

CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

O.A.NO.060/00888/2018

Orders pronounced on:04.07.2019
(Orders reserved on: 31.05.2019)

CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

Pradeep Kumar Bhagat

S/o late Sh. M.R. Bhagat,

aged 59 years,

r/o House No. 1601, Sector-18,

Chandigarh-160018.

Applicant

Versus

1. The Administrator, U.T. Chandigarh,
Sector-6,
Chandigarh-160001.
2. The Home Secretary-cum-Secretary Technical Education,
Union Territory Secretariat,
Sector-9, Chandigarh-160009.
3. Accountant General, (A&E), U.T. Chandigarh, Sector 17-E,
Chandigarh-160017.

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Respondents

**Present: Mr. D.R. Sharma, Advocate, for the applicant.
Mr. G.S. Chhina, Advocate, for respondents No.1&2.
Mr. G.S. Sidhu, Advocate for Mr. I.S. Sidhu, Advocate,
for R.No.3.**

ORDER
(BY HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)):

The applicant has invoked the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, seeking quashing of the impugned order dated 19.7.2018 (Annexure A-9) and 26.7.2018 (Annexure A-11), imposing 20% cut in pension and that the respondents be directed to release his retiral dues like full pension w.e.f. 1.1.2018, leave encashment, Commuted Value of Pension and gratuity after deducting a sum of Rs.2,54,994/- towards retention of government accommodation, with interest @ 12% per annum w.e.f. 1.1.2018 to the actual date of payment.

2. The facts of the case are largely not in dispute. The applicant joined service as Assistant Professor on 26.10.1994. He was, later on, re-designated as Associate Professor w.e.f. 1.1.2006. On 1.12.2009, he was given charge of Officiating Principal till 29.9.2017. He was to retire on superannuation on 31.12.2016. After a years' extension, he retired on 31.12.2017. At that time, no disciplinary / judicial proceedings were pending against him.

3. On submission of requisite pension papers, the amount standing in General Provident Fund (GPF) was released in May, 2018. However, since the benefits like Death-cum-Retirement Gratuity (DCRG), Leave encashment, CVP, and pension were not released, the applicant submitted a representation dated 12.6.2018 (Annexure A-3) to release the due benefits. Vide letter dated 14.6.2018 (Annexure A-4), it was informed that outstanding dues of Rs.3,87,998/- were pending against the applicant and as such he was asked to deposit the same. The applicant requested vide letter dated 21.6.2018 (Annexure A-4) that penal rent of Rs.2,78,734/- be kept in abeyance till decision on his representation. It was followed by another representation dated 4.7.2018 (Annexure A-6). Vide letter dated 19.7.2018 (Annexure A-7), the applicant was asked to reconcile the

Students Amalgamated Funds (SAF). The applicant claims that being Head of Department (HoD), he had nothing to do with SAF issue, as it was managed by one Jaspal Singh and there is a procedure to route the file by College Bursar. For mis-management, Cashier had already been charge-sheeted on 20.9.2017 to which reply was filed on 29.9.2017 (Annexure A-2). The applicant was asked to clear the dues to the tune of Rs.3,87,998/-, vide letter dated 19.7.2018 (Annexure A-8). In reply, applicant deposited a sum of Rs.80,114/- and Rs.29,150/- for Library and Computer Sections respectively. He requested that balance of Rs.2,54,994/- be deducted from DCRG. Ultimately, vide letter dated 19.7.2018 (Annexure A-9) the respondent no.2 sanctioned only provisional pension @ 80% and vide letter dated 26.7.2018 (Annexure A-11), provisional pension was released. Hence the O.A.

