

(2022) 12 CAT CK 0004

In the Central Administrative Tribunal

Case No : Original Application No. 994 Of 2012

Om Prakash Srivastava

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 05-12-2022

Acts Referred:

Citation : (2022) 12 CAT CK 0004

Hon'ble Judges : Om Prakash VII, Member (J)

Bench : Single Bench

Advocate : Deepak Sharma, A.D. Singh, Saurabh

Final Decision : Partly Allowed

Judgement

Om Prakash VII, Member (J)

1. Shri A D Singh, learned counsel for the applicant and Shri Saurabh, learned counsel for the respondents, were present at the time of hearing.

2. The instant original application has been filed seeking following relief:

"(i) Issue any order or direction of the appropriate nature setting aside the order dated 30.11.2011 passed by the respondent no. 4/5 (Annexure A-1 with Compilation No. 1)

(ii) Issue any order or direction in the nature of mandamus direction the respondents to forthwith release the outstanding post retiral dues of the applicant.

(iii) Issue any order or direction in the nature of mandamus directing the respondents to pay interest at the rate of 18% per annum on the outstanding amount from the date the same fell due till the date of actual payment.

(iv) Issue any other order or direction in the nature of the case as this Hon'ble Court /tribunal may deem fit and proper in the circumstances of the case.

(v) Award the cost of the application.”

3. The brief facts of the case as have been narrated in the original application are that the applicant was initially employed as Goods Superintendent under the respondents and retired on 31.01.2010 upon reaching the age of superannuation. The applicant was a permanent employee of the respondents' organization and was eligible for all the retiral dues as are accrued to a permanent employee. The applicant was paid an amount of Rs. 6,17,389/- towards payment of post retiral dues. However, an amount of Rs. 8,15,116/- has been withheld by the respondents which the applicant claims to be his rightful due. The instant original application has been filed by the applicant seeking a direction to the respondents to release the entire retiral dues which have been withheld by the respondents at an interest rate of 18%.

4. I have heard the rival contentions advanced by the learned counsels appearing for the parties and perused the records.

5. Initiating his arguments, learned counsel for the applicant submits that when the applicant was not granted all his retiral dues, he preferred a representation to the authorities concerned. However, no action was taken upon the said representation and the respondents' authorities arbitrarily continued to withhold a considerable amount of Rs. 8,15,116/- with them. Subsequently, seeking the redressal of his grievance, the applicant preferred an Original Application No. 1299 of 2011 before the Allahabad Bench of the Central Administrative Tribunal. The said application was disposed of by the Tribunal on 19.10.2011 directing the respondents to pass a reasoned and speaking order in the representation of the applicant. In an absolute abrupt compliance of the Tribunal's order, the respondents authorities passed an order dated 30.11.2011 thereby denying granting the applicant his retiral dues.

6. Learned counsel for the applicant goes on to submit that respondents have alleged that the applicant had overstayed in the official accommodation which was granted to him. This averment does not hold water as pursuant to his retirement on 31.01.2010, the applicant vacated the Govt. accommodation on 26.08.2010 and the said fact was further communicated by the applicant to the respondent authorities vide letter dated 27.08.2010 with regard to which a no objection certificate was also issued in favour of the applicant.

7. Learned counsel for the applicant further submits that the applicant has rendered a spotless service and never has been subjected to any departmental proceeding whatsoever nor he has ever been alleged for dereliction of duty. The nature of work of the applicant was such that he used to pay visits to the firms / businessmen regularly in connection with recovery of the dues and the necessary intimation, in the eventuality of non-payment of dues, was immediately forwarded by the applicant to the concerned higher authorities. Learned counsel further adds that many intimations regarding non-recovery of dues were addressed by the applicant to the higher authorities, however the superior

officers never showed any kind of interest whatsoever in extending any kind of support to the applicant so as to ensure recovery of outstanding dues. Furthermore, on many occasions, the applicant, when visited the defaulters for recovery, was even informed that all such defaulters have already approached the superior officers in connection with waiver of the amount due and, as such, some amount was left un-recovered at the relevant point of time when the petitioner was posted at Ghazipur City Station.

