

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.2867/2012

**Reserved On:25.08.2017
Pronounced On:29.08.2017**

HON'BLE MS. NITA CHOWDHURY, MEMBER (A)

Satyawati
W/o Late Shri Mohan Lal
R/o House No.1333,
Village & P.O. Pooth Khurd,
Delhi-110039.

....Applicant

(By Advocate: Shri Parvinder Chauhan)

Versus

1. Union of India,
Through The Secretary,
Ministry of Finance,
Through its Secretary,
(Department of Revenue),
Govt. Of India,
North Block,
New Delhi-110001.
2. Central Board of Customs and Excise,
Through its Chairman,
Ministry of Finance,
North Block,
New Delhi-110001.
3. Office of the Commissioner of Customs,
Through its Commissioner,
Air Cargo Export,
New Customs House,
New Delhi-110 001.

.....Respondents

(By Advocate: Ms. J. Vijetha for Shri P.C. Aggarwal for Respondent No.3)

ORDER

This Original Application (OA) has been filed by the applicant, wife of Shri Mohan Lal, who was working as Senior Tax Assistant (STA) with respondent No.3. Applicant has prayed for the following reliefs:-

“(i) Set aside the letter/order bearing C.No.VIII (12)ACE/P.Cell/Retd./M.L. Sharma/125/2010/8274 dated 31.05.2012 issued by the respondent No.3 against the applicant;

(ii) Direct the respondents to take the period of 1464 days which have been wrongly excluded from the total period of service, into account for the purpose of calculating retirement gratuity admissible to Shri Manohar Lal Sharma at the time of his retirement without any further delay;

(iii) Direct the respondents to pay the amount admissible on account of encashment of upto 300 days Earned Leave and CGEIS to the applicant;

(iv) Direct the respondents to release the withheld amount of Rs.1,27,286/- to the applicant;

(v) Direct the respondents to pay interest for the delay in making payment of the pension/provisional pension/family pension and other retiral dues as has been provided in the relevant service rules; and

(vi) Direct the respondents to pay an amount of Rs.4,05,815/- to the applicant as reimbursement of medical expenses”.

2. The facts, in brief, are that applicant's husband was working as STA and was posted with effect from 01.10.1990 to 31.12.1992 in the Panchkula Office of Respondent No.2, i.e. Central Board of Excise and Customs (CBEC) and thereafter at the Faridabad Office w.e.f. 01.02.1999 to 31.08.2000 and from 01.02.2002 to 01.01.2002 to 30.09.2002. As per well established procedure, his Service Book maintained by respondent no.3, i.e., Air Cargo Export was sent to the offices at Panchkula and Faridabad for maintaining records. Though Shri Mohan Lal Sharma was very hard working and a sincere officer, but as he was suffering from heart ailments, he had to often take leave sometime in advance and sometimes in emergent condition. Instead of helping the applicant's husband, respondent No.3 initiated major penalty under Rule 14 of the CCS (CCA) Rules, 1965 vide Memorandum dated 16.09.2008 on charges

related to wilful and unauthorised absence from duty on 14 different spells between October, 2002 and December, 2003 for a total period of 211 days, which reads as under:-

1.	October, 2002	14 days
2.	November, 2002	17 days
3.	December, 2002	18 days
4.	January, 2003	28 days
5.	February, 2003	03 days
6.	April, 2003	06 days
7.	May, 2003	22 days
8.	June, 2003	14 days
9.	July, 2003	04 days
10.	August, 2003	07 days
11.	September, 2003	21 days
12.	October, 2003	21 days
13.	November, 2003	24 days
14.	December, 2003	12 days (till 12.12.03)
	Total Days	211

