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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

Original Application No. 387 of 1994

Cuttack this the 11th day of April, 1996

Pramoda Chandra Kanungo .1. Applicant (s)

Versus

Union of India & Others ... Respondent (s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? No.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