

**Central Administrative Tribunal
Principal Bench**

OA No. 4394/2014

Order Reserved on: 05.04.2016
Order Pronounced on: 26.04.2016

Hon'ble Dr. B.K. Sinha, Member (A)

B.P. Mathur, Aged 73 years,
S/o late Shri Ved Ram Mahaur,
Retired from the post of Asst. Commissioner,
While working in Govt. of NCT of Delhi,
R/o C-7/202, Sector-8, Rohini,
Delhi-110 085 -Applicant

(By Advocate: Shri Yogesh Sharma)

VERSUS

1. Union of India,
Through the Secretary,
Govt. of India, Ministry of Home Affairs,
North Block, New Delhi
2. The Chief Secretary,
Govt. of NCT of Delhi,
Delhi Secretariat, Players Building,
IP Estate, New Delhi
3. The Principal Secretary,
Land & Building Department,
Govt. of NCT of Delhi,
Vikas Bhawan, New Delhi-2 -Respondents

(By Advocate: Shri Sanjay Kumar Pathak)

O R D E R

The short question for consideration in the instant Original Application is that whether full service pension and other post retiral benefits, including leave encashment and gratuity should be restored/granted to the applicant

consequent to the disposal of the departmental proceedings in his favour.

2. The case of the applicant, in very brief, is that he retired as Assistant Commissioner (Sales Tax) on having attained the age of superannuation on 30.11.2001 and was granted full provisional pension. At the time of his retirement, eight charge-sheets were issued against the applicant. On 16.07.2012, a penalty in the form of 100% deduction in pension was imposed upon the applicant and his other post retiral benefits were withheld, including the entire gratuity amount. The applicant submits all penalty orders have been quashed save for penalty in deduction of 20% of pension for five years imposed vide order dated 31.07.2013. On 21.08.2014, the applicant requested the competent authority to release his pension, but no action has been taken, thereby compelling the applicant to approach this Tribunal vide the instant OA. The applicant further submits that unless the orders of this Tribunal quashing the departmental proceedings are modified by the superior courts, there is no justification for not releasing the service pension and other retiral benefits to the applicant, except one dated 31.07.2013 whereby the pension of the applicant had been reduced by 20% for a period of five years. The applicant further submits that

there is no penalty of withholding the gratuity and, therefore, retention of gratuity amount is unauthorized and illegal.

3. The applicant has, therefore, prayed for the following reliefs:-

- “(i) That the Hon’ble Tribunal may graciously be pleased to pass an order directing the respondents to restore and to grant the full service pension of the applicant till 31.7.2013 and 80% pension w.e.f. 1.8.2013 till completion of the penalty imposed vide order dt. 31.7.2013 with all the consequential benefits including arrears of pension with interest.
- (ii) That the Hon’ble Tribunal may graciously be pleased to pass an order directing the respondents to release the gratuity amount of the applicant with interest.
- (iii) That the Hon’ble Tribunal may graciously be pleased to pass an order directing the respondents to release the leave encashment of the applicant with interest at the rate of 18% PA.
- (iv) Any other relief which the Hon’ble Tribunal deem fit and proper may also be granted to the applicant along with the costs of litigation.”

4. The respondents have filed the counter affidavit submitted that the applicant has approached this Tribunal with unclean hands and is guilty of suppressio vari suggestio falsi to conceal and distorted the facts which in simpler language means concealment and distortion of facts in order to mislead the Tribunal. The applicant has failed to inform this Tribunal that the common order dated

01.12.2009 passed in OA Nos. 397/2009 and 448/2009 filed by the applicant had been challenged by the respondents before the Hon'ble High Court of Delhi in WP(C) Nos. 4762/2010 and 4777/2010, which had been disposed of vide the common order dated 20.07.2010 modifying afore order of the Tribunal. The respondents have further submitted that in compliance with the afore order of the Hon'ble High Court, the competent authority considered the matter and vide order dated 23.08.2010 had withheld the leave encashment and gratuity. The respondents submitted that they were well within their right to withhold the gratuity and leave encashment in view of the relevant applicable Rules i.e. Rule 9 read with Rule 69 of the CCS (Pension) Rules and Rule 39 of CCS (Leave) Rules. The respondents further submitted that the aforesaid order dated 23.08.2010 had been challenged by the applicant by filing two contempt petitions bearing CP Nos.533/2011 and 547/2011 and both the contempt petitions had been dismissed vide orders dated 25.07.2011 and 28.07.2011. Thus, the order dated 23.08.2010 became final. This aspect has also not been disclosed by the applicant which is a material fact as the applicant is seeking release of leave encashment and gratuity besides release of full pension till 31.07.2013 and 80% pension w.ef. 01.08.2013 till completion of penalty imposed vide