4. Respondents No.1 and 2 have filed a joint reply. They submit that a complaint was received against the applicant vide memo dated 6.12.2017 regarding some administrative and financial irregularities (Annexure R-1). His pension papers were received in Technical Education Department on 26.12.2017 (Annexure R-2) which was forwarded to Advisor to Administrator-cum-Chief Vigilance Officer (AA-cum-CVO) for issuance of vigilance clearance vide letter dated 19.1.2018 (Annexure R-3). As per documents, outstanding dues were pending against the applicant relating to financial and administrative irregularities. He was also asked from time to time to clear the dues but to no avail. Since, the Vigilance Clearance Certificate of the applicant has not yet been received, and veracity of allegations against applicant is being ascertained, therefore, pension papers were not sent to Accountant General, U.T. Chandigarh for retiral dues. Even as on date, a sum of Rs.2,78,734/- is pending against the applicant as per memo dated 14.2.2019 (Annexure R-6). Thus, retiral dues were not released to the applicant due to non release of Vigilance Clearance. Thus,

only provisional pension of 80% was released to the applicant. Short reply filed by respondent no.3 is also on similar lines.

5. I have heard the learned counsel for the parties at length.

6. Mr. Sharma, learned counsel appearing for the applicant vehemently argued that the action of the respondents in not releasing retiral benefits and 100% pension, even when there was nothing against the applicant on the date of retirement, is totally illegal, arbitrary and colourable exercise of power at the hands of the respondents. To elaborate his submission, he explained that mere non issuance of vigilance certificate cannot be taken to be pendency of or initiation of disciplinary proceedings against the applicant. To buttress his submissions, he placed reliance upon a judgment passed by this Tribunal in O.A.No. 1480-PB-2013 (**VIJAY KUMAR SHARMA VS. UNION OF INDIA & OTHERS**) decided on 16.4.2015 and the Hon'ble jurisdictional High Court decisions in the cases of **ATAM BODH SHARMA V S. STATE OF HARYANA & OTHERS** (CWP no. 3567/2006) decided on 9.10.2006, **RAJINDER KUMAR DANIA VS. STATE OF PUNJAB & OTHERS** (CWP No. 14185/2010) decided on 18.9.2012 and **L.R. DHAWAN V S. STATE OF HARYANA & OTHERS**, 1996 (3) SCT, 11. He submitted that pension and retiral dues are not a bounty and has to be released on retirement of employee, without any delay and it cannot be withheld only on the ground of possibility of initiation of a departmental proceedings. For this, reliance is placed on **BOOTTA RAM, TEHSILDAR (SALES) AND OTHERS VS. STATE OF PUNJAB**, 1996 (2) RSJ 63.

7. Per contra, learned counsel for respondents, argued that the respondents are well within their right to withhold the retiral benefits in terms of Rule 2.2 (c) of the Punjab Civil Services Rules, Volume-II. They submitted that the respondents have already released 80% provisional

pension to the applicant, and they cannot release more than that what had already been accorded in his favour.

8. I have given my thoughtful consideration to the entire matter and perused the pleadings available on record and the judgments cited thereupon with the able assistance of the learned counsels appearing for the parties.

9. The short question that involves for determination in this case is as to whether, on the plea of non issuance of vigilance clearance, the department can withhold the retiral benefits of a retiree, in terms of Punjab Civil Services Rules or not?

10. To answer the indicated question, rule 2.2 (b) of the Punjab Civil Services Rules, is reproduced below, as the same is applicable to the employees / retirees of Chandigarh Administration:

"2.2. Recoveries from pensions:

(a) xx xx xx

(b) The Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if, in a departmental or judicial proceeding, the pensioner is found guilty of grave mis-conduct or negligence during the period of his service, including service rendered upon reemployment after retirement:

Provided that:-

(1) Such departmental proceedings, if instituted while the officer was in service, whether before his retirement or during his re-employment, shall after the final retirement of the officer, he deemed to be a proceeding under this article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service;

(2) Such departmental proceedings, if not instituted while the officer was in service whether before his retirement or during his re-employment-

(i) shall not be instituted save with the sanction of the Government;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the officer during his service.

(3) No such judicial proceedings, if not instituted while the officer was in service, whether before his retirement or during his re-employment shall be instituted in respect of a cause of action which arose or an

event which took place more than four years before such institution....."