3. Further, according to the applicant, during the currency of departmental proceedings, Shri Mohan Lal Sharma had retired from the office of the respondent No.3 on 31.03.2010 on attaining the age of superannuation. However, the respondent No.3 instead of terminating the departmental proceedings against Shri Mohan Lal Sharma on his retirement, allowed the proceedings to continue as deemed proceedings under Rule 9 of the CCS (Pension) Rules, 1972. Applicant has also submitted that continuance of disciplinary proceedings against her husband after his retirement is totally illegal and erroneous and same

can be continued if charges are of very grave nature, but in the case of wilful and unauthorised absence, the same cannot be termed as grave one in the light of health condition of the applicant by any stretch of imagination. Moreover, it is a well established principle of law that every pensioner is granted regular or provisional pension based on Pension Payment Order (PPO) but in the case of applicant's husband Shri Mohan Lal Sharma nothing has been done because of pending disciplinary proceedings. Shri Mohan Lal Sharma was used to be called in the office of respondent No.3 and a cheque was handed over to him of the provisional pension. Non-issuance of PPO has also deprived the applicant of the benefits like CGHS. While applicant's husband was alive, he gave application for medical reimbursement claims but was refused on the ground that after retirement no medical reimbursement could be made to him. This, in fact, has result in mental agony and financial loss to Shri Mohan Lal Sharma and the applicant.

4. The applicant further submitted that at the time of retirement every employee is entitled to receive an amount equivalent to encashment of leave up to 300 days of EL. However, in the case of the applicant the same has been withheld. He has also not been paid any retirement Gratuity and CGEGIS with mala fide intention of the respondents only because of pending departmental proceedings. Rule 9 of the CCS (Pension) Rules, reads as under:-

⁶¹[(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 pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement :

Footnote : 1. Substituted by G.I., Dept. of P. & P.W., Notification No. 7/14/90-P. & P.W. (F), dated the 23rd August, 1991, published as S.O. No. 2287 in the Gazette of India, dated the 7th September, 1991.

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy-five per mensem.]

(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 :
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Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

	(b)	The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment, -
	(i)	shall not be instituted save with the sanction of the President,
	(ii)	shall not be in respect of any event which took place more than four years before such institution, and
	(iii)	shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) ¹omitted

Footnote : 1. Deleted by G.I., Dept. of P. & P.W., Notification No. 38/189/88-P. & P.W. (F), dated the 4th February, 1992, published as G.S.R. 55 in the Gazette of India, dated the 15th February, 1992.

(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 ²[[Rule 69](#)] shall be sanctioned.

Footnote : 2. Substituted by G.I., Dept. of Per. & A.R., Notification No. 6(1), Pen. (A)/79, dated the 19th May, 1980.

(5) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule, -

(a)	departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date ; and	
(b)	judicial proceedings shall be deemed to be instituted -	
	(i)	in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made, and
	(ii)	in the case of civil proceedings, on the date the plaint is presented in the court.

In this case respondents have not intimated the applicant that they have consulted the UPSC before withholding his pension and/or gratuity which is a must. He has thus prayed that he be paid provisional pension as family has no other source of income to survive, however, the respondent No.3 did not take a lenient view in the matter because of his ill health. Finally, applicant expired on 20.10.2011.

5. Thereafter, applicant approached the respondents to release all the retiral benefits of her late husband but she was informed vide letter

dated 05.12.2011 that the President has been pleased to issue orders for closure of the departmental proceedings (DE proceedings) against Late Shri Mohan Lal Sharma. After the closure of DE proceedings, applicant wrote to respondent No.3 to release all the dues of her husband but respondents denied the same either on one pretext or the other. The main plea taken by them was that the service verification of certain period is to be done by the Panchkula and Faridabad Offices. Immediately thereafter, applicant served a legal notice on 23.04.2012 on respondents No.1 and 2 to release all the retiral benefits with interest of Late Shri Mohan Lal Sharma to her, being the legal heir. No response was received from the office of the respondents. Feeling aggrieved, son of applicant resorted to Right to Information Act, 2005 and filed an application on 25.04.2012 for settlement of retirement dues. In response to the said RTI application, respondent No.3 vide reply dated 10.05.2012 intimated that since there is a vigilance case pending against Late Shri Mohan Lal Sharma, nothing can be done. However, they intimated that cheque of gratuity is being prepared.