order dated 31.07.2013. Thus, the applicant, at this stage, when five disciplinary proceedings are still pending consideration before the competent authority, cannot raise any grievance regarding non-release/non-payment of pension or non-payment of leave encashment or gratuity. In short, it is the submission of the respondents that in view of the pendency of the proceedings, the deduction in pension has been made in terms of various Rules, including Section 9 read with Rule 69 of the CCS (Pension) Rules, 1972 and Rule 39 of CCS (Leave) Rules, authorizing withholding of leave encashment till the conclusion of the departmental proceeding. The respondents further submits in their counter affidavit that the applicant has not exhausted fora of relief available to him and is seeking final relief in the garb of interim relief. The respondents have, therefore, strongly urged dismissal of the OA.

5. The applicant has filed the rejoinder application to the counter affidavit mainly based upon the facts already narrated in the OA.

6. The respondents have also filed additional counter affidavit. It has been brought to the notice of this Tribunal in this OA that during pendency of the present OA, vide order dated 18/19.01.2016, the competent authority has concluded the disciplinary proceeding and decided to

accept the advice of UPSC and to impose the penalty of “withholding of 100% of the monthly pension on permanent basis, otherwise admissible to him and forfeiture of 100% gratuity, otherwise admissible to him” on the applicant. The afore order of the competent authority has been served on the applicant on 02.02.2016 and has been implemented. The respondents in their additional counter affidavit further submit that in view of the afore order of the competent authority imposing upon the applicant the penalty of withholding of 100% monthly pension and forfeiture of 100% gratuity, otherwise admissible to him, the present OA against the alleged non-restoration of service pension after quashing of the penalty orders vide judgment and order dated 22.07.2014 and against non-release of the other retirement benefits has become infructuous and is liable to be dismissed by this Tribunal with costs.

7. I have considered the pleadings of rival parties as also the documents adduced and have patiently heard the arguments advanced by the learned counsel for the parties.

8. I have taken note of the communication dated 18/19.01.2016 whereby the competent authority, i.e., President accepted the advice of UPSC and imposed penalty of withholding of 100% of the monthly pension on

permanent basis and 100% for the forfeiture of the gratuity, otherwise admissible to the applicant.

9. I have taken a note of the departmental proceedings which have been placed in the following factual matrix:-

Srl. No.	Date of charge sheet	Date of penalty order & OA No.	Penalty imposed	Particulars (About penalty orders)
1.	22.08.2001	04.03.2008 & OA No. 397/2009	10% cut in pension for 10 (Ten) years.	Applicant challenged the penalty order before Hon'ble Tribunal and penalty is quashed and set aside on 01.12.2009
2.	05.01.2001	10.10.2008 & OA No. 448/2009	10% cut in pension for 10 (Ten) years.	-do-
3.	20.08.2001	26.07.2012 & OA No. 4289/2012	20% cut in pension for 05 (Five) years.	Applicant challenged the penalty order before Hon'ble Tribunal and penalty is quashed and set aside on 22.07.2014
4.	27.06.2001	16.07.2012 & OA No. 4290/2012	25% cut in pension for 02 (Two) years.	-do-
5.	19.07.2001	29.11.2012 & OA No. 618/2013	30% cut in pension for 05 (Five) years.	-do-
6.	22.06.2001	20.12.2012 & OA No. 618/2013	30% cut in pension for 05 (Five) years.	-do-
7.	12.07.2001	08.01.2013 & OA No. 783/2013	Withholding entire pensionary benefits on	-do-

			permanent basis & forfeiture of gratuity	
8.	12.11.2001	31.7.2013 & OA No. 3173/2013	20% cut in pension for 05 (Five) years.	Applicant challenged the penalty order before Hon'ble Tribunal and the case is under subjudice

10. I have further taken note of the fact that all these five orders of punishment had been quashed on account of non-furnishing of the advice of the UPSC to the applicant.

11. In view of the afore discussion, it emerges plainly that the applicant is under order of punishment under the aforesaid proceedings and as such, his claim for restoration of his pension and release of leave encashment, including gratuity is misplaced. The OA is hence bereft of merit and is accordingly dismissed as such. No order as to cost.

(Dr. B.K. Sinha)
Member (A)

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