

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-4342/2017

Reserved on : 19.12.2018.

Pronounced on : 02.01.2019.

Hon'ble Ms. Praveen Mahajan, Member (A)

Sh. P.K. Pun, aged 60 ½ years,
S/o Sh. Om Prakash Pun,
R/o 14-D, Pocket-B, Dilshad Garden,
New Delhi-110095.

(Retired as Assistant Engineer(Civil),NDMC) Applicant
(through Sh. K.L. Manhas, Advocate)

Versus

1. New Delhi Municipal Council
Through its Chairman,
Palika Kendra, Sansad Marg,
New Delhi-110001.
2. The Secretary,
NDMC, Palika Kendra,
Sansad Marg,
New Delhi-110001. Respondents

(through Sh. Yogesh Pachauri with Ms. Sriparna Chatterjee,
Advocate)

ORDER

Facts leading to filing of this current O.A. are that the applicant was appointed as Junior Engineer (Civil) in the New Delhi Municipal Council (NDMC) on 22.03.1978. He was promoted to the post of Assistant Engineer (Civil) on 02.11.2004. Vide order dated 10.07.2017, the respondents refixed the pay of the applicant in the DTL pay

scale w.e.f. 01.04.1998 and fixed his basic pay as Rs.39100/- + grade pay of Rs.7600/- w.e.f. 01.07.2015. The applicant retired from the NDMC on 31.07.2017.

2. The applicant submitted a representation to respondent No.1 on the date of his retirement i.e. 31.07.2017 stating that all his retiral dues have been withheld by the respondents on the ground that a case for major penalty is in progress against him. The applicant averred that he is entitled to at least grant of his leave encashment as has been done in the cases of his similarly placed colleagues (Sh. J.K. Katyal, retired AE(C) and Sh. P.B. Lal, retired EE(C), who are also facing similar proceedings. When no response was forthcoming, the applicant filed a detailed representation on 30.10.2017 to respondent No.2 explaining the financial hardships being faced by him due to non-release of his leave encashment amount.

3. The applicant has submitted that Hon'ble Supreme Court and Central Administrative Tribunal have clearly laid down that an employee cannot be deprived of his retiral dues without the authority of law. He has placed reliance on the judgments of Hon'ble Supreme Court in the case of **Vijay L. Malhotra Vs. State of U.P. & Ors.**, JT 2000(5)SC 171, **D.D. Tiwari through LRs Vs. Uttar Haryana Bijli Vitaran Nigam Limited & Ors.** decided on 01.08.2014 and **State of U.P. & Ors. Vs. Dhirendra Pal** decided on 15.11.2016 holding that

employee are fully entitled to interest on the delayed payment of his retiral dues.

4. Aggrieved, the applicant has filed the current O.A. seeking the following reliefs:-

“To direct the respondents to release the entitled amount of leave encashment to the applicant within a month alongwith the interest @12% per annum for the period of delayed payment.”

5. In the counter affidavit, the respondents submit that the applicant was served with Memorandum dated 10.04.2015 proposing to hold an inquiry against him under Rule 14 of the CCS (CCA) Rules, 1965. The applicant retired from service on 31.07.2017 and his leave encashment was withheld in terms of Rule 39(3) of the CCS (Leave) Rules, 1972.

6. The respondents state that in cases of similarly placed persons, namely, Sh. J.K. Katyal and Sh. P.B. Lal (wherein disciplinary proceedings are also pending), the payment was made (to the said officers) due to oversight of correct rule position, which was virtually irreversible. Thus, the plea taken by the applicant for claiming release of leave encashment by citing their cases is not justified.

7. I have gone through the facts of the case carefully and considered the rival submissions.

The applicant, Sh. P.K. Punni retired as Assistant Engineer (Civil) from the NDMC on 31.07.2017. The applicant is aggrieved due to denial of his leave encashment by the respondents. The respondents state that the applicant is undergoing disciplinary proceedings under Rule-14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and his leave encashment has been withheld in terms of Rule-39(3) of CCS (Leave) Rules, 1972.

7.1 The applicant, who was Assistant Engineer during the relevant time has been charged with manipulation and favouring the contractor M/s China Railway Shisiju Group Corporation by accepting poor quality of concrete and submitting the bill for full payment for the same. It has been alleged that instead of taking action against the contractor, he submitted fabricated test registers so that full payment may be made to the Contractor.

7.2 The applicant in OA was issued a Memorandum on 10.04.2015 (Annexure-A9(Colly.)) enclosing the following articles of charge against him. The same read as under:-

“ARTICLE-1

He, as Assistant Engineer (Civil), failed to get executed the Item of cement concrete while supervising the work, “Improvement/upgradation of Shivaji Stadium. SH: - Construction of sport facility block, Hockey Stadium, Warm up pitch with two level basement for parking including Electrical, Fire-fighting & Protection, HVAC, lifts etc. complete as composite work” as per specifications and conditions of the agreement and favoured M/s. China Railway Shisiju Group Corporation, the contractor by accepting the poor

quality of concrete, submitting the bill for full payment of the same and fabricated/got fabricated the Test Registers instead of taking action against the said contractor and getting improved the quality of work.