Explanation: For the purpose of this rule-

(a) A Departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him or, if the officer has been placed under suspension from an earlier date, on such date; and

(b) A Judicial proceedings shall be deemed to have been instituted.-

(i) in the case of criminal proceedings, on the date on which the complaint is made or a challan is submitted to a criminal court; and

(ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made to civil court.

Note: As soon as proceedings of the nature referred to in the above rule are instituted, the authority which institutes such proceedings should without delay intimate the fact to the Accountant General."

Rule 8.21 of PCS Rules (Leave Encashment)

"8.21(a) Leave at the credit of a Government employee in his leave account shall lapse on the date of his retirement: Provided that the Government employee;-

xxx xxx xxx

(aa) Notwithstanding anything contained in sub-rule (a) the authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of Government employee who retires from service on superannuation while under suspension or while disciplinary or criminal proceedings are pending against him, if in the opinion of such authority, there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him and on conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any."

11. Perusal of the above rules makes it more than clear that pending departmental or judicial proceedings, the employer is well within its right to withhold the retiral benefits i.e. gratuity or DCRG and leave encashment. Now, the question is as to what would be the stage where we can say that departmental proceedings have been instituted. This is made clear in rule specifically explaining that a departmental proceedings shall be deemed to be instituted on the date on which statement of charges is issued to the officer or pensioner, or if the officer has been placed under suspension, from an earlier date on such date. It is not in dispute that the applicant has

not ever been issued any charge sheet by the respondents on the indicated issues raised for clearance of Vigilance Clearance. In these circumstances, I have no hesitation in holding that the respondents could not withhold the amounts of retiral dues / pension as the elements for invoking of rule 2(b) reproduced above are totally missing in this case and mere non issuance of Vigilance Clearance, cannot be taken as a ground to withhold the dues and the same cannot be taken to be initiation of disciplinary proceedings.

12. The Court finds merit in the plea taken by the learned counsel for the applicant that in terms of pointed Rule 2.2(b) and 2.2 (c) of the PCS Rules, the amount of gratuity and leave encashment due to the applicant could not have been withheld as on the date of retirement no charge-sheet had been served upon him. This was the view taken by Hon'ble Jurisdictional High Court in the case of **RAM NARAIN DUA VS. DAKSHIN HARYANA BIJLI VITRAN NIGAM LTD. & OTHERS**, 2007(1) SCT 161. Not only that, similar view was taken in **NARINDER DEV SHARMA VS. STATE OF PUNJAB AND ANOTHER**, 1996(1) SCT 623 as also another judgment in **L.R. DHAWAN VS. STATE OF HARYANA AND OTHERS**, 1996(3) SCT 11. In the case of L.R. Dhawan's (Supra), the Court has held in the following terms:-

"Gratuity due to an employee is payable to him on the date of retirement. Payment of the gratuity can be deferred in a case where the employee is under cloud at the time of his retirement, namely, in a case where he is facing departmental inquiry or judicial proceedings. If no inquiry or judicial proceedings is pending on the date of retirement of the employee, the Government/employee does not have any authority to withhold the payment of gratuity. Similarly, full pension payable to an employee can be withheld during the pending of the departmental inquiry or judicial proceedings. The Government is also possessed with the power to withhold the pension or a part thereof or recover any pecuniary loss caused to the Government from the pension payable to an employee in case such Government servant is found guilty of grave misconduct or negligence in the discharge of his duties during the course of service. Deduction from the pension can be made even on the basis of an inquiry which may be initiated against the employee after his retirement but subject to the fulfillment of the conditions enumerated in proviso to Rule 2.2(b). However, proceedings initiated against an employee under proviso to Rule 2.2 (b) cannot be made a ground for Withholding of death-cum-retirement gratuity or the pension payable to an employee on the date of his retirement. In the case in hand, no inquiry was pending against the petitioner on the date of his retirement. The proceedings have been initiated against him

after over three years and nine months of his retirement from service. That may ultimately lead to the withholding of the pension or part thereof or recovery there from in terms of Rule 2.2(b) but there does not appear to be any legal justification for withholding of death-cum-retirement gratuity payable to the petitioner on the ground that inquiry has been initiated against him under Rule 2.2(b) with the issue of notice dated 26.12.1986."

