(2019) 09 CAT CK 0002

In the Central Administrative Tribunal

Case No : Original Application No. 930 Of 2017

Rati Ram Dhawaria APPELLANT

Vs

Union Of India Through And Ors RESPONDENT

Date of Decision : 03-09-2019

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 3
Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 14, 15, 23(ii)

Citation : (2019) 09 CAT CK 0002

Hon'ble Judges : Pradeep Kumar, Member (A)

Bench : Single Bench

Advocate : Sachin Chauhan, Gyanendra Singh

Final Decision : Allowed

Judgement

1. The applicant was working as LDC in CGHS and he superannuated on 31.01.2013. The gratuity and commutation of pension amounts were paid to him after certain delay on 23.09.2016. The applicant represented for compensating him by way of interest for the delay on these two amounts. However, this was not replied to. Hence the applicant has preferred the instant OA and has sought the relief as under:

"(i) To direct the respondents to pay the applicant 9% rate of interest on the delayed payment of retiral benefits to the applicant from the date of retirement to the date of actual payment as granted in WPC No.9767 of 2015 by Hon'ble Delhi High Court."

2. The relevant details are that while he was in service a Dharna had taken place on 01.05.2007. A total of five employees were issued a charge-sheet on 25.09.2007. The article of charge was common for all five employees except in respect of the name. The article in respect of applicant reads as under:

"That the said Shri Rati Ram, LDC, while functioning in the aforesaid CGHS, South Zone, New Delhi, participated in a dharna organized by the All India CGHS Employees Association on 1st May, 2007. The dharna staged was recorded on a compact disc, on the viewing of which it has been observed that Shri Rati Ram has used unparliamentarily/abusive and indecent language against The Additional Director (HQ), CGHS, 9, Bikaner House, New Delhi, which is treated as unbecoming of a Government servant under Rule 3 of CCS (Conduct) Rules, 1964."

2.1 Common proceedings were ordered against five officials vide orders dated 14.02.2008. Five officials are as follows and applicant's name appears at serial no.4 below:

1. Sh. Ram Kishan, Lab Tech.

2. Sh. Inder Singh Pharmacist

3. Sh. Jaidev Pharmacist

4. Sh. Rati Ram L.D.C.

5. Smt. Rajwanti Staff Nurse

3. The Enquiry Officer (EO) was nominated and a common enquiry report was put up on 26.11.2009, wherein the concluding para reads as under:

"11. On perusal of the rules I have come to a definite conclusion that evidence which can be given by a witness only and cross examination of the witness by the COs is an essential feature of the rules of the enquiry under Rule 14 of the Central Civil Services (CCA) Rules, 1965. Under rule 23 (ii) of the Rule 14 of the Central Civil Services (CCA) Rules, 1965 provides that Inquiry Officer shall forward to the disciplinary authority oral and documentary evidences produced in the course of enquiry. The provisions of the rules are not met and hence it is not possible to hold a complete and perfect enquiry. I therefore return the case to disciplinary authority with the observations as made above."

4. Since the Disciplinary Authority (DA) had not taken a decision on the enquiry report when the applicant superannuated, this was perhaps the reason for delay in release of gratuity and commuted value of pension. Subsequently, applicant was advised on 02.08.2016 that the charge-sheet was dropped. This order reads as under:

"It has been decided by the Competent Authority that the Disciplinary Proceeding initiated against Sh. Rati Ram Dhawaria, Ex-LDC are hereby dropped keeping in view of facts and circumstances of the case.

All the retirements' benefits to Sh. Rati Ram Dhawaria, Ex-LDC is to be paid after adjustment of Government dues.

This issues with the approval of the Competent Authority."

Thereafter the applicant was paid gratuity and commuted value of pension vide orders dated 23.09.2016.

5. The applicant pleads that since the charge-sheet was dropped, he is required to be compensated for the delay in payment of gratuity and commuted value of pension for the period 01.02.2013 to 23.09.2016.