ARTICLE-2

He, as Assistant Engineer (Civil), in connivance with S/Sh. V.K. Gulati, the then EE(C) and Roshan Lal, JE(C) manipulated the cement concrete cores which were collected on 05.10.2009 and duly sealed and were marked with Emblem of Govt. of India, Central Vigilance Commission, New Delhi by the concerned Technical Examiner of CTE for testing,. Samples of the cement concrete core were sent to M/s National Council for Cement and Building Materials in place of Shriram Institute of Industrial Research, that too after more than three months without mentioning the seal of Govt. of India, Central Vigilance Commission, New Delhi's Emblem on it, as was directed by the said Technical Examiner of CTE. The results of cores indicate much higher strength than required (46.52 MPa to 54.00 MPa for M30 grade concrete against 34.125 Mpa).

ARTICLE-3

He, as Assistant Engineer (Civil), failed to supervise the working of the Third Party Quality Assurance Agency, M/s SGS India Pvt. Ltd. which was engaged to have independent comprehensive check on the quality of all the works so that all tests are carried out in systemic manner as per specifications in order that nothing is overlooked while carrying out the work "Improvement/upgradation of Shivaji Stadium. SH: -Construction of sport facility block, Hockey Stadium, Warm up pitch with two level basement for parking including Electrical, Fire-fighting & Protection, HVAC, lifts etc. complete as composite work" for Common Wealth Games, 2010 but during the inspection by CTE, all the cement concrete cubes failed during tested, defeating the very purpose of engaging TPQA and favoured the contractor for not getting complied with the conditions of the Agreement with the said Agency and submitting the bill for full payment.

ARTICLE-4

He, as Assistant Engineer (Civil), failed to implement/get implement the various conditions of the contract during execution of the work, "Improvement/upgradation of Shivaji Stadium. SH: -Construction of sport facility block, Hockey Stadium, Warm up pitch with two level basement for parking including Electrical, Fire-fighting & Protection, HVAC, lifts etc. complete as composite work" as per the agreement with M/s China Railway Shisiju Group Corporation, the contractor.

ARTICLE-5

He, as Assistant Engineer (Civil), failed to supervise/to have superintendence over his subordinates in getting executed the work, "Improvement/upgradation of Shivaji Stadium. SH: Construction of sport facility block, Hockey Stadium, Warm up pitch with two level basement for parking including Electrical, Fire-fighting & Protection, HVAC, lifts etc. complete as composite work, " as per the specifications mentioned in the agreement with M/s China Railway Shisiju Group Corporation, the contractor.

The above misconduct on the part of Sh. P.K. Punn, Assistant Engineer (Civil), Civil Engineering Department, New Delhi Municipal Council, New Delhi amounts to unbecoming of the Council Employee. He has thus violated the provisions of Rule 3 of CCS (Conduct) Rule- 1964."

Annexure-2 of Memorandum of Charges dated 10.04.2015 further elaborates in detail how the applicant in OA failed to maintain devotion to duty by not following the necessary directions/guidelines in getting the samples tested from the designated laboratory viz. Shriram Institute of Industrial Research.

8. During the course of hearing, learned counsel Sh. Yogesh Pachauri with Ms. Sriparna Chatterjee emphasized that due to extremely serious lapses on part of the applicant, the quality assurance and quality control of the work could not be carried out in a systematic manner. It was emphasized that the entire tender amount of the work was to the tune of Rs. 1,60,27,16,430/- but only an amount of Rs.3.44 cores could be withheld as compensation for delay in the absence of proper recommendation from the applicant. It was forcefully argued that there are numerous instances on record to show that the applicant favoured the contractor M/s China Railway Shisiju Group Corporation against the provisions of the agreement, and did not take or recommend a corrective action against the aforementioned contractor for slow progress of work and also for the sub-standard quality material being used, which resulted in huge financial loss to the respondents.

During the course of hearing learned counsels for the respondents relied upon the following judgments:-

- (i) **V.K. Gulati** Vs. **NDMC** (OA-1470/2018) decided by Principal Bench of CAT on 19.12.2018.
- (ii) **Director Genjeral of Ordnance Services & Ors.** Vs. **P.N. Malhotra**, JT 1995(2)SC 98.
- (iii) **P.K. Mehra** Vs. **GNCTD** (OA-1663/2013) decided on 16.12.2014.

9. Sh. K.L. Manhas, the learned counsel for the applicant, on the other hand, strongly argued that out of the other people, who were also charge sheeted along with the applicant, two of his (the applicant) similarly placed colleagues, namely, (Sh. J.K. Katyal, retired AE(C) and Sh. P.B. Lal, retired EE(C), who are also facing similar proceedings in the NDMC have received their leave encashment whereas the applicant has been arbitrarily discriminated again.

10. The leave encashment of the applicant has been withheld as per provisions of Rule-39(3) of CCS (Leave) Rules, 1972, which stipulates as under:-

"The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any."

10.1 It cannot be disputed that the charges against the applicant are serious. The possibility of some money becoming recoverable from him on conclusion of the proceeding cannot be ruled out. There is also a possibility that the said amount may not be fully recoverable from other retiral dues of the applicant like his gratitude. Hence, action of the respondents for non release of leave encashment dues to the applicant seems justified.

11. As far as release of leave encashment to the other alleged accomplices of the applicant is concerned, the respondents have admitted that the same was done inadvertently for which they must take appropriate redeemable steps, as per law.

12. In view of the aforementioned facts, the request of the applicant to release the leave encashment amount to him is rejected. O.A. is dismissed. No costs.

(Praveen Mahajan)
Member (A)

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