

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.**

ORIGINAL APPLICATION NO. 170/2017

Dated this the 1st day of October, 2018.

CORAM:- HON'BLE SHRI R. VIJAYKUMAR, MEMBER (A)

1. Dr. Banakar, V.K.
Son of Mr. Banakar Kashappa,
Aged 60 years, Indian National,
Retired Chief Scientist
National Institute of Oceanography
Dona Paula, Goa-403004

...Applicant

(In person)

Versus

1. Union of India, Ministry
Of Science & Technology
New Mehrauli Road, New Delhi-110016.
2. The Council of Scientific &
Industrial Research(CSIR),
(A society registered under the
Societies Act-1908), through
The Director General,
CSIR, Anusandhan Bhavan
2-Rafi Marg, New Delhi-110001.
3. The Chief Vigilance Officer
CSIR, Anusandhan Bhavan
2-Rafi Marg, New Delhi-110001.
4. Dr. S. W.A. Naqvi, Retired Director
NIO, Dona Paula Goa.
Presently working at
Kuwait Institute of Scientific
Research
Environment & Life Science Research
Centre
PO Box 1638, Salmiya 22017, KUWAIT
Through,

a) Office of the Legal Affairs
 Kuwait Institute for Scientific
 Research
 PO Box 24885, Safat, 13109, Kuwait
 And
 b) Embassy of India
 Diplomatic Enclave
 Arabian Gulf Street
 PO Box 1450, Safat 13015, Kuwait.

5. National Institute of Oceanography
 (A Constituent Laboratory of CSIR)
 Represented herein by its Director
 Having registered office at
 Dona Paula, Goa-403004

...Respondents

(By Advocate Shri Anil Kumar K.P.)

Reserved on :- 17.08.2018.

Pronounced on:- 01.10.2018.

O R D E R

Per:- R. Vijaykumar, Member (A)

This application has been filed on
 21.02.2017 under Section 19 of the
 Administrative Tribunals Act, 1985 seeking
 the following reliefs:

"(a) This honorable
 Tribunal be pleased to quash
 and declare the Impugned
 communications dated
 11/07/2016 and Impugned OM
 dated 24/1/2017 null & void
 and issue appropriate writ,
 order, or direction to the
 Respondents No. 2 & 5 to pay
 forthwith a Penal Interest
 18% p.a. for six months and
 twenty three days on the
 entire withheld retirement
 benefit amount of Rs.40.5
 lakhs, which works-out to be
 Rs. 4,05, 444/- for 203 days

e Rs. 1997/- per day calculated on simple interest basis as $[(4050000/100 \times 18)/365] =$ Rs . 1997/day;

(b) This Hon'ble Tribunal be pleased to direct the respondent No. 2 & 5 to recover the amount of said interest and legal costs from the Respondent No. 4

(c) This Hon'ble Tribunal may be pleased to issue appropriate writs / punishment / direction to Respondents for encroaching the jurisdiction of the Hon'ble President of Respondent No. 2 and the Hon'ble President of India: for gross disrespect shown towards the Hon'ble Supreme Court orders with respect to pension/pensionary benefits; illegally restraining the Applicant over six months from accessing his own hard-earned 'Property' and thus violating the Article 300A of the Constitution of India; and for violation of CCS Pension and Leave Rules and DoPT circulars.

(d) For such other and further reliefs that this Honorable Tribunal deems fit and proper"

2. In this case, replies have been filed by official respondents while R4, who has since retired from the post of Director was served notice but has not filed any reply.

3. The facts of the case are that the

applicant retired as Chief Scientist in the National Institute of Oceanography at Goa on 30.06.2016. The applicant received an advance of Rs. 1.44 lakhs to cover expenses related to a field trip of students of the Academy of Scientific and Industrial Research (AcSIR) and after this money was received personally by the applicant, the expenditure details were submitted under his signature for settlement. The Finance section of respondents claimed to have found that the cash memo & vouchers were apparently tampered or manipulated and brought this to the notice of the then Director, respondent 4, pointing to a manipulation of amount of Rs. 35,000. It appears that this difference amount was settled and the audited bills were admitted for Rs. 101,172 and the balances of Rs. 42,828/- were remitted to the respondents' account. It also appears that the Chief Vigilance Officer (CVO), respondent 3, wrote to the then respondent 4 in reference to their letter dated 23.07.2014 and in her letter

dated 29.08.2014, asked for obtaining the reply and opinion of the applicant on this matter. After receiving the reply of respondent 4, forwarding the reply of the applicant dated 22.09.2014, they noted that the advance amount which had been received by the applicant and disbursed to students on the field trip had already been settled by remittance of balance in the year 2012. They have noted that dues as per proceedings with regard to applicant is as below:

" With reference to the reply dated 22.09.2014 of Dr. V.K. Banakar concerning the alleged mis-utilization/manipulation of bills, this office has noted that the adjustment of advance of Rs.1,44,000/- received by Dr. Banakar and disbursed to the students of Mayem Lake CSIR-800 Project, had already been settled in the year 2012.

