

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 042/00270/2020

Date of Order: This, the 22nd Day of April, 2021

**THE HON'BLE SMT. MANJULA DAS, MEMBER (J)
THE HON'BLE MR. NEKKHOMANG NEIHSIAL, MEMBER (A)**



Sri James Guite,
 Son of Late Vialzachin Guite
 Deputy Commissioner (Retired),
 Customs (P) Headquarters, Shillong
 Resident of Tedium Road, Near CBA Office
 New Lamka, (E) Churachandpur,
 Manipur-795006 .

... Applicant

- Versus -

1. The Union of India
 Through the Secretary to
 The Government of India
 Revenue Department
 Ministry of Finance, New Delhi-110001.
2. The Chairman,
 Central Board of Excise & Customs
 Ministry of Finance
 North Block, New Delhi-110001.
3. The Commissioner
 Customs (Preventive)
 110 M.G.Road, NER, Shillong-7993001.

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4. The Controller of Accounts
Office of the Deputy Controller of Accounts,
Central Board of Excise and Customs,
EZ, Kolkata.
5. Senior Accounts Officer
Pay and Accounts Officer
Central Board of Excise and Customs,
M.G.Road, "Crescens" Building,
shilling-793001.

...Respondents.



For the Applicant : Sri M. Chanda, Smt. U. Dutta &
Sri K. Abhinaba

For the Respondents : Sri S.K. Ghosh, Addl. CGSC

ORDER (ORAL)

MANJULA DAS, MEMBER (J):-

This O.A. has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking a direction upon the respondents to release his regular monthly pension and gratuity with 18% interest and other retirement dues consequent upon his retirement on 30.11.2019 till payment is made.

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2. The main grievance of the applicant as narrated in the present case is that though he retired from service on 30.11.2019, however, all his pensionary benefits and consequential dues are not yet released by the respondent authorities. He was however, granted provisional pension @ Rs. 52800/- p.m.



3. It was submitted by Sri M. Chanda, learned counsel appearing for the applicant that applicant submitted his application form on 18.11.2019 for assessing Pension/Family pension and gratuity which was forwarded on 18.11.2019 by the Additional Commissioner to the Pay & Accounts Officer, Shillong for authorization of pension. The Assistant Commissioner, office of the Directorate General of Vigilance, Indirect Taxes and Customs, Kolkata vide letter C. No. 98/EZU/VIG/2019/278 dated 20.02.2020 informed the Additional Commissioner of Customs, Commissionerate of Customs (Prev.), NER that the vigilance enquiry being

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conducted regarding cash seizure from the applicant/from his daughter and requested the applicant to appear on 03.03.2020 for recording of his version before the Investigating Officer. The applicant appeared on 16.03.2020 before the inquiry officer in the office of the Directorate General of Vigilance, Indirect Taxes and Customs, Kolkata along with required documents and his statement was recorded. The applicant was co-operated with the Police, Income Tax Department and his parent department in connection with detection of an amount of Rs. 42 Lakh case on 18.11.2018 at Lengpui Airport, Aizwal from the bag of his daughter Ms. Niangmuan Kim. The applicant also submitted all his required documents to the Income Tax Department and to the respondents but even than his gratuity, regular monthly pension and other retirement benefits have not been released till date without assigning any valid reason. Situated thus, the applicant submitted a detail representation on 02.07.2020 to the

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Commissioner, Commissionerate of Customs (Preventive), N.E.R. Shillong against non-payment of his pension and other retirement benefits. However, the applicant was informed that the Vigilance enquiry conducted against the applicant is no way connected with the non-payment of his pension and other retirement benefits.



4. Sri Chanda further submitted that in the latest vigilance status informed vide letter dated 18.11.2019 that there is no disciplinary/criminal case pending against the applicant but the Customs (P) Hqrs. Shillong has been ordered to conduct a preliminary inquiry against him as he was accompanying his daughter enroute to Imphal, who was found carrying cash amounting to Rs. 42 Lakh. Thereafter, the office of Pay and Accounts Office vide letter No. PAO/PR/CUS-2459/2019-20/3094 dated 17.12.2019, enquired on the vigilance status/clearance certificate asking the copy

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of outcome of investigation report as stated in CBIC letter dated 18.11.2019. In the letter dated 16.10.2020, it has been requested to intimate that pending submission of the preliminary inquiry report, whether it would be appropriate to finalize the pension case of the applicant. As such, it has been requested to issue necessary order/guidance so that the Pay and Accounts Office, Central Board of Excise & Customs, Shillong can process the case accordingly.



5. Sri Chanda vehemently argued that after successful completion of 37 years 9 months and 23 days service, the respondents have not paid regular monthly pension, gratuity and other retirement dues of the applicant till date although no disciplinary/criminal case are pending against the applicant. According to Sri Chanda, as per provisions of Rule 64 of CCS (Pension) Rules, 1964 and Rule 9 of the CCS Pension Rule 1972, the respondent authorities have no right to withhold the

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pension, gratuity and other retiral benefits. Thus the action of the respondent authorities is not permissible under the law and the pensionary benefits due to the applicant has to be released immediately as the applicant has already retired from service on 30.11.2019 and has not obtained regular pension and other benefits.



