

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.4442/2017

Reserved on:12.09.2018
Pronounced on:18.09.2018

Hon'ble Ms. Praveen Mahajan, Member (A)

Shri N.K.Taneja
Aged about 70 years
S/o Late Shri K.C.Taneja
presently superannuated
w.e.f.31.12.2008 while
last posted as Executive Engineer (Electrical)
Group 'A' Gazetted Cadre on attaining age
of superannuation in Delhi Central
Electrical Circle V CPWD East
Block-III Level-5, R.K. Puram
New Delhi under Ministry of Urban
Development, New Delhi
R/o A-191, Sector-43 Noida
(Gautam Budha Nagar).

... Applicant

(By Advocate: Shri V.P.S.Tyagi)

VERSUS

1. The Union of India (Through Secretary)
Ministry of Urban Development
Nirman Bhawan
New Delhi – 110 108.
2. The Director General of Work's
CPWD, Nirman Bhawan
Maulana Azad Road
New Delhi.
3. The Superintending Engineer
DCEC-V CPWD East Block-III
Level-5, R.K.Puram
New Delhi -66.

...Respondents

(By Advocate: Shri Rajinder Nischal)

ORDER

Brief facts of the case are that the applicant superannuated as Executive Engineer of CPWD on 31.12.2008. Just three months before his retirement he was served a memorandum dated 01.09.2008 for holding an enquiry against him for major penalty under Rule 14 of CCS (CCA) Rules 1965. The enquiry culminated in the disciplinary authority imposing a penalty of withholding of 25% of monthly pension otherwise permissible to the applicant, for a period of 5 years, by invoking provision of Rule 9 of CCS (Pension) Rules, 1972 vide order dated 23.06.2009 passed in the name of Hon'ble President of India. It was also directed in the aforesaid order, that the gratuity of the applicant should be released if not required to be withheld in any other case.

2. The DCRG of the applicant was withheld and the applicant continued to be paid Provisional Pension. The non-release of withheld pension has been challenged by the applicant in another OA, which is still pending.

3. In the meanwhile, the applicant was served another memo of charges on 12.11.2008. In the said charge-sheet, the inquiry report dated 23.06.2011 held the article of charges as not proved. However, the Hon'ble President, disagreed with the findings of the inquiry authority and vide order dated 13.01.2015, imposed the penalty of withholding of 20% of monthly pension otherwise permissible to the applicant for a period of five years with a direction to release the gratuity of the applicant, if not otherwise required to be withheld in any other case.

4. It is averred in the OA and the rejoinder filed by the applicant that the respondents did not release the DCRG of the applicant despite various representations. Finally a legal notice dated 25.01.2018 was sent to the

respondents for release of withheld gratuity, alongwith interest, for the delay.

5. In the counter filed by the respondents it is stated that necessary payments like PPO & gratuity etc. due to the applicant have since been released in his favour, redressing his grievance.

6. During the course of hearing, learned counsel for the applicant Shri V.P.S.Tyagi argued that though in the order issued on 23.06.2009 the Hon'ble President had ordered that after the pension cut, the gratuity should be released to the applicant, if not otherwise required in some other case, the respondents did not examine the matter properly. They withheld the DCRG, despite their being no finding or averment that a certain amount of recovery was due from the applicant. He emphasized that the DCRG has been paid to the applicant as late as April 2018, after an unjustified delay of almost a decade, for which interest, at the appropriate rates, must be paid by the respondents. In support of his contention, he relied upon the judgment of the Hon'ble Apex Court in (2014) 8 SCC 894- **D.D.Tewari vs. Uttar Haryana Bijli Vitran Nigam Ltd. & Ors.**

7. Per contra, the learned counsel for the respondents, Shri Rajinder Nischal stated that the applicant has been given revised Pension Payment Order as per his eligibility. Earlier the DCRG of the applicant could not be released due to the pending Inquiry proceedings, but now the gratuity has been released to the applicant on 11.04.2018 (Annexure R-1).

8. I have gone through the facts of the case and heard both sides. In the earlier order dated 23.06.2009, a penalty of withholding 25% of the monthly pension payable to the applicant, was ordered to be withheld for a period of five years. In the said order, directions were also given to the respondents to release the gratuity, if not otherwise required to be withheld in any other case. It would appear that this direction was taken rather casually by the respondents and not considered seriously. They continued to withhold the DCRG of the applicant without specifically determining whether it was necessary to do so and whether a recovery was likely to accrue against the applicant in some other case. Surprisingly, the respondents remained complacent even when the second order of the Hon'ble President, dated 13.01.2015, was issued containing similar directions with regard to release of gratuity of the applicant. To justify their action, it was incumbent upon the respondents to make out a case that some amount might become recoverable from the applicant after issue of order dated 23.06.2009 (of the Disciplinary Authority). In the absence of such a finding, mere silence on the issue – certainly does not justify the delay.

9. In view of these facts, I am convinced that the gratuity of the applicant should have been released after the order dated 23.06.2009, when specific directions were given to release the gratuity of the applicant, subject to the requirement of withholding it in some other case. The respondents have not been able to make out a case that any govt. dues were either pending or recoverable from the applicant either in 2009 or at the time of issue of the second charge sheet.

10. In view of these facts, interest on delayed payment of DCRG is payable to the applicant with effect from the date of the first order dated 23.06.2009. Accordingly, the respondents are directed to pay interest on

the delayed payment of DCRG of Rs.5,98,384/-, at GPF rates, to the applicant w.e.f.23.06.2009 to 11.04.2018 (the date of payment). These directions must be complied within three months from the date of receipt of a certified copy of this order.

11. OA is allowed with these directions. No costs.

(Praveen Mahajan)
Member (A)

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