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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A./3859/2022

M.A./3911/2022

Order reserved on :05.03.2024
Order pronounced on :02.04.2024**Hon'ble Dr. Chhabilendra Roul, Member (A)**

Dr. Sarbesh Bhattacharjee,

...Applicant

(Through Ms. Arundhati Katju with Ms. Ritika Meena, Ms. Shristhi, Mr. Sagar Saxena and Mr. Pakhi, Advocates)

VERSUS

1. Union of India
Through the Secretary,
Ministry of Health and Family Welfare,
2. Government of Delhi,
Through the Secretary,
Ministry of Health and Family Welfare,

...Respondents

(Through Mr. Amit Anand and Dr. Ch. Shamsuddin Khan,
Advocates)

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ORDERHon'ble Dr. Chhabilendra Roul, Member (A)

The present OA has been filed by the applicant seeking the following reliefs:



- “8.(i) Set aside Order dated 03.09.2012 bearing no.PAO/XX/PEN/2012-13 issued by Pay & Accounts Officer No. XX, Govt. of NCT of Delhi;
- (ii) Direct the Respondents to issue a Pension Payment Order to the Applicant;
- (iii) Direct the Respondent to release gratuity in the sum of Rs. 10 lakhs to the Applicant;
- (iv) Direct the Respondent to release leave encashment as per the law;
- (v) Direct the Respondent to release the ½ months' salary deducted during Applicant's suspension from November 2011 to January 2012 being Rs. 42,500 x 3 i.e. Rs. 1,27,500;
- (vi) Direct the Respondent to release interest on items (ii)-(iii) above from 01.02.2012 till the date of receipt of such amounts at the rate and manner as applicable to the Gratuity Provident Fund as issued in instructions from time to time;
- (vii) Direct the Respondent to release interest on item (iv) above from the date of withholding of the monthly salary, till the date of receipt of such amounts at the rate and manner as applicable to the Gratuity Provident Fund as issued in instructions from time to time.”

2. The factual matrix of the case is as follows:

2.1 The applicant joined as Medical Officer with the respondents on 15.01.1976. He was regularized in Central Health Services (CHS) as General Duty Medical Officer (GDMO) with effect from 30.10.1976. The respondents suspended the applicant on 2.11.2011. The applicant filed

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OA No.4087/2011 before this Tribunal against the said suspension order dated 2.11.2011. Vide order dated 23.12.2011, this Tribunal quashed the suspension order dated 2.11.2011. As the said order of the Tribunal was not implemented within the stipulated time, the applicant filed Contempt Petition No.6/2012. The Department of Health & Family Welfare preferred Writ Petition (C) No.249/2012 before the Delhi High Court against the order dated 23.12.2011 passed by this Tribunal. Vide interim order dated 13.01.2012, the Delhi High Court stayed the operation of the order of this Tribunal dated 23.12.2011. The Hon'ble Delhi High Court vide order dated 8.04.2013 passed the following order:



- “1. Learned counsel for the respondent states that the respondent has superannuated from service and thus the issue of his continued suspension has become irrelevant. Counsel for the petitioner agrees.
2. We note that the impugned decision records the fact that the respondent was to superannuate on January 31, 2012.
3. The writ petition is dismissed as infructuous.”

2.2 Before the superannuation of the present applicant on 31.01.2012, the Anti Corruption Bureau of Delhi filed two FIRs on 10.01.2012 against the present applicant namely 1) FIR No.01/2012 registered at PS Anti Corruption Branch under Section 13(1)(d)/12(2) of PC Act and Section 420/120B IPC; and 2) FIR No.02/2012 registered at PS Anti

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Corruption Branch under Section 13(1)(d)/13(2) of PC Act r/w Section 420/468/471/120B IPC. There was another FIR registered against the applicant by the Anti Corruption Bureau on 16.02.2013 after he superannuated from service. This is FIR No.04/2013 registered at PS Anti-Corruption Branch under Section 13(1)(d)/13(2) of PC Act and Section 420/468/471/120B IPC. The applicant subsequently moved the Delhi High Court for quashing the said FIRs in WP(Crl) No.784/2021. The CBI filed a status report in RC/DAI/2014/A/0036 P.S. ACB on 28.07.2021 (Annexure A-19). The CBI has subsequently mentioned in their status report as follows:



- “3. That although the CBI registered the instant case against Dr. S. Bhattacharjee, the then Director, DHS & Ors., however, the allegations against Dr. S. Bhattacharjee has not sustained.
4. That the CBI has conducted fair & proper investigation in this matter and found that during investigation petitioner Dr. S. Bhattacharjee was not involved in the criminal conspiracy. M/s Lifeline Systems Pvt. Ltd. has submitted the forged & fake documents for obtaining the tender and deceived the public servants.”

