

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 316 of 2018

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Deba Prasad Patnaik, aged about 68 years, S/o Late Raghunath patnaik, resident of Plot No. EB-557 (1st Floor), Raghunath Bhawan, Brit Colony, PS-Badagada, Bhubaneswar, Dist-Khurda.

.....Applicant

VERSUS

1. Union of India represented through the Secretary, Ministry of Information & Broadcasting, (IIS Section), Shastri Bhawan, New Delhi – 110001.
2. The Director General, Doordarshan News, Doordarshan Bhawan-II, Copernicus Marg, New Delhi.
3. The Deputy Director General, Doordarshan Kendra, Bhubaneswar-751005, Dist.-Khurda.
4. The Pay & Accounts Officer (Pension), (IRLA Group), Ministry of Information & Broadcasting, Soochana Bhawan, 7th Floor, Lodhi Road, New Delhi-110003.

.....Respondents

For the applicant : Mr.B.S.Tripathy, counsel

For the respondents: Mr.M.R.Mohanty, counsel

Heard & reserved on : 22.11.2019 Order on : 18.12.2019

ORDER

Per Mr. Gokul Chandra Pati, Member (A)

In this OA the applicant has prayed for the following reliefs :

- “(a) To pass appropriate orders quashing the impugned order vide letter dtd. 25.9.14 in annexure-A/6.
- (b) To pass appropriate orders directing the Respondents-authorities to grant all the retrial/full pensionary benefits in favour of the applicant with interest within a stipulated period; and
- (c) To pass such further order/orders as may be deemed just and proper in the facts and circumstances of the case and allow this OA with cost.”

2. The facts in brief are that the applicant was transferred to Bhubaneswar on 7.12.2010 and thereafter, he retired from service on superannuation on 31.5.2011. Although vigilance clearance certificate was issued in his favour on 3.1.2012 (Annexure-A/2), but his pensionary benefits were not released. The applicant filed the OA No. 514/12, which was disposed of with a direction to the respondents to consider his representation. When no action was taken, the applicant filed the Contempt Petition No. 83/12. When the CP 83/12 was

pending, the respondents sanctioned the provisional pension. Thereafter, the CP 83/12 was dropped.

3. The applicant filed another OA No. 587/14, which was disposed of vide order dated 19.8.14 (Annexure-A/5) with a direction to dispose of the applicant's representation for grant of full pensionary benefits. The representation was rejected vide order dated 25.9.14 (Annexure-A/6), which has been challenged in this OA, mainly on the ground that no vigilance case was pending or contemplated against him at the time of his retirement and vigilance clearance certificate was issued in his favour after his retirement. No charge-sheet was issued to the applicant as on his date of retirement on 31.5.2011. It is averred in the OA that a CBI case was pending against him for which sanction order was issued on 28.12.2010, but he was not informed about any further development about the case till his retirement.

4. The respondents in the impugned order have stated that a fresh vigilance clearance was required in his favour since he has been charged in the CBI case on corruption charges against him. In the Counter, it is stated that CBI Bhubaneswar was requested for the status of the case. It was informed that the said CBI case against the applicant is pending in the court of Spl. Judge, Court No.-II (CBI) Bhubaneswar. It is also stated that the applicant has been informed accordingly vide letter dated 19.11.2018 by the PAO (Annexure-R/4 of the Counter).

5. In the Rejoinder, the applicant stated that the vigilance clearance certificate was issued in his favour on 3.1.2012 after his retirement. It is stated that as on his retirement on 31.5.2011, he had the vigilance clearance and no dues certificate. Hence, he should not have been deprived of his legitimate dues.

6. The applicant filed an affidavit dated 12.9.2019, stating that at the time of his retirement, no vigilance cease was pending against him and that he was supplied a copy of the charge-sheet in the CBI case on 6.8.2012. Vide orders dated 25.10.2019 and 8.11.2019 of the Tribunal, the applicant was permitted to file the affidavit dated 12.9.2019, copy of which was given to the respondents' counsel on 8.11.2019, who wanted to obtain instructions.