NIO's raising this issue, therefore, while imputing motives to Dr. Banakar, is not called for.

However, it also cannot be denied that Dr. V.K. Banakar, as the Co-ordinator who had received monies and counter signed the bills, was accountable to this extent.

In view of this, Dr. V.K. Banakar is cautioned to be careful in future while

handling such matters where persons/officials other than himself are intrinsically involved."

4. Prior to the applicant's retirement on 30.06.2016, the respondent filed an FIR on 14.03.2016, one year and seven months after the letter dated 29.08.2014 and five years after the amounts were settled, in reference to this matter, stating that some cash memos and vouchers had been tampered with or manipulated and this has been revealed by a Facts and Findings Committee(FFC) which went into the issue of the bills of 2014. When the applicant retired on 30.06.2016, he was granted provisional pension and his final GPF accumulations but he was not disbursed his retirement gratuity of Rs. 10 lakhs, commuted value of pension of Rs. 14,23,593 and leave encashment of Rs. 16,28,780 totaling Rs. 40.5 lakhs. The applicant filed a Writ Petition before the Hon'ble High Court at Goa and when the matter came up for hearing on 23.01.2017, the respondents produced a xerox of the DD for

this amount favouring the applicant. The Hon'ble High Court advised the applicant to receive the amount under protest and seek appropriate remedies for the delay from this Tribunal.

5. The applicant states that the entire manner in which the delay in disbursement of terminal benefits occurred and for an issue that had been settled several years previously was clearly on account of mala fides because of various disputes that existed between the applicant and respondent no. 4 who was then Director of the Institute. The applicant had questioned certain expenses incurred by the R-4 in a letter addressed to respondent 2 in 2014 and this had become a point of bitterness for respondent no.4. It appears that respondent no. 4 thereafter transferred the applicant by orders dated 18.09.2014 from Goa to the Institute's regional centre at Vishakhapatnam and the applicant had challenged the transfer before this Tribunal in O.A. NO. 32/2015. The orders

of this Bench in this connection at para 19 are reproduced below:

"It appears from record that the applicant lodged complaint about financial irregularity committed by the Respondent No. 4 for diverting money meant for research to other heads particularly for the personal benefit of Respondent No. 4. As a counterblast the applicant was also prosecuted regarding an issue of small amount involving students which was settled two years ago."

Further, the Tribunal held that the transfer orders did not constitute a bonafide action and were not issued in the public interest and while recording that the transfer orders were clearly mala fide, quashed the transfer orders dated 18.09.2014. The applicant claims that pension is not a bounty and that the pension that is due to him, gratuity, commutation amount and leave encashment cannot be withheld merely because of filing an FIR just prior to his retirement and when there were no disciplinary proceedings pending against him.

6. The respondents argue that Vigilance clearance could not be obtained

for the applicant prior to retirement from respondent no. 2 and that as and when the vigilance clearance was received, they cleared his pending amounts. They state that after filing the FIR, the investigation officer gave a report on 18.06.2016 that the matter was under investigation and statement of certain witnesses had been recorded and had been submitted to the magistrate and was under examination. Later, on 19.01.2017, the investigating officer continued to state that the case was under investigation. However, at this stage, the CVO CSIR, who is respondent 3 granted vigilance clearance to the applicant on 20.01.2017 and pensionary benefits were released immediately. During arguments, the respondents were heard at length on the alleged contentions of the applicant in regard to the advance drawn in 2012 and its settlement. In their reply to OA, they also contend that although the CVO of CSIR had observed that the advance had already been settled, the CVO did not go

into the criminal aspect of the case and therefore, this issue was pursued to its logical conclusion by following a complaint with the Goa Police. They deny any conspiracy between Respondent 3 and 4 in withholding vigilance clearance.

