

CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH

OA 1617/2003



New Delhi, this the 16th day of January, 2004

Hon'ble Sh. Sarweshwar Jha, Member (A)

Lala Ram Verma
S/o Sh. Ganga Dan
(Retired from Govt. Co-Educational
Middle School, Govind Puri, Kalkaji
New Delhi as Physical Educational Teacher)
R/o House No. 60, Rampuri, Kalkaji
New Delhi - 19.

...Applicant

(By Advocate Sh. G.B. Tulsiani)

V E R S U S

1. Chief Secretary
Govt. of NCT of Delhi
Delhi Sachivalaya
Players Building
New Delhi - 110 002.

2. Director of Education
Govt. of NCT of Delhi
Old Secretariat, Delhi - 54.

3. Deputy Director of Education
Distt. South, Defence Colony
New Delhi - 110 024.

4. Head Master/Vice Principal
Govt. Co-Educational Middle School
Govindpuri, Kalkaji, New Delhi - 19.

...Respondents

(By Advocate Sh. George Paracken)

O R D E R (ORAL)

Shri Sarweshwar Jha,

The applicant has preferred this OA for directions being given to the respondents to pay him pensionary benefits since he has voluntarily retired from service w.e.f. 1-11-2002 vide orders of the respondents No. 215 dated 16-12-2002. The applicant, who was initially appointed as Physical Educational Teacher (PET) w.e.f. 23-10-1970 and while he served last in Govt. Co-Educational Middle School, Govind Puri, Kalkaji, New Delhi, applied for voluntary retirement vide his letter dated 29-7-2002 and was allowed the same, but has not been paid retirement benefits till date.

-2/-



2. It appears that there was a complaint against the applicant and an enquiry was conducted against that and the enquiry report submitted on 24-12-2001, a copy of which is placed at Annexure A-7 to the OA. The respondents appear to have taken a position that on the advice of the Anti Corruption Branch, they are proposing to initiate departmental action/enquiry against the applicant under the relevant rules. The said departmental enquiry is yet to be initiated against the applicant. From the reply of the respondents, it is observed that in view of the said complaint and the departmental enquiry being proposed to be processed, they have not been able to release pension/provisional pension to the applicant. They are, however, considering the grant of provisional pension to the applicant in terms of Rule 69 of the CCS (Pension) Rules, 1972.

3. The applicant, however, referring to the provisions of Rule 69 (b), has submitted that provisional pension should have been authorised to him "during the period commencing from the date of retirement up to and including the date on which, after conclusion of depttl. or judicial proceedings, final orders are passed by the competent authority." In the case of the applicant, as the departmental enquiry is yet to be initiated and accordingly no depttl. or judicial proceedings are in sight, the respondents' action in not paying provisional pension to the applicant so far on the said ground, is, therefore, not proper and is arbitrary. The applicant has also cited the decisions of the Tribunal in IA 392/85 decided on 27-1-88, in which, among other things, it had been held that provisional pension has to be paid to a person even when depttl. or criminal proceedings have been

(a)

initiated. In the said decision, it had also been held that out is to be effected only after according an opportunity of representation to the employee. Another decision of the C.A.T. (Jabalpur Bench) in TA 18/86 decided on 11-12-1986 has also been relied upon, in which, among other things, the following has been held :-

Pension is a statutory right which accrues to a government employee after rendering satisfactory qualifying service and it becomes his property. Hence, delay justifies grant of interest thereon. Further held on facts, payment should have been made within two months. Relief - Interest at the rate of 12 % per annum allowed for delay beyond two months.

4. A mention has also been made of the observations of the Hon'ble Supreme Court in the case of D.S. Nakara v. UOI as have appeared in the above mentioned TA decided by the Tribunal (Principal Bench), in which, the following had been held by the Hon'ble Apex Court :-

Pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer, nor an ex gratia payment. It is a payment for the past service rendered. It is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. Pension as a retirement benefit is in consonance with and furtherance of the goals of the Constitution. The most practical *raison d'être* for pension is the inability to provide for oneself due to old age. It creates a vested right and is governed by the statutory rules such as the Central Civil Services (Pension) Rules which are enacted in exercise of powers conferred by Articles 309 and 148 (5) of the Constitution.

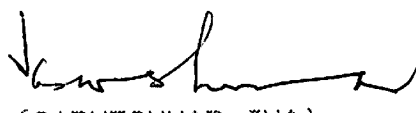
5. Learned counsel for the respondents has also, however, submitted that the pension/provisioanl pension could not, however, been granted to the applicant for the reason that it is a case of voluntary retirement, in which, the respondents were not afforded as much time as is normally available to them in the case of retirement on

Lawrence M. M.

superannuation. In his opinion, the grant of provisional pension perhaps got delayed due to paucity of time available to the respondents.

6. It is thus observed that the fact remains that the applicant retired on 1-11-1998 on voluntary retirement and his pension/provisional pension is yet to be released to him for the reasons stated above. But this state of the matter is not permissible under Rule 69 of the CCS (Pension) Rules as has been stated by the respondents as well as the applicant in their respective papers on the subject. It is also not permitted under the directions/observations as made by the Hon'ble Apex Court as well as this Tribunal as referred to above even during the period when depttl. enquiry/depttl. proceedings are on. In the present case, no depttl. enquiry has been initiated nor depttl. proceedings are in sight. In such a situation, it is just not conceivable as to how the provisional pension/pension would have been withheld by the respondents.

7. Having regards to the facts of the case, I am, therefore, inclined to allow this OA with directions to the respondents to immediately release provisional pension to the applicant pending finalisation of his regular pension. They are also directed to consider payment of interest on delayed payment of provisional pension/pension as admissible under the rules as well as under the pronouncements of the Hon'ble Courts on the subject. Respondents shall ensure that the matter relating to finalisation of the pension of the applicant is decided in any case within a period of three months from the date of receipt of a copy of this order. No costs.


(SARWESHWAR JHA)
MEMBER (A)

/vikas/