

Reserved
(On 20.03.2015)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Dated: This the 31 st day of March 2015

Original Application No. 121 of 2003

Hon'ble Dr. Murtaza Ali, Judicial Member

Smt. Hemlata, Widow of Ram Roop Parasari, R/o
L.I.G. - 70 Barra - 7 District Kanpur.

..... Applicant
By Adv: Shri R.L. Yadav

V E R S U S

1. Union of India through Secretary to the Government of India, Ministry of Finance, (Department of Central Board of Excise & Custom) New Delhi.
2. Commissioner, Custom & Central Excise, Sarvoday Nagar, Kanpur.
3. Deputy Commissioner, Custom & Central Excise, Division I, Kanpur.
4. Joint Commissioner (P&V), Central excise Commissionerate, Kanpur.

..... Respondents
By Adv: Shri Arvind Singh

O R D E R

This OA was filed under Section 19 of the Administrative Tribunals Act, 1985 by Ram Roop Parasari, who died during the pendency of proceedings and now his widow Smt. Hemlata has been substituted. The applicant had sought the following main relief:

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"a. The respondents may be directed to quash the order dated 11.05.2001 passed by the Deputy Commissioner Central Excise, Division - I, Kanpur and the order communicated on 05.07.2001 by the Joint Commissioner P&V, Central Excise, Kanpur, contained in Annexures 5 and 6 respectively, when the proceedings initiated against the applicant vide memorandum of charge dated 03.04.1997 were pending and ultimately the memorandum of charge dated 03.04.1997 was dropped by the Commissioner, Central Excise, Kanpur vide his order dated 11.02.2002.

b. The respondents may be directed to pay the interest over the retiral benefits of pension, death-cum-retirement gratuity and leave encashment.

c. The respondents may be directed to pay Rs. 18,863/- against commutation value."

2. Shorn off un-necessary details, the brief facts of the case are that the applicant was charge sheeted alongwith 03 other officers on 02.04.1997, on the basis of an audit objection. A charge was levelled against the applicant that he caused some revenue loss to the Government. Mr. R.S. Sankhla was appointed as Inquiry Officer who submitted his report and found that the charge levelled against the applicant was baseless. The Deputy Commissioner (I) Central Excise, Kanpur II sent a letter to Commissioner (PAC) Central Board of Excise and Customs, New Delhi with the comment that the audit objection raised by the Accountant

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General was not correct and liable to be withdrawn. On receipt of vigilance clearance dated 07.12.2000 the retiral benefits were paid to the applicant on 09.01.2001 and 08.03.2001 but the interest over the Commuted value of Pension, Death cum Retiral Gratuity and Leave Encashment was not paid. The Commissioner Central Excise Kanpur dropped the proceedings initiated against the applicant vide order dated 11.02.2002. The applicant sent a representation on 16.04.2001 to respondent No. 3 and also sent representation to the President of India on 05.01.2003 for payment of interest on the retiral benefits and when no reply was received he filed the instant OA. The applicant was retired on 31.01.1997 and due to delay in departmental proceedings he claimed interest on his retiral benefits. The respondent No. 4 has rejected his representation vide impugned order dated 11.05.2001. The applicant challenged the impugned order claiming the interest over his retiral benefits and payment of commutation value of Rs. 18,863/-.

3. In the counter reply filed on behalf of respondents it has been submitted that the payment of retiral benefits were made to the applicant soon after receipt of vigilance clearance. It has

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further been submitted that as per Rule 68 of CCS (Pension) Rules, 1972, gratuity of the applicant was withheld due to pendency of disciplinary proceedings and as per Government of India's decision (1) and (3) given below Rule 68 of CCS (Pension) Rules, 1972, no interest on DCRG is payable. It is also stated that Rule 65 (2) of CCS (Pension) Rules, 1972, permits the drawl or disbursement of the gratuity to the retired Government servant only after adjustment of Government dues. As the final position of the disciplinary proceedings was ascertained in January, 2001 thus no interest is payable to the applicant in respect of the period prior to January, 2001.

4. The said OA was dismissed by this Tribunal vide order dated 01.11.2004. Aggrieved by the said order, the applicant filed Writ (A) No. 19509 of 2005 which was allowed vide order dated 10.05.2013 and the order dated 01.11.2004 passed by this Tribunal was quashed. The matter has been remitted to this Tribunal for fresh consideration in the light of observations made in the order and judgment dated 10.05.2013 passed by Hon'ble High Court.

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5. Heard Shri R.L. Yadav, learned counsel for the applicant and Shri Arvind Singh, learned counsel for the respondents and perused the entire record.

