

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

O.A. No.3184 of 2017

This the 3rd day of October, 2018

Hon'ble Ms. Nita Chowdhury, Member (A)

R.K. Das, aged 63 years, Group -A,
S/o Ram Dulare Das,
158, Lumbini Apartment,
Sector-14, Kaushambi,
Distt: Ghaziabad (UP).
Pin: 201010.

....Applicant
(By Advocate : Shri Suresh Tripathy)

VERSUS

1. India Tourism Development Corporation Ltd.
Through its Chairman & Managing Director,
Regd Off: Scope Complex, Core-8,
6th Floor, 7 Lodi Road,
New Delhi-3.
2. Manager (HR),
Indian Tourism Development Corporation Ltd.,
Regd Off: Scope Complex, Core-8
6th Floor, 7 Lodi Road,
New Delhi-3.

.....Respondents

(By Advocate : Shri Ujjwal K. Jha)

ORDER (oral)

By filing this OA, the applicant is seeking the following
reliefs:-

- “a. direct respondents to release retiral dues that includes gratuity, VRS dues and other dues, leave encashment dues etc. to the applicant forthwith.
- b. grant interest @ 12% on the dues illegally withheld all these years:
- c. cost of the proceedings:
- d. pass such order or further order as may be deemed fit.”

2. Brief facts of the case, as stated in the OA, are that the applicant joined the respondent – ITDC as Manager (Civil) in the year 1987 and promoted to the post of Sr. Manager (Civil) in the year 1993. Immediately after the promotion, applicant was transferred to Bangalore to join Hotel Ashok, run by respondents.

2.1 The next promotion granted to applicant was DG(Civil) in the year 1997 but the same was kept under sealed cover because of some complaint made by respondents, which relates to alleged irregularities in award of tender in the Hotel Ashok.

2.2 During the period 2003-04, respondents have floated a Scheme, i.e., Voluntary Retirement Scheme (VRS) and the applicant, like others, who fulfilled the eligibility applied for the same and the said request was accepted by the respondents and consequently, respondents relieved him w.e.f. January 2004. Thought it was incumbent upon the respondents to release the retiral benefits due to the applicant but they refused. However, vide letter dated 6.7.2004 (Annexure A-1), released only PF account only.

2.3 Other retiral dues were withheld due to pendency of criminal case pending against the applicant and the said impediment was over when vide judgment dated 27.6.2013 (Annexure A2) passed in Criminal Appeal No.167/2008 by the Hon'ble High Court of Karnataka at Bangalore vide which conviction and sentence awarded by the learned City Civil and Sessions Judge was set aside and the applicant was acquitted of the charges.

2.4 The applicant submitted his representation dated 9.7.2013 (Annexure A3) requesting the respondents to release the retiral benefits.

2.5 When the respondents have not taken any decision on the same, the applicant submitted another letter dated 26.8.2013 (Annexure A4). The aforesaid representation dated 9.7.2013 was dealt with by the respondents vide their letter dated 13.11.2013 (Annexure A5) in which it was stated that CBI was scrutinizing the aforesaid judgment of the Hon'ble High Court and further decision with regard to settlement of his dues would be considered by ITDC Management in receipt of final decision from the CBI.

2.6 Again when nothing was heard from the respondents, the applicant vide letter dated 11.4.2014 (Annexure A6) again made request to the respondents to release the retiral benefits to him.

2.7 However, vide letter dated 27.6.2014 (Annexure A7), the respondents informed the applicant that steps were being taken to file SLP and after the outcome of the SLP, the final decision on the release of his retiral dues would be rendered.

2.8 The said SLP No.12128-29 of 2014 filed by the CBI against the judgment of the Hon'ble High Court of Karnataka (supra) was dismissed by the Hon'ble Supreme Court vide Order dated 11.7.2014 (Annexure A8).

2.9 Even then the respondents did not release the retiral dues forcing the applicant to visit them innumerable times but only to be told that file is being processed.

