

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA NO.4309/2014

RESERVED ON 16.09.2015
PRONOUNCED ON 27.10.2015

**HON'BLE MR. JUSTICE B.P. KATAKEY, MEMBER (J)
HON'BLE MR. K.N. SHRIVASTAVA, MEMBER (A)**

Dr. Santosh Singh (Retired)
Aged 64, Formerly Joint Secretary and
Legal Adviser, Kothi No.24,
Pocket 11A, Sector 23,
Rohini, Delhi-110 085. ...Applicant

(Applicant in person)

VERSUS

Union of India:
Through-
Law Secretary, Department of Legal Affairs,
Ministry of Law and Justice,
Shastri Bhavan, New Delhi-110001. ...Respondents

(By Advocate: Mr. Rajesh Katyal)

:ORDER:

HON'BLE MR. JUSTICE B.P. KATAKEY, MEMBER (J):

The applicant, who has retired from service on 31.01.2011 on attaining the age of superannuation, has filed this OA praying for direction to the respondent-authority to pay him retiral benefits as well as salary for the period from 29.11.2010 to 17.01.2011, with interest, contending *inter alia* that as no charge sheet was ever issued and served on him prior to retirement from service on 31.01.2011, his retiral benefits under the provisions of CCS (Pension) Rules, 1972 (in short 1972 Rules), cannot be

withheld as has been done in the instant case. It is the contention of the applicant that instead of granting the full retiral benefits to the applicant, he has been granted provisional pension despite not initiating any disciplinary proceeding while he was in service. The further contention of the applicant is that salary due for the period from 29.11.2010 to 17.01.2011 has not been paid to him though he is entitled to the same.

2. On the date of retirement i.e. 31.01.2011, a charge memo of the even date was stated to have been issued and served on the applicant, which the applicant, however, has denied. Based on the said charge memo an enquiry was conducted. The Inquiry Officer in his report dated 30.04.2012 recorded the finding that on the date of retirement on 31.01.2011 the charge sheet was not served on the applicant. The Central Vigilance Commission (CVC) also vide his office memo dated 13.07.2012 observed that the charge memo dated 31.01.2011 has not been served on the applicant. The applicant after his retirement prayed for release of the retiral benefits which, however, have not been allowed. The respondent-authority on 08.07.2014 has withdrawn the said charge memo dated 31.01.2011 and issued another charge memo on the same day i.e. 08.07.2014, under Rule 14 of the CCS (CCA) Rules, 1965.

3. We have heard the applicant in person and also the learned counsel Mr. Rajesh Katyal appearing for the respondents.

4. Referring to different provisions of 1972 Rules as well as the findings recorded by the Inquiry Officer in his report on 30.04.2012 and the observations of the CVC in the office memo dated 13.07.2012, it has been submitted by the applicant in person that since no charge memo was issued and served on the applicant before his retirement from service on 31.01.2011, the respondent-authority cannot refuse to release the retiral benefit to which he is entitled to, on the ground that a fresh charge memo dated 08.07.2014 has been issued after about three years from the date of retirement of the applicant. It has also been contended by the applicant that it is evident from the pleadings in the reply filed by the respondents that the charge memo dated 31.01.2011 has never been served on the applicant before his retirement from service on attaining the age of superannuation. The applicant, therefore, submits that the respondents may be directed to release the pensionary benefits payable to the applicant with interest.

5. Per contra, learned counsel appearing for the respondents, referring to the charge memo dated 31.01.2011 as well as the noting in the Peon book, stated that the said charge memo was issued to the applicant prior to his retirement and though attempt was made to serve the same through Peon, such attempt was not successful as the applicant's wife refused to accept the same on 31.01.2011. It has also been submitted that the subsequent

charge memo dated 08.07.2014 has been sent to the applicant in his postal address along with the order of the even date withdrawing the earlier charge memo dated 31.01.2011. The learned counsel, referring to the provisions contained in Rule 9 (4) of the 1972 Rules, submits that since the disciplinary proceeding has been initiated by issuing the charge memo dated 08.07.2014, the applicant is entitled to the provisional pension as provided in Rule 69 of the said rule, which has been paid to him. In support of his contention he has placed reliance on the judgment of the Apex Court in **U.P. State Sugar Corporation Ltd. and others Versus Kamal Swaroop Tondon** (2008) 2 SCC 41.

6. The arguments advanced by learned counsel for the parties received our due consideration. We have also perused the pleadings of the parties including the annexures appended thereto.

7. It appears from the pleadings that the charge memo dated 31.01.2011 was issued by the Disciplinary Authority. The said charge memo, however, was not served on the applicant, which is evident from the report of the Inquiry Officer dated 30.04.2012, who conducted the enquiry on the basis of the said charge memo as well as the memorandum dated 13.07.2012 issued by the CVC observing that the said charge memo has not been served on the applicant. The stand taken by the

respondents in the reply filed that attempt to serve the said charge memo on the applicant was made on 31.01.2011 through the Peon but was not successful because of refusal on the part of the applicant's wife, is not believable because the applicant was very much present in the Office and hence there was no occasion on the part of the respondent-authority to make an attempt to serve the said charge memo at his residence. Such stand of the respondents also cannot be accepted in view of the specific finding recorded by the Inquiry Officer in his report dated 30.04.2012 as well as by the CVC in the aforesaid memorandum dated 13.07.2012.

