

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2962 OF 2003

New Delhi, this the 9th day of November, 2004

HON'BLE SHRI SARWESHWAR JHA, MEMBER (A)

Shri H.L. Yadav,
S/o Late Shri A.S. Yadav,
R/o A-229, Prashant Vihar,
Delhi-110085.
(By Advocate : Shri J.S. Bakshi)

.....Applicant.

versus

1. The Chief Secretary,
Government of National Capital Territory of Delhi
(Delhi Government),
Delhi Sachivalya Players Buildings,
I.T.O.,
New Delhi.
2. The Director (Education)
Directorate of Education,
Old Secretariat,
Delhi.
3. Principal/Vice-Principal,
Sarvodaya Kanya Vidyalaya,
Badli,
Delhi-110042.Respondents

(By Advocate : Ms. Renu George)

O R D E R

The applicant has prayed for directions being given to the respondents to allow his representations dated 23.6.2003 (Annexure C) and 28.10.2003 (Annexure D) and grant him regular pension w.e.f. 1.7.2003 and computation of pension as admissible to the extent of Rs.2,01,066/- and gratuity amounting to Rs.2,22,503/-. He has also prayed for interest being paid to him at market rate on the above amounts w.e.f. 1.7.2003 till realization of these amounts.

2. The applicant was initially appointed as a Lower Division Clerk in the respondents' organisation on 8.3.1963 and was subsequently promoted as Steno-Typist on 18.5.1966 in the scale of pay of Rs.110-180 plus Rs.20/- as a special pay after qualifying test. In due course, he was benefited with promotion to the post of Junior Stenographer and then to the post of Senior

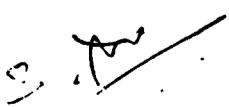
Stenographer/Stenographer Instructor in Grade II of the Delhi Administration Subordinate Service after passing the necessary test. He found himself in the scale of pay of Rs.5500-9000 after the 5th Central Pay Commission Report. While working as Grade II Stenographer, his promotion to Grade I DASS was, however, withheld due to pendency of departmental inquiry against him without issuance of charge-sheet. He accordingly filed an OA in the Tribunal claiming promotion to Grade I of DASS. The arguments of the respondents that promotion had not been given to the applicant due to departmental inquiry pending against him was, however, not accepted by the Tribunal and that the OA was allowed on 7.8.1992. Specific directions given in the case have been reproduced by the applicant in paragraph 4 (iii) in which, among other things, it was stipulated that 'The respondents shall convene a meeting of the D.P.C. to consider the case of the applicant for promotion to the post of Grade I in the Delhi Administration Subordinate Service in the scale of Rs.1640-2900 as on 31.1.1990'. In pursuance of the said order, the respondents promoted the applicant to the post of Grade I of DASS in the then scale of pay of Rs.1640-2900 on ad hoc basis with the stipulation that the applicant would not be entitled to any benefit for purpose of seniority of regular appointment to this or other equivalent post unless the applicant is selected by the Departmental Promotion Committee and further that promotion was subject to the decision in OA 113/1991 pending with this Tribunal. The promotion to the said grade was given to the applicant w.e.f. 31.1.1990, i.e., the date when persons junior to him have been promoted. The applicant alleged discrimination with reference to his juniors and claimed promotion on regular basis w.e.f. 12.5.1989 instead of 31.1.1990. He was paid arrears, but regularisation of his appointment was kept pending subject to the outcome of the disciplinary/vigilance case instituted against him.

3. The applicant accordingly filed another OA 279/1996 in the Tribunal which was allowed vide order dated 17.10.1996 which led to regularisation of his appointment vide order dated 20.1.1997 as Grade I DASS and was allowed seniority at Sl. No.1233 vide letter dated 3.2.1997. The applicant

claimed that he had become entitled to promotion to the post of DANICS alongwith one Shri Desh Raj and Shri Yogi Raj.

4. While the applicant was posted in different departments to different posts and rendered satisfactory service, he was served with an order dated 5.7.2002 conveying some adverse remarks in his ACR for the period from 1.4.1996 to 31.3.1999. These adverse remarks appear to have stood in the way of his promotion to the post of DANICS including ex-cadre post of DANICS, thereby allowing juniors to have been promoted to the said posts. The OA filed by the applicant in this regard was disposed of with a direction on 7.2.2002 by the Tribunal, quashing the order dated 8.12.2000. The applicant was required to appear before the Joint Secretary of the Delhi Government where he submitted the copies of the relevant documents. He did not receive any reply thereafter. This was followed with a CP filed by the applicant. The competent authority thereafter quashed and set aside the adverse remarks recorded in the ACR of the applicant. The applicant retired on superannuation w.e.f. 30.6.2003. On non-receipt of his pension, gratuity and computation of pension, insurance, GPF, leave encashment etc., the applicant made a representation to the Lt. Governor Delhi on 23.6.2003 (Annexure C) and, though followed payment of GIS and leave encashment, gratuity and computation of pension were withheld without any reasonable basis. Incidentally, provisional pension was released to him. It was followed up with another representation on 28.10.2003 (Annexure D), broadly making request for penal interest at the rate of 18% per annum with effect from 1.7.2003 till such payment was made. The end result of the entire exercise is that the respondents have so far not released gratuity and computation of pension and also not disposed of the representation of the applicant.

