

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
Order reserved on: 04.09.2018

ORIGINAL APPLICATION NO. 060/00074/2018

Chandigarh, this the 10th day of September, 2018

...
**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)**

...
Nanu Singh Gill son of S. Shiv Charan Singh, age 71 years, R/o H. No. 76-B, Ram Nagar, Ambala Cantt., Haryana (Group-A).

....APPLICANT

(By Advocate: Shri H.P.S. Ishar)

VERSUS

1. Union of India, through Secretary to Ministry of Defence, South Block, New Delhi.
2. Director General, Directorate General of Defence Estates, (ADM Section), Ministry of Defence, Raksha Sampada Bhavan, Ulaanbaatar Marg, Delhi Cantt.
3. Principal Director, Defence Estate Ministry of Defence, Western Command, Kendriya Sadan, Sector 9-A, Chandigarh.
4. Defence Estates Officer, Ambala Circle, Ambala Cantt.
5. Controller General of Defence Accounts, Lekha Bhavan, Ulaanbaatar Marg, Delhi Cantt.
6. Principal Controller of Defence Accounts, Western Command, Kendriya Sadan, Sector 9-A, Chandigarh.
7. Area Accounts Office, Pay and Pension, C.D.A. Western Command, Jalandhar Circle, Jalandhar Cantt.
8. Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Allahabad.

....RESPONDENTS

(By Advocate: Shri R.L. Gupta)

ORDER

AJANTA DAYALAN, MEMBER (A)

The present Original Application (O.A.) has been filed by applicant Nanu Singh Gill seeking release of gratuity to him. He has also sought interest @ 18% per annum on all retiral benefits

namely; pension, gratuity and leave encashment etc. from the date of retirement till the date of realization.

2. The facts of the case are largely not in dispute. The applicant joined service in Cantonment Board Ambala as Cantonment Overseer. He was promoted as Assistant Engineer in 1986. He appeared in Limited Departmental Examination for Cantonment Executive Officer (CEO) 'Group-B' as prescribed under Rules of 1987. He qualified the examination and was appointed as Cantonment Executive Officer on 12.5.1999. He was drawing pay of Rs. 12,750/- per month as Assistant Engineer on 12.5.1999 in the pay scale of Rs. 12000-375-16500/-. However, the pay scale of CEO was only Rs. 6500-200-10,500/-. Respondent No. 2 originally sent a proposal dated 6.11.2009 proposing his case to be covered under FR-22 1(a) (1) as he was statedly carrying greater/higher responsibilities. However, this was not done. The fixation of pay of the applicant became a contested issue. When the applicant was working as Assistant Engineer in Cantonment Board, he was governed by Cantonment Fund Servants Rule (CFSR), 1937. On his becoming CEO, he was governed by Defence Estates Service (Cantonment Executive Officer) (Group 'B' Gazetted) Recruitment Rules, 1987. The CEO was neither in line of hierarchy of his position as Assistant Engineer nor was it a promotion. Another issue was that he was already drawing basic pay of Rs. 12,750/- before he moved as CEO on 12.5.1999. However, the pay scale in his new post was only Rs. 6500-200-10500/-. As such, the maximum in the new pay scale was only Rs. 10,500/- and he

could not be granted basic pay above that level. The question arose whether this was transfer on his own request or otherwise and whether his pay could be protected. He retired from service on 30.6.2007 before the issue could be resolved to the satisfaction of all concerned. Finally after consideration of the matter at the level of Ministry of Defence in consultation with DoPT and UPSC, the pay of the applicant was fixed by the department without giving him pay protection vide letters dated 26.9.2012 and 27.9.2012.

3. Against this order, the applicant approached this Tribunal by filing O.A. No. 148/HR/2013 which was decided on 28.10.2015 by directing the respondents to take a fresh look at his pay fixation in the light of the observations made in the order and pass fresh order within a period of 3 months from the date of receipt of copy of the order. It was also directed to release his retiral benefits within 2 months from the date of decision.

4. According to the applicant, the order of the Tribunal was not complied with and the applicant filed Contempt Petition during the pendency of which respondents submitted letter dated 24.1.2017 which was an internal communication stating that benefits of commutation of pension and gratuity were withheld as departmental proceedings were pending against the applicant.

5. In fact, a memorandum of charges was issued to the applicant vide letter dated 11.12.2008 i.e. 18 months after his retirement. Interim reply was submitted by the applicant on 23.12.2008. Proceedings continued for 4 years and Inquiry Report was finally submitted on 20.11.2012 (Annexure A-5. Statement of

defene was submitted by the applicant immediately thereafter on 17.12.2012 (Annexure A-6). The applicant has alleged that there is no justification for delay in concluding the proceedings and release of his retiral benefits. He has now claimed interest thereon @ 18% p.a.

6. The respondents have pleaded that the O.A. is barred by limitation. The applicant has not impugned any order or filed any representation related to his grievance. As such, the O.A. filed by him is defective and cannot be admitted in terms of Central Administrative Tribunals (Procedure) Rules, 1987. Letter dated 24.1.2017 issued by respondents is an internal communication and not an order. In fact, in guise of this letter, he is seeking relief on an issue that is already time barred as per Section 21 of the Administrative Tribunals Act, 1985. The applicant retired in 2007 and as such cause of action, if any, arose to him at that time. He needs to explain the delay of 10 years in filing the O.A. The respondents have also alleged that the applicant has already agitated the same issue in his earlier O.A. No. 148/HR/2011 in which he was not granted any relief regarding payment of interest.