6. The applicant also brought out that out of five officials one Shri Ram Kishan, whose name appears at serial no.1 (para 2.1 supra) was also similarly placed. The charge-sheet was already issued on 25.09.2007. He had superannuated on 31.07.2009. Shri Ram Kishan was issued provisional pension order dated 17.07.2009. Once the enquiry report was finalized, the same was forwarded to Shri Ram Kishan along with a disagreement note, on 11.10.2012 and he was called upon to submit his representation thereon.

Feeling aggrieved, Shri Ram Kishan approached the Tribunal in OA No.793/2013 with a request to quash the charge-sheet dated 25.09.2007 and the disagreement note dated 11.10.2012. It was also pleaded that the respondents be directed to pay the applicant his pensionary benefits, including gratuity, commuted value of pension, leave encashment, regular pension along with interest for the delay.

6.1 The matter was considered by the Tribunal and decided vide order dated 11.08.2015. The charge-sheet and the disagreement note were quashed. However, the Tribunal did not grant any interest. The operative paragraph of this order reads as under:

"9. After having given our anxious consideration to the facts and circumstances of the present case in the light of the above decision of the Hon'ble Supreme Court, we have no hesitation in holding that the departmental authorities have failed to scrupulously follow the procedure prescribed in Rule 14 and 15 of the CCS (CCA) Rules, 1965, while initiating and conducting the departmental proceeding against the applicant, as a result of which there has been inordinate delay in conclusion of the departmental proceeding, and the applicants retirement dues have not yet been released. Considering the gravity/magnitude of the charge purportedly leveled against the applicant, we have also no hesitation in holding that he departmental proceeding initiated against the applicant and all actions taken by the departmental authorities being vitiated are liable to be quashed, and consequently, the respondents are liable to be directed to release the retirement dues of the applicant within a stipulated period.

10. Accordingly, the departmental proceeding initiated against the applicant, vide charge memo dated 25.9.2007 (Annexure A/2), and all other actions taken by the respondent-departmental authorities against the applicant pursuant thereto, including the purported disagreement note dated 11.10.2012 (Annexure A/4), are quashed. The respondents are directed to release all the retiral benefits to the applicant, after adjustment of Government dues, if any, within a period of three months from the date of receipt of copy of this order. ON the facts and in the circumstances of the case, we are not inclined to grant any interest on the

retirement dues to be paid to the applicant in terms of this order within the period stipulated as above."

6.2 Feeling aggrieved, Shri Ram Kishan filed a Writ before the Hon'ble High Court of Delhi vide Writ Petition (C) No.9767/2015. The Hon'ble High Court relied upon the judgments by the Hon'ble Apex Court in S.K. Dua v. State of Haryana & Anr., [AIR 2008 SC 1077], D.D. Tewari v. Uttar Haryana Bijli Vitran Nigam Ltd. & Ors., [2014 (9) SCALE 78] and V.K. Sareen v. Union of India & Ors., [187 (2012) Delhi Law Times 483] and delivered judgment on 7.12.2015. Following observations and orders were made:

"11. Having regard to the submissions made and taking into consideration the fact that the order passed by the Tribunal dated 11.08.2015 has attained finality and the same has not been assailed by the respondents, the petitioner cannot be made to suffer on account of the delay in release of his pensionary dues. Since the petitioner is not at fault, he would be entitled to interest. We may note that despite the order dated 11.08.2015 passed by the Central Administrative Tribunal, the retiral dues of the petitioner have not been released till date. The petitioner cannot be deprived of his retiral benefits which were to be released to him in the year 2009 or at least after the passing of the order by the Tribunal in August, 2015.

xxx xxx xxx

15. In view of the law laid down by the Apex Court, the writ petition is allowed and the respondents are directed to pay interest @ 9% to the petitioner on his retiral benefits."

7. In this context, the applicant pleads that in his case also the charge-sheet originated from the same incident, articles of charge was also exactly the same and in the case of applicant no disagreement note was ever communicated and on the contrary the charges were dropped. Accordingly, the applicant was required to be paid the gratuity and commuted value of pension along with due interest for the delayed period. The applicant pleaded that he cannot be discriminated against with respect to said Shri Ram Kishan.

