

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 244 of 2018

Reserved on 08.1.2019
Pronounced on 18th January, 2019

Hon'ble Ms. Jasmine Ahmed, Member-J

Sunil Kumar Saxena, aged about 60 years, S/o Sri S.P. Saxena, R/o 554/Ka/92 Arjun Nagar, Alambagh, Lucknow.

.....Applicant
By Advocate : Sri Praveen Kumar

Versus.

1. Union of India through the Secretary, Ministry of Defence, Government of India, South Block, New Delhi.
2. The Director General, Defence Estates, Raksha Sampada Bhawan, Cantt. Palam Road, New Delhi.
3. The Principal Director, Defence Estates, Central Command, 17 Carriappa Road, Lucknow Cantt, Lucknow.
4. The Director, Defence Estates, Central Command, 17 Carriappa Road, Lucknow Cantt., Lucknow.
5. The Defence Estates Officer, Lucknow circle, 30 Nehru Road, Lucknow Cantt., Lucknow.
6. Ms. Deepa Bajwa, presently posted as Principal Director, Defence Estates, Central Command, 17 Carriappa Road, Lucknow Cantt., Lucknow.

.....Respondents.

By Advocate : Sri Rajesh Katiyar

O R D E R

By means of this O.A., the applicant has sought the following main relief(s):-

“(i) to quash the impugned decision, if any, forwarding the letter dated 25.6.2018, after summoning original from the respondents with all consequential benefits.

(ii) to release all the benefits including Gratuity, final pension alongwith commutation of pension forthwith alongwith interest @ 18% p.a. from the date of due till the date of actual payment.

(iii) to release pension and pensionary benefits after update revision while extending the benefits of MACP and release arrears thereof alongwith interest @ 18% p.a. from the date of due till the date of actual payment.”

2. This is third round of litigation. The applicant joined the respondents' organization in the year 1981 and while working on the

post of SDO Grade-II on 29.6.2007 under the Defence Estate Officer, Lucknow, he came to know that the FIR has been lodged against him alleging therein that while the applicant was working as SDO during the year 2003 to 2005, he had forged and fabricated signatures of the Defence Estates Officers and conspired in cutting of 55 trees from Military Station Banbasa and also indulged in fabricating fake actions and also fraudulently sold the trees and money was not deposited in the Government account. Pursuant to the aforesaid, a charge-sheet was issued to the applicant on 8.3.2010, which was challenged by the applicant through O.A. No. 137 of 2010. The aforesaid O.A. came to be allowed vide judgment and order dated 27.10.2014. Thereafter, the applicant preferred an application for grant of third financial up-gradation under MACP scheme, but the same was denied by the respondents vide order dated 31.12.2015. Thereafter, the applicant filed another O.A. No. 71 of 2016 challenging the order dated 31.12.2015 by means of which the applicant was denied third financial up-gradation under MACP Scheme. The aforesaid O.A. was disposed of vide judgment and order dated 13.4.2017 by directing the respondents to grant the benefit of third financial up-gradation within a period of three months from the date of communication of the order if the applicant is otherwise entitled subject to final outcome of Writ petition pending before the Hon'ble High Court. On receipt of copy of order of this Tribunal, the respondent no.5 wrote a letter dated 23.2.2018 to the respondent no.3 by enclosing the letter dated 22.2.2018 seeking vigilance clearance. On 1.5.2018, the respondent no.5 again wrote a letter to the respondent no.3 for issuance of necessary instructions so that final settlement of the applicant could be made. Thereafter the office of respondent no.2 vide letter dated 24.5.2018 asked the respondent no.5 to inform the status of the Writ petition pending before the Hon'ble High Court and in furtherance thereof, the respondent no.5 vide letter dated 29.5.2018 informed the respondent no.2 stating therein that no stay has been granted by the Hon'ble High Court against the judgment and order passed by this Tribunal. But in spite of that, the applicant has not been paid third financial up-gradation under MACP and during the pendency of the aforesaid litigation, the applicant retired from service on attaining the age of superannuation. After retirement, the applicant has not been paid the amount of Gratuity, final pension and commutation of pension

on account of pendency of the aforementioned Writ petition. Hence, this O.A.