7. The respondents have stated that gratuity and commutation of pension of the applicant were withheld due to pendency of disciplinary proceedings against him. In support of this, the respondents have relied upon Rule 9 and Rule 69 of CCS (Pension) Rules, 1972 and Rule 4 of CCS (Commutation of Pension) Rules, 1981. It is further stated that Inquiry Report has since been submitted and is under consideration of the Disciplinary Authority.

It is also stated that his pay fixation case was complex and was processed by various administrative ministries and financial authorities in Ministry of Defence in consultation with DoPT and UPSC which resulted in delay in his pay fixation. The issue was finally settled with issuance of order dated 27.9.2012 (Annexure R-8).

8. The applicant vehemently argued that his gratuity has still not been released 11 years after his retirement. The disciplinary case in which he was charge sheeted in 2008 has still not been decided. As such, there is no ground now for the respondents not to release his gratuity. He is also entitled to and has claimed interest on the delayed payments.

9. We have heard the arguments of opposing counsels, have gone through the pleadings and have also given our thoughtful consideration to the matter.

10. Regarding respondents' argument about delay in filing of O.A. and there being no impugned order in terms of Central Administrative Tribunals (Procedure) Rules, 1987 (the order quoted being only an internal communication and not an order), we are of the view that no doubt the cause of action arose in June 2007 when the applicant retired from service. However, he was issued charge sheet on 11.12.2008 and hence he may have waited for conclusion of proceedings, being aware that gratuity cannot be released pending disciplinary proceedings. In spite of waiting patiently for long years, the same is still to be released. That there is no order withholding release of gratuity cannot be held against

him to deny him even the benefit of approaching the Tribunal. Hence, we do not find merit in this argument.

11. The present O.A. is for the limited purpose of release of gratuity and interest thereon. The respondents have taken a stand that though the Inquiry Report has been submitted, the same is under consideration of the Disciplinary Authority. It is true that under the Rules quoted by the respondents, the President has the right to withhold pension or gratuity or both, either permanently or for a specific period, or even for ordering recovery for any pecuniary loss caused to the Government. It is also true that under Rule 4 of CCS (Commutation of Pension) Rules, 1981, government servant would not be eligible to commute percentage of his provisional pension during the pendency of any departmental or judicial proceedings. However, in the instant case, we observe that the charge sheet was issued in 2008 and the matter is still pending consideration 11 years after his retirement and 10 years after issue of charge sheet. Considering the charges and the documents and witnesses enclosed therewith, we are not convinced that there would be any reasonable ground for unusual delay in taking final decision in the case. In a number of cases, the Apex Court has come down very strongly of such delays. Lately the Apex Court has held that disciplinary proceedings should in any case be completed within a period of 180 days. Besides, no charge of pecuniary loss is made out in memorandum of charge issued to the applicant. It is also observed that there is no specific order and conscious order of the Government to withhold part or full pension or gratuity. It is

only that these are presently being withheld mainly due to lack on part of competent authorities to take a view in the pending disciplinary proceedings. To say the least, this lackadaisical approach is not acceptable. Further, it is also observed that Rule 9 of CCS (Pension) Rules, 1972 only talks of the right of the President to withheld pension or gratuity where 'the pensioner is found guilty of grave misconduct or negligence'. In the instant case no such guilt has yet been established and hence this Rule cannot be invoked. The position of Rule 69 of CCS (Pension) Rules, 1972 on the other hand is quite clear. The Rule states as follows:

'No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon'.

Even here there has to be a reasonable estoppel for the authorities to take a view in the matter. In the instant case, the inquiry report was received in 2012. But, still there is no decision even at first level i.e. by the Disciplinary Authority. The applicant retired 11 years back and has still not been released many of his retiral benefits. Hence we see no reason to further withhold gratuity.

12. In view of all above, we order release of gratuity within one month from the date of receipt of certified copy of this order.

13. As regards interest on gratuity, the respondents in their Preliminary objection in written statement have pleaded that this relief was already claimed by the applicant in O.A. 148/H/2013 wherein one of the reliefs sought was 'consequently for releasing the arrears of salary and revised pensionary and retiral benefits

alongwith interest @ 18% p.a. from the date when it became due till the date of realisation'. However, this Tribunal did not grant any relief in this regard in its order of 28.10.2015. As such, the respondents have argued that once the matter is settled and has obtained finality (as this Tribunal's order dated 28.10.2015 was not challenged), the same issue cannot be raised again and the same relief cannot be claimed now before this Tribunal. On this matter, we are of the view that the Tribunal's order dated 28.10.2015 was quite general and directed the respondents to take a fresh look at the pay fixation of the applicant and pass fresh orders. Further, the applicant was left at liberty to approach the Tribunal if he felt still aggrieved from the decision so taken by the respondents. We therefore feel that the applicant is entitled to seek this relief. He is also entitled for reasonable interest on the unusual delay in payment of retiral benefits to him. He will therefore be entitled to interest on gratuity. However, the interest will be allowed at the rate applicable to GPF deposits for Government servants. Incidentally, this rate corresponds well with the bank rates on savings.

14. In view of all above, we direct the respondent department to release gratuity alongwith interest at the rate applicable to GPF deposits of Government servants, within one month from the date of a receipt of copy of this order.

15. The O.A. is allowed in the above terms. No costs.

(AJANTA DAYALAN)
MEMBER (A)

Dated: 10 .09.2018

‘SK’

(SANJEEV KAUSHIK)
MEMBER (J)

