

**Central Administrative Tribunal
Principal Bench**

OA No. 218/2018

**Reserved on: 02.05.2019
Pronounced on: 12.07.2019**

Hon'ble Mr. Mohd. Jamshed, Member (A)

Vinay Kumar Bawa,
Superintendent (Retired)
Aged about 63 years,
G-20 Naraina Vihar,
New Delhi – 110028.

...Applicant

(By Advocate: Ms. Ekta Kapoor)

Vs.

Commissioner of Central Excise (Delhi – I).
Central Revenue Building,
I.P. Estate,
New Delhi.

...Respondent

(By Advocate: Mr. Rajinder Nischal)

ORDER

Mohd. Jamshed, Member (A):-

This OA has been filed by the applicant seeking the following reliefs:-

"a) Direct the learned Respondent to issue final Pension Payment Orders and disburse the same up to date;
b) Grant interest @ 18% or as deemed fit by this Hon'ble Tribunal on all the outstanding dues;
c) Impose cost on learned Respondent for not observing the Orders of the Hon'ble Tribunal;
d) Pass such other or further order(s) in favour of the Applicant as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the instant case and in the interest of justice."

2. The applicant has submitted that he retired as Superintendent of Customs and Central Excise Department by seeking voluntary retirement under Rule 48A of the Central Civil Service (Pension) Rules, 1972. The respondent accepted the voluntary retirement notice of the applicant w.e.f. 12.10.2009. It is submitted by the applicant that he furnished all the necessary documents for obtaining retiral benefits. As no action was taken by the respondent, the applicant served a legal notice on the respondent for release of his retiral benefits along with interest on 09.09.2013. The applicant, thereafter, filed OA No. 483/2014 for issuance of direction to respondent for fixation and disbursal of pension and other terminal benefits to the applicant. This Tribunal vide order dated 29.06.2015 disposed of the same with directions to the respondent to take decision on the period applicant remained on 'leave not due' and to settle his terminal

benefits as expeditiously as possible preferably within a period of three months.

3. In terms of the order of this Tribunal, the respondent vide order dated 25.05.2016 passed order for fixation of provisional pension and payment of arrears. The applicant has submitted that only the provisional pension has been provided and the respondent has not yet fixed his final pension.

4. Aggrieved by this action of the respondent the applicant filed the present O.A. seeking the relief in terms of grant of final pension payment along with 18% interest on outstanding dues and delayed payments.

5. The respondent in their counter reply has indicated that the applicant has qualifying service of 30 years 08 months and 05 days w.e.f. 05.12.1973 to 10.08.2004. Further, GPF amount of Rs. 1513478/-, which is part of pensionary benefits has already been paid to the applicant. However, no other benefits could be paid due to pending case of unauthorised absence of more than five years against the applicant. Provisional pension has also been paid to the applicant regularly w.e.f. 12.10.2009 which is the date of applicant's voluntary

retirement. It is also submitted that retiral benefits are subject to final decision of the Competent Authority on the regularization of unauthorised absence of the applicant. Provisions of Rule 83, it is submitted by the respondent is not applicable in this case as the same is covered under provision of Rule-9 and 69 of the CCS Pension Rules 1972 in view of the charge sheet issued to the applicant.

6. Learned counsel for the applicant has argued that he had opted for voluntary retirement due to various physiological disorders and served a notice for the same on 28.01.2008, requesting discharge from service. Although respondent accepted the applicant's notice for voluntary retirement w.e.f. 12.10.2009, no orders were passed for release of his retiral benefits for a number of years and only after the directives of this Tribunal, the respondent vide order dated 25.05.2016 provided provisional pension to the applicant. It is, further, submitted that the applicant has suffered due to non payment of final pension and other retiral dues, which are admissible to him, under Pension Rules. Learned counsel for the respondent argued that the voluntary retirement of the applicant has been accepted by the Competent

Authority w.e.f. 12.10.2019. The retiral benefits and final pension could not be granted to the applicant in view of the charge sheet and impending decision of the Competent Authority on regularisation of the unauthorised absence of more than five years of the applicant.