8. Learned counsel for the applicant further submits that when the applicant was posted at Ghazipur City Station, the applicant was the only employee in as much as all the posts pertaining to Clerks (Goods) were vacant and, as such, at the relevant point of time the applicant was undergoing serious constraint of man force. This fact was repeatedly communicated to the respondents' authorities but no step at any point of time was ever taken by the department to fill up such vacancies.

9. Learned counsel for the applicant submits that in spite of all such constraints as have been mentioned in the preceding paragraphs, the applicant ensured smooth functioning of the office work to the utmost satisfaction of the competent authority such that neither prior to the retirement of the applicant nor subsequent thereto, at any point of time, any departmental proceeding whatsoever was ever initiated against the applicant. However, to his utter shock, the applicant was not paid his entire retiral dues subsequent to his retirement.

10. Learned counsel for the applicant further submits that the act of the respondents' authorities to stop post retiral dues of the applicant challenges the very principal of natural justice as the recovery has been ordered from the applicant's retiral dues and moreover, the same has been done without any notice whatsoever as no disciplinary proceeding has ever been conducted against the applicant.

11. Learned counsel for the respondents, by way of his counter affidavit, vehemently contradicts the claim of the applicant submitting that the railway accommodation was not vacated by the applicant during tenure of his services. Regarding the NOC which the applicant claimed to have been granted by the respondents allowing the applicant's retention of government accommodation, the respondents counsel submits that the applicant was allowed to retain the railway quarter only for four month after his retirement however, he surpassed that time limit.

12. Learned counsel for the respondents contradicts the averment of the applicant that several posts were lying vacant at the Ghazipur City Station submitting that at the said Station, for commercial work, there are no several posts but both the work are being discharged by one employee in view of traffic condition.

13. Regarding the withholding of Rs. 8,15,116/- from retiral dues of the applicant, learned counsel for the respondents submits that the withholding is

absolutely justified as the applicant was posted as Superintendent at Ghazipur City Station. At that time, parties received parcel of goods sent to them on which delayed charges of Railways became due which was to be recovered by the applicant being the Goods Superintendent but he did not do so causing Railways loss to the tune of Rs. 8,15,116/- and accordingly, the said recovery has to be attributed from the applicant only in view of the rules governing the matter.

14. I have considered the rival contentions advanced by the learned counsels appearing for the parties and also gone through the documents on record.

15. It is an established fact that the entire service of the applicant has been an unblemished one as no departmental enquiry or proceeding whatsoever was ever conducted against him. Regarding the issue of prolonged retention of government accommodation by the applicant, the respondents have produced no cogent grounds which can establish that this act on the part of the applicant to have retained the government accommodation just for some time beyond permissible time limit is grave enough to have invited a withholding of such a great amount, that too from the retiral dues of the applicant.

16. As far as the impugned order dated 30.11.2011 is concerned, I am of the considered view that even if the said order is legal, the process followed in the course of passing the same is completely unwarranted as the order was passed when the applicant has already been retired. Moreover, no notice prior to passing the order was served upon the applicant which violates the very principal of natural justice nor there has been any disciplinary enquiry conducted against the applicant during the course of service. Therefore, passing such an order of recovery to the tune of Rs. 8,15,116/- from the retiral dues of the applicant is absolutely uncalled for.

17. In view of the aspects which have been deliberated upon in the preceding paragraphs, I am of the considered view that instant original application is liable to be partly allowed and is accordingly, partly allowed. The order dated 30.11.2011 which have been impugned in the instant original application is hereby set aside. The competent authority amongst the respondents is hereby directed to pass a fresh order after affording an opportunity of being heard to the applicant. The Order passed must be a reasoned and speaking one vividly elucidating the entire facts and circumstances of the matter.

18. Respondents are directed to comply with this Order within a period of three months from the date of this order and the order passed thereafter shall be communicated to the applicant forthwith.

19. Accordingly, Original Application No. 994 of 2012 is partly allowed.

20. All associated MAs stand disposed of accordingly.

21. No order as to costs.