The Delhi High Court vide its order dated 29.07.2021 quashed the FIR No.RC/DAI/2014/A/0036. Further, the Hon'ble Delhi High Court on 14.10.2022 quashed the FIR Nos.01/2012, 02/2012 and 04/2013 in W.P. (C) Nos.781/2021, 785/2021 and 786/2021.

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2.3 On superannuation of the applicant on 31.01.2012, the respondents vide order dated 11.07.2012 sanctioned provisional pension at the rate of Rs.45,200/- per month plus allowances with effect from 1.02.2012 to the applicant.



On 16.06.2017, the applicant submitted a representation to the respondents to release his pensionary benefits. This representation was followed by another representation dated 8.08.2017. The Assistant Director (Vig) vide his letter dated 23.10.2017 stated that FIR No.01/2012, FIR No.02/2012 and FIR No.04/2013 were still pending investigation against the present applicant. The respondents vide their letter dated 29.11.2017 informed the applicant regarding the vigilance status to him. Again the applicant, after the Delhi High Court order dated 29.07.2021, submitted an application seeking payment of the pending retirement benefits. However, the respondents have neither released to him the final pension nor the gratuity amount and the leave encashment. Being aggrieved, the applicant has filed the present OA seeking the aforementioned relief.

3. Notices were issued to the respondents and they have filed their counter reply, to which the applicant has also filed his rejoinder.

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4. The applicant in his OA as well as through his counsel during the arguments has taken the following grounds in support of the relief sought by him.



4.1 That the sanction of the provisional pension by the respondents vide order dated 3.09.2012 to the applicant was against the provisions of rule 9 (4) of the CCS (Pension) Rules, 1972. At the time of his superannuation on 31.01.2012, there was no disciplinary or judicial proceeding pending against the applicant. Particularly, the learned counsel for the applicant referred to rule 9 (4) of the CCS (Pension) Rules, 1972, which reads as follows:

“9.(4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 69 shall be sanctioned.”

The position regarding institution of departmental and judicial proceedings has been clarified in sub-rule 6 of Rule 9 of the CCS (Pension) Rules, 1972, which reads as follows:

“9. (6) For the purpose of this rule,-

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner; or if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted -

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- (i) in the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognizance, is made, and
- (ii) in the case of civil proceedings, on the date the plaint is presented in the Court.”



4.2 The learned counsel for the applicant avers that from the plain reading of the aforementioned rule position of the CCS (Pension) Rules, 1972, it is clear that in the instant case, there was no disciplinary case instituted by the respondents at the time of superannuation of the applicant. Similarly, there were no criminal proceedings pending against him. There was no judicial proceeding instituted as per definition of sub-rule (b)(i) of rule 9 of the CCS (Pension) Rules, 1972. In view of this, invocation of Rule 9 (4) of the CCS (Pension) Rules, 1972 was illegal on the part of the respondents vide which the applicant was granted only provisional pension. Rather, the respondents should have granted regular pension and they should have released gratuity and leave encashment to the applicant immediately after his retirement.

4.3 Even if it is taken that the applicant was under suspension till his date of retirement i.e. 31.01.2012, it is a fact that the suspension order was quashed by the CAT against which the respondents moved to the Hon'ble High Court and the High Court vide order dated 13.01.2012

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stayed the CAT order. Subsequently, the Delhi High Court vide order dated 8.04.2013 stated that the suspension has become infructuous as the applicant has retired from service on superannuation on 31.01.2012. In view of this, the learned counsel for the applicant avers, the respondents could not treat, after the High Court order dated 8.04.2013 that the applicant remained under deemed suspension.



4.4 The Delhi High Court vide order dated 14.10.2022 in W.P. (Crl) Nos. 781/2021, 785/2021 and 786/2021 quashed the FIR Nos.01/2012, 02/2012 and 04/2013 on account of delay in investigation and filing of charge sheet. In other words, as per the definition of institution of criminal proceedings, there was no such institution because the competent magistrate has not taken cognizance of the offences after filing of the charge sheet in the said criminal proceedings. From this, the learned counsel for the applicant avers that there was no criminal proceeding on the date of superannuation of the applicant with effect from 31.01.2012 till the unambiguous order by the Hon'ble Delhi High Court vide its order dated 14.10.2022 in the aforementioned Writ Petitions. Hence, the entire action of the respondents in invoking rule 9 (4) of the CCS (Pension) Rules, 1972 was illegal and contrary to the statutory provisions under the said Rules.