8. Be that as it may, admittedly the respondents have withdrawn the said charge memo dated 31.01.2011 vide order dated 08.07.2014, i.e. after lapse of about 3½ years from the date of retirement of the applicant.

9. Rule 83 of the 1972 Rules provides that except in the case of Government Servant to whom the provisions of Rule 37 apply and subject to the provisions of Rules 9 and 69, a pension other than family pension shall become payable from the date on which a Government servant ceases to be borne on the establishment.

10. Rule 9 of the 1972 Rules empowers the President to withhold or withdraw the pension. Under Rule 9 (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 proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement.

Rule 9 (2) (a) provides that the departmental proceedings, 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. It, therefore, provides for continuation of departmental proceedings initiated before retirement of the Government servant from service even after such retirement.

11. Clause (b) of Rule 9(2) of 1972 Rules empowers the authority to initiate departmental proceedings against the Government servant, if such proceeding has not been instituted before his retirement or during his re-employment, subject to the conditions that such proceeding shall not be instituted save with the sanction of the President; in respect of any event which took place more than four years before such institution and conducted

by such authority and in such place as the President may direct and in accordance with the procedure applicable to the departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

12. Sub-rule 4 of Rule 9 of the 1972 Rules provides that in 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.

13. Rule 9 (6) (a) provides that the 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. Rule 69 of the aforesaid Rule provides for payment of provisional pension where departmental or judicial proceedings may be pending.

14. In the case in hand, though a charge memo was issued on 31.01.2011, according to the respondents themselves, the same was withdrawn on 08.07.2014. The effect of the said withdrawal would be that as if there was no departmental proceedings initiated against the applicant on the date of his retirement i.e.

31.01.2011. That being the position, we are not going to the question as to whether to constitute the institution of departmental proceeding, within the meaning of Rule 9 (6) of the 1972 Rules, not only the issuance of charge memo but also the service of the same is required.

15. As noticed above, Rule 9 (1) of the 1972 Rules empowers the President to withhold the pension only in the event the pensioner is found guilty of grave misconduct or negligence during the period of service including service rendered upon re-employment after retirement. As discussed above, the pensioner is entitled to receive the pension immediately on his retirement and such pension is payable from the date on which a Government servant ceases to be borne on the establishment. Under Rule 83 of the aforesaid Rule, a Government servant is, therefore, entitled to receive the pension immediately after his retirement, unless, of course, a departmental proceeding or judicial proceeding has been instituted, within the meaning of Rule 9 (6) of the said rule, before the retirement of a Government servant.

16. The provision of Sub-rule 4 of Rule 9 of the 1972 Rules, which provides for payment of provisional pension, as provided in Rule 69, cannot be made applicable in the eventuality of the initiation of departmental proceeding under Rule 9 (2) (b) of the said rule, in view of the fact that the power of withholding the

pension is available only upon completion of a proceeding i.e. departmental or judicial proceedings and when the Government servant is found guilty of grave misconduct or negligence during the period of service including service rendered upon re-employment after retirement. As discussed above, the pension is payable to the Government servant immediately on his retirement from service, by virtue of Rule 83 of the 1972 Rules.

17. The decision rendered by the Apex Court in **U.P. State Sugar Corporation Ltd.** (supra), on which the learned counsel appearing for the respondents has placed reliance, is not applicable in the facts and circumstances of this case, for two reasons, first being that in the said case the charge memo was issued and served on the employee on the date of retirement i.e. 31.01.2000 and second that in the instant case the charge memo dated 31.01.2011 issued by the respondents has been withdrawn subsequently, which would have the effect of non-issuance of the charge memo at all.

18. In view of the aforesaid discussion, we are of the considered opinion that the applicant is entitled to the pensionary benefit, which cannot be curtailed unless, of course, in the disciplinary proceeding initiated vide charge memo dated 08.07.2014, a finding has been recorded relating to the grave misconduct or negligence committed by the applicant during the period of his service, based on which the President passes an

order withholding the retiral benefits either in full or in part. The respondents are, therefore, directed to release the pensionary benefits payable to the applicant, less the amount of provisional pension already paid to him, with interest at the rate of 9% per annum from the date when such pension was payable till the date of actual payment. It is made clear that the respondents are at liberty to proceed with the disciplinary proceeding initiated against the applicant by issuing the charge memo dated 08.07.2014. The respondents shall also verify as to whether the salary for the period from 29.11.2010 to 17.01.2011 has been paid to him and upon verification if it is found that the salary for that period or any part thereof is due and payable, the same shall be paid to the applicant. The entire exercise, as directed above, shall be completed within 2 (two) months from today.

20. The OA is accordingly, allowed to the extent indicated above. No costs.

(K.N. Shrivastava)
Member (A)

(B.P. Katakey)
Member (J)

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