6. The observations made by Hon'ble High Court on page 7 and 8 in its order/judgment dated 10.05.2013 are being reproduced below:

"The Tribunal in its order dated 1.11.2004 has referred to Rule 68 of the Pension Rules, 1972 and has held that as in case of the petitioner, the disciplinary proceedings were dropped and the case of the petitioner was not a case of the petitioner being fully exonerated, no interest was payable to the petitioner under Rule 68. The Tribunal was evidently relying upon subpara 3 of para (1) of the Decisions/ Instructions of the Government of India in respect of Rule 68, as mentioned above. The Tribunal has emphasized that there is distinction between the full exoneration in disciplinary proceedings and dropping of the disciplinary proceedings. In our view, the Tribunal has not correctly appreciated the import of the order dated 11.2.2002 passed by the Commissioner, Central Excise, Kanpur. From a reading of the entire order dated 11.2.2002, particularly, paragrpah 6 thereof, it is evident that while dropping the proceedings against the petitioner and other persons, the Commissioner, Central Excise, Kanpur relied upon the Advice of the Central Vigilance Commission, whereby the Central Vigilance Commission advised the exoneration of the petitioner and other three persons. Thus, the Commissioner, Central Excise, Kanpur by the said order dated 11.2.2002 dropped the proceedings against the petitioner and other three persons accepting the advice given by the Central Vigilance Commission regarding exoneration of the petitioner and other three persons. Hence, the distinction sought to be made by the Tribunal between the dropping of disciplinary proceedings and the full exoneration in the disciplinary proceedings, does not exist in the present case. In the circumstances, we are of the opinion that the Tribunal ought to have considered on merits the question of payment of interest

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to the petitioner on account of delayed payment of gratuity in the light of the aforesaid Rule 68 of the 1972 Rules and the Decisions/ Instructions of the Government of India in respect of the said Rule, particularly subparas 2 and 3 of para (1) of the Decisions/ Instructions, as quoted above.

It is further noteworthy that in the Original Application, the petitioner claimed interest on the delayed payment of retiral benefits of pension, deathcumretirement gratuity and leave encashment and also claimed an amount of Rs. 18,863/- against commutation value.

Rule 68 of the 1972 Rules, as noted above, deals with the question of payment of interest on account of delayed payment of gratuity. The Tribunal has not considered the claim of the petitioner for interest in respect of other retiral benefits, as claimed by the petitioner in the relief clause of the Original Application. Further, the Tribunal has also not considered the claim of the petitioner for payment of Rs. 18,863/- against commutation value.

In view of the above discussion, we are of the opinion that the Writ Petition deserves to be allowed, and the order dated 1.11.2004 passed by the Tribunal is liable to be quashed, and the matter is liable to be remitted to the Tribunal for fresh consideration of the case in the light of the observations made above."

7. The main controversy in this case is whether dropping of disciplinary proceedings should be treated as full exoneration. The guidelines given under Rule 68 (3) of CCS (Pension) Rules, 1972 provides that if a government servant is "exonerated" of all charges, the payment of gratuity will be deemed to have fallen due on the date following the date of retirement. If the payment of gratuity has been authorized after 03

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months from the date of his retirement, interest may be allowed beyond the period of 03 months from the date of retirement. The guidelines also provides that in cases where the disciplinary proceeding is dropped on account of death of government servant during pendency of disciplinary/judicial proceeding, the payment of gratuity will be deemed to have fallen due on the date following the date of death and if the payment of gratuity has been delayed, interest may be allowed for the period of delay beyond 03 months from the date of death.

8. From the perusal of inquiry report and advice of Central Vigilance Commission, it is aptly clear that no charge levelled against the applicant was proved and Central Vigilance Commission advised the exoneration of the applicant and other 03 persons. Thus there is no doubt that the applicant was entitled for full exoneration in the disciplinary proceedings, but the order dated 03.02.2002 (Annexure No. 7) did not mention the word exonerated and wrongly used the word "dropped", thereby depriving the applicant of the interest of delayed payment of gratuity which would be deemed to have fallen due on the date following his date of retirement. Under these

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circumstances I am of the considered view that the applicant was actually fully exonerated in the disciplinary proceedings and therefore he was entitled to get the interest on the payment of gratuity.

9. The applicant had also claimed interest on the payment of other retiral benefits like pension and Leave Encashment and also claimed an amount of Rs. 18,863/- against commutation value. In the reply filed on behalf of respondents the claim of Rs. 18,863/- was not denied and it has only been submitted that the applicant is not entitled to claim interest over the commuted value of pension and Leave Encashment. It has been contended on behalf of respondents that since the charges levelled against the applicant were standing till the finalization of departmental proceedings i.e. upto 11.02.2002 and the other retiral benefits were also paid to him soon after vigilance clearance and, therefore, the applicant is not entitled for any interest on other retiral dues. I do not agree with the submissions put forward on behalf of respondents. I am of the considered view that the applicant was actually exonerated in the disciplinary proceedings and he was entitled to get interest on the delayed payment of gratuity as

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well as other retiral benefits. He is also entitled to get Rs. 18,863/- against the commutation value, if not already paid and interest thereupon.

10. The OA is accordingly allowed. The respondents are directed to pay the simple interest at the rate, as admissible on GPF at the relevant time, after 03 months from the date following the date of his retirement. The respondents are also directed to pay Rs. 18,863/- against commutation value, if the said amount has not already been paid, alongwith the interest. This exercise must have been completed within 03 months from the date of receipt of this order. There is no order as to costs.



Member (J)

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