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4.5 The learned counsel for the applicant states that there is no statutory provision for withholding payment of gratuity, leave encashment and finalization of pension due to want of vigilance clearance. The CCS (Pension) Rules clearly mention that there should be criminal or judicial proceedings instituted against the applicant, otherwise the Government is duty bound to finalize the pension and release gratuity and other retirement benefits. Similarly, under rule 39 (3) of CCS (Leave) Rules, the competent authority should have passed an order that there is a possibility of recovery of any loss to the government exchequer due to any irregularity committed by the applicant during his service period. In the instant case, no such order has been passed by the competent authority and hence withholding of leave encashment was also contrary to the statutory provisions.

5. Per contra, learned counsel for the respondents, relying on the counter affidavit filed by the respondents, states that there was no vigilance clearance in respect of the applicant even as late as 23.05.2019 and 14.09.2023. The Vigilance Wing of GNCT of Delhi had informed that the applicant is not clear from vigilance angle and accordingly the respondents are not in a position to clear the retirement benefits of the applicant. The learned counsel for the

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respondents further argues that at the time of superannuation, the applicant was under “deemed suspension” because the applicant was suspended on 23.11.2011 and at the time of his superannuation, this suspension was valid. Though the Tribunal vide order dated 23.12.2011 quashed and set aside the suspension order dated 2.11.2011, the respondents went to the Hon’ble High Court and the High Court vide order dated 13.01.2012 stayed the operation of the order of this Tribunal dated 23.12.2011. The applicant attained the age of superannuation on 31.01.2012. In view of these circumstances, the applicant remained under “deemed suspension” because of the stay of the order of this Tribunal by the Delhi High Court vide order dated 13.01.2012. As the applicant was under deemed suspension on the date of his superannuation. Invoking sub-rule 6 (a) under rule 9 of the CCS (Pension) Rules, 1972, it can be safely said that the applicant remained under suspension and as per this clause, the departmental proceedings were deemed to be instituted on the date on which the government servant was placed under suspension. Because of this suspension order which remained valid since 2.11.2011 and as per provision under sub-rule 6 (a) of rule 9 of the CCS (Pension) Rules, 1972, it can be said that departmental proceedings were instituted as on 2.11.2011. Accordingly, the issuance of

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provisional pension by the respondents invoking rule 9 (4) of the CCS (Pension) Rules, 1972 was perfectly legal and regular.



5.1 Learned counsel for the respondents further states that as the vigilance clearance in respect of the applicant was not there, the respondents could not finalize the pension and release his gratuity and leave encashment.

5.2 When this Tribunal queried to the learned counsel for the respondents what is the statutory provision in respect of the vigilance clearance, the learned counsel for the respondents could not furnish any statutory provision which states that in absence of vigilance clearance, the pension of a particular government servant cannot be finalized nor his gratuity or leave encashment could be withheld. He reiterated the fact that the vigilance wing of the Govt. of NCT of Delhi has not given clearance in respect of the present applicant and accordingly the respondents are not in a position to release the gratuity or finalize his pension and release the same.

6. I have heard the learned counsels representing both the parties and perused the records of the case carefully.

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6.1 In the instant case, I do agree with the averment by the learned counsel for the respondents that on the date of superannuation i.e. 31.01.2012, the applicant was under suspension and as per provisions of sub-rule 6 (a) of rule 9 of the CCS (Pension) Rules, 1972, it can be said that on the date of his superannuation, a departmental proceeding had been instituted against the applicant because he was under suspension with effect from 2.11.2011. In view of this, the invocation of rule 9 (4) of the CCS (Pension) Rules, 1972 by the respondents while issuing provisional pension vide order dated 11.07.2012 was perfectly legal.

