

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No. 100 of 1989

Date of decision 26th May, 1989

1. Shri Pandaba Praharaj
aged about 40 years son of
late Baikuntha Nath Praharaj
Vill. & P.O. **Kaimatia** via-
Janla, P.S. Jatni, Dist. Puri.

..... Applicant

-Versus-

1. Union of India, represented by
the Secretary, Ministry of
Communications, Government of
India, Department of Post,
New Delhi-110001.
2. Post Master General, Orissa Circle,
Bhubaneswar-751001, Dist. Puri
3. Senior Superintendent of Post Offices
Puri Division, At/P.O./Dist. Puri.

.... Respondents

For the Applicant Mr. Antaryami Rath, Advocate

For the Respondents ... Mr. A. B. Misra, Senior Standing
Counsel (Central)

C O R A M :

THE HON'BLE MR. B. R. PATEL, VICE-CHAIRMAN
AND
THE HON'BLE MR. K. P. ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed
to see the judgment ? Yes
2. To be referred to the Reporters or not ? **No**
3. Whether Their Lordships wish to see the fair
copy of the Judgment ? Yes

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:- JUDGMENT :-

K.P.ACHARYA, MEMBER (J) In this application under section 19 of the Administrative Tribunal's Act, 1985 the Petitioner prays for a direction to the Competent Authority to make payment of the gratuity money due to Late Baikuntha Nath Praharaj, Ex-Extra Departmental Branch Post Master, Kaimatia Branch Post Office.

2. Shortly stated the case of the Petitioner is that his father was appointed as Extra Departmental Branch Post Master of Kaimatia Post Office and served as such from 1967 to September, 1983 and in September, 1983, the Petitioner retired on superannuation. Under the Rules E.D.B.P.M. including the retiring Extra Departmental Branch Post Master of Kaimatia post office is entitled to exgratia gratuity money. The same not having been paid either to the retired E.D.B.P.M. or to his legal heirs, this application has been filed with the aforesaid prayer.

3. In their Counter, the Opposite Parties maintain that the Petitioner's father Late Baikuntha Nath Praharaj Ex.E.D.B.P.M. Kaimatia Post Office should have retired on superannuation in the year 1974 and his continuance till 1983 was un-authorised and therefore the rules prevalent in the year 1974 regarding payment of ex-gratia money would be applicable to the said Ex-E.D.B.P.M. of Kaimatia Post Office and he would not be covered by the rules prevalent in the year 1983. It is further maintained in the Counter

that a sum of Rs.339.75 paisa having been already paid to the petitioner, he has no further grievance to be agitated and therefore the case being devoid of merit is liable to be dismissed.

4. We have Mr. Antarjami Rath, learned Counsel for the petitioner and Mr. A.B. Misra, learned Senior Standing Counsel (Central) at some length. Before we deal with the rival contentions put forth on behalf of the petitioner and on behalf of the Opposite Parties it is necessary to state succinctly the history of this case so that the contention raised at the Bar can be appreciated in its proper perspective. The petitioner had admittedly joined the Postal Department in 1967 and admittedly the petitioner retired on superannuation in September, 1983. After retirement the petitioner filed an application before the Hon'ble High Court of Orissa invoking its jurisdiction under Article 226 of the Constitution praying therein to give a declaration that the petitioner was born on 26th July, 1922 and hence he should have been made to retire in December, 1987 instead of 1983. The case of the Opposite parties was that actually the date of birth of the petitioner is 26th July, 1909 for which he should have retired on superannuation in the year 1974 and the petitioner's continuance in service amounts to un-authorised continuance and after this mistake was dictated the petitioner was made to retire in the year 1983. The case formed subject matter

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of O.J.C.No.1999 of 1983 which was transferred to this Bench under section 29 of the Administrative Tribunal's Act, 1985. It was re-numbered as T.A.No.318 of 1986, judgment of which was delivered on 1st April, 1987. In the said judgment we held that the case of the petitioner that he was born on 26th July, 1922 is not acceptable and basing on the entries made in the service book we accepted the case of the Opposite parties that the Petitioner was born on 26th July, 1909. This judgment has not been set aside by the Hon'ble Supreme Court and therefore our findings to the above effect in the said judgment still stands. In view of this position we cannot but find in this case that the petitioner should have retired on superannuation in the year 1974 and his continuance till 1983 was un-authorised. So far as this subject is concerned, under Rule 4 of the E.D.A. conduct and service rules stating that the employees shall not be entitled to any pension, it is therein also enumerated that E.D. Agent will be eligible for the grant of gratuity at the rate of ^a/₁₂ months allowance as drawn by him immediately before the termination of service for every three years completed and continuance service subject to maximum of Rs.1000/- This amended rule came into force in the year 1983. Prior to that from the year 1968 the rule contemplated that the employees would be entitled to maximum of Rs.1000/- and the gratuity payable would be ^{at} one months allowance as drawn by him immediately before the termination of service for every 3 years of completed and continuance service. If 1980 rules is applicable to the petitioner then he would be entitled to an amount more