6. Sri Chanda has relied para 2 of written statement filed by the respondents wherein they have admitted that there is no charge sheet issued by the Directorate General of Vigilance to the applicant till date. Accordingly, the pension papers were resubmitted online on 28.09.2020 to the Pay and Accounts Officer, Central Goods and Services Tax & Customs, Shillong with rectification, where necessary, with request to finalize the pension. To that effect, Sri S.K. Ghosh, learned Addl. CGSC appearing for the respondents vehemently argued that the Pay and Accounts Office

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referred the matter to the Controller of Accounts, CBIC, East Zone Kolkata vide their letter No. PAO/PR/CUS-2459/2020-21/1403-1405 dated 16.10.2020 and finally ordered for drawal of Provisional Pension @ Rs. 52800/- per month, pending vigilance clearance and receipt of final order passed by the competent authority exonerating him of the departmental/judicial proceeding instituted, presumably taking into consideration the preliminary inquiry stated to have been under process against the applicant as mentioned in the Vigilance Status Report issued by the CBIC. Accordingly, Provisional Pension for the period from 01.12.2019 to 31.10.2020 was sanctioned vide this office order dated 19.11.2020 and paid to him. The said Bill amounting to Rs. 6,79,536/- processed online, was credited to the Bank Account of the applicant held with United Bank of India on 20.11.2020.



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7. Sri Ghosh further submitted that in case of provisional pension, the benefits like Gratuity, is not released, which is processed from the Pay and Accounts Office. The Leave Encashment and Group Insurance dues are processed by the office of the retiree last served. But the authority may withhold whole or part of the payment of Leave encashment amount under Rules 39(c) of CCS Leave Rules in case of any departmental proceeding under process against a retiree. Therefore, the Leave encashment has not been sanctioned/released as yet. The amount admissible from Savings fund under Central Govt. Group Insurance scheme is also calculated. But since the status/outcome of inquiry is not yet known, the same could not be settled. Thus, by submitting as above, Sri Ghosh prayed for dismissal of the present case of the applicant.

8. Having heard the learned counsel on both sides, perusal of the pleadings and materials placed on

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record, we need to decide as to whether withholding of pension and other retirement benefits is as per prescribed law. The basic cause for withholding of applicant's pension and other retirement benefits is on the alleged ground of carrying an amount of Rs. 42 lakh in cash by the applicant's daughter in the Aizawl Airport which was seized by the Intelligence Authority and finally handed over the said case to the concerned department of Income Tax. It appears from the perusal of Annexure-A2 of the O.A. that the applicant did make statement on 03.12.2018 to the Investigating Authority in respect to cash seizure of Rs. 42 lakhs as intimated by Air Intelligence Unit, Lengpul Airport, Aizawl on 18.11.2018 which is being extracted as hereunder:-

"On 18.11.2018 I had proceeded to the Airport along with my daughter Ms.Niangmuan Kim, to see her off to Imphal bound for Churachandpur via Air India Airlines flight No.AI 715(Aizawl to Imphal)- that was supposed to take-off at 12.15 hrs. On reaching the Airport terminal entrance gate and while scanning her had luggage, State Police manning the Xray machine detected the said cash which



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was packed in a laptop bag and immediately informed the AIU, Leengpui Airport, Aizawl. At that moment, my daughter signalled me with her hand to wait, and on seeing that the taken-off time of her flight was nearing. I decided to enter the Airport terminal building and purchased an entry ticket costing Rs.30/- . Then I pleaded with the authorities to let my daughter continue on her journey and myself will explain/take up the matter with them. Accordingly, the Police allowed my daughter to leave and I remained with them at the chamber of the Deputy Superintendent of Police waiting for the arrival of the AIU personnel who were stationed at Aizawl town.



On their arrival at around 16:00 hrs, they started recording my statement which was put to me in questionnaire form in the adjacent room of the Deputy Superintendent of Police that was provided for the purpose, where I stated that the cash was borrowed from two persons viz (i) Sri S.Haukhanlian Mate (46 Yrs), S/O of (L)S.Kamchinghang Mate, R/O Opp.Rural Bank, H.No.1/24/Kulikawn, Aizawl, Mizoram for a sum of Rs.22(Twenty Two) lakhs (ii) Sri Paukholun Gangte (39 Yrs), S/O Ngulzathang Gangte, R/O H/No.Ch.Section IIII 52/G, Thuampui, Aizawl, Mizoram for a sum of Rs. 15 (Fifteen) Lakhs. Deed of Agreement of both the above borrowed money is enclosed. The remaining amount of Rs.5(Five) lakhs was given by Sri Johnssin Sinate a close relative to be handed over to his family at Rengkai, Churachandpur, Manipur for his father's urgent treatment expenses. Copy asking refund of the above sent amount by Sri Johnson Sinate is enclosed.

