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CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH: CUTTACK.
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ORIGINAL APPLICATION NO: 9 OF 1992.

Date of decision: April 22, 1992.

Nrusingha Charan Patnaik

.. Petitioner

-Versus-

Divisional Railway Manager and oths. Opp. Parties.

For the Petitioner

: M/s. Bijan Ray, C. Choudhury,
B.K. Bal, Advocates.

For the Opp. Parties

: Mr. D.N. Misra, Standing Counsel,
(Railway Admn.)

C O R A M:

THE HONOURABLE MR. K.P. ACHARYA, VICE CHAIRMAN

A N D

THE HONOURABLE MR. C.S. PANDEY, MEMBER (ADMINISTRATIVE)

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporters or not? *yes*.
3. Whether Their Lordships wish to see the fair copy of the Judgment? Yes.

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JUDGMENT

K.P. ACHARYA, V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the Petitioner prays for a direction to the Opposite Parties to pay the Petitioner the amount due to him on account of Death-Cum-Retirement Gratuity with 12% interest.

2. Shortly stated the case of the Petitioner is that he was an officer of the South Eastern Railway and was working as G.S.R.(C), C.B.T., K.T.L siding and the petitioner has retired on superannuation with effect from 31st October, 1986. According to the Petitioner, he is entitled to Death-Cum-Retirement Gratuity to the extent of Rs. 33,000/- (approximately) from his employer. Despite the fact that the Petitioner has retired since 1986 and has been regularly making representation for making payment of the aforesaid amount, no heed has been paid to his request and naturally the petitioner is seriously suffering from financial hardship. Hence this application has been filed with the aforesaid prayer.

3. In their counter, the Opposite Parties maintained that the Petitioner was incharge of making collection of the amount due to from Kalinga Tubes Ltd. (KTL) and the Petitioner due to his negligence did not collect Rs. 16,32,853.00 causing a grave loss to the Government and therefore, the gratuity money has been withheld. It is further maintained that the petitioner is not legally entitled to the said gratuity money and therefore, the case being devoid of merit is liable to be dismissed.

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4. We have heard Mr. Bijan Ray learned Counsel for the Petitioner and Mr. D.N.Misra learned Standing Counsel appearing for the Railway Administration.

5. The fact of non-payment of the gratuity money due to the Petitioner is admitted and ~~equally~~ it is admitted that the Petitioner has retired on superannuation with effect from 31st October, 1986. The only question on which the Bench is required to address itself is whether there is any justification on the part of the Railway Administration in not making ~~the~~ payment of the Death-cum-Retirement Gratuity to the Petitioner soon after his retirement. Mr. D.N.Misra relied upon para 318 of the Manual of Railway Pension Rules, 1950 and submitted that no enquiry was necessary to determine as to whether the Petitioner was responsible for the loss caused to the Government and the only requirement was for the administration to come to a conclusion that certain loss was caused to the Government which has become irrecoverable from the party and therefore, the Gratuity money due to the petitioner has been rightly withheld. Provisions contained in para 318 runs thus:

" Para 315 applies to only recurring pensions and commuted value thereof which are governed by the Pension Act 1871. It does not apply to gratuity, or to Death-Cum-Retirement Gratuity and the conditions laid down in that para do not have to be fulfilled before these are forfeited to the Government".

Para 315 runs thus:

" The President reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss

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caused to Government, if in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his serving, including service rendered upon re-employment after retirement".

6. The cumulative effect of the provisions of both the paras, quoted above, is the President has right to withheld any part of the Pension only when it is proved that the concerned officer is held to have misconducted himself or is proved to have been negligent in the discharge of his duties. This provision is in par with rule 9 of the C.C.S. Pension Rules, . Therefore, by no stretch of imagination it can be conceived that without giving notice to the concerned officer, without calling for his explanation and without proof of the fact that he had misconducted himself or had become negligent in discharge of his duties, neither the pension could be reduced nor the DCRG could be attached. According to us, this amounts to a clear punishment . Law is well settled, a punishment cannot be awarded against a Government officer without compliance of the principles of natural justice namely reasonable opportunity must be given to the person concerned to have his say in the matter. In case the Railway Authorities were of opinion that due to negligence of the officer concerned, loss was caused to the Government, it was well open to them to follow the procedure laid down under the law. Not having done so, the authorities had no right to trample down the sacred constitution and judicial pronouncements of the Supreme Court which is law of the land under Article 141 of the constitution and he who violates the same is liable for Contempt. The concerned higher authority who was required to disburse the money has taken an attitude of a monarch which is no

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longer exists in India after passing of the Constitution making all Public Servants creatures and slave of statutes and the law in force. Such callous and illegal act on the part of the concerned officer cannot be appreciated or tolerated. Rather it should be thoroughly deprecated. The officers in service do not have the sense to realise the predicament of a retired Government employee and every officer should bear in mind that one day or the other he will face the same situation and then only he would feel the pinch. If a particular retired Government servant is held to be guilty in the eyes of law stringent action must be taken but so long as he or she has not been proceeded against or found to be guilty according to law all financial benefits accruing in favour of a Government servant must be expeditiously given to him. Therefore, in the case of State of Kerala and others vs. M. Padmanabhan Nair reported in 1985 (1) SCC 429 Their Lordships of the Supreme Court strongly deprecated the delay in disbursement of pension and Gratuity. Their Lordships observed as follows:

" Pension and gratuity are no longer bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."

7. Without compliance of the principle of natural justice and the law laid down, the authorities do not have any justification in withholding the gratuity money since 1986. Withholding of this amount in the peculiar facts and circumstances of this case is against all canons of Justice, Equity and fair

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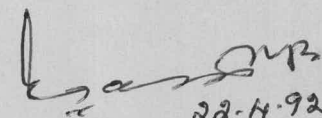
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play. It is therefore, directed that the entire gratuity money due to the petitioner be paid to the petitioner within 30 days from the date of receipt of a copy of the judgment failing which the defaulting officer would be personally liable to pay interest at 12% per annum from the date on which the amount was due to the petitioner till payment.

8. Before we part with this case we cannot but observe that the General Manager, S.E. Railway should cause an enquiry as to who was responsible for the inordinate delay and whosoever is found to have been responsible for the delay stringent action according to law should be taken against such officer or officers. A copy of this judgment be sent to the General Manager, S.E. Railway, Calcutta inviting his special attention.

9. Thus, the application stands allowed leaving the parties to bear their own costs.


MEMBER (ADMINISTRATIVE)


22.4.92.
VICE CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack/K. Mohanty,
22.4.1992.