2.10 When respondents did not act upon their own assurance i.e. decision to be taken only after the outcome of the SLP, applicant submitted a letter dated 6.11.2016 (Annexure A9) by e-mail requesting the respondents to release the dues that includes gratuity and other dues.

2.11 Being aggrieved by inaction of the respondents on his grievance, the applicant left with no option except to approach this Tribunal for redressal of his grievance.

3. Pursuant to notice issued to the respondents, they have filed their reply in which they stated that one Shri Ashok Raj and the applicant were working at Hotel Ashok Bangalore. There was criminal conspiracy between them pertaining to renovation work of 32 guest rooms at Hotel with ulterior motives with understanding between them that payments would be made for the substandard work and the proceeds would be shared between them. As a result of the said conspiracy, the loss sustained by the Management was quantified at Rs.1.46 lakh.

3.1 The applicant was charge sheeted and charges were framed against them under Section 120B, 420, 468, 471 of IPC. As per advice of CBI, major penalty disciplinary proceedings were initiated against the applicant. The Enquiry Officer submitted his report dated 10.11.2004 wherein none of the charges were proved. Meanwhile the applicant was granted voluntary retirement scheme and was relieved. However, on the advice of the CBI, the then CDA decided to withhold the voluntary retirement and gratuity benefits of the applicant. The then CDA decided that because facts were the

same as in the departmental inquiry as well as in the criminal proceedings pending before the CBI Court, Bangalore, the above said advice of the CBI be adhered to.

3.2 The CBI vide communication dated 21.2.2008 intimated that the trial proceedings against the applicant have been concluded and the Hon'ble Court had pronounced the judgment on 29.1.2008 and convicted the applicant for rigorous imprisonment of one year with fine.

3.3 After the judgment of the Trial Court, the then CDA had passed an order dated 14.7.2008 while observing that since the applicant having taken voluntary retirement and relieved from the Corporation, the major penalty as listed in ITDC CDA rules, could not be imposed upon him. The CDA concluded that the applicant former Sr. Manager (Civil) is not to be paid the payment of gratuity and compensation of his voluntary retirement payable to him because of the adequate reasons and exceptional circumstances and also ordered recovery and loss of Rs.1,46,000/- caused by the applicant to the Corporation, from his other dues.

3.4 In the meanwhile, the applicant approached the Hon'ble Karnataka High Court at Bangalore where the Hon'ble High Court vide order dated 27.6.2013 exonerated him and the order of the Trial Court dated 29.1.2008 has been quashed.

3.5 Being aggrieved by the order dated 27.6.2013 of the Hon'ble High Court of Karnataka, the CBI filed the SLP before the Hon'ble

Supreme Court and the said SLP has been dismissed by the Hon'ble Supreme Court vide Order dated 11.7.2014.

3.6 As per Rule 33.4 of ITDC CDA Rules, the appeal shall be addressed to the Appellate Authority specified in the Schedule to these Rules and submitted to the Authority whose order is appealed against. The Authority whose order is appealed against shall forward the appeal together with its comments and the records of the case to the Appellate Authority within 15 days. The Appellate Authority shall consider whether the findings are justified or whether the penalty is excessive or inadequate and pass order expeditiously. The appeal of the applicant is pending before the Appellate Authority.

4. In the rejoinder, the applicant while reiterating the averments made in the OA and denying the contents of the counter reply filed by the respondents submitted that once there were no disciplinary proceedings and the VRS was granted, so-called decision to recover the amount as indicated above is completely unlawful.

4.1 Respondents seem to suggest that some appeal was filed but the fact remains that no such appeal was filed and as a result, the pendency of the so-called appeal is of no significance.

