

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

OA-4570/2017

Reserved on : 26.11.2018.

Pronounced on : 06.12.2018.

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

Dr. Lakshmy Anantha Raman, 64 years
D/o Late Sh. T.L. Anantha Raman,
R/o 11133-11134, 2nd Floor,
Doriwalan, New Rohtak Road,
Karol Bagh, New Delhi-110005.

And working as:

Demonstrator,
Department of Microbiology,
Lady Hardinge Medical College,
New Delhi-110001.

.... Applicant

(through Sh. K.Venkatraman, Advocate)

Versus

1. Union of India through
Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi.

2. Directorate General of Health Services
Through its Director General,
Govt. of India,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi.

3. Lady Hardinge Medical College &
Smt. S.K. Hospital through
Medical Superintendent/Director,
Govt. of India,
Directorate General of Health Services,
Shaheed Bhagat Singh Marg,
New Delhi.

.... Respondents

(through Ms. Shireen Khan for Sh. Rishabh Sahu, Advocate)

ORDER

Briefly stated, the facts of the current O.A. are that the applicant joined the respondent department on 01.07.1981 as Demonstrator in Microbiology. The main duties of the post, it is averred, included teaching MBBS students as well as Post Graduate (MD) students.

2. The applicant states that she was illegally superannuated at the age of 60 years vide order dated 28.03.2013. This order was challenged by the applicant in OA-1379/2013 before the Central Administrative Tribunal. The same was dismissed on 16.04.2015 declining her prayer for retirement at the age of 65 years.

3. The dismissal order was assailed by the applicant by filing a Writ Petition (Civil) No. 5330/2015 before the Division Bench of Hon'ble High Court of Delhi. The said Writ Petition was allowed on 02.02.2017.

4. During the pendency of the OA filed before the Tribunal, the office of Lady Hardinge Medical College Hospital issued a show cause notice for the service accommodation occupied by the applicant. They got the alleged flat vacated on 03.08.2015 and also illegally recovered damages w.e.f. 01.12.2013 to 03.08.2015 amounting to Rs.5,52,661/-. The applicant handed over the flat on 30.08.2015 and also paid a sum of Rs. 5,83,862/- on the alleged demand notice dated 30.07.2015. The order of the Hon'ble High

Court of Delhi was challenged by the respondents by filing an SLP before the Hon'ble Supreme Court, which was dismissed on 14.07.2017.

5. The applicant filed a Contempt Petition, which was disposed of by the Hon'ble High Court of Delhi on 04.09.2017 in terms of the letter issued by the Department dated 01.09.2017 wherein the applicant was asked to join duties with the assurance to pay all the dues in terms of the judgment of Hon'ble High Court of Delhi. Hence, the Contempt Petition was disposed of as withdrawn with liberty to revive in case the department does not comply with the order.

6. The applicant joined her duties on 08.09.2017. In pursuance to Court order the respondents passed an Office Order that the applicant would superannuate at the age of 65 years and the period from 01.04.2013 till the date of joining shall not be treated as break in service and salary on joining would be computed by giving notional benefits of increments.

7. The applicant submits that in view of the orders of the Hon'ble High Court of Delhi holding that the applicant is entitled to the benefit of age of superannuation of 65 years, the order passed by the respondents imposing market rate/damages for the period from 01.12.2013 to 03.08.2015 is illegal. She has, therefore, filed the current

O.A. seeking refund of Rs. 5,83,862/- along with interest w.e.f. 17.08.2015 when the payment was made by the applicant.

8. The respondents in their counter affidavit submit that an employee, who is allotted a government accommodation is permitted to retain the quarter after retirement for two months on normal license fee and another two months on double the normal license fee. Further, retention for two months period is allowed on four times of the normal license fee and for further next two months on six times of the normal license fee. Thus, the maximum retention of accommodation is allowed only for eight months after approval. However, the applicant neither applied for retention of the accommodation after retirement nor did she vacate the accommodation upto 03.08.2015.

9. A notice was issued to the applicant under sub-section (1) of Section 4 of Public Premises Act, 1971 on 08.12.2014 to which a reply was received from the advocate of the applicant stating that the demand was irrelevant. A demand notice for Rs. 5,83,862/- was sent to the applicant on 30.07.2015. The said amount was paid up by the applicant on 17.08.2015, without prejudice. Subsequently, an eviction notice was issued and the applicant finally vacated the allotted accommodation on 03.08.2015.

