(2018) 10 CAT CK 0070

In the Central Administrative Tribunal

Case No : Original Application No. 1897 Of 2017

Shyam Lal APPELLANT

Vs

Chairman And Anr RESPONDENT

Date of Decision : 17-10-2018

Acts Referred:

Citation : (2018) 10 CAT CK 0070

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

Bench : Single Bench

Advocate : Padma Kumar. S., Anmol Pandita, Diya Jyoti Singh, Anil Kumar

Final Decision : Disposed Off

Judgement

1. Mr. Padama Kumar S, learned counsel for the applicant and Mr. Anmol Pandita with Ms.Divya Jyoti Singh appeared for the respondents. Mr. Anil Kumar, Dealing Assistant, also appeared as departmental representative on behalf of the respondents -DTC.

2. The instant case pertains to an employee who had retired from the service of respondents- DTC on 30.04.2016. Some of his retiral dues have not been paid as yet. These are enumerated as under :-

"4.12. That the applicant aggrieved by the arbitrary action of the respondents in having withhold the retiral and other dues of the Applicant. The following amounts are due from the respondents corporation:-

(a) Leave Encashment benefit for 298 days which was at his Leave Account at the time of retirement -Rs.5,65,306/-.

(b) Medical reimbursement for Rs.29764/-

(C) Bonus for the years 2014-15 and 2015 -16 (part 2016-2017)- Rs.11083/-

(D) Part Gratutity amount on account of 7th Pay Commission implementation-2,65,523.

(e) Payment of arrears on account of 7th Pay Commission implementation for 4 months Rs.31220/-"

It was brought out that these amount have not been released as the respondents are claiming that certain excess payment amounting to approximately Rupees 4.5 lacs were made to one Dr. G.S. Bensal (Ex. Part time Medical Officer Token No. 60864, during the period Feb.,2009 to June, 2015.) The respondents had claimed to have conducted an internal inquiry and they have held three employees responsible for the same, namely,S/Shri (1) Yogender Pal Sharma (who was working as dealing assistant) (2) Prem Chand (Assistant) and (3) Shyam Lal (who was working as Assistant in-charge and who is the instant applicant in the present case). The respondents had held these three employees responsible and advised them to deposit the Rupees 1.5 lac each.

The departmental representative present in court mentioned that the two employees at Sr. No.(1) & (2) herein above i.e. other than the applicant, were still serving in the department and they have since deposited the said amount.

The applicant had not deposited the said amount as he has already retired by that time and since the alleged outstanding dues were not cleared, the retiral benefits could not be released to him.

On a specific querry whether any charge-sheet was issued to the applicant, the answer was in the negative. It was pleaded that the applicant had retired from service and hence the charge-sheet was not issued.

3.0 The respondents mentioned that Dy. Manager (Pers) vide his letter Dt. 3.5.2016, had directed as under:-

"Please refer to your office note dated 27.4.16, bearing diary No. Noida Depot/1598F dated 28.4.16 wherein the excess recovery to the tune of Rs. 3,99,891/-+50266/- has been verified / vetted by your office in respect of Dr. G.S. Bansal Ex-Part Time Medical Officer T.No. 60864 during the period from Feb.2009 to June 2015 (30.6.2015) i.e. the date on which his arrangement was discontinued (excess amount bill attached herewith).

In this connection, DM Noida Depot is requested to arrange to recover the above excess amount from Dr. G.S. Bansal Ex. Part time Medical Officer T.No. 60864 failing which the same be recovered from the erring officials/PBC concerned and also initiate the disciplinary action against the responsible officials as per rules being a serious irregularity committed by him/them under intimation to this office."

Thereafter, one notice dated 09.06.2016 had been issued to the applicant, wherein the excess payment of Rupees 4.5 lcas was mentioned and the applicant was directed to deposit the amount of Rupees 1.5 lac within 10 days thereof. This was delivered to the applicant on 17.6.2016. Thereafter, the appeals of applicant were rejected vide letters Dt. 19.8.2016 and 17.10.2016.

4.0 The applicant had therefore ventilated his grievance in this OA and sought following reliefs:-

"(i) Quash and set aside the Orders and dated 03.05.2016, 09.06.2016, 19.8.2016 and 17.10.2006 (Annexure A-1 and A-2).

(ii) Direct the respondents to release the entire retiral benefits and other dues of the applicant, withheld by the respondents i.e. Rs.902896/- forthwith.

(iii) Direct the Respondents to grant interest on the entire retiral benefits and other dues mentioned above with govt rate applicable to PF.

(iv) Also award cost of litigation to the employee who is retired and without source of income.

(v) any other relief which the Hon'ble Tribunal may deem appropriate."

5.0 The matter was heard at length. It is seen that the sum total of retiral dues, that have not been released, amount to much more than the alleged amount of Rupees 1.5 lacs, which has been directed to be paid back. It is admitted that the charge-sheet was not issued and thus the applicant had not been granted reasonable opportunity to defend his case. It is also seen that applicant retired from service on 30.04.2016, when 7th CPC recommendations had also come into force w.e.f. 1.1.2016. It is also admitted that pay fixation, in respect of applicant for 7th CPC, has also not been done as yet.

6.0 This Tribunal holds that direction issued vide letter dt. 03.05.2016, to the detriment of an employee, without giving him an adequate opportunity to defend himself, cannot be sustained and hence cannot be implemented. There are rules in force, under which an employee can be given charge sheet even after retirement. This procedure has not been followed in this case as yet.

However, be that as it may, the following directions are given:-

(i). The respondents had mentioned that 7th CPC's recommendations are being implemented in respect of all employees in this year. This 7th CPC fixation in respect of instant applicant will also be done immediately. All retiral dues including gratuity and leave encashment shall be recalculated as per 7th CPC and this entire amount, except an amount of Rupees 1.5 lac, shall be released to the applicant within a period of 8 weeks from the date of receipt of a certified copy of this order.

(ii) The respondents are also directed to pay interest at GPF rate, on this amount to be paid as per (i) above, from the date three months after retirement till date of these orders.

(iii) The respondents, if they deem it necessary, may process for issuance of charge sheet to the applicant in respect of his culpability towards loss amounting to Rupees 1.5 lac, within a period of three months from now and give him an opportunity to defend his case and thereafter take further action as deemed fit on merits. This charge sheet, if and when issued, shall be finalized within a period of one year from the date of issuance of the same.

7.0 The OA is disposed off accordingly with liberty to the applicant to approach Tribunal if some grievance still remains. No order as to costs.