

**Central Administrative Tribunal
Principal Bench**

OA No.3692/2015

New Delhi, this the 12th day of July, 2017

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

Mahavir Prasad Sharma, Aged 61 years,
Ex. EEG Technician,
Kalawati Saran Children's Hospital,
R/o No.163, Street-15, Paratap Nagar,
Mayur Vihar-1,
Delhi-110091.

...applicant

(By Advocate : Shri Yogesh Mahur)

Versus

1. Union of India,
Through the Secretary,
Ministry of Health & Family Welfare,
Shastri Bhawan,
New Delhi.
2. The Director,
Lady Hardinge Medical College & KSCH,
New Delhi.

...respondents

(By Advocate : Shri N.D. Kaushik)

ORDER (ORAL)

The applicant retired from the post of EEG Technician, Kalawati Saran Children's Hospital, Mayur Vihar, Delhi, which comes under the administrative control of respondent No.1, on 31.12.2014. The grievance of the applicant is that his retiral dues have not been fully released by the respondents so far on the

ground that he owes some dues towards Thrift and Cooperative Society Ltd. It is further stated that the applicant has been paid Central Government Employees Insurance Scheme (CGEIS) amount and has also been sanctioned provisional pension. He has prayed for release of his leave encashment, gratuity and grant of regular pension. Learned counsel for applicant submits that in the pensioner's portal of Government of India, at Sl. No.21, it is mentioned as under :-

“21. Dues to Municipality (water and electricity charges etc.) and Co-operative Societies are not treated as Government dues, since Municipal Committees and Co-operative Societies are not considered as Government bodies/organizations. No recovery of such dues can be made from the DCRG.”

2. Learned counsel for applicant contends that even if the applicant owes some dues to the Thrift and Cooperative Society of the Hospital, his retiral benefits cannot be withheld on that account.
3. Shri N.D. Kaushik, learned counsel for respondents on the other hand submitted that there has been an embezzlement of over Rs. One crore in the Thrift and Cooperative Society when the applicant was its Manager, for which an FIR has been lodged against him and other office bearers. He further submits that the *ibid* Cooperative Society is promoted by the Hospital and hence, withholding of some retiral benefits of the applicant was justified.

Shri Kaushik, drew my attention to the averments made in para 5 of the reply, in which it is stated that the applicant had not obtained 'No Dues Certificate' from the competent authority of the hospital. He further submits that the respondents are contemplating to take disciplinary action against the applicant for his above mentioned misdemeanour. In this regard, learned counsel stated that in terms of Rule 9 (2) b(ii) of the CCS (Pension) Rules, 1972, the respondents can start disciplinary action against the applicant since four years period has not yet expired.

4. Rebutting the arguments of learned counsel for respondents on the issue of embezzlement in Thrift and Cooperative Society's fund, Shri Mahur, learned counsel for applicant stated that the matter has been enquired into by Shri Pankaj Kumar, Inquiry Officer appointed by Registrar, Cooperative Society, Delhi and in his report dated 28.07.2015, following observations have been made:-

"From the perusal of the reports of the earlier Audit Report, it is clear that Accounts have not been reconciled since long and at this stage it may not be said that there is shortfall in the funds and as such difference is continuing long for almost 10-12 years. Hence nobody can be held responsible for the shortfall shown in the audit report of 2010-11. Since the office bearer of Ex-Managing Committee has already said that they will cooperate with new Managing Committee. Office of the RCS can order a Special Audit for the account so that reconciliation can be done and at this stage nobody can be held responsible as it may not be said with the certainty that there is short fall in the Accounts."

5. I have considered arguments and also perused the pleadings and documents annexed thereto. It is not in dispute that the applicant was not facing any disciplinary enquiry on the date of his retirement and that so far no disciplinary enquiry has been started by the respondents against him. The applicant retired from service on 31.12.2014. As per Rule 9(1) of CCS (Pension) Rules, 1972, pensionary benefits of retired Government servant can be withheld only if in any departmental or judicial proceedings, misconduct or negligence is established or he has been found to have caused pecuniary loss to the Government. For clarity, the relevant part of this rule is extracted below :-

“(1) 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 pension is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement.”

6. As observed hereinabove, the respondents have so far not established that the applicant has caused any loss to the Government nor have they started the disciplinary proceedings wherein his misconduct or negligence has been established.

7. In this view of the matter, withholding of pensionary benefits of the applicant is legally not permissible. No doubt, the respondents are well within the rights to start disciplinary enquiry against applicant for any misconduct that he might have committed within a period of four years from the date of commission of such misconduct. However, as the things stand today, the applicant is not subjected to any kind of disciplinary or judicial proceedings nor any charge of causing pecuniary loss to the Government has been established against him. Hence, I am of the clear view that withholding of retiral benefits of the applicant by the respondents is not at all justified.

8. In the conspectus of discussions in the foregoing paras, OA is allowed. Respondents are directed to release all the withheld pensionary benefits of the applicant which could include, leave encashment, gratuity and grant of regular pension from the due date. This shall be done within a period of three months from the date of receipt of a certified copy of this order. The respondents are further directed to pay interest @ 9% on the arrears of these pensionary benefits to the applicant. No costs.

**(K.N. Shrivastava)
Member (A)**

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