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than Rs.339.75 but if the Petitioners father is governed by the rules of 1968 and thereafter then the petitioner's father is entitled to Rs.339.75. Having already found that continuance of the petitioner ~~in~~ service after 1974 is un-authorised then it is deemed that the petitioner retired from service in the year 1974 and therefore the rule amended in the year 1980 has no application to the petitioner's father. It was strenuously urged by Mr. A. Rath that the service of the petitioner having not been terminated in the year 1983 the rules framed on the subject in the year 1980 would be applicable and the petitioners father would be entitled to an amount much higher than Rs.339.75. We are unable to accept this argument because the petitioners continuance after 1974 was un-authorised and therefore the period of service from 1974 to 1983 could not be considered as valid service in the eyes of law though he has been paid his remuneration because he has worked in the post for this period. Such un-authorised extension of service rendered by the petitioner to the department could not yield any gratuity benefit. Our view gains support from the direction contained in the letter of Director General Post and Telegraphs bearing No. 40/9/82-PEN dated 26th June, 1982. In the said letter the Director General noted that in certain places EDAS have been retained beyond 65 years of age, irregularly, and therefore it is further stated by the Director General which runs thus:

" Further it is hereby clarified that the period of irregular retention beyond 65 years of age even after regularisation of the period of such retention will not count for purpose of grant of ex-gratia gratuity".

The basis for calculation of gratuity in the manner stated above relating to the year 1980 is also in the instruction of the Director General and therefore the instruction issued in the year 1982 has the very same force as that of the instruction issued prior to 1980. The retention of the petitioner's father in the Department being un-authorised, at the cost of the repetition we may say that the Petitioner's father is entitled to an amount to be calculated on the basis of the direction of Director General issued in the year 1968 and thereafter from time to time till 1980. In such circumstances we would say that the E.D.B.P.M. and his legal heirs are entitled to Rs. 339.75 and nothing more.

5. While dealing with this case we have found to our utter dismay that not only the officers concerned with this matter have been grossly negligent in discharging their duties promptly but also such officer/officers have committed contempt of this Court. In our judgment passed in T.A. 318 of 1986 on 1st April, 1987, in the concluding paragraph we had stated as follows :-

"Before parting with this case we must say in case the retirement benefits, namely gratuity money etc. have not been paid to the petitioner as yet, it should be paid within two months from the date of receipt of a copy of this judgment."

6. According to our direction in T.A.318 of 1986 the gratuity money should have been paid on or before 1st June, 1987, but very unfortunately the petitioner's father i.e. E.K-E.D.B.P.M. died on 8th July, 1987 without reaping the benefits of his service rendered to the department and the petitioner filed this application on 22nd April, 1989. Admittedly Rs.339.75 was paid to the petitioner on 24th April, 1989 when the concerned Officer rose from his slumber knowing very well that the direction of this Court have been violated. Taking into consideration the laches on the part of the Departmental officers we feel inclined to grant interest to the petitioner on the sum of Rs.339.75. The next question which needs determination as to what would be the rate of interest. The rules contemplate and so also the directions of Director General of Post and Telegraphs is that before retirement of E.D.B.P.M. the concerned Superintendent of Post Offices should collect necessary data and papers and make the financial benefits ready to be paid to the E.D.B.P.M. on his retirement. Even if no action was taken by the concerned authority prior to September, 1983 yet we are prepared to give allowance to the concerned authority till December, 1983. Therefore, we direct that from January 1984 till 31st May 1987 petitioner should be paid interest on Rs.339.75 at the rate of 12% per annum. In our judgment passed in T.A.318 of 1986 we had directed that the gratuity money should be paid within two months from the date of receipt of a copy of this

judgment. We would also give allowance of one month more which is included within the period covered after receipt of the judgment and therefore interest should be paid to the petitioner at the rate 12% per annum from 1.4.87 to 30th June, 1987. The direction given in our judgment stating the stipulated period within which the money should be paid not having been carried out, we would direct that interest at the rate of 15% per annum should be paid to the petitioner on the sum of Rs. 339.75 from 1st June, 1987 to 24th April, 1989 the date on which the amount was paid.

7. We hope and trust that the interest money due to the petitioner as indicated above should be paid to the Petitioner within two months from the date of receipt of the copy of this judgment.

8. Thus the application is accordingly disposed of leaving the parties to bear their own costs.

B.R.PATEL, VICE-CHAIRMAN

I agree.

B.R.Patel 26.5.89
.....
MEMBER (JUDICIAL)

B.R.Patel 26.5.89
.....
VICE-CHAIRMAN

Central Adminstrative Tribunal
Cuttack Bench, Cuttack
26th May, 1989/Mohapatra