8. Per contra, the respondents opposed the OA. It was pleaded that the report by the EO is not culmination of the disciplinary process. The disciplinary process will come to finalization when the competent authority decides the issue. In respect of the five employees the competent authority had actually decided to award the punishment of Censure. It was, however, found that out of five, three employees were in service while two had already retired. The punishment of Censure was served upon the three serving employees and in respect of the two retired employees, which included the applicant, the competent authority decided that punishment of Censure is not applicable, hence it was decided to close the case for the two retired officials under the clause 'Displeasure of Government' and ultimately the departmental enquiry was dropped on 02.08.2016 and thereafter the retiral benefits were released to the applicant. On being queried, respondents

mention that one of the retired employees was Shri Ram Kishan whose name appears at serial no.1 in para 2.1 supra.

In support of this contention, respondents have submitted a photo copy of note dated 18.12.2015 for orders of competent authority where the case of these five officials was dealt with. Certain extracts of this note are reproduced below:

"xxx xxx xxx

It is stated that AD (HQ) being Disciplinary Authority to Group 'C' & ' D' has given his remarks on N-135/ante that as per the enquiry report, Inquiry officer has come to definite conclusion that these provisions of the rules are not met and hence it not possible to hold a complete & perfect inquiry in case of Shri Rati Ram, Ex-LDC & Sh. Ram Kishan, Ex-lab Technician.

As per direction of Hon'ble CAT O.A.No.793 of 2013 dated 11th August, 2015, in the case of Shri Ram Kishan, ex-lab technician, the respondents are directed to release all the retirement benefits to the applicant, after adjustment of Government dues, if any, within a period of three months from the date of receipt of copy of this order.

In this regard, it is stated that Sh. Rati Ram ex-LDC has not gone to the CAT so his case is still under consultation with UPSC on the same disciplinary proceedings.

After going through the case, it is observed that it is case of irregularity or lapse of a character which though not considered a serious act and further there is no financial implication has been involved. The said case may be considered under Displeasure of Government, which states that-

"on occasions, an officer may be found to have committed an irregularity or lapse of a character which though not considered serious enough to warrant action being taken for the imposition of a formal penalty or even for the administration of a warning but the irregularity or lapse is such that it may be considered necessary to convey to the officer concerned the sense of displeasure over it. Such displeasure is usually communicated in the form of a letter.

xxx xxx xxx

Hence, the case is submitted please for the approval of the Competent Authority to close the case of Sh. Rati Ram, ex-LDC (Retired) & Sh. Ram Kishan, ex-Lab. Tech. (Retired), if agreed to, under Displeasure of Government.

Sd/-

17.12.15

Sd/-

18.12.15

US (CGHS/Admn)

Three persons have been imposed "Censure" i.e., "Minor Penalty" for the same offence. In view of this the remaining two persons (Retd.) may be awarded Minor Penalty. However, Minor penalty is not applicable to the retired persons. In this circumstance the case may be closed with the approval of competent authority.

Before put up the file to competent authority, comments of AD(HQ) may be sought.

Submitted please.

Sd/-

21.12.15

Dir. (CGHS)

Sd/-

21.12.15

A.D. (HQ)"

(Emphasis supplied)

This was signed by Director (CGHS) on 22.12.15, without any further noting/ comment and put to competent authority.

8.1 The respondents also pleaded that the case of Shri Ram Kishan and that of the applicant are distinguishable in as much as that Shri Ram Kishan had approached the Tribunal wherein the charge-sheet was quashed. Thereafter, once the Hon'ble High Court ordered payment of interest, the same was complied with.

As against this, in the case of the applicant the charge-sheet was never quashed and in fact it was closed under the clause 'Displeasure of Government'. Accordingly, circumstances are not similar and hence the requisite relief in the instant OA in the form of interest is not permissible.