6. The applicant further submitted that vide letter dated 31.05.2012, respondent No.3 have informed the applicant that she is not entitled to interest for delay in payment of gratuity due to the Government of India Decision (1)(3) under Rule 68 which states that “ the benefits of these instructions will, however, not be available to such of the Government servants who die during the pendency of judicial/disciplinary proceedings against them and against whom proceedings are consequently dropped”. Moreover, on death of a pensioner, the DE

proceedings automatically abate and that does not amount to dropping of the proceedings. In this case deceased has worked with respondent No.3 for 35 years and 7 months but only 31 years and 7 months have been taken into account for the purpose of calculating the retirement gratuity and remaining 4 years have been ignored. Accordingly, a total qualifying service for gratuity comes to Rs.3,63,589/- out of which an amount of Rs.1,27,286 has been withheld in lieu of licence fee/market rent for Government accommodation which will be released on receipt of NOC from the Estate Office. He has also submitted that as per Leave Order dated 23.02.2012, a period of 2691 days is not verified out of which a period of 1464 days are purely EOL (as verification not available and entry of EOL is available) has been deducted from total service. The remaining period of 1227 days is not available with the respondents but no specific entry is there to exclude the aforesaid period. She has thus prayed that all the retiral benefits be released taking into consideration as if applicant's husband has rendered more than 33 years of service. Moreover, respondents being the custodian of the record cannot put the blame on the applicant for not maintaining the record, which is totally illegal and against the service rules.

7. Lastly, the applicant submitted that Government accommodation allotted to her husband was vacated on 12.12.2011 and the same was intimated to respondent No.3. As such, there is no delay on their part and hence withholding of Rs.1,27,286/- is wrong and unjustified. Applicant has, therefore, prayed that the OA be allowed and she be paid all the retiral benefits with interest.

8. The respondents have filed their reply in which they have submitted that retirement benefits were delayed due to pending DE proceedings but was paid Leave Encashment of 300 days amounting to Rs.1,81,296 vide Cheque No.297167 dated 23.08.2012, Gratuity amount of Rs.2,36,303/- out of Rs.3,63,589/- vide Cheque No.293027 dated 20.04.2012 and an amount of Rs.1,27,286/- was withheld for want of NOC as the applicant's husband had not paid the licence fee/market rent of Government accommodation allotted to Late Shri Mohan Lal Sharma and continued to be in occupation of the said accommodation till his death, i.e., 20.10.2011 despite the fact that he retired from service on 31.03.2010 which was finally surrendered by the family on 12.12.2011. The applicant was paid CGEGIS amounting to Rs.25,940/- vide Cheque No.295906 dated 04.07.2012. The department at no stage delayed the payment of aforesaid amounts but delay has occurred on account of pending DE proceedings. PPO can be issued if nothing is pending against a pensioner and in this case since DE was pending so no PPO was issued. However, as per Swamy's news June 2014 states that in case PPO is not ready for any reason, there is option to get a provisional card on the basis of Last Pay Certificate.

9. They have further submitted that applicant's husband was a habitual absentee and prior to issue of Memorandum dated 16.09.2008, he was penalized on three different occasions on account of unauthorized absence/late reporting for duty by way of withholding of increment of pay for a period of 2/3 years without cumulative effect and Censure. In the instant case, while being posted in the office of the Dy. Commissioner,

Central Excise Division-V, Delhi-II, he was issued a memo dated 24.4.2003 calling for explanation for his unauthorised absence for 84 days during October 2002 to April, 2003 and another on 19.9.2003 for his continued unauthorized absence of 63 days from May, 2003 to September, 2003. In reply, he submitted a medical certificate only for a part period. He also did not attend office from December, 2003 to 12.12.2003, the day on which he was surrendered for Office of the Commissioner of Central Excise, Delhi-II Commissionerate, New Delhi. Further, it was found that he had tampered with the official records by marking his attendance in columns already cross-marked by his superiors showing his absence. In this view of the matter, major penalty proceedings under Rule 14 of the CCS(CCA) Rules were initiated. Thereafter, the same was continued under Rule 9 of the CCS (Pension) Rules, 1972 (as quoted above). Applicant was paid provisional pension @ Rs.8550/- per month plus dearness relief as declared by the Government of India from time to time w.e.f. 01.04.2010 till conclusion of the DE proceedings. He was getting provisional pension as per Rule 69 of CCS (Pension) Rules.