7. In his rejoinder, the applicant has stated that the CCS(Pension) Rules do not specify any requirement that vigilance clearance is required for releasing pension and pensionary benefits and even the CVC Manual of 2017 Section 7.41 specifies that release of pension is governed by CCS(Pension) Rules, 1972 Rule 8 and 9 which does not require vigilance clearance. He has also stated that after filing this O.A., he obtained through RTI, a copy of the facts of vigilance clearance from respondent 3 to respondent 4 (Lett No: 15-1(74)/95-Vig; 29/6/2016: 5:43pm) which was the basis for withholding his pension. He notes that in the said letter, there is no categorical statement on not granting vigilance clearance whereas the impugned

letters of the respondents at Annexure A-1 bearing ref no. 1/758/83 - NIO dated 11.07.2016 state that since CSIR Headquarters has not granted vigilance clearance certificate, pensionary benefits have been withheld and that they will be released as and when vigilance clearance is obtained. In Letter No. 1/758/83 - NIO dated 24.01.2017, they state that based on a letter from vigilance, dated 20.01.2017 (from respondent 3) they have now released the pensionary dues. This specific reply on the denial of vigilance clearance, contained in the rejoinder has not been rejected by respondents and it would appear that they have no reason for any rebuttal in this matter which is a substantive aspect of the case made out by the applicant.

8. During arguments, the applicant appeared in person and referred to the provisions of the Pension Rules. He refers to the decision of the Hon'ble Apex Court in **D.V. Kapoor Vs. Union of India & Ors.**

(1990) 4 SCC 314 in which it is held that the employees right to pension is a statutory right and it was held as follows:

"The employee's right to pension is a statutory right. The measure of deprivation therefore, must be correlative to or commensurate with the gravity of the grave misconduct or irregularity as it offends the right to assistance at the evening of his life as assured under Article 41 of the Constitution. The impugned order discloses that the President withheld on permanent basis the payment of gratuity in addition to pension. The right to gratuity is also a statutory right. The appellant was not charged with nor was given an opportunity that his gratuity would be withheld as a measure of punishment. No provision of law has been brought to our notice under which the President is empowered to withhold gratuity as well after his retirement as a measure of punishment. Therefore, the order to withhold the gratuity as a measure of penalty is obviously illegal and is devoid of jurisdiction. Since there is no finding that appellant did commit grave misconduct as charged for, the exercise of the power is clearly illegal and in excess of jurisdiction as the condition precedent, grave misconduct, was not proved."

Applicant argues that no determination of the existence of such a condition precedent has been made. The applicant also referred to **Union of India & Anr. vs J.P. Sharma** in W.P. No. 6465/2003 which considered the partial relief that had been granted to the respondent-employee but allowed the pensionary benefits and in addition, limited relief to provisional pension. The Government as petitioners in the High Court limited their contest to the release of gratuity. The Hon'ble High Court of Delhi noted that no disciplinary proceedings were contemplated or pending and that in the criminal proceedings for which FIR had been lodged on 06.02.2001, no chargesheet has been filed nor a complaint lodged or challan filed even four years after registration of FIR. The Court finally ruled for grant of gratuity to the employee. The applicant then referred to **State of Jharkhand & Ors. vs Jitendra Kumar Srivastava & Anr. (2013) 12 SCC 210**, where the issue of whether State Government could withhold a part of

pension and/or gratuity came up for consideration. The Court held that gratuity and pension are not bounties and referred to the decisions of the Hon'ble Apex Court in **D.S. Nakara & Ors. Vs. Union of India (1983) 1 SCC 305 , Deoki Nandan Prasad v. State of Bihar and Ors.[1971] Su. S.C.R. 634 & State of Punjab and Anr. v. Iqbal Singh (1976) IILLJ 377SC.**

Therefore, the Hon'ble Apex Court held as below:

"We are not inclined to accept the contention of the learned counsel for the respondents. By a reference to the material provisions in the Pension Rules, we have already indicated that the grant of pension does not depend upon an order being passed by the authorities to that effect. It may be that for the purposes of quantifying the amount having regard to the period of service and other allied matters, it may be necessary for the authorities to pass an order to that effect, but the right to receive pension flows to an officer not because of the said order but by virtue of the Rules. The Rules, we have already pointed

out, clearly recognise the right of persons like the petitioner to receive pension under the circumstances mentioned therein"

The Court finally held by reference to Article 300A of the Constitution that a person could not be deprived of property save by authority of law and held in favour of the petitioner as below:

"15. It hardly needs to be emphasised that the executive instructions are not having statutory character and, therefore, cannot be termed as "law" within the meaning of aforesaid Article 300A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold - even a part of pension or gratuity. As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different.

16. We, accordingly, find that there is no merit in the instant appeals as the impugned order of the High Court is without blemish. Accordingly, these appeals are dismissed with costs quantified at Rs. 10,000/- each."