9. The applicant countered the pleas given by the respondents. It was pleaded that while Shri Ram Kishan was issued a disagreement note and he had the occasion to approach the Tribunal, no such disagreement note was ever issued to applicant. The only communication issued to the applicant was on 02.08.2016 when charge-sheet was dropped (para-4 supra). Therefore, there was no occasion for the applicant to agitate the matter before the Tribunal. Further, once it was the same incident which led to charge-sheet and it was the same enquiry report and in the instant case it led to dropping of the charge, the applicant cannot be discriminated vis-a-vis Shri Ram Kishan where charge-sheet was quashed. Therefore, he is required to be compensated for the delayed payment by paying interest thereon, as has been upheld by various judicial pronouncements in WP(C) No.9767/2015 in the case of Shri Ram Kishan.

10. The matter has been heard at length. Shri Sachin Chauhan, learned counsel represented the applicant and Shri Gyanendra Singh, learned counsel represented the respondents.

11. The facts of this case are not in doubt. It was the incident of Dharna on 01.05.2007 that had led to issuance of charge-sheet to five employees. The charge was exactly the same for all five and the enquiry report was also exactly the same. While the enquiry report was being processed, one of the retired employees Shri Ram Kishan was issued a disagreement note. Feeling aggrieved, he approached the Tribunal and taking into account the merit of relied upon documents, the Tribunal quashed the charge-sheet without granting interest for the delay in release of the retiral dues to Shri Ram Kishan. He approached Hon'ble High Court of Delhi from where requested relief in the form of interest for such delays was also granted.

12. As far as applicant is concerned, he was communicated on 02.08.2016 that charges have been dropped. Once the charge-sheet for Shri Ram Kishan was quashed on the merit of relied upon document, it would not be appropriate to apply a different yardstick for applicant for the same charges and same relied upon document. And especially so because in respect of applicant, charge-sheet was eventually dropped. Therefore, on the reasoning of charge-sheet being quashed in one case and being dropped in another case, it would not be correct to deny compensation to the applicant for the delayed payment of gratuity and commuted value of pension which has been granted to Shri Ram Kishan, though as per directions of Hon'ble High Court.

13. Even if the respondents' plea that in their internal notings, the charge-sheet against the applicant was closed under the clause 'Displeasure of Government', as he had already retired, is taken to be true, this by itself cannot cause prejudice to the applicant vis-a-vis Shri Ram Kishan, on merits as well as since this displeasure was never communicated to the applicant at relevant point of time.

In this connection, a perusal of noting sheet (para 8 supra), indicates that while proposal was prepared to "close the case under displeasure of Government" clause, what was finally put up by US/CGHS was just to "close " the case, which was agreed by Director (CGHS) and put up to competent authority. Eventually, dropping was communicated (para 4 supra).

14. Moreover, the plea put-forth by the respondents that in the case of Shri Ram Kishan the charge-sheet itself was quashed whereas in the case of instant applicant the charge-sheet was finalized under the clause 'Displeasure of Government' on the reasoning that applicant had already retired and the charge-sheet was dropped, is too technical a point in the context that displeasure was not communicated at relevant point of time either before dropping or while dropping, which was necessary as per rules quoted in the noting above (para 8 supra).

In this context, it is relevant to note that the incident leading to charge-sheet to Shri Ram Kishan as well as applicant was the same and the article of charge against the two was also exactly the same and the relied upon document was also exactly the same. The conclusion of Enquiry Officer was also exactly the same for both. Once disagreement note was issued to Shri Ram Kishan he had the occasion to approach the Tribunal where charge-sheet was quashed on merits of relied upon document.

No such disagreement note was issued to the applicant. Accordingly, he had no occasion/reason to approach the Tribunal. The respondents decided to drop the charge-sheet in respect of the applicant.

Under such circumstances, distinguishing the case of the applicant with that of Shri Ram Kishan is too technical and not sustainable in the interest of substantive justice on account of merit as well as on account of discrimination that has been caused.

15. In view of the foregoing, this Tribunal is of the view that the applicant is required to be compensated by paying interest @ GPF rate for the period of delay in releasing payment of gratuity and commuted value of pension for the period 01.02.2013 to 23.09.2016.

Accordingly, the Tribunal directs the respondents to make this payment of interest at GPF rates, on the delayed payment of gratuity and commuted value of pension, within a period of three months from the date of receipt of a certified copy of this order. No costs.