

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 2112/2018

Reserved on 07.12.2018
Pronounced on 03.01.2019

Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N.Terdal, Member (J)

Sh.Mahesh Kumar Sharma
(Aged about 63 years)
S/o (Late) Sh. Jai Dev Sharma,
R/o H.No. 4, Maheshwari Apartments,
Sector-14, Rohini, Delhi-110085
[Presently retired on the substantive post of
A.E (Civil) from DDA (Group 'B' post).

... Applicant

(By Advocate Shri R.A.Sharma)

VERSUS

1. Delhi Development Authority,
Through its Chairman,
(Lt. Governor of Delhi),
6, Raj Niwas Marg, Delhi-110054.
2. The Commissioner (Personnel),
DDA Vikas Sadan (B- Block),
Gr. Floor, Near INA,
New Delhi-110023.

... Respondents

(By Advocate Mr. Arun Birbal)

ORDER

Hon'ble Mr. S.N.Terdal, Member (J):

We have heard Mr.S.A.Sharma, counsel for applicant and Mr. Arun Birbal, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In this OA, the applicant has prayed for the following reliefs:

- “(a) Quash and set aside the order dated 07.05.2018(Ann.A-1).
- (b) Quash and set aside the show cause notice dt.29.08.2017 (Ann.A-2).

- (c) Pass in favour of the applicant any other order or direction as deemed fit and proper in the facts & circumstances of this case in the interest of justice.
- (d) Allow costs in favour of the applicant."

3. The relevant facts of the case are that because of his involvement in offences punishable under Section 120-B IPC read with Section 13(2) and 13 (1) (d) of the Prevention of Corruption Act, as sufficient material was available to launch prosecution, a sanction was given for prosecuting the applicant vide order dated 19.05.2005. Subsequently when the criminal Court convicted the applicant on the above charges vide order dated 17.12.2015 and sentenced him to undergo simple imprisonment for a period of 3 years 6 months and imposed a fine of Rs.5 lacs for the above said offences, a Show Cause Notice (SCN) was issued to the applicant vide order dated 4.08.2017 proposing to impose a penalty of permanently withholding pension and recovery of gratuity in full as the applicant had retired on 31.05.2015. After considering his representation to the SCN dated 29.08.2017 vide order dated 7.05.2018 the proposed penalty was imposed on him in view of the law laid down by the Hon'ble Supreme Court in the case of **Union of India Vs. Ramesh Kumar** (1997) 7 SCC 514.

4. The counsel for the applicant vehemently submitted that as he has filed an appeal against the conviction in the criminal Court and the appeal is still pending. As such issuing SCN and imposing penalty only on the basis of the judgment of the trial Court is bad in law. He has further submitted that though pension could be withheld, but however the gratuity should not have been directed to be recovered. But,

however, from the perusal of the Pension Rules, it is clear that even gratuity can be withheld.

5. In view of the facts of the case narrated above and in view of the law laid down by Hon'ble Apex Court referred to above and relied upon by the respondent authorities and in view of the fact that the counsel for the applicant has not brought to our notice violation of any procedural rules or principles of natural justice, the impugned orders cannot be faulted, simply because the appeal is pending.

6. Accordingly, OA is dismissed. No order as to costs.

(S.N.Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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