10. The respondents further submitted that out of 35 years, 7 months and 15 days, applicant's husband remained on EOL for 2376 days, out of which a period of 1464 days (4 years and 4 days) is deductible from the gross service due to specified entries of extra ordinary leave of this period in the service book, and this period of 1464 days is deductible from the gross service. The calculation of retirement gratuity has been made in a very positive manner and not on the lower side, as the period of EOL and

uncertified service has been settled in a positive manner as per Final Leave Order on 23.02.2012 thereby giving the deceased maximum administrative concession/consideration. They have also submitted that since applicant's family has kept the accommodation for 20 months, therefore, an amount of Rs.1,27,286/- has been withheld as normal retention period is 8 months, i.e., first 2 months normal rate, next 2 months at 4 times of the normal rate, the next 2 months at 6 times of the normal licence fee and after completion of retention period of Govt. Accommodation market rent due is for the same and hence they have rightly withheld an amount of Rs.1,27,286/-. They have thus prayed that the OA be dismissed.

11. I have heard the learned counsel for the parties and gone through the records.

12. The issue involved in this case is that applicant's husband is a habitual absentee and remained absent for nearly 4 years and was punished for that purpose by holding departmental proceedings under Rule 14 of the CCS (CCA) Rules, 1965. Hence, he is not entitled for any leniency in the matter. This issue has been dealt by the Hon'ble Supreme Court in a number of cases.

13. The Hon'ble Apex Court in the case of ***U.O.I. & Others Vs. Bishamber Das Dogra (2009) 13 SCC 102*** has held that in case of misconduct of grave nature or indiscipline, even in absence of statutory rules, the authority may take into consideration the indisputable past conduct/service record of the employee for adding

the weight to the decision of imposing the punishment, if the facts of the case so require. It was also held that “habitual absenteeism means, gross violation of discipline”.

14. An identical question came to be decided by the Hon’ble Apex Court in the case of ***Mithilesh Singh Vs. Vs. U.O.I. & Others* AIR 2003 SC 1724** wherein it was ruled that “absence from duty without prior intimation is a grave offence warranting removal from service”. Similarly, the Hon’ble Supreme Court in the case of ***State of U.P. and Others Vs. Ashok Kumar Singh (1996) 1 SCC 302***, held that absence of the respondent from duty would amount to grave misconduct and there was no justification for the High Court to interfere with the punishment holding that the punishment was not commensurate with the gravity of the charge.

15. Again, it was reiterated by the Hon’ble Apex Court in the cases of ***North Eastern Karnataka Road Transport Corporation vs. Ashappa, (2006) 5 SCC 137*** and ***State of Rajasthan vs. Mohd. Ayub Naz: 2006 SCC (L&S) 175***, that that habitual absenteeism can be a valid ground for dismissal of an employee from service. Absenteeism from office for a prolonged period of time without prior permission by government servants has become a principal cause of indiscipline which has greatly affected various government services. In order to mitigate the rampant absenteeism and wilful absence from service without intimation to the Government, he may be removed from service. Further, the Hon’ble Apex Court held in

Delhi Transport Corporation Vs. Sardar Singh (2004) 7 SCC

574 that habitual or continuous absence from duty, without sanctioned leave for long, prima facie, amounts to “habitual negligence of duties and lack of interest in work” which constitutes misconduct under relevant Standing Order of the Corporation.

16. The next point to be considered is with regard to withheld amount of Rs.1,27,286/- on account of overstay in the Government accommodation, i.e., nearly for 20 months from the date of retirement of late Shri Mohan Lal Sharma, which respondents have rightly withheld so no relief can be granted to the applicant on this account.

17. In view of above, I find that there is no merit in the instant OA. Accordingly, the same is dismissed. No costs.

(NITA CHOWDHURY)
MEMBER (A)

Rakesh