitled to. Not paying the pension and pensionary benefits to the applicant is arbitrary and illegal on the part of the respondents. It is stated that the Hon'ble Apex Court in a catena of judgments has reiterated that gratuity and pension are not the bounties paid to an employee and that these benefits are earned by dint of his long, continuous, faithful and unblemished service. Not taking any action in regard to disbursement of pension and pensionary benefits of the applicant is in total disregard to the statutory provisions and settled legal position.

4. Learned counsel for the applicant also states that pension is in a character of property, which cannot be snatched away by

the respondents and delayed payment of pension and pensionary benefits is violative of the principles of natural justice.

5. Of the three, only respondent no.1 had filed their counter and contested the case. Rejoinder thereto has been filed by the applicant. However, despite service no response from the other two respondents have been received and by an order dated 20.07.2017 of this Tribunal, pleadings were treated as complete and the case was listed for final hearing. It is contended by the learned counsel for the respondent that the applicant was charge sheeted for major penalty and the UPSC, vide its letter dated 17.08.2000, held that all the charges against the applicant have been proved beyond reasonable doubt and that the ends of justice would be met if penalty of dismissal from service is imposed on the applicant. It is also contended by the learned counsel for the respondents that the Ministry of Home Affairs, taking a lenient view in consultation with the DoP&T and the UPSC, imposed the penalty of compulsory retirement on the applicant vide order dated 13.01.2004.

6. Learned counsel for the respondents vehemently argued that the applicant has misrepresented the fact that she never received the order dated 13.01.2004 of compulsory retirement as she herself has made a representation dated 25.02.2004 with reference to penalty order dated 13.01.2004. It is also argued by the learned counsel for the respondents that through her representation dated 5.08.2016, the applicant intimated that her last place of posting was Arunachal Pradesh and that she did not

get her provident fund till date. It is also contended that if her pension and pensionary benefits were not released, the applicant ought to have approached the Government of Arunachal Pradesh with whom she was working and that the Ministry of Home Affairs had nothing to do in regard to release of her pension and pensionary benefits as respondent no.1 is only cadre controlling authority and the subject matter of this application is beyond its jurisdiction and pertains to Govt. of Arunachal Pradesh.

7. Learned counsel for the respondents also argued on the point of limitation, stating that the applicant has approached this Tribunal very late and hence the OA cannot be entertained at such a belated stage. Sur-rejoinder to the rejoinder has also been filed by the respondent, stating that all the documents relating to the applicant have been sent to the Government of Arunachal Pradesh and that she should approach the Arunachal Pradesh Government for release of her pension and pensionary benefits. Learned counsel also stated that the applicant may be directed to approach the Government of Arunachal Pradesh with all material/ supporting documents for grant of pension and pensionary benefits.

8. Heard the learned counsel for the parties and perused the documents on record.

9. The respondent no.1 in this case tries to wash off its hands claiming that as the applicant last served at Arunachal Pradesh and the Ministry of Home Affairs is the cadre controlling authority and its responsibilities confine to promotion,

transfer/posting, cadre clearance, departmental proceedings etc. but does not deal with pay, allowances, salary, provident fund, pension, gratuity etc. which are the jurisdiction of the concerned States/ Union Territories where the individual is posted.

10. No doubt as it is on record that hibernation on both sides persisted till January 2004, when the DOPT issued Presidential order dated 13.01.2004, compulsorily retiring the applicant in a disciplinary proceeding, according to the respondent no.1 was received by the applicant as it is evident from the representation dated 25.02.2004 (Annexure R-3). According to the applicant, the above order of compulsory retirement was not communicated to her at the relevant point of time and that the same was received in response dated 20.06.2016 to an RTI application dated 1.06.2016 filed by her. Silence prevailed again till 2013 when the applicant made representation for disbursement of the pension and other terminal benefits, which was again followed up in 2014 by addressing a representation to the Minister of State (Home) (Annexure A-1). The applicant renewed the earlier 2014 request for pension etc., again in August, 2015 (Annexure A-2).

11. The applicant on receipt of penalty order dated 13.01.2004 in 2016 chose not to agitate against the same, but insisted that the respondents are under legal and statutory obligation to disburse/grant the pension and other pensionary benefits to the applicant on compulsory retirement as per the provisions of the

CCS (Pension) Rules 1972 and on various other grounds the nonfeasance of the respondents has been challenged.

12. Counsel for the applicant has referred to the decision of the Hon'ble Apex Court in the case of **M.R. Gupta Vs. Union of India and others**, 1995 SCC (L&S) 1273 which related to continued cause of action and also a judgment of the Hon'ble Delhi High Court relating to pay and allowances.

13. It is to clarify here that the CCS (Pension) Rules are not applicable to the All India Services Officers and it is the All India Services (Death cum Retirement Benefits) Rules, 1958 that regulate the entitlement of death-cum-retirement benefits to such All India Services Officers. Rule 2 (1) m of the said Rules defines the term "State Government" which is reproduced below:

"2(1)(m) "State Government means the State Government on whose cadre the member of the service was borne immediately before retirement order on and in relation to a member of an All India Service borne on a joint cadre, the Joint Cadre authority."

