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**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION No.210/280/2020

Dated this Tuesday, the 9th day of March, 2021

CORAM : DR. BHAGWAN SAHAI, MEMBER (ADMINISTRATIVE)

Name - Balakrishnan Mudaliar, Age : 61, Designation - Retired Driver,
Office Address – Office of the Commissioner, CGST & Central Excise,
Thane Nav Prabhat Chambers, Ranade Road, Dadar West, Mumbai 400 028.
Residing at : 201, A-Wing, Ramkutir CHS Ltd Asalpa,
Ghatkopar (West), Mumbai 400 084. Mob : 9869479859,
Email : balakrishnan_mudaliar@rediffmail.com. - Applicant
(By Advocate Shri Sangram Chinnappa)

Versus

1. Union of India through The Chairman,
Central Board of Excise & Customs, North Block,
New Delhi 110 001.
2. The Chief Commissioner, Central Excise & CGST Mumbai Zone,
115, Maharshi Karve Road, New Central Excise Building,
Churchgate, Mumbai 400 020.
3. The Commissioner of Central Excise & CGST,
Thane Commissionerate, Nav Prabhat Chambers,
Ranade Road, Dadar (West), Mumbai 400 028. - Respondents

(By Advocate Smt. N.V.Masurkar)

Reserved on 16.02.2021

Pronounced on : 09.03.2021

ORDER

Shri Balakrishnan Mudaliar has filed this OA. He seeks directions to respondents to release pension and other retiral benefits accrued to him as per prevalent pay rules and provisions along with appropriate interest.

2. Facts of the case :

- (i). The applicant has stated that he was employed as a driver with respondents from 30.03.1989 to 08.01.2008. By order of 08.01.2008, he was compulsorily retired from service.
- (ii). However, the order of his compulsory retirement was set aside by this Tribunal in its order dated 21.02.2013 in his OA No.787/2010. That order of the Tribunal was challenged by the respondents in a Writ Petition No.6368/2013,

which was disallowed by High Court on 21.06.2017. Against that High Court order, the SLP filed by the respondents was also disallowed by Supreme Court order dated 17.07.2018. Thereafter the applicant was reinstated in service in 2018.

(iii). The applicant also filed Writ Petition No.11391/2013 against that order of the Tribunal denying back wages which was disposed of by the High Court order dated 25.01.2018 remitting the case back to the Tribunal to redetermine the issue of payment of back wages. Thereafter, in OA No.787/2010, this Tribunal issued an order on 09.08.2018 directing the respondents to reinstate the applicant in service from 08.01.2008 with stoppage of one increment for three years and to pay arrears of salary to him from 08.01.2008 till he was allowed to resume his duty. Against that order of the Tribunal, the respondents again filed Writ Petition No.7568/2019 challenging the grant of back wages. This Writ Petition is still pending in the High Court. However, by the High Court order dated 23.07.2020, Union of India was directed to deposit the amount under the impugned order along with calculations which shall be subject to further High Court orders.

(iv). The applicant retired from service on 31.08.2019. But due to pendency of Writ Petition No.7568/2019, the respondents have refused to release pension and other retiral benefits to the applicant. In reply to Interim Application 01/2020 of the applicant in Writ Petition No.7568/2019, the respondents have acknowledged withholding of pension of the applicant, subject to outcome of the Writ Petition and also pointed out some excess amount paid to the applicant on his retirement, along with pension received by him after his compulsory retirement. The applicant was permitted by the High Court with reference to the Interim Application to pursue his case pertaining to pension and retiral benefits as per order dated 23.07.2020. The applicant made a representation on 11.02.2020 requesting the respondents to release his pension but it has not been replied. Therefore, this OA has been filed.

3. **Contentions of the applicant :**

3(a). Withholding of his pension, gratuity and other retiral benefits is bad in law. His pension is protected under Section 11 of the Pensions Act, 1871. He was not given any notice about withholding of pension and other benefits. The applicant and his dependents are also not able to avail of facility of Central Government Health Scheme as Identity Card, his last pay certificate and Pension Payment Order have not been issued to him. After his reinstatement, the applicant has been given benefits of VII CPC pay scales. The respondents' contention that they can withhold retiral benefits till the Writ Petition No.7568/2019 gets decided is totally baseless and fallacious.

3(b). After his reinstatement, he wrote to the respondents to discontinue his pension in September, 2018 but they did not discontinue payment of pension and therefore excess payment has been paid to him till his retirement in August, 2019. After his retirement, the respondents cannot recover the payment made to him earlier. Rule 69 r/w Rule 9 of Pension Rules means that an order has to be passed by office of the President of India as per Allahabad High Court decision in Civil Miscellaneous Writ Petition No.33680/2000 dated 10.05.2001 in case of **M.D.Gautam Vs. Union of India and others, reported in 2001 (3) L.L.N. 751 decided on 10.05.2001.** Powers under Rule 69 r/w Rule 9 of the Pension Rules can be exercised only when an authority applies its mind and passes an order that there is allegation of grave misconduct pending against the employee and therefore, such an order is issued. Against the applicant no judicial or departmental proceedings for misconduct are pending and no order under Rule 69 has been passed by the respondents. Therefore, the O.A. be allowed.