10. The respondents state that the applicant was an unauthorized occupant of the accommodation for a period beyond retirement, hence damages have been rightly charged from her. They also aver that there is no provision for refund of damages. The respondents sought comments from Ministry of Urban Development, Directorate of Estate on deduction of license fee on normal rate for the said period and refund of amount along with interest. However, Ministry of Urban Development has directed as under:-

“As the allottee in the present case was in unauthorized occupation of accommodation for period beyond retirement till vacation of the accommodation, damages have been charged by the allotment authority as per the Rules. As per the Police Guidelines, Directorate of Estate has no authority of the waiving of the damages once charged. Further there is no provision of refund of damages charged under extant guidelines. In such cases, only Cabinet Committee on Accommodation (CCA) has the power to regularize the unauthorized period.

The Directorate of Estate, after the aforesaid observations specifically stated that the applicant request for refund of Rs.5,34,811/- along with the interest at 12% per annum is not tenable.”

The respondents concur that the Hon'ble High Court of Delhi in their judgment dated 02.02.2017 had directed that the petitioner would superannuate at the age of 65 years and draw her salary as demonstrator w.e.f. 01.04.2017, but she would not be paid back wages. However, this period between 01.04.2013 till the date of rejoining would be computed accordingly by notionally giving benefit of increments etc. Pension and retirement dues already paid to her would be dealt as per Rule.

11. I have gone through the facts of the case carefully and considered the rival submissions of both the sides.

12. It is a fact that in the order dated 02.02.2017, the Hon'ble High Court of Delhi categorically directed that:-

"16. In view of the aforesaid discussion the petitioner, it is held, is entitled to succeed as she is entitled to benefit of enhanced/increased age of superannuation of 65 years. The petitioner had demitted office on 31st March, 2013 at the age of 60 years and would attain the age of 65 on 31st March, 2018. The petitioner would accordingly retire on 31st March, 2018.

17. The petitioner, who was present in person in the Court, has made a statement that she would not claim arrears or back wages for the period between 1st April, 2013 till the pronouncement in the writ petition. We appreciate the stand taken by the petitioner. The petitioner has also possibly been paid her pensionary dues and retirement benefits.

18. Accordingly, we allow the present writ petition and hold that the petitioner would retire or superannuate at the age of 65 years. The respondent authorities would issue necessary order within one month from the date of receipt of a copy of this order. The petitioner would be paid her salary as Demonstrator with effect from 1st March, 2017. She would not be paid back wages. However, this period between 1st April, 2013 till the date of joining would not be treated as break in service and the salary payable on re-joining would be computed accordingly by notionally giving benefit of increments, etc. Pension and retirement dues already paid to the petitioner would be dealt with as per the Rules.

19. The writ petition is accordingly allowed to the extent indicated above. In the facts of the case, there will be no order as to costs."

The said order attained finality with SLP of the respondents getting dismissed on 14.07.2017.

12.1 The net result of the aforesaid order of the Hon'ble High Court is that the applicant, whom the respondents have treated as having retired at the age of 60 years has ultimately been allowed to

continue in service till the age of 65 years. It has also been made clear in the order that the period between 01.04.2013 till the date of her joining back is not to be treated as break in service and salary payable is to be computed accordingly.

12.2 Having clearly held that the applicant would stand retired only after attaining the age of 65 years, the logical and only inference that can be drawn is that other service benefits would also automatically accrue to her till her attaining the age of 65. Retaining her official accommodation is a consequential benefit which would accrue to her. Thus the period of occupation of flat from 01.04.2013 till 03.08.2015 would form a part of her entitled service benefits.

12.3 Though the respondents have granted her other benefits (prayed for in the Writ Petition), her occupation of Government accommodation has been held as unauthorized. In the calculation sheet given at Para-8 based on which the demand has been raised against the applicant, the date of retirement has been taken as 28.03.2013 (when the applicant attained the age of 60 years) and not 31.03.2018, when she attained the age of 65. It is not in dispute that as per the orders of the Hon'ble High Court of Delhi, it was categorically directed that the petitioner would retire on 31.03.2018.

12.4 In view of the aforesaid facts and discussions, I hold that the order passed by the respondents imposing market rate damages for the period from 01.12.2013 to 03.08.2015 is bad in law.

13. I am convinced that the applicant is fully entitled to refund of Rs.5, 83,862/- (after adjusting normal license fee for the period from 01.04.2013 to 03.08.2015). The submission of the respondents that there is no provision for refund in their guidelines is not acceptable. When the applicant paid the amount on 17.08.2015, the same was paid under protest without prejudice. Government can only retain the amount which is due and not enrich itself at the cost of the poor applicant. If license fee and damages have been recovered wrongly and in excess of the actual amount due, the same will have to be refunded to the occupant (applicant) in full.

14. The respondents are accordingly directed to refund the amount of Rs. 5,83,862/- within three months from the date of receipt of a certified copy of this order. I am, however, not inclined to grant any interest on the same. O.A.is allowed. No costs.

(Praveen Mahajan)
Member (A)

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