

(71)

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, : CUTTACK.**

Original Application No.177 of 1990.

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Date of decision: July, 20, 1990.

Netrananda Tripathy

: Applicant

- Versus -

Union of India and others

: Respondents.

For the Applicant

: M/s. S.K. Mohanty,
S.P. Mohanty,
Advocate

For the Respondents

: Mr. A.K. Misra, learned
Standing Counsel (Central).

C O R A M:

THE HON'BLE MR. B.R. PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR. N. SENGUPTA, 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 Lordship's wish to see the fair copy of the judgment ? Yes.

J U D G M E N T

N. SENGUPTA, MEMBER (J), This case though posted for orders, has

been heard on merits with the consent of the learned Counsel for the parties.

2. The material facts alleged by the applicant for this judgment may be stated as below. The applicant retired as an Assistant Sub-Post Master, Rourkela in the forenoon of 1-12-1987 and thus became eligible for pensionary benefits. The applicant drew the death-cum-retirement gratuity as sanctioned by the Department and an order for payment of pension at the rate of Rs. 750/- per month was also passed. He(applicant) was paid pension till the end of February, 1990 and thereafter on the strength of a letter addressed by the Senior Superintendent of Post Offices, Sundargarh Division to the Superintendent of Post Offices, South Division, Cuttack vide Annexure-2, it was mentioned that penal house rent from 1.2.1987 till 30.12.1989 and Electricity charges totalling Rs. 12,727= 34 paise remained to be recovered from the applicant. The applicant has prayed for quashing order at Annexure-2 which directs recovery of the above said amount. The Respondents in their counter have averred that the application is misconceived inasmuch as no direction has been given to recover the amount from the pension payable to the applicant but it is from other retirement benefits due to the applicant. The averments relating to how the amount is to be recovered from the applicant was arrived at are not material at present.

3. We have heard Mr. S.K. Mohanty, learned Counsel for the applicant and Mr. A.K. Misra learned Standing Counsel for the Respondents. Mr. Misra during the course of argument has invited our attention to paragraph 14 of the

*Mr. Mohanty
10/2/90*

counter where it has been clearly mentioned that the Senior Superintendent of Post Offices, Sundargarh did not issue the letter to withhold the pension of the applicant. That there has been no order to recover the amount from the pension payable to the applicant can be found from Annexure-2 the relevant para of which may be quoted:

" The following amounts are still unrecovered from Shri Netranaanda Tripathy the retired A.S.P.M. Rourkela-2. Kindly make arrangement to recover the said dues from Shri Tripathy who is now a pensioner under Athagarh H.O.".

On reading this, it would be clear that only a request was made for recovery without specifying from what the recovery is to be made. Withholding or not paying any part of the pension can be made only under three circumstances namely when the President passes an order for recovery from pension of the whole or part for any pecuniary loss caused to the Government, if the retired person was found guilty and punished in a Disciplinary Proceeding commenced prior to his retirement or found guilty of grave misconduct in a judicial or Departmental Proceeding during the period of his service, or in case the appointing authority passes an order of withholding the pension or part thereof if the person is convicted of a serious crime or is found guilty of grave misconduct. In the instant case none of the three conditions exist. Therefore, we have absolutely no hesitation for holding that no recovery in the present circumstances can be made from the pension amount paid to the applicant and we would also add that the Respondents do not dispute

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this position, in fact in paragraph 10 of their counter, the respondents have clearly mentioned that no recovery can be made from the pension amount. In view of this position, we would direct that payment of pension amount should not be withheld. However, the Department would be free to make recovery from other amounts payable to the applicant. The case is accordingly disposed of. No costs.

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VICE-CHAIRMAN

Parbhu 20.7.90

Meenakshi 20.7.90
.....
MEMBER (JUDICIAL)