In their reply and written submissions, the respondents contend thus:

3(c). The issue of back wages is still subjudice, so the provisional pension had to be calculated based on the last pay drawn by the applicant before his compulsory retirement. In Writ Petition No.7568/2019, the High Court order

dated 23.07.2020, has directed the respondents to deposit the amount as per the Tribunal's order of 09.08.2018 along with calculations. Accordingly, pay fixation order has been issued on 21.08.2020 and amount of pay arrears from 09.01.2008 to 19.07.2018 after deducting the amount of pension already received by the applicant, gratuity and commuted pension along with recovery of excess pension with interest have been calculated, and the amount is being deposited as per the High Court order.

3(d). The present OA filed by the applicant amounts to multiplicity of proceedings for the same relief and therefore, it should be dismissed with cost. The applicant is not entitled for the relief claimed in this OA. After his reinstatement, he continued to receive pension and also salary and kept insufficient balance in his pension amount so the amount of pension paid to him in excess of salary could not be recovered from Bank. His response and conduct to the situation is irresponsible and evasive. He has wilfully suppressed vital facts that he was paid pension, gratuity, leave encashment and other benefits after his compulsory retirement from service. After resumption of his duty on reinstatement, liability for payment of pension to him would arise only after Writ Petition No.7568/2019 gets decided. Therefore, the OA should be dismissed for suppression of facts.

3(e). As per order dated 21.02.2013 in OA No.787/2010 filed by Shri M.S.Kamble, LDC, (who was co-delinquent with the applicant) was also reinstated in service with continuity of service after reducing penalty of compulsory retirement to stoppage of one increment for three years and his request of arrears of salary from the date of his compulsory retirement till his reinstatement has also been rejected based on the principle of 'no work no pay'.

3(f). While the Writ Petition No.6368/2013 filed by the respondents was dismissed by the High Court order on 21.06.2017, on his Writ Petition No.11391/2013, the High Court remitted back the case to the Tribunal after which

the order of 09.08.2018 has been issued by the Tribunal. The PAO, CGST, Thane returned the pension papers of the applicant on 18.05.2020 stating that the matter of reinstatement of the applicant from 08.01.2008 to 20.07.2018 is subjudice and the authority competent for reinstatement has not issued any orders regarding payment of pay and allowances for that period, so the pension case cannot be processed. Centralized Processing Centre of SBI at Belapur, Navi Mumbai has informed on 20.09.2019 that there is outstanding total recovery of Rs.68,201/- and after the recovery is made, the original PPO be returned to that office. But so far only Rs.7,102/- has been recovered from the applicant.

Based on final calculations made by the respondents, Rs.24,73,034/- have been deposited in the High Court on 28.10.2020. If the applicant's case for payment of back wages is upheld, thereafter order for the payment of pension will get issued. Therefore, his contention that he has not been paid pension, gratuity and other benefits is baseless and untrue. Because of pendency of Writ Petition No.7568/2019 in the High Court, quantum of pension could not be finalized as last pay drawn by the applicant will depend on the outcome of the Writ Petition. So he is being paid only provisional pension.

3(g). The Allahabad High Court judgment in case of **M.D.Gautam Vs. Union of India and others, reported in 2001 (3) L.L.N. 751** decided on 10.05.2001 is not applicable to the present case. The applicant's contention that when he retired, neither any departmental proceedings nor criminal proceedings was pending is wrong in view of the still pending Writ Petition No.7568/2019 in the High Court. Therefore, this OA should be dismissed.

4. Analysis and conclusions:

I have carefully considered the submissions of the applicant and the respondents in this O.A.. Based on their analysis, the following conclusions emerge:

(i). After his compulsory retirement from service by order dated 08.01.2008, the applicant was paid by the respondents, pension, gratuity, leave

encashment and amount of commuted pension.

(ii). Even after his reinstatement in 2018 as per the order of the Tribunal dated 09.08.2018, the applicant has been paid and he has received his pension as well as salary till his retirement in August, 2019. Although the applicant has contended in this OA that he had informed the respondents not to pay him pension, the fact is that he did not return the PPO and continued receiving the pension in addition to his salary, which shows that he received excess payment of his pension in addition to his due salary.

(iii). By order dated 09.08.2018, the Tribunal had directed reinstatement of the applicant from the date of his compulsory retirement i.e. 08.01.2008 and to pay him back wages for the period from that date till he resumes duty. However, this order of the Tribunal has not yet attained finality because the respondents have challenged it in W.P.No.7568/2019 in February, 2019 which is still awaiting High Court decision.

(iv). Because of this pendency of the Writ Petition, the respondents can finalize the amount of his pension only after the decision on this Writ Petition becomes available which will enable them to work out amount of his last pay drawn at the time of his retirement i.e. in August 2019 and based thereon amount of other retiral benefits due to him along with recovery of earlier excess payment received by him. Till this happens, as provided in Rule 69(1) of CCS (Pension) Rules, 1972, the applicant can be paid only provisional pension which the respondents have already sanctioned to him. The contention of the applicant that at the time of his retirement neither any criminal proceedings nor any departmental proceedings were pending against him is only partly correct because the litigation initiated by the applicant himself challenging his compulsory retirement and for payment of back wages to him from 2008 to 2018 has not yet attained finality.

(v). Considering the above analysis of rival contentions and facts in the OA, for finalization of his pension and other retiral benefits, the applicant has to await the High Court decision in WP No.7568/2019 filed by the respondents challenging the order of the Tribunal. Therefore, this OA seeking sanction of pension to the applicant cannot be allowed at this stage and it has to be dismissed.

5. Decision:

The OA is dismissed. No costs.

(Dr. Bhagwan Sahai)
Member (Administrative).

Kmg/H