7. Heard learned counsels for the applicant and respondents, who reiterated their stand in their pleadings. Learned counsel for the applicant filed a copy of the judgment of Hon'ble Apex Court in the case of State of Jharkhand & Ors. vs. Jitendra Kumar Srivastava & Anr. in Civil Appeal No. 6770 of 2013 and 6771 of 2013 in support of the applicant's case.

8. Learned counsel for the respondents filed written notes of submission. It is stated that the case of Jitendra Kumar Srivastava (supra) relied on by the applicant's counsel is not applicable to this case since as noted in para 20 of the said judgments, it was noted that there was no provision under the rules to withhold pension or gratuity. But in the present OA, such a provision exists in the rule, such as the rule 69 of the CCS (Pension) Rules, 1972. The respondents' counsel also relied upon the judgment of Hon'ble Allahabad High Court in the case of Inayatulla Khan vs. State of U.P. to augment the case of the respondents in this OA.

9. The respondents have relied on the Rule 69 of the CCS (Pension) Rules, 1972 to withhold sanction of full pensionary benefits to the applicant. The rule 69 states as under:-

“69. Provisional pension where departmental or judicial proceedings may be pending

(1) (a) In respect of a Government servant referred to in sub-rule (4) of [Rule 9](#), the Accounts Officer shall authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant, or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorized by the Accounts Officer during the period commencing from the date of retirement up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon :

¹Provided that where departmental proceedings have been instituted under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, for imposing any of the penalties specified in Clauses (i), (ii) and (iv) of Rule 11 of the said rules, the payment of gratuity shall be authorized to be paid to the Government servant.

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

Footnote : 1. Inserted by G.I., Dept. of Per. & A.R., Notification No. 30/2/80-Pension Unit, dated the 13th February, 1981.”

Further, the meaning of the pending departmental and judicial proceeding have been clarified by the DOPT in the website for the Pensioners' Portal (pensionersportal.gov.in/FAQ_Civil.pdf) and the paragraph 1.7 of the said guidelines of the DOPT states as under:-

“(1.7) When is departmental or judicial proceeding deemed to be instituted?

(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 is the Government servant has been placed under suspension from an earlier dated, on such date;

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

(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."

10. As per the rule 69 of the CCS (Pension) Rules, 1972, the pension and gratuity can be withheld if any judicial proceeding is pending. As per the DOPT guidelines, the judicial proceeding (the criminal case registered by the CBI against the applicant) is deemed to be instituted against the applicant if the Magistrate has taken cognizance of the same. It is not clear from the pleadings of the respondents if in the criminal case pending in the Court of the Spl. Judge Court No. II (CBI), the magistrate/judge has taken cognizance of the charges against the applicant before the date of his retirement on 31.5.2011. Although it is stated in the pleadings that sanction for the prosecution was given on 28.12.2010 i.e. before retirement of the applicant, but nothing has been stated in the Counter about the date on which the trial court has taken cognizance of the charges against the applicant. The applicant in his affidavit dated 12.9.2019 has stated that he received a copy of the charges from the court on 6.8.2012. Hence, there is no evidence on record to show that cognizance of the criminal charges has been taken by the Spl. Judge CBI on or before 31.5.2011, when the applicant retired. Further, taking into consideration the fact that the vigilance clearance certificate dated 3.1.2012 (Annexure-A/2) was issued to the applicant after his retirement and the said certificate dated 3.1.2012 has not been cancelled by the competent authority as there is no such averment in the Counter and the contentions in para 4.3 of the OA in this regard have not been contradicted in the Counter, I am of the considered opinion that that there was no justification for the authorities to invoke the provisions of the rule 69 of the CCS (Pension) Rules, 1972 to withhold the retirement benefits of the applicant in this case.

11. In the circumstances as discussed above, the impugned order dated 25.9.2014 is not sustainable under law and accordingly, it is quashed with a direction to the respondents to release the full retirement benefits of the applicant as per the provisions of law within three months from the date of receipt of a copy of this order. In the event of failure to release the retirement benefits to the applicant within the time as stipulated above, the applicant will be entitled for an interest on amount payable at the rate of 9% per annum from

31.5.2012 till the date of actual payment subject to recovery of such interest from the officials who would be found to be responsible for delaying the release of the dues of the applicant in accordance with this order.

12. The OA is allowed as above with no order as to cost.

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath