

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

OA-2957/2014

New Delhi this the 22nd day of December, 2016.

Hon'ble Mr. Shekhar Agarwal, Member (A)

Sh. Jai Charan Verma (Retired)
S/o Sh. Hukam Singh,
Aged about 63 years,
R/o H.No. 84 Village
Dallupura, Delhi-96.

..... Applicant

(through Ms. Joymoti for Sh. Naresh Kaushik, Advocate)

Versus

1. Commissioner of Police
Secretariat, I.P. Estate, ITO,
New Delhi.

2. Union of India through
Secretary,
Ministry of Home Affairs,
North Block, New Delhi.

3. Govt. of NCT of Delhi through its
Secretary Home,
Department of Home,
Delhi.

..... Respondents

(through Sh. N.K. Singh for Mrs. Avnish Ahlawat, Advocate)

ORDER (ORAL)

The applicant was appointed as Sub-Inspector (Executive) in 1968. He was promoted as Inspector vide order dated 17.04.2003 w.e.f. 11.11.1985. He retired on superannuation on 31.01.2005. He was, however, granted only provisional pension w.e.f. 30.05.2006

whereas other pensionary benefits were denied to him. He made a representation on 26.09.2006. In reply to his representation, he was asked by the respondents to complete the formalities required to proceed further in the matter. The applicant accordingly complied. Even then there was no progress in his case. However, on 03.09.2009, the respondents revised the provisional pension of the applicant w.e.f. 01.01.2006. He was, however, not given final pension besides other retiral benefits. He made another representation on 01.06.2012 and sent a reminder on 16.01.2013. He was informed vide letter dated 23.01.2013 that his pensionary benefits will be decided after a decision is taken regarding his suspension period from 23.07.2003 to 31.01.2005. Even then when no decision was taken, the applicant made other representations on 22.02.2013 and on 09.05.2013. He, however, failed to elicit any response from the respondents. He has, therefore, filed this O.A. before this Tribunal seeking the following relief:-

“(a) allow the present Original Application.

(b) issue appropriate directions/orders to the Respondent to release the final 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 insurance, GPF, T.A, Arrears alongwith the interest for delay in payment.

(c) and pass such other directions and orders as deemed fit and proper in the interest of justice.”

2. The contention of the applicant is that the respondents have acted in an arbitrary manner. Their action was unconstitutional as it was violative of Fundamental Rules guaranteed under Articles 14 and 16 of the Constitution. Relying on the judgment of Apex Court in the case of **State of Jharkhand Vs. Jitendra Kumar & Anrs**, AIR 2013 SC 3383, the applicant has submitted that the Apex Court has held that pension and gratuity were not bounties and the employee earns them by dint of his long and continuous service.

3. In their reply, the respondents stated that when a complaint made by one Smt. Raj Bala on 20.06.2002 was enquired into, it was found that the applicant did not bear good reputation. His name also existed in the list of persons of doubtful integrity. He was found to be involved in 09 criminal cases in addition to many civil cases. After considering all the facts and circumstances, the applicant was dismissed from service with immediate effect under Article-311(2)(b) of the Constitution of India vide speaking order dated 22.07.2003. The applicant then approached this Tribunal by filing OA-475/2004. This was allowed on 31.01.2005 and reinstatement of the applicant with consequential benefits from the date of his dismissal was ordered. The department was, however, given liberty to take departmental action against the applicant in accordance with law.

3.1 In compliance of the aforesaid judgment, the applicant was reinstated with consequential benefits w.e.f. 22.07.2003. He was, however, held to be under suspension from that date till the date of his superannuation. A proposal was also sent to GNCTD on 28.07.2005 for obtaining President's sanction for initiating a regular departmental enquiry against the applicant under Rule-9 of CCS (Pension) Rules, 1972. The applicant was also granted provisional pension under Rule-69 of the CCS (Pension) Rules, 1972 vide order dated 30.05.2006.

3.2 When several representations were received from the applicant seeking release of his withholding pensionary benefits, the Vigilance Cell was consulted and they intimated that a proposal for initiating disciplinary proceedings had been sent to GNCTD on 28.07.2005 and the same was also being pursued vigorously. However, since the matter had become time barred, CP/Delhi requested the Additional Secretary, GNCTD to close the disciplinary proceedings against the applicant vide letter dated 13.05.2014. A reminder was also sent on 27.06.2014. On 13.10.2014, it was intimated that the matter was still under consideration.

3.3 The respondents have further submitted that the department has acted strictly according to the rules and provisional pension has been granted under Rule-69 of CCS (Pension) Rules. His gratuity has

also been accordingly withheld. The respondents have also relied on the judgment of Apex Court in the case of **Kumari Shrilekha Vidyarthi & Etc. Vs. State of U.P. & Ors.**, 1991 AIR 537 wherein it has been held that every state action must be informed by reason and that an act uninformed by reason is arbitrary.

4. I have heard both sides and have perused the material placed on record. Rule-69(1) of the Pension Rules reads as follows:-

“Provisional pension where departmental or judicial proceedings may be pending

(1)(a) In respect of a Government servant referred to in sub-rule (4) of Rule 9, the Accounts Officer shall authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant, or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorized by the Accounts Officer during the period commencing from the date of retirement up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the Competent Authority.

(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.”

Rule-9, sub-rule (2)(a) & (4) read as follows:-

“(2)(a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were

commenced in the same manner as if the Government servant had continued in service.

(4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule(2), a provisional pension as provided in Rule 69 shall be sanctioned."

4.1 A conjoint reading of Rule-69(1) and Rule-9, sub-rules (2)(a) and (4) would reveal that provisional pension can be authorized only in cases where departmental or judicial proceedings are instituted against a government servant or where departmental proceedings are continued under sub-rule-2 of Rule-9.

4.2 From the facts narrated above, it is clear that when the applicant superannuated on 31.01.2015, no judicial or criminal proceedings were pending against him. The order of dismissal dated 22.07.2003 passed against the applicant had been quashed by the Tribunal. Although liberty was given by the Tribunal to the department to initiate fresh disciplinary proceedings against the applicant in accordance with law, no such proceedings have so far been initiated as the matter is still pending at the level of GNCTD. Moreover, now more than 12 years have passed since the applicant retired from service. Therefore, in terms of Rule-9(2)(b)(ii), no proceedings can be initiated now since the aforesaid rule states that if the departmental proceedings have not been initiated while the

Government servant was in service, they shall not be initiated in respect of any event after his retirement, which took place more than 04 years before such institution.

5. In view of the above, there cannot be any justification now for withholding the pensionary benefits of the applicant. I find that the attitude of the respondents has been callous inasmuch as even almost 12 years after the retirement of the applicant the respondents have failed to release the retiral benefits of the applicant or to initiate departmental action against him if they so wanted.

6. I, therefore, allow this O.A. and direct the respondents to pay all the retiral benefits of the applicant including final pension within a period of 08 weeks from the date of receipt of a certified copy of this order. The applicant shall also be entitled to interest at GPF deposit rates on the arrears for the period commencing from the date of his retirement till the date of actual payment. No costs.

(Shekhar Agarwal)
Member (A)

/Vinita/