

(2019) 04 CAT CK 0004
In the Central Administrative Tribunal
Case No : Original Application No. 445 Of 2017

Ravendra Mohal Dayal

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 12-04-2019

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 7, 13(1)(d), 13(2)
Prevention Of Corruption Act, 1988 — Rule 7

Citation : (2019) 04 CAT CK 0004

Hon'ble Judges : Mohd. Jamshed, J

Bench : Single Bench

Advocate : Preshit Surshe

Final Decision : Disposed Off

Judgement

1. In this OA, the applicant has sought the following reliefs:-

(a) To allow this OA.

(b) To direct the Respondent No. 7 to pay the pension of the applicant from 01.12.2016 onwards immediately to the applicant and to further direct the respondent no. 7 that henceforth the pension of the applicant be deposited in his account before 5th day of every month regularly as per order Annexure - A-5, issued by the Respondent No. 3.

(c) To direct the Respondent No. 7 to deposit the arrear on refixation of his pension (Annexure -A-5), as per order issued by the Respondent No. 3 within stipulated period.

(d) To direct the Respondent No. 3 to refix the pension of the applicant as per instructions contained in O.M. dated, 04.08.2016, read with O. M. dated 30.11.2016 Annexure -A-7 (Colly.), issued by Respondent No. 2.

(e) To direct the Respondent No. 6 to sanction Composite Transfer Allowance to the applicant on his retirement.

(f) To direct the Respondent No. 6 to pay the arrears of pay and allowances of the applicant for the encashment of 15 days Earned Leave each, availed by the applicant, while availing LTC during his posting in Dhule, as per the refixation of the applicant's pay and allowances by the Respondent No. 3 vide Annexure A-9 and Annexure A-10.

(g) To direct the Respondent No. 6 to pay the applicant the arrears of enhanced telephone allowance, during his posting at Dhule.

(h) To hold and declare that applicant is entitled for all allowances, except transport for the period during suspension period w.e.f. 06.07.2007 to 01.11.2011, which has been treated on duty and to further direct the Respondent No. 4 and Respondent No. 6 that arrears be paid to the applicant.

(i) To hold and direct that on delayed/ non-payment of pension, arrears, other allowances and other retirement benefits, due to the applicant, an interest of 18% annually be paid to the applicant.

(j) Exemplary cost be imposed on errant Respondents.

(k) To direct the Respondents that judgment/orders shall be implemented within four weeks, from the date of pronouncement.

The facts of the case as stated in the OA are as under:-

2. The applicant belongs to Indian Forest Service, 1978 batch of Maharashtra Cadre. The applicant superannuated on 31.10.2015. Accordingly, he submitted his retirement application for release and payment of Group Insurance Scheme, accumulated GPF and of encashment of accumulated earned leave, gratuity and other retiral entitlements. It is stated that the applicant has submitted his papers timely to Respondents. The Respondent No. 3 issued orders of provisional pension vide memo dated 20.04.2016, for six months. It is also stated that a criminal case is pending against the applicant under section 7, 13 (1) (d) read with 13 (2) of Prevention of Corruption Act in the year 2007. As the criminal case is going on against the applicant, hence, only the provisional pension was sanctioned.

3. He has further submitted that there has been delay in sanction of provisional pension and various other pensionary and post retiral benefits. The applicant has been making a number of representations. He has also stated that his pension often gets delayed, his GPF withdrawal has not been made timely and so is encashment of accumulated leave. Further, he has also not been paid composite transfer allowance, arrears of enhanced telephone allowance and his gratuity has been withheld. The applicant has relied upon various judgments on the subject.

4. Counter reply submitted on behalf of Respondent No. 3, 4, 5, 6 and 7, states that the applicant vide order dated 21.05.2013 in a departmental case was awarded the punishment of withholding one increment for two years. Against this the applicant Filed OA No. 4155/2014 in the Tribunal and the Tribunal vide its

order dated 01.09.2015, quashed and set aside the impugned order dated 21.05.2013 on technical grounds.

5. One more departmental disciplinary proceeding had been instituted against the applicant and the Government of Maharashtra vide order dated 03.09.2001, imposed the punishment of withholding the next increment of the applicant for three years without cumulative effect. The applicant challenged this in Mumbai Bench of Central Administrative Tribunal. The Tribunal vide its order dated 18.06.2004 quashed and set aside the Government's order dated 03.09.2001 on technical grounds. Government of Maharashtra filed Writ Petition No. 8684/2004, which was dismissed by the Hon'ble High Court, Mumbai.

6. The applicant was promoted as Additional Principal Chief Conservator of Forests and, thereafter, as Principal Chief Conservator of Forests. In the meanwhile, it is stated in the counter reply a criminal case was pending before Hon'ble Special Court against the applicant. In the criminal case, an offence was registered against the applicant as per crime register No. 3096/2007 under section 13(1)(d), 13(2) and rule 7 of the Prevention of Corruption Act, 1988. The applicant retired on 31.10.2015 on superannuation. Further, due to ongoing criminal proceedings against him, the applicant was asked to submit his pension papers, which was done by the applicant on 12.10.2015, with a number of mistakes, in address etc. which had to be corrected. Due to incomplete pension papers and the incorrect information as stated by respondents the pension was delayed for sometime. The Government sanctioned only the provisional pension to the applicant on 20.04.2016, in view of the ongoing criminal case. Further, the provisional pension and other retiral benefits were revised and arrears were paid to the applicant. As submitted by the respondents, the applicant had been paid arrears for difference of pay, due to his promotion, leave encashment for 300 days, LTC difference and hometown transfer allowance after retirement, etc. Further, packaging and transfer allowance to the applicant on retirement was also paid.