9. During the final hearing, the party was heard in person and at length and learned counsel for respondents was also heard. It is observed at the outset that no disciplinary proceedings were initiated against the applicant when the first obvious action for respondents was to initiate such proceedings if they had suspected or wished to discipline the applicant. Although commenced, this ended with the advice of the CVO putting a full stop to any action against the applicant except to advise him on the extent to which he was accountable in respect of the money he had received and the bills he had countersigned especially where other persons and other officials were involved. Notably, the letter dated 31.10.2014 bearing No. 15-30(45)/2014-Vig. was issued with the directions of the Director General, CSIR. It is, therefore, apparent that no Disciplinary Proceedings were ever contemplated on this issue until even as early as October 2014. A perusal of the FIR shows that the applicant was shown as

the single accused in this matter. However, this directly contradicts the letter of the respondent no. 3 which suggests that the Dr. Banakar had only vicarious responsibility. In such a case, it was obligatory for the respondent no. 4, the Director to identify the students individually or as a group or in some representative capacity, who could have made the concerned manipulations or forgeries that he alleges. Nothing was done between 2012 and 2016 and no explanation for the delay has even been attempted. It appears self-evident from the facts and circumstances, that the FIR was lodged nearly four months prior to the applicant's retirement with the barely disguised intention to delay payment of benefits due to him including those covered by relevant statutes. During arguments, it was also learnt that the police could not succeed in persuading the Magistrate with the evidence in the case and investigations continuing well after three months of the FIR, and they have

been directed to file a C-Summary to close the matter, although this was only revealed during the final hearing. It is also clear that after 3 months of filing the FIR, no chargesheet had been filed to the satisfaction of Magistrate nor does it appear that any movement has taken place in this matter 17 months after filing the FIR. The fact that this fact has not been filed through additional affidavit by respondents (especially respondent no. 5) also suggests that not only have respondents taken undue personal interest in this matter but they have not come with clean hands to the Tribunal. In particular, the respondents have made no efforts either by written reply or during arguments to rebut the applicant's assertion that vigilance clearance was never denied to him and from this statement, it may be inferred that the entire excuse of vigilance clearance as a basis for granting provisional pension and then for denying and delaying gratuity, leave encashment benefits and commutation

value of pension was a thorough fraud and has been concocted by the then Director of NIO (Respondent no. 4) which was being held at that point of time by respondent 4 and was purely actuated on malafides. The exercise of power by R-4 in his capacity as Director of the Institute is then clearly an arbitrary exercise of power that was vested in him by Respondents 1 and 2 to exercise in a judicious manner to conserve the interests of respondent 1 & 2 in accordance with statutes. Even so, respondents 1 and 2 had a grave responsibility to place a check on the activities of respondent 4 to ensure that he stayed within the bounds of common sense and law and it is plainly apparent that they have failed to do so in the present case. It is also noticed as learnt during the hearing, that respondent no. 4 has retired from Government Service even prior to filing of this OA.

10. In respect of some of the benefits paid after delay, the concerned statute

itself provide for interest payment but the delay in the present case is based on extreme malafides by persons acting in personal capacity and deserve exemplary imposts. In the circumstances, respondents 2 and 5 are directed to pay interest of 12% per cent per annum on the entire withheld retirement benefits, including gratuity, of Rs. 40.5 lakhs from the date of superannuation upto date of payment by DD and 6% on such interest from the date of delivery of DD (which was done before the Hon'ble High Court in 2017) upto date of payment of interest amount so calculated. In addition, Respondent No. 2 shall pay the applicant Rs. 1000 for failing to perform his official duty of ensuring that Respondent 4 does not engage in arbitrary and illegal actions when entrusted with responsibilities of public service. Respondent No. 4 (former Director) shall also pay a personal penalty of Rs. 25,000 to the applicant for subjecting him to harassment citing fraudulent bases. For not bringing the

factual aspects on developments in the FIR to this Tribunal promptly, Respondent No. 5 shall pay a sum of Rs. 5000/- to the CAT Bar Association, Mumbai for library purposes for the lapse. The respondents 1, 2 & 5 shall pay the personal penalty affixed on Respondent 4 to the applicant in the first instance and thereafter, recover the moneys along with costs of collection and applicable interest from Respondent 4. Since all these penalties other than the sums of Rs. 1000/- and Rs. 5000/- above are purely held to be related to the malafide actions of respondent no. 4, it is also appropriate to provide liberty to respondents 1 and 2 to recover the said interest payments and costs from respondent no. 4 in any lawful and suitable manner including by treating them as arrears of land revenue. These recoveries shall be in addition to commencement of any proceedings that may be contemplated under the CCS (Pension) Rules, 1972. All the sums payable as ordered above shall be deposited in

respective accounts or handed over as DD within four weeks failing which penal interest computed at 18% shall be additionally paid.

11. The OA is accordingly disposed of as above.

(R. Vijaykumar)
Member (A)

g.m.