

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00085/2017

Tuesday, this the 14th day of August, 2018

CORAM:

**Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member**

D. Rejith, S/o. K.N. Damodara Kurup, aged 60 years,
former Chief Marketing Manager, Hindustan Organic Chemicals Ltd.,
Ambalamugal, Ernakulam, residing at Chaitram, 29/764A, L.M. Pylee
Cross road, Vytilla, Kochi – 682019. **Applicant**

(By Advocate – Mr. V. Sajithkumar)

V e r s u s

1. Hindustan Organic Chemicals Ltd., registered office,
PO Rasayani, District Raighad, Maharashtra India, Pin 410207,
represented by its Chairman & Managing Director.
2. The Chairman & Managing Director, Hindustan Organic Chemicals
Ltd., registered office PO Rasayani District, Raighad, Maharashtra,
India, Pin 410207.
3. The Chief General Manager (Personnel & Administration),
Hindustan Organic Chemicals Ltd., Ambalamugal,
Ernakulam, Pin – 682302. **Respondents**

(By Advocate – Mr. V. Krishna Menon)

This Original Application having been heard on 08.08.2018, the
Tribunal on 14.08.2018 delivered the following:

ORDER

Per: Ashish Kalia, Judicial Member -

Applicant seeks the following reliefs in this O.A:

- “(i) To direct the respondents to regularise the service of the applicant from 1.3.2005 to 28.2.2014, the period he was unlawfully kept under suspension and to disburse all consequential benefits including the salary, gratuity, incentives and gifts extended to other employees during the period with the interest at the rate of 12% per annum from the period of suspension.
- (ii) To direct the respondents to clear the arrears to the Employee Provident

Fund Corporation into the account of the applicant and to disperse the eligible benefits to the applicant under EPF Scheme.

(iii) Grant such other reliefs as may be prayed for and as the court may deem fit to grant, and

(iv) Grant the cost of this Original Application.”

2. The brief facts as narrated by the applicant leading to file this O.A are that the applicant entered into the service of the Respondents as a Senior Marketing Officer w.e.f. 03.09.1986. He was promoted as Assistant Manager in the year 1989. Later on he was promoted as Deputy Manager, Manager and Finally as Chief Manager in the year 2002.

3. It is submitted by the applicant that he was suspended w.e.f 01.03.2005 vide Annexure A1 suspension order on CBI registering a case against him and three others in a matter related to import of materials during his tenure in the materials department of the Respondents.

5. It is also submitted by the applicant that the applicant was kept under suspension till his due date of retirement in February, 2014, i.e., he superannuated while remaining in suspension. On retirement, the applicant had approached the Respondents for the release of provident fund and gratuity.

4. According to the applicant since there was a no response, the Applicant had to file OA No. 916/2014 before this Tribunal for the release of provident Fund. By Annexure A2 order dated 16.12.2014 by this Tribunal respondents were directed to release the Provident Fund to the applicant. In fact, the Respondents conceded to pay the gratuity as well.

5. On filing a discharge application before the Special Judge/CBI-II Ernakulam by the applicant, the CBI Court found that in fact, the steps

taken by the applicant and others have brought more profit to the company; thereby the applicant was discharged vide Annexure A3 judgment dated 05.08.2015 from the charges leveled. The CBI Court found that the charges leveled against the applicant are without *prima facie* evidence and has to be treated as groundless.

6. On discharge of the applicant without any finding of guilt, the Respondents are bound to treat the suspension as unjustified and to grant all consequential benefits including arrears of salary, gratuity, incentives, and gifts extended to other regular employees during the period and the pension under Employees Provident Fund Scheme. Seeking the above benefits, the applicant has submitted Annexure 4 representation dated 18.01.2016 before the 2nd Respondent in registered post.

7. On finding that there is arbitrary delay in settling the benefits, the applicant had submitted Annexure A5 reminder dated 08.04.2016 before the 2nd Respondent.

The applicant thereafter submitted an application under RTI to know the progress of the claims made by him. By Annexure A6 letter dated 09.09.2016, the Public Information Officer of the 1st Respondent informed that dues payable to the applicant from 01.03.2005 to 28.02.2014 are being worked out.

8. Learned counsel for the applicant submitted that the applicant was trapped into a wrongful allegation and his entire career as a professional got badly affected by the actions of the Respondents. It was also submitted that as per the rules and precedents, in case, suspension is proved totally unjustified, an employee is entitled to all consequential benefits.

9. It is also stated that the Respondents had revised the pay of the employees in the year 2007. The applicant is entitled to get all the benefits that he would have enjoyed, had he not been suspended from service. The delay from the part of the respondents is highly unjust and unfair.