5. The applicant has, in this connection, cited the decision of the Hon'ble Supreme Court in the case of *State of Kerala Vs. Padmanabhan Nair*, as reported in AIR 1985 SC 356, and argued that pension and gratuity are no longer bounty to be distributed by the Government to its employees on their retirement. It is a valuable right and property in their hands and any culpable delay in



settlement/disbursement thereof must be visited by penalty of payment of interest at the market rate till actual payment. Reliance has also been placed on the decision of the Hon'ble Apex Court in the case of *D.V. Kapoor Vs. U.O.I.*, as reported in 1992(3) SLR 591, in which withholding of gratuity and pension as a measure of punishment has been considered illegal. It has also been held that exercise of the power to withhold gratuity and pension is hedged with a condition precedent that finding should be recorded either in departmental inquiry or judicial proceedings that the pensioner committed grave misconduct or negligence in discharge of his duties while in office. In the absence of such a finding, the President is without authority of law to withhold the payment of gratuity. It has been further held that gratuity is a statutory right.

6. The respondents, however, have denied the allegations/ submissions of the applicant and have submitted that gratuity and computation of pension of the applicant have not been released because of non-issuance of vigilance clearance.

7. On perusal of what has been stated in paragraph 2 of the reply, it is observed that a complaint case No.12/95 was pending against the applicant in the learned Court of Shri P.K. Bhasin, Additional District Judge, Delhi and the same was fixed for framing of charges and that the respondents have taken the position that, under these circumstances, the gratuity and pension cannot be paid to the applicant.

8. This position has, however, been contested by the applicant in his rejoinder to the reply of the respondents by reiterating his reference to the decisions of the Hon'ble Apex Court in the case of *D.V. Kapoor* (supra) that withholding of gratuity and pension as a measure of punishment is illegal. It has also been held that the exercise of power to withhold gratuity and pension is hedged with a condition precedent that a finding should be recorded either in departmental inquiry or in judicial proceedings that the pensioner committed grave misconduct or negligence in discharge of his duties while in office, which should be the subject of the charge. In the absence of such a finding, the President



is without authority of law to withhold the payment of gratuity. It has been further held that right of gratuity is a statutory right. This observation of the Hon'ble Supreme Court, as referred to above, has also been reemphasized by the applicant by stating that no charge has yet been framed against him in the case pending against him. The applicant has also made it clear that he has neither been charged with any offence whereby any financial implication was involved nor has there been any finding of grave misconduct against him. He has, therefore, contended that in terms of the decisions/observations of the Hon'ble Supreme Court, as cited above, the respondents have no right to withhold the gratuity and computation of pension. He has also pointed out that no opportunity has been granted to him before deciding to withhold the said benefits, as a measure of punishment. Reference to the decision of the Hon'ble Supreme Court in the case of *State of Kerala Vs. Padmanabhan Nair* (supra) has been reiterated claiming that pension and gratuity are valuable rights and property in the hands of the applicant and that it is not a bounty to be decided by the Government to its employees on retirement.

9. Having perused the facts of the case, as submitted by both the parties, it is observed that the respondents have erroneously taken a view of withholding of payment of gratuity and computation of pension for the reason that vigilance clearance has not been issued in favour of the applicant on account of a complaint pending in a Civil Court in Delhi. It is quite obvious that they have not kept in view the decision of the Hon'ble Supreme Court in the case that these benefits cannot be withheld as a measure of punishment and that the authorities concerned shall have to record either in departmental inquiry or in judicial proceedings that the applicant had committed grave misconduct or negligence in the discharge of his duties while in office, which should be the subject of the charge. Surprisingly, no charge has yet been framed against the applicant in the case pending against him and he continues to suffer for want of non-payment of these benefits. The respondents appear to have taken an open ended and indefinite position while not releasing the gratuity and computation of pension to the applicant, even though he has retired w.e.f. 30.6.2003. It also appears that the

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respondents have not taken into account that they will be liable to pay interest in the event of delay in disbursement of these amounts at the market rate commencing at the expiry of two months from the date of retirement of the applicant in pursuance of the decisions of the Hon'ble Supreme Court in the case of *State of Kerala Vs. Padmanabhan Nair* (supra). According to the submission made by the respondents, the case as referred to be pending in the learned court of Additional District Judge of Delhi was fixed for framing of charges on 22.2.2004. According to the applicant, who filed the rejoinder in the month of June, 2004, no charge has been framed against him in the case till that date. It is quite possible that the charge has not been framed/finalized till date. Under these circumstances, instead of making the applicant suffer for want of decision in the matter for an indefinite period, it would be appropriate for the respondents to release the said payments without any further delay, without prejudice to the decisions of the learned Court of the Additional District Judge of Delhi.

10. Having regard to the above facts and submissions of the applicant and also the respondents and also having heard the learned counsel for the parties in the matter, I am, therefore, of the considered opinion that the ends of justice shall be met if this OA is disposed of with a direction to the respondents to release the gratuity and commuted value of pension and other retiral dues, if any, pending with them immediately, in any case, within one month from the date of receipt of a copy of this order together with interest on delayed payment of these amounts as admissible in terms of the decisions of the Hon'ble Supreme Court, as cited above, as well as the relevant instructions on the subject. This will, however, be without any prejudice to the decisions of the learned Court of Additional District Judge, Delhi in a case pending against the applicant in the said learned Court. Ordered accordingly. No order as to costs.


(SARWESHWAR JHA)
MEMBER (A)


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