
(2018) 09 CAT CK 0088

In the Central Administrative Tribunal

Case No : Original Application No. 2838 Of 2017

Dharam Pal Dharra

APPELLANT

Vs

Delhi Jal Board And Ors

RESPONDENT

Date of Decision : 19-09-2018

Acts Referred:

Central Civil Services (Pension) Rules, 1965 — Rule 69

Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 16

Citation : (2018) 09 CAT CK 0088

Hon'ble Judges : Praveen Mahajan, Member (A)

Bench : Single Bench

Advocate : S.K. Gupta, Vishwendra Verma

Final Decision : Allowed

Judgement

1. Through the medium of this O.A., the applicant has sought the following relief:-

"Direct the respondents to release provisional pension and pensionary benefits in accordance with law along with the arrears of pension w.e.f. 01.11.2012 along with the interest at the rate of 10% p.a."

2. Briefly stated, the facts of the case are that the applicant was dismissed from service vide order dated 19.10.2012 just before 12 days before retirement. The applicant challenged the aforesaid order before the Tribunal by filing OA-1500/2013. The Tribunal vide its order dated 26.07.2016 allowed the O.A. declaring that the applicant is entitled for all consequential benefits with a liberty to the respondents to proceed against the applicant in accordance with law. The aforesaid order of the Tribunal was challenged by the respondents before Hon'ble High Court of Delhi in WP(C) No. 798/2017, which was dismissed vide order dated 30.01.2017. Thereafter, the respondents issued order dated 12.04.2017 by which the applicant was reinstated in service but was placed under suspension w.e.f. 19.10.2012. He superannuated on 31.10.2012.

3. It is averred by the applicant that though he became entitled for provisional

pension and other pensionary benefits but the respondents have not issued any pensionary benefits till date. On 24.04.2017, the applicant made a representation to the respondents seeking release of provisional pension in terms of CCS (Pension) Rules, 1965 followed by another representation dated 31.07.2017. The Contempt Petition- 20/2017 filed by the applicant was disposed of on 11.05.2017 with a direction to the respondents to release the consequential benefits to the applicant within a period of six weeks.

4. In the counter, the respondents submit that they have already released the payment for a sum of Rs. 2,61,874/- and Rs. 31,713/- to the applicant on 23.06.2017 as per directions contained in CP-20/2017 in OA-1500/2013 dated 11.05.2017. It is contended that an enquiry against the applicant is still pending and another OA-826/2018 has also been filed by the applicant, which is still pending adjudication.

5. During the course of hearing, learned counsel for the applicant Sh. S.K. Gupta vociferously argued that his client is being harassed by the respondents by denying him his rightful dues under law. Sh. Gupta stated that the applicant has no other means of livelihood and his claim of provisional pension is very much within the ambit of the CCS (Pension) Rules, 1972, which the respondents have wrongfully withheld.

6. Per contra, the learned counsel for the respondents Sh. Vishwendra Verma reiterated that the payment for a sum of Rs.2,61,874/- and Rs.31,713/- has already been released to the applicant as per directions of the Tribunal. He stated that if the applicant gives a detailed representation as per law, the respondents will examine the same as per rules.

7. I have gone through the facts of the case carefully and am little surprised by the contention raised by the respondents that for the provisional pension to be considered by the respondents, they require the applicant to give a detailed representation. Be that as it may, had the respondents bothered to read the representation dated 24.04.2017 of the applicant (Annexure A-5) carefully, it would have been clear that the applicant in the said representation (last para) has requested not merely for grant of pensionary benefits on provisional basis but has also requested for provisional pension. While releasing the benefits to the applicant, the respondents should have decided his request for grant of provisional pension.

8. As per Rule 69 of the CCS (Pension) Rules, 1972, there is a specific provision of provisional pension where departmental or judicial proceedings are pending against a government servant. The same is reproduced below for the sake of better appreciation of facts:-

"69. Provisional pension where departmental or judicial proceedings may be pending

(1) (a) In respect of a Government servant referred to in sub-rule (4) of Rule 9,

the Accounts Officer shall authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant, or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorized by the Accounts Officer during the period commencing from the date of retirement up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon :

Provided that where departmental proceedings have been instituted under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, for imposing any of the penalties specified in Clauses (i), (ii) and (iv) of Rule 11 of the said rules, the payment of gratuity shall be authorized to be paid to the Government servant.

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period."

The payment of provisional pension under these Rules is mandatory and the matter has been clarified through various OMs issued on the subject. I see no reason why the respondents are hesitant to grant the provisional pension to the applicant as mandated under the rules.

8. In view of the aforesaid, I direct the respondents to release provisional pension to the applicant in accordance with rules on the subject, as per his eligibility and as per law. This exercise may be completed within a period of three months from the date of receipt of a certified copy of this order.

9. Learned counsel for the applicant has also pressed for grant of interest, which I am not inclined to grant. No costs.