10. Counsel for the applicant in his pleadings states that the inaction from the part of the Respondents in regularising the period of suspension on discharge of the Applicant from the crime is highly unfair and unreasonable.

11. The applicant was suspended from service on the basis of a crime registered by the CBI. The CBI Court which considered the charge sheet discharged the applicant honorably with a finding that there is no *prima facie* evidence to sustain a charge. In such a case, the Respondents are bound to regularize the period of suspension and to disburse all consequential benefits as if he had continued in service. Delay on the part of the Respondents is highly unfair and unjust.

12. The applicant is entitled to pension under EPF scheme. However, his contributions from March 2005 to February 2014 were not paid by the Respondents. In view of the discharge order the Respondents are bound to clear the arrears with EPF and to ensure that the pension entitled to the applicant are credited appropriately or in the alternative they have to compensate the Applicant for the loss suffered by him. The denial of benefits is highly unreasonable and illegal.

13. As per Clause 24 of the conduct discipline and appeal rules of the Respondents, if the employees is exonerated and not awarded any of the penalties mentioned in Rule 25, full pay and allowances which would have been entitled to, if he had not been suspended, less the subsistence allowance

already paid will due for him. In this case Applicant was fully exonerated from the charges behind the suspension. Further he was not awarded any of the penalties. Therefore, the denial of benefits is against the Rules framed and enforced by the Respondents. Actions from the part of the Respondents are highly unfair and unreasonable.

14. Aggrieved by the inaction on the part of the Respondents to regularize his service from 01.03.2005 to 28.02.2014, during which period he has been kept under suspension erroneously on the basis of a Crime registered by Central Bureau of Investigation which later on found unsustainable, resulting in honourable discharge, the applicant has approached this Tribunal for redressal of his grievance.

15. Notices were served to the Respondents and a reply statement has been filed on behalf of the respondents.

16. Counsel for the Respondents in their reply statement submitted that while the applicant was working as Chief Manager (Marketing) in the 1st Respondent company, he was placed under suspension w.e.f. 01.03.2005 pending investigation in Case No. RC 05/A/2005/KER filed before the CBI Special Judge II, Ernakulam. While under suspension, CBI had registered another FIR on some other charges against the applicant, and two other officers of the unit Sri. Saju M. Joseph, DGM (Materials) and Sri. Babu Thomas, Chief Production Manager. This FIR was forwarded by the CBI to the Company.

17. The charges leveled by the CBI required placing the applicant under suspension from the service pending enquiry. Sri. Babu Thomas, one of the accused in this FIR was placed under suspension. The other two accused

namely the applicant and Sri. Saju M. Joseph were already under suspension and hence no further orders were issued in their cases.

18. It was also submitted on behalf of the respondents that charge sheet was issued to the accused officers in the above case. A departmental enquiry was conducted in this case. In the enquiry the applicant was found guilty of the charges. Accordingly, on 25.02.2014, the Disciplinary Authority had issued a punishment order to the applicant based on the enquiry report. He was awarded a punishment of reduction to the lower scale. The applicant has however suppressed furnishing the details of the second FIR filed by the CBI against him and the punishment imposed by the company in connection with the charges relating the second FIR. Annexure A3 judgment does not pertain to the subsequent FIR registered by the CBI. Annexure A3 judgment pertains to the earlier FIR registered by the CBI.

19. The applicant had superannuated from the service of the 1st Respondent on 28.02.2014. Since the proceedings in CBI Court were pending, no vigilance clearance was received in his case and he was not paid any terminal benefits. He had given various representations to the Company and also approached this Tribunal for the release of his terminal benefits. This Tribunal had ordered to dispose of his representations. In due compliance with the said direction the Company had disposed off the representations submitted by the applicant and he had been informed that the Company was unable to disburse his terminal benefits due to no receipt of vigilance clearance since criminal trials were pending against him.

20. Counsel for the respondents submitted that, during the period of suspension in one case, a fresh FIR on other charges was lodged against the

applicant by the CBI. The charges leveled against him unwarranted suspension from service and the co-accused in this case was placed under suspension. Hence the applicant also would be deemed to have been suspended from service with effect from based on the second FIR of CBI. It was only because he was already under suspension on account of the earlier FIR filed by the CBI, no separate order of suspension had been issued based on the second FIR. The applicant was found guilty in the enquiry in this case and was awarded a punishment vide order dated 25.02.2014. Subsequently, he had retired from service on 28.02.2014.

21. It is, therefore, submitted that as the applicant was found guilty of the charges leveled and was awarded a punishment, the period of suspension from 01.03.2005 to 28.02.2014 will have to be treated as not on duty as per the CDA Rules of the Company. The applicant is thus not entitled for any benefits from the Company for that period. However this period will be treated for the limited purpose of continuity of service. The respondents prayed for dismissal of the present O.A.