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Then the cash was physically counted inside the DSP's room by the AIU Personnel in the presence of the Deputy Superintendent of Police and me. The cash amounted to Rs.42 (Forty Two) lakhs. Then a summon under Section 131 of the income Tax Act, 1961 was issued to me by the AIU authorities to attend again personally at their camp office at Control RoomNo.315, Tourist Lodge, Chaitlang , Aizawl on 20.11.2018 to give evidence and to produce personally the documents/Books of Accounts viz (i) Details of your soursces of income wwith evidences (ii) Copy of all Bank Statements of Accounts being maintained by you for the F/Y 2018-19, (iii) Copies of PANand Income Tax return being filed by you (iv) Copies of Tax Exemption Certificates and ST certificate if an ST and (v) Details of the source of the cash with corroborative evidences, which was furnished by me accordidngly. Copies of all the above mentioned documents are being submitted for perusal.

I aalso wanat to bring on record that way back in the month of January 2018, I had requested PAO, C&CE, Shillong over phone to take-up my case of transferring my GPF Balance that was still lying at Kolkata Pay and Accounts Office, as I had wanted to make part-final-withdrawal for purchase of a residential plot, where negotiations were already going on between th owner/seller and my wife. Also , we had plans to help set up a doctor's clinic for my daughter Ms.Niangmuan Kim, a graduate doctor in Homeopathic Medicine & Surgery who recently passed out in 2016. Further correspondence on the matter was made on10.10.2018 by PAO, C&CE, Shillong with PAO, CE-1, Kolkata on the matter, copy of which is enclosed.

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I would also like to bring on record that I had given (i) Prior Intimation for purchase of land to the Commissioner of Customs (Prev.), N.E.Region, Shillong on the 13.11.2018 as soon as the borrowed money was received partly and (ii) Application for withdrawal from General Provident Funds (GPF) for an amount of Rs.30,00,000/- (Rupees Thirty Lakhs) only to the Pay & Accounts Officer, C&CE, Shillong on 13.11.2018 itself, which was then forwarded by the Administrative Officer, Aizawl Customs Division vide letter C.No.II(17)1.GPF/AC-AZL/PT-II/2017/844 dated 13.11.2018 (Copies enclosed)

I also want to add that I will be retiring on 30.11.2019 and therefore humbly pray that my case be settled expeditiously, considerately and favourably."



9. It is noted that the matter is under investigation by the Vigilance Department of Income Tax which is still pending. By now, applicant retired on 30.11.2019. Due to allegation thereon and pending of vigilance case before the Income Tax, applicant's pension and other retirement benefits were withheld by the respondent department. Rule 9 of the CCS Pension Rule 1972 says as follows:-

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“Right of President to withhold or withdraw pension”

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and or ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service including service rendered upon re-employment after retirement:

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further where apart of pension is withheld or withdrawn, the amount of such pensions shall not be reduced below the amount of (Rupees Three Thousand five hundred) per mensem.)

(2) (a) The departmental proceedings referred to in sub-rule (1), if

Instituted while the Government servant was in service before his retirement or during his re-employment, shall after the final retirement of the Government servant, be deemed proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall



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submit a report recording its findings to the President."

Rule 39 (3) says as follows:-

"(3) In case a Government servant is granted pay and allowances for the period by which the notice given to him falls short of three months and he is re-employed before the expiry of the period for which he has received pay and allowances, he shall refund the pay and allowances so received for the period following his re-employment."



10. Admittedly there is no such departmental/judicial/criminal proceedings against the applicant till his retirement. Even the Additional Commissioner, Office of the Commissioner of Customs (Preventive), Shillong vide order No. 32/2019 dated 28th November, 2019, Annexure-A6, page 38 to the O.A., passed an order which is extracted as follows:-

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11. The incident so happened was of 18.11.2019 and applicant retired honourably w.e.f. 29.11.2019 as

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appears from the aforesaid office order No. 32/2019 dated 28.11.2019.

12. From the above law as provided under Rule 9 of the CCS (Pension Rule 1972 as well as Rule 39 (3) of CCS Leave Rules 1972, there is a clear indication that pension/pensionary benefits/gratuity or leave encashment can be withheld only in the case of where there is disciplinary/criminal/judicial proceedings pending. From the written statement as well as submissions made by Sri S.K. Ghosh, Addl. CGSC for the respondents, it is not disputed that there is such disciplinary/judicial/criminal case pending against the applicant till the date of applicant's retirement. By taking into consideration the entire conspectus of the case, as the Rule does not provide for withholding pensionary benefits, regular pension, we direct the respondent authorities to release the pension including consequential benefits to the applicant immediately



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within a period of three months from the date of receipt
a copy of this order.

13. O.A. stands allowed to the extent as indicated
above. No order as to costs.



(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)

PB

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