5. During the course of hearing, learned counsel for the applicant submitted that admittedly in the disciplinary proceedings which were initiated against the applicant, none of the charges were proved as per the report submitted by the Enquiry Officer

vide his report dated 10.11.2014. Thereafter the applicant was granted voluntary retirement scheme and was relieved. However, on the advice of the CBI, the then CDA decided to withhold the voluntary retirement and gratuity benefits of the applicant. The then CDA decided that because facts were the same as in the departmental inquiry as well as in the criminal proceedings pending before the CBI Court, Bangalore, the above said advice of the CBI be adhered to. The applicant preferred a Criminal A. No.167/2008 against the conviction order passed by the learned Additional City Civil and Sessions Judge and Special Judge for CBI cases, Bangalore, in Spl. C.C. No.194 of 1999 dated 29.1.2008 and the Hon'ble High Court of Karnataka vide Order dated 27.6.2013 set aside the judgment of the trial court and the appellant was honorably acquitted and the fine amount, if any, paid by the applicant was directed to be refunded to him. Thereafter the CBI filed SLP No.12128-12129/2014 before the Hon'ble Supreme Court against the said Order of the Hon'ble High Court of Karnataka which was dismissed vide Order dated 12.7.2014 by the Apex Court.

5.1 Counsel further submitted that after the dismissal of the SLP, nothing is left to be decided by the respondents in the matter of release of his withheld dues as no departmental inquiry is pending or the so called criminal case is decided in favour of the applicant by the Hon'ble High Court of Karnataka which was upheld by the Hon'ble Supreme Court. The respondents now are unnecessarily withholding the same and as such the respondents

are required to release all the retiral dues even without affecting any recovery which was ordered by the respondents vide order dated 14.7.2008 as the departmental inquiry initiated by the respondents had already been concluded by the Enquiry Officer vide his report dated 10.11.2004 wherein none of the charges were proved and, therefore, nothing is required to be recovered from the withheld retiral dues of the applicant. Counsel further submitted that applicant is also entitled for interest on the delayed payment of his retiral dues @ of 12 % per annum.

6. Counsel for the respondents reiterated the averments made by the respondents in their counter affidavit.

7. After hearing the counsel for the parties and perusing the pleadings on record, this Court is fully in agreement with the contention of the applicant that after dismissal of SLP preferred by the CBI in the said criminal matter, nothing is left to be decided by the respondents on the issue of release of his withheld retiral dues. Further the respondents have themselves stated in response to the applicant's representation vide letter dated 27.6.2014 (Annexure A7) that any final decision with regard to settlement of applicant's dues would be considered by ITDC Management on receipt of clearance in the matter from CBI. Further after dismissal of the said SLP, the applicant also sent a representation dated 6.11.2016 through e-mail to the respondents but still they have not taken any decision on the issue of release of his withheld retiral dues pertaining to VRS granted to the applicant w.e.f. January 2004. The inaction of the respondents after the dismissal of the said SLP

is highly unappreciable despite the fact that they themselves withheld the same on account of pendency of said SLP. Therefore, it is incumbent upon them to pass an order on the issue of release of withheld retiral dues of the applicant after the dismissal of the said SLP, which was dismissed on 11.7.2014. They have unnecessarily dragged the applicant to approach this Tribunal for redressal of his grievances and the instant OA was filed on 11.9.2017 and the respondents have filed their counter affidavit on 17.5.2018 and in the counter affidavit they have not stated what compelled them now after dismissal of SLP to still withhold the retiral dues. This Court does not find any basis on the counter affidavit filed by the respondents to withhold the retiral dues of the applicant after the dismissal of the said SLP preferred by the CBI.

8. In the result, for the foregoing reasons, the instant OA is allowed. The respondents are directed to release all the withheld retiral dues of the applicant pertaining to his VRS, which was accepted by them and he was relieved w.e.f. January 2004. The applicant is also entitled to interest at the GPF rate of interest applicable at the relevant time on the delayed payment of his retiral dues, which were unlawfully withheld by the respondents, from January 2015 till the date of actual realization. There shall be no order as to costs.

**(Nita Chowdhury)
Member (A)**

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