

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No. 21/1559/2015

Date of Order: 19.03.2019

Between:

Dr. Adapa Srinivasa Rao,
S/o. Sri A. Raja Rao, aged 67 years,
Chief Scientist (Retd.),
9-81/1, Street No.4, A 10 HMT Nagar,
Nacharam, Hyderabad – 500 076.

... Applicant

And

1. The Government of India, represented by its Secretary,
Ministry of Science and Technology,
Department of Science & Technology,
Technology Bhavan, New Mehrauli Road,
New Delhi – 110 016.
2. The Deputy Secretary,
Pensioner's Welfare,
Department of Pension & Pensioner's Welfare,
Lok Nayak Bhawan,
Khan Market, New Delhi – 110 003.
3. The Director General,
Council of Scientific and Industrial Research,
Rafi Marg, Anusandhan Bhawan,
New Delhi – 110 001.
4. The Director,
Indian Institute of Chemical Technology,
Hyderabad – 500 007.

... Respondents

Counsel for the Applicant	...	Dr. Adapa Srinivasa Rao, Party in person
Counsel for the Respondents	...	Mr. V. Vinod Kumar, Sr. CGSC
		Mr. M. Srikanth, SC for RR 3 & 4

CORAM:

<i>Hon'ble Mr. B.V. Sudhakar</i>	...	<i>Member (Admn.)</i>
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ORAL ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. Applicant has filed the OA for non grant of gratuity.
3. Applicant on retiring from the respondents organisation w.e.f. 31.12.2008 was not paid gratuity. After 6 years of retirement part payment of the gratuity was made. Reason for withholding the gratuity is that an instrument costing Rs.5,35,065 which was issued in the name of the applicant could not be traced. Applicant made several representations but of no avail and hence the OA.

The contentions of the applicant are that the respondents have not initiated any disciplinary action to recover the amount from gratuity. Applicant claims that he has handed over the items in his name to the then HOD by a note but later the note was rescinded for reasons best known to the respondents. Under threat applicant gave an undertaking for recovery of the cost of the equipment in 2014 to get part of the GRATUITY released. In similar cases respondents have waived the loss. The life span of the machine has expired by 2006 and it has no book value.

4. Respondents state that Pension and other benefits were released in time but the GRATUITY was withheld as the applicant has not submitted the 'No demand Certificate' (NDC) till 2014 though he retired on 31.12.2008. As per the norms of the organisation NDC has to be produced for release of retirement benefits. In the case of the applicant an instrument of value in lakhs was found missing by a committee in 2014. When the applicant gave an undertaking that the cost of the equipment be recovered, the balance gratuity was released in 2014. Respondents assert that the applicant's request for recovery of loss by working out depreciation cost of the equipment based on US treasury rules is

unacceptable. In fact, after release of the balance of gratuity based on the undertaking executed by the applicant, filing the OA is unfair. Applicant being responsible for the loss of the equipment he has to make good the loss.

5. Heard both the counsel and perused the documents and material papers placed on record.

6. Respondents organisation follows the norm of obtaining 'No Demand Certificate' before release of pensionary benefits. Applicant, though retired in 2008, did not submit 'No Demand Certificate' till 2014. Respondents appointed a committee to trace out equipment issued in the name of the applicant. Committee completed its job in 2014 and found that an equipment by name Gas Chromatograph of value Rs.5,35,065/- was not traceable. Applicant gave an undertaking that the loss of the equipment be recovered from the gratuity. Accordingly the cost of the equipment was recovered from gratuity and balance released in 2014. When the case came up for hearing, applicant submitted that the depreciated cost of the equipment be recovered from the gratuity and the balance released. As seen from the case records respondents have not initiated any disciplinary action for recovery of the loss of the equipment. Respondents need to prove through an inquiry that the applicant is responsible for the loss by citing the findings of the committee set up for the purpose and other relevant documents. No such steps were taken by the respondents. Without proving the same respondents holding the gratuity due to the applicant is against the basic tenets of law. Moreover, the applicant has claimed that a handing over note containing the equipments issued in his name was prepared and handed over to the stores. The note was signed by the then HOD, who is now the Director. After having done so, it is not explained by the respondents as to why the note was rescinded. Respondents claiming that it is a

tampered note would not do until it is demonstratively proved. There has been no elaboration as to what was tampered and who has tampered it along with the reasons for such tampering. Applicant has averred at 5 (g) of the OA that in similar other cases such losses were waived but in his case it has not been done. Respondents silence on this assertion is conspicuous by the absence of any rebuttal in the reply statement. Thus it appears that the applicant has been discriminated. Further, taking an undertaking from the applicant after 4 years of retirement to release some part of gratuity without the respondents giving the applicant an opportunity to prove himself innocent in a full fledged inquiry as per disciplinary norms, is untenable. It is understandable that a pensioner in the evening of his life would give an undertaking as in the present case being hapless in the circumstances in which he is placed. In fact it was for the respondents, who represent the State and being a model employer, to introspect as to whether it was proper to take such an undertaking without following rules and due process of law. Hon'ble Supreme Court has made the following observation in regard to a model employer as under, which are apt and pertinent to the case.

- i) [In Som Prakash Rekhi v. Union of India, 1981 AIR 212, 1981 SCR \(2\) 111](#), Hon'ble Supreme Court has observed thus: -

“Social justice is the conscience of our Constitution, the State is the promoter of economic justice, the founding faith which sustains the Constitution and the country is Indian humanity. The public sector is a **model employer** with a social conscience not an artificial person without soul to be damned or body to be burnt.”

- ii) 46. [In Gurmail Singh and others v. State of Punjab and others](#), it has been held that the State as a **model employer** is expected to show fairness in action.

Nevertheless, respondents organisation is a public institution which should not be put to loss. Applicant has agreed for deduction of the depreciated cost of the equipment from the gratuity. Therefore in all fairness respondents should apply the rules of depreciation prevalent in their organisation as on the date of retirement of the applicant and recover the said cost from the gratuity. The balance be released to the applicant within a period of 30 days since the applicant is a septuagenarian and procrastinating the issue further would be unfair. Applicant claimed interest for the delay in release of the gratuity citing certain judgments. We do not find merit in the argument of the applicant since he was also responsible for the delay in not submitting the NDC and his non cooperation with the committee has further compounded the delay. Therefore the judgments cited and the rules quoted are not relevant since the delay cannot be attributed solely to the respondents. Hence no interest can be allowed.

7. With the above directions the OA is allowed with no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 19th day of March, 2019

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