6.2 Having held that the initial issuance of provisional pension vide order dated 11.07.2012 was perfectly legal, when the Delhi High Court vide order dated 8.04.2013 declared that the W.P. (C) No.249/2012 has become infructuous as the applicant has superannuated on 31.01.2012, the force of such suspension did not exist after passing of such order i.e. 8.04.2013. Accordingly, the respondents were duty bound to release the gratuity and finalize the pension as well as release leave encashment forthwith. But the respondents have invoked the absence of vigilance clearance in respect of the applicant and have not bothered to finalize his pension or release his gratuity and leave encashment. Mere pendency of FIRs is no statutory

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condition under which the government can withhold pensionary benefits of its employees. There are specific provisions under rule 9, sub-rule 6 of the CCS (Pension) Rules, 1972 and CCS (Leave) Rules, 1972, particularly rule 39 (3) under which the pensionary benefits like gratuity and the leave encashment can also be withheld. But none of these conditions are satisfied in the instant case. For withholding gratuity, the President has to pass a specific order under rule 9 (1) of the CCS (Pension) Rules. In the instant case, there is no specific order passed by the President in respect of the present applicant under rule 9 (1) of the aforesaid Rules. Similarly, the competent authority has not passed any specific order for withholding leave encashment under rule 39 (3) of the CCS (Leave) Rules. Rule 39 (3) reads as follows:

- “39. (3) The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any.”

In view of the statutory position mentioned above, the action by the respondents in not releasing leave encashment to the applicant can be termed as irregular.

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6.3 It has already been discussed that this Tribunal queried to the learned counsel for the respondents regarding the statutory provision pertaining to vigilance clearance based on which the government can withhold pensionary benefits. The learned counsel for the respondents has failed to bring to my notice any such statutory provision. There is hypothetical possibility that a vigilance wing of a department may withhold vigilance clearance in respect of a government servant for an indefinite period and the government servant would suffer on account of that. The Hon'ble Apex Court in State of **State of Jharkhand and ors. Vs. Jitendra Kumar Srivastava and anr.**, AIR 2013 SC 3383 has categorically held that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and unblemished service. Relying on the judgment of the Apex Court in **D.S. Nakara and Ors. Vs. Union of India**, (1983) 1 SCC 305 and **Deoki Nandan Prasad Vs. State of Bihar and ors.**, (1971) 2 SCC 330, the Hon'ble Apex Court in Jitendra Kumar Srivastava (supra) case held that pension and pensionary benefits are like private property and right to property is a constitutional right under Article 300A of the Constitution. Article 300A of the Constitution reads as under:

“300A Persons to be deprived of property save by authority of law - No person shall be deprived of his

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property save by authority of law.” Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this person without the authority of law, which is the Constitutional mandate enshrined in Article 300 A of the Constitution. It follows that attempt of the applicant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.”



The Apex Court held that:

“15. It hardly needs to be emphasized that the executive instructions are not having statutory character and, therefore, cannot be termed as “law” within the meaning of aforesaid Article 300A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold –

even a part of pension or gratuity. As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different.”

6.4 In the instant case, the respondents have not invoked any statutory provision while withholding the pensionary benefits. After the declaration of Writ Petition No.249/2012 was declared infructuous, the deemed suspension of the applicant on his superannuation dated 31.01.2012 cease to exist. Hence, any action on the part of the respondents in not releasing retirement benefits like gratuity and leave encashment as well as not finalizing the pension after issuance of provisional pension was not supported by any statutory provision. In the instant case, mere pendency of FIRs against the applicant could not be constituted that criminal proceedings were instituted against the applicant as

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per the definition of institution of such proceedings under the CCS (Pension) Rules i.e. sub-rule 6 (b) of rule 9 of the said Rules. Mere pendency of vigilance clearance from the vigilance wing cannot justify withholding release of pensionary benefits for an indefinite period. It has been held by the Apex Court that pensionary benefits are like private property and the government servants could not be deprived of that without following due procedure of law. In the instant case, the action of the respondents in not releasing gratuity and leave encashment as well as not finalizing pension is not supported by any statutory provision. Hence, such action can be termed as arbitrary and irregular.



7. In view of the above, the present OA is allowed. The respondents are directed:

- (i) To issue final pension to the applicant;
- (ii) To release gratuity to the applicant forthwith;
- (iii) To release leave encashment to the applicant forthwith;
- (iv) The respondents are further directed to grant interest to the applicant at applicable GPF rates on delayed payment of gratuity with effect from 9.04.2013, the date after the Delhi High Court

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declared the W.P. (C) 249/2012 as infructuous;
and

- (v) The respondents are also directed to grant interest on delayed payment of leave encashment as well with effect from 9.04.2013 at applicable GPF rates.



8. The above exercise shall be completed by the respondents within eight weeks of receipt of a certified copy of this order. No order as to costs.

9. Pending MA, if any, also stands disposed of.

(Dr. Chhabilendra Roul)
Member (A)

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