7. The respondents have submitted that in addition the applicant was paid allowance for telephone, internet, newspaper and peon for the period 09.09.2011 to 31.10.2015. However, during the suspension period, i.e., 06.09.2007 to 01.11.2011, which was later on treated as on duty, the allowances like telephone, peon and newspaper have not been paid as these are admissible to the officer who is actually discharging the duties.

8. Heard the applicant in person and learned counsel of the respondents. During his submission the applicant stated that after filing of this OA various pensionary and post retiral amounts have already been paid to him. He categorically mentions that he does not want to press for the relief sought from (a) to (f) and would only be seeking relief indicated in (g), (h), (I), (J), (k). Thus he is seeking relief from this OA on the following:-

"(g) To direct the Respondent No. 6 to pay the applicant the arrears of enhanced

telephone allowance, during his posting at Dhule.

(h) To hold and declare that applicant is entitled for all allowances, except transport for the period during suspension period w.e.f. 06.07.2007 to 01.11.2011, which has been treated on duty and to further direct the Respondent No. 4 and Respondent No. 6 that arrears be paid to the applicant.

(i) To hold and direct that on delayed/ non-payment of pension, arrears, other allowances and other retirement benefits, due to the applicant, an interest of 18% annually be paid to the applicant.

(j) Exemplary cost be imposed on errant Respondents.

(k) To direct the Respondents that judgment/orders shall be implemented within four weeks, from the date of pronouncement."

The relief sought now primarily pertains to a few allowances during his suspension period later treated on duty.

9. The applicant during his arguments also reiterated that he should be paid interest due to the delayed payment of his pension, in addition to the allowance which has not been paid to him during year 2007 to 2011. The Counsel of the respondents also mentioned that the applicant had filed another OA No. 3012/2016, seeking similar relief, which was disposed of by the Hon'ble Tribunal vide order dated 08.09.2016, wherein it was directed that:-

" 3. It is submitted that the applicant has made number of representations vide Annexure A-13 (Colly) ventilating his grievances to the respondents, however, the respondents have not passed any order thereon till date.

4. It is submitted by the applicant that his grievances are to be redressed mainly by the

2 nd respondent i.e. State of Maharashtra through its Secretary (Forests) and others in their official Capacity. However, he made certain official respondents also as respondents by their personal name and in their individual capacity, which is unnecessary. Hence all the respondents, whoever made by their personal name as respondents to the O.A. are deleted from the array of the respondents.

5. In the circumstances, the OA is disposed of, at the admission stage, without going into the merits of the case, by directing the respondents to consider the various claims of the applicant made vide Annexure A/13 (colly) and pass appropriate reasoned and speaking order thereon within 90 days from the date of receipt of a copy of this order, if not already answered/redressed, in accordance with law. No costs."

10. The respondents also mentioned that in view of the order of the CAT, during this period the applicant has been paid provisional pension and various other payments due to him. His request for payment of various allowances like,

newspaper, telephone and peon, etc., is not justifiable and, therefore, the same is not paid. The respondents have also argued that in view of the ongoing criminal case with serious charges against the applicant only provisional pension can be paid to him and there is no question of paying any interest for delay. The issue of grant of regular pension will be decided only after the criminal case pending in the Hon'ble Special Court is decided.

11. Heard applicant in person and learned counsel for the respondents and perused the records.

12. It is quite evident that the applicant was served two charge sheets and punishments were imposed in the past, which were subsequently quashed and set aside by the Tribunal. There is also an ongoing criminal case in the Special Court, under Prevention of Corruption Act, against the applicant. The applicant had come to the Tribunal earlier vide OA No. 3012/2016 and the Tribunal had directed the respondents to consider various claims of the applicant and pass speaking orders.

13. After this order, till the time of hearing, a number of actions have been taken by the respondents and almost all the dues as are applicable to the applicant have been paid. Reasons have been quoted by respondents for initial delay in payment of provisional pension. In view of the ongoing criminal case against him, a decision about provisional pension shall be taken only after the case is finalised by the Government. It has also been mentioned by the respondents that he is not entitled for certain allowance like, newspaper, peon, telephone for the period he was under suspension. They have also opposed the claim of the applicant for 18% interest for the delay in payment of pension.

14. The applicant has himself indicated that most of the reliefs in terms of payments under various heads have already been made by the respondents and only a few allowances, like newspaper, peon, telephone for the suspension period have not been paid to him and for delayed payment, he seeks 18% interest. In support of his arguments, he has also quoted the order of the Tribunal in OA No. 3012/2016 quoted above. It is settled in various judgments that the employee should be entitled to allowances during suspension period.

15. This is the second round of litigation and it is obvious that regular payments are being made to the applicant by the respondents. The applicant was heard during the last OA filed and directions were given to the respondents to address his claims and take necessary action. It is obvious that the payment of provisional pension involves a certain procedure and, therefore, certain delay is inherent, which should be taken care of by the respondents. No interest can be paid on the provisional pension which is being paid to the applicant.

16. It is also evident that the applicant seems to be seeking his reliefs only by filing OAs. The Tribunal cannot intervene in every single aspect of pensionary benefit and allowance etc. There are a number of grievance redressal and administrative procedures and forums which take care of such issues. As far as,

certain allowances in terms of peon, newspaper and telephone are considered for the period under suspension, the respondents are directed that they shall verify the claims in terms of existing rules and make payments under these heads, if not already paid, for the period during which the applicant was under suspension within a period of three months.

17. The OA is accordingly disposed of with the above directions. There shall be no order as to costs.