22. We have heard the learned counsel for the parties, perused the pleadings, and have carefully considered the rival submissions.

23. The first criminal case against the applicant culminated into exoneration but in another judicial proceedings in the C.B.I. Court which was pending for trial and for the same reasons disbursement of pension and gratuity at this stage is not permissible under Rule 69 of the CCS (Pension) Rules. Apart from culmination of the first criminal case the applicant was subject to departmental inquiry wherein the penalty of reduction to lower rank was awarded to him. The applicant has suppressed this information

from this Tribunal and also suppressed the fact of filing second F.I.R. which was pending while claiming the pensionary benefits. In accordance with the law laid down by the Hon'ble Apex Court in *S.P.Chengalvaraya Naidu (Dead) by LRs Vs. Jaganath (Dead) Lrs and ors. AIR 1984 SC 853*, Hon'ble it was held as under:

"The Courts of Law are meant for imparting justice between the parties. One who comes to the court , **must** come with clean hands."

24. It is settled law by various courts that a person approaching the Court for a relief must come with clean hands and he must do equity. He who seeks equity must do equity. If a person who has not come with clean hands before the Court shall be dealt with firmly. A person who seeks equity must come with clean hands. He, who comes to the Court with false claims, cannot plead equity nor the Court would be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. The respondents in their reply has clearly stipulated that the period for which the applicant is claiming regularisation i.e. from 1.3.2005 to 28.2.2014 has already been treated as "not spent on duty" and hence the question does not arise of releasing the pensionary benefits for the said period to the applicant.

25. The Hon'ble High Court of Allahabad (Lucknow Bench) in **Union of India & Ors. v. Raj Kishore Pandey & Ors** in Writ Petition No.19240 of 2016 wherein an identical situation had been examined and decided. Elaborating on the eligibility of a retired employee for provisional pension as well as gratuity the Court goes on to state :

"10. Thus from the perusal of Rule 69 of the CCS (Pension) Rules 1972 read with Rule 9, the position which emerges out is that the gratuity, which is payable to an employee after retirement can be

withheld, if criminal proceedings are pending. As referred above, Rule 69 of the Central Civil Service (Pension) Rules 1972 provides that where a departmental or judicial proceeding is pending against a government servant, he is only entitled to provisional pension. Clause (c) of sub-rule 1 of rule 69 stipulates that no gratuity shall be paid to a government servant until the conclusion of the departmental or judicial proceeding and issuance of final orders thereon. Under Rule 3, pension has been defined to include gratuity except where the term pension is used in contradistinction to gratuity. Therefore, the pendency of a criminal case against a government servant precludes him from receiving the full pension and it matters little whether the criminal case has been pending for a long period of time.”

26. As part of the same judgment the Hon'ble High Court further reiterates that :

“13. Admittedly, departmental proceedings are not pending against the employee and his suspension had already been revoked before his retirement but judicial proceedings, ie. a criminal case under Section 379/420 IPC related to discharge of his official duty is still pending against the respondent. Therefore, after retirement of the applicant, he has been paid the GPF, CGIS and leave encashment. However, the payment of retirement gratuity has been withheld in accordance with Rule 69 (c) of the CCS (Pension) Rules, 1972. “

27. On the very same question the Hon'ble Supreme Court in **Jarnail Singh v. Secretary, Ministry of Home Affairs & Ors. (1993) 1 SCC 47** held as under:

“9.Rule 69(1)(c) provides that no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon. This provision is indicative of the power to withhold payment of gratuity and its payment being subject to the final outcome of any pending departmental or judicial proceeding against the Government servant.....”

28. In view of the foregoing discussion, we find not merit in the present O.A. which warrants the interference of this Tribunal. Accordingly, the same is dismissed. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER
sj*

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

Original Application No.180/00085/2017**List of Annexures of the applicant**

- Annexure A-1 - True copy of the suspension order No. CMD:PNL:2005:756 dated 1.3.2005 issued by the 2nd respondent.
- Annexure A-2 - True copy of the judgment dated 16.12.2014 in OA 916/2014.
- Annexure A-3 - True copy of the judgment dated 05.08.2015 in CC No. 10/2016 issued by the Hon'ble Special Judge/CBI to Ernakulam.
- Annexure A-4 - True copy of the representation dated 18.1.2016 submitted by the applicant to the 2nd respondent.
- Annexure A-5 - True copy of the second reminder letter dated 8.4.2016 submitted by the applicant to the 2nd respondent.
- Annexure A-6 - True copy of the letter dated 9.9.2016 issued by the Public Information Officer of the 1st respondent to the applicant.

List of Annexures of the Respondents

Nil