3. The respondents have contested the claim of the applicant by filing a detailed Counter Reply wherein they have stated that the applicant has already been paid a sum of Rs. 8,68,570/- vide cheque no. 950413 dated 23.7.2018 by further stating that the FIR was lodged on 10.8.2017 by the then DEO, Bareilly against the applicant and six others and on the basis thereof, Criminal Case no. 84 of 2010 was filed in the Court of CJM, Champawat and later-on charge-sheet under Rule 14 of CCS (CCA) Rules, 1965 was issued for misusing his position as public servant. The Learned CJM, Champawat vide order dated 17.1.2014 discharged all the accused including the applicant. Thereafter, the State of Uttrakhand filed a Criminal Revision No. 4/2014 before the District & Session Judge, which was allowed vide judgment and order dated 19.11.2015 by setting aside the order dated 17.1.2014 passed by the Learned CJM, Champawat. Against the judgment and order dated 19.11.2015, the applicant and others had approached the Hon'ble High Court at Nainital and while entertaining the aforesaid matter, the Hon'ble High Court has been pleased to pass an stay order staying the order passed by the Learned District & Session Judge. The applicant has also filed Misc. Criminal Application No. 907 of 2016 under Section 482 of Cr.P.C. and the same was connected with earlier Criminal Misc. Application no. 15 of 2016 vide order dated 2.8.2016. As regards payment of MACP is concerned, the respondents have stated that the vigilance clearance is a pre-requisite condition for grant of benefits under MACP scheme by referring para 18 of DoP&T O.M. dated 19.5.2009 wherein it has been observed that "in the matter of disciplinary penalty proceedings, grant of benefit under MACP scheme shall be subject to rules governing normal promotion and such case shall, therefore, be regulated under the provisions of CCS (CCA) Rules, 1965 and instructions issued thereunder." They have further pleaded that the respondent no.5 has forwarded provisional pension papers to the PCDA (Pension), Allahabad through letter dated 25.6.2018 and the same was processed, but due to pendency of criminal proceedings against the applicant and that he has been granted only interim relief by the Hon'ble High Court and the applicant has not been acquitted honourably from the charges leveled against him and as such the vigilance clearance initiated against the

applicant has not yet been finally closed. They have further averred that the Writ petition No. 1821 of 2014 filed by Union of India Vs. S.K. Saxena is still pending for final adjudication before the Hon'ble High Court. Lastly, they have stated that the claim of the applicant being bereft of merit and the same is liable to be dismissed with costs.

4. The applicant has filed Rejoinder reply negating the contentions of the respondents made in the Counter Reply while reiterating the averments made in the Original Application.

5. I have heard the learned counsel for the parties and also perused the pleadings available on record.

6. The moot question for consideration before this Tribunal is whether on account of pendency of criminal proceedings, the applicant is entitled for payment of Gratuity, commutation of pension and Full pension and also third financial up-gradation under MACP Scheme or not ?. Admittedly, a departmental charge-sheet dated 8.3.2010 has been issued to the applicant which has been quashed by this Tribunal vide order dated 27.10.2014 by observing that the witnesses mentioned in the charge-sheet and the witnesses mentioned in the FIR are the same and the charges mentioned in the charge-sheet as well as charges indicated in the FIR are also the same by further observing that all the Articles of charges mentioned in the charge-sheet as well as in the FIR are also the same and not only this, the list of witnesses are also the same. By relying upon the decision rendered in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Another wherein it has been held that Normally where the accused is acquitted honourably and completely exonerated of the charges, it would not be expedient to continue a departmental enquiry on the very same charges or grounds or evidence. The Writ petition filed by the respondents against the judgment and order of this Tribunal is still pending and no stay has been granted by staying the operation of the order. Further the order dated 31.12.2015 passed by the respondents denying the third financial up-gradation under MACP has also been quashed by this Tribunal vide order dated 13th April, 2017 passed in O.A. no. 71 of 2016.

7. Learned counsel for the applicant has placed reliance on the decision of Principal Bench in the case of Sri RamVs. Union of India &

Others decided on 14.11.2017 (O.A. no. 3517 of 2013) and decision of Lucknow Bench of the Tribunal in the case of Sharda Prasad Vs. Union of India & Others (O.A. no. 100 of 2018) decided on 26.4.2018 wherein it has been held that no judicial proceedings were instituted/pending against the applicant on the date of his retirement and that the respondent-departmental authorities were not justified in withholding the retirement gratuity and in not making the payment of final pension as well as commuted value of pension after duly considering Rule 9(4) & 6 of the CCS (Pension) Rules, 1972, Rule 69 of the CCS (Pension) Rules, 1972 Rule 4 of CCS (Commutation of Pension) Rules, 1981.

8. The case, in hand, is fully covered by the ratio laid down in the aforementioned cited cases and there is no occasion to deviate from the conclusion arrived in the aforementioned cited case.

9. In view of what has been stated hereinabove, the O.A. is disposed of with a direction to the respondents to grant third financial up-gradation under MACP to the applicant from the due date and pensionary benefits be revised accordingly and arrears thereof shall be paid. The respondents are further directed to release/sanction the Gratuity, commutation of pension and final pension which has been withheld on account of pendency of alleged criminal proceedings alongwith interest on the amount of Gratuity alone @ 8% per annum from the date of its due till the date of actual payment. The aforesaid exercise shall be completed within a period of four months from the date of receipt of certified copy of this order. There shall be no order as to costs.

**(Ms. Jasmine Ahmed)
Member-J**

Girish/-