7. It is, further, argued that in terms of Rule-69 only provisional pension could be provided and no gratuity can be paid until the conclusion of the departmental proceedings. It is, further, stated that the provisional pension is being paid and arrears of provisional pension has also been paid along with GPF amount of Rs. 1513478/-, to the applicant. However, the decision to grant regular pension and other retiral benefits shall be taken after the final decision of the Competent Authority on regularisation of the unauthorised absence of the applicant.

8. Heard Ms. Ekta Kapoor, learned counsel for the applicant and Mr. Rajinder Nischal, learned counsel for the respondent and perused the records.

9. The applicant worked as superintendent under Commissioner of Central Excise. He sought voluntary

retirement in view of various physiological disorders that he was suffering from and served notice on the respondent on 28.01.2008. His voluntary retirement was, accepted w.e.f. 12.10.2009. Thereafter, no action was taken by the respondent in terms of releasing the retiral benefit and pension to the applicant. Aggrieved by this action of the respondent, the applicant approached this Tribunal by filing OA No. 483/2014 seeking similar relief. The Tribunal vide its order dated 29.06.2015 disposed of the OA with the directives to the respondent to take decision regarding the period in which the applicant remained on 'leave not due' and to settle his terminal benefits as expeditiously as possible preferably within a period of three months. However, as it appears no action was taken on the directives given by this Tribunal and the respondent vide his letter dated 25.05.2016 fixed the provisional pension and paid the arrears thereof. The respondent had earlier paid the GPF amount of Rs. 1513478/- on 04.02.2011, to the applicant.

10. It is, however, evident that the directives passed by the Tribunal on 29.06.2015 directing the respondent to take decision regarding the period applicant remained on 'leave not due' and to settle his terminal benefits has yet

not been done. Instead of filing contempt petition in this connection, the present OA has been filed by the applicant. Be that as it may, although, the respondent in their counter reply have mentioned that regular pension and pensionary benefits will be processed on final decision of the Competent Authority on the regularisation of the unauthorised absence of the applicant, the letter addressed by the Under Secretary to the Chief Commissioner dated 18.01.2018 indicates as under:-

"2. The matter has been considered in the Board. You are requested to process the case of Sh. V. K. Bawa, for his regular pension and terminal benefits on the basis of last pay drawn on record (as on 11.08.2004) subject to final decision of the competent authority on the regularization of unauthorized absence for the period from 11.08.2004 to 11.10.2009 (more than five years). You are also requested to intimate whether his pensionary benefits have been paid or not.

3. This issues with the approval of Member (Admn.), CBEC."

11. From this letter, it is evident that the Board (CBEC) has considered the matter and directed that the case of the applicant should be processed for his retiral benefits on the basis of last pay drawn subject to final decision on regularisation of the period of absence from 11.08.2004 to 11.10.2009.

12. The stand taken in the counter affidavit by the respondent appears to be in contradiction to the Ministry of Finance letter dated 18.01.2018. The respondent

should have acted on the instructions of this letter and granted retiral benefits to the applicant as due. The fact that the applicant has been issued a charge sheet has not been stated in the OA. The respondents have only made a passing reference in their counter reply about the charge sheet having been issued to the applicant. The charge memorandum and the progress of the disciplinary proceedings have also not been communicated.

13. In view of the above mentioned the OA is disposed of with the directives to the respondent that they will process the case of the applicant for his regular pension and retiral benefits in terms of Ministry of Finance letter dated 18.01.2019. The respondent is also directed to finalise ongoing disciplinary proceedings, if any, and decide the period of unauthorized absence of the applicant for the period from 11.08.2004 to 11.10.2009 within three months from the date of receipt of certified copy of this order. There shall be no order as to costs.

**(Mohd. Jamshed)
Member(A)**

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