13. Similarly, a Division Bench of this Tribunal in O.A. No. 1480-PB-2014 titled **VIJAY KUMAR SHARMA VS. UOI ETC.** decided on 16.4.2015 (authored by me) has decided the similar issue in the following terms :-

"10. A perusal of the above extraction makes it clear that the legislature has given power to the respondents to withhold the pension/DCRG of a retiree, if any pecuniary loss is caused to the government and in a departmental or judicial proceedings, it is established that the pensioner is found guilty of grave misconduct or negligence during his service including service rendered on re-employment after retirement. Therefore, it can safely be concluded that if on date of retirement, the inquiry is pending or he has already been held guilty of charges on a pecuniary loss to the department, then the respondents can withhold the amount of DCRG otherwise under the above rule, they are precluded from doing so. The above Rule 2.2 (b) of the PCS Rule, came for interpretation before the Hon'ble High Court in case of L.R. Dhawan's case (supra), wherein the Hon'ble High Court in para 4 has recorded a categorical finding that if a departmental proceeding has been initiated, after retirement of employee, then in terms of 2.2(b) of the PCS Rules, the respondents cannot withhold the amount of DCRG as it is due on the date of retirement because on that date there was nothing against an employee. Following the above law, subsequently, in case of Rajinder Kumar Dania's case (supra) action of the respondents therein was quashed and direction was issued to the department to release the amount as same had been withhold without there being pendency of any inquiry/judicial proceeding against the applicant on the date of retirement. The commencement of criminal proceeding or departmental proceeding has also been decided in case of Atma Bodh Sharma's case (supra) wherein the Hon'ble Division Bench have laid down that in terms of 2.2(b) of the PCS Rules, the department can withhold the amount if the employee is found guilty of grave misconduct or guilty of causing pecuniary loss to the department during the service. Explanation of 2.2(b) of PCS Rules provides that departmental proceeding can be deemed to be instituted on the date on which the statement of charges is issued to the officer or pensioner or the officer has been placed under suspension from an earlier date, on such date and a judicial proceedings shall deemed to be instituted (i) in the case of criminal proceedings on the date on which the complaint on which Magistrate takes cognizance, is made and (ii) in the case of civil proceeding, on the date of presentation of the plaint in the court.

11. In the light of the above legal proposition, we have considered the present case. It is clear that there was nothing against the applicant on date of his retirement i.e. 31.08.2012. After a period of nine months, for the first time, the respondents issued a letter asking the applicant to hand over the record. Subsequently, on 27.09.2013, the respondents passed the order to withhold the DCRG till further orders. During the pendency of the O.A, the competent authority accorded the sanction to withhold the gratuity and DCRG. Suffice to record that on date of retirement of applicant, there was nothing against him, therefore, in terms of 2.2(b) of the PCS Rules, the respondents could not withhold the amount of DCRG as held in case of L.R. Dhawan's (supra) and subsequently, in case of Rajinder Kumar Dania(supra)."

14. The learned counsel for the respondents have not denied the fact that on the date of retirement of the applicant, no charge-sheet had been issued

to him. On the contrary, they submit that even as on date, no charge sheet has been issued and amounts have been withheld only on the ground of non release of vigilance clearance. Considering the well settled principle that the initiation of departmental proceedings takes effect from the date a charge-sheet is served upon an employee/retiree, there was no justification, at all, from any angle, with respondents to withhold the indicated pensionary benefits of the applicant which is in violation of rules aforesaid. The other decisions quoted by applicant, and noticed above, also support the case of the applicant.

15. In view of the aforesaid discussion, this O.A. is allowed. The impugned orders to the extent of withholding of retiral dues are quashed and set aside. The respondents are directed to release full retiral dues of the applicant, after adjusting the amounts deposited by applicant and requested by him for adjustment, within a period of one month from the date of receipt of a certified copy of this order. The parties are, however, left to bear their own costs.

(SANJEEV KAUSHIK)
MEMBER (J)

PLACE: CHANDIGARH
DATED: 04.07.2019

HC*