The term Joint Cadre Authority has been defined in Rule 2 read with Rule 4 of the All India Services (Joint Cadre) Rules, 1972 and the same is as under:

"2. Definitions – In these rules, unless the context otherwise requires -

(a) "Joint Cadre Authority" means the Committee of Representatives referred to in Rule 4

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4. Committee of representatives – (1) There shall be a committee consisting of a representative of each of the Governments of the Constituent States, to be called the Joint Cadre Authority. (2) The representatives of the Governments of the Constituent States may either be members of an All India Service or Ministers in the Council of Ministers of the Constituent States, as may be specified by the Governments of the Constituent States.”

14. In so far as the present procedure for processing pension papers is concerned, the latest instructions are contained in the following letter issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training. Instructions issued vide letter No.25014/2/2002-AIS(II) dated 16.01.2009 read as follows:

“To

Chief Secretaries of all State Governments/UTs

Subject: Simplification of Procedure for payment of pension and other benefits to All India Service officers retiring from Government of India/State Governments.

Sir,

I am directed to refer to this Department's letter of even number dated 11th April, 2007 on the subject mentioned above. It may be stated that by paragraph 3 of this Department's letter under reference, it was conveyed that detailed operational procedure to be followed by various agencies for preparation of pension papers, issue of PPO and arranging payment and accounting of payments etc. would be issued by the Controller General of Accounts, Ministry of Finance, Department of Expenditure.

2. In this regard, Central Pension Accounting Office (CPAO), Department of Expenditure, Ministry of Finance by its letter no. CPAO/AIS/M.F/01/2008-09 dated 18/8/2008 has issued the detailed procedure to be followed by various agencies for preparation of pension papers. A copy of the said

letter dated 18/8/2008 of CPAO is sent herewith for information and guidance.

Yours faithfully,

Sd/-
(Harjot Kaur)
Director (Services)

Encl: As above.

Copy to:

1. All Ministries/Departments of the Government of India
2. Controlling General of Accounts, Ministry of Finance, Department of Expenditure
3. Principal Secretary (Finance) of all the State Governments
4. Accountants General of all the State Governments.
5. Ministry of Home Affairs, JS (Police), North Block, New Delhi-110001
6. Ministry of Environment and Forests, JS(IFS), Paryavaran Bhavan, CGO Complex, New Delhi.
7. Ministry of Finance, JS (Pers), D/o Expenditure, North Block, New Delhi-110001
8. Additional Secretary, Department of Pension and PW, Lok Nayak Bhavan, New Delhi.
9. NIC, Department of Personnel & Training, North Block, New Delhi-110001 with the request to put on this circular on the website (Home page> Circulars/Reports>Services Division) immediately.

Copy also to:-

1. PPS to Secretary(Personnel)/PPS to EO/PPS to AS (S&V)/PPS to JS (E)/PPS to JS (AT&A)/PPS to JS (Vig.)
2. All officers/sections of Department of Personnel & Training.

(Harjot Kaur)
Director (Services)"

Instructions issued vide letter No.CPAO/AIS/M.F./01/2008-09

dated 18.08.2008 read as follows:

"Sub:- Procedure for payment & accounting of pension etc in respect of All India Services officers

retiring from Government of India/ State Government.

Sir/Madam,

A reference is invited to DOPT OM No.25014/2/2002/AIS (II) dated 11.04.2007 wherein it was decided that:-

1. Government of India would take over the entire pension liabilities of AIS officers who had already retired or would be retiring either from State Government or Central Government.
2. All retiring AIS officers & existing pensioners would uniformly have the option to drawing the pension through the Government of India or through State Government on whose cadre they are borne.

The detailed procedure to be followed by various agencies for preparation of pension papers as approved by C&AG and the CGA is enclosed.

The PAOs/DAs are required to prepare the both halves of PPO in White Colour only in respect of AIS officers. The Cadre/ State/ Batch to which the AIS officers belong should be clearly mentioned in SSA as well as both halves of the PPOs.

State Governments are requested to send the names of the Designated Authority at the earliest. Further the budget may send to this office by all Designated Authorities latest by 15th Sep. 2008 enclosing prescribed forms duly filled.

Please ensure that the guideline/ procedure are followed strictly by PAOs/ DAs for smooth disbursement of pension to AIS officers and its proper budgeting and accounting."

15. A bare reading of above quoted instructions would reflect that the procedure to be adopted for AIS officers is already notified with information to all the stake holder departments.

16. In the instant case, notwithstanding the fact that the applicant had been compulsorily retired more than a decade ago, the documents relating to pension had not been processed for

disbursement of pension. As such, the above procedure laid down in letter No.25014/2/2002-AIS(II) dated 16.01.2009 shall govern the case of the applicant herein. Thus, respondent no.2 shall coordinate the entire action relating to fixation of pension/gratuity and other dues payable to the applicant including the interest as provided for in the instant rules for delayed payment. It will be the responsibility of the said respondent to liaise with the State Government concerned to procure all the service records and attendant particulars on priority basis and work out the dues payable to the applicant. In so far as payment of GPF is concerned, the same shall be released by the State Government, as retained by them. Payment of GPF shall be made with interest at the rate in force for each year till the date of payment of fund to the applicant. The entire exercise shall be accomplished within 4 months of the receipt of a certified copy of this order.

17. The Registry is directed to ensure dispatch of a copy of this order forthwith to all the three respondents, in addition to a copy to all the counsels.

18. In the facts and circumstances of the case, there shall be no order as to costs.

(Jasmine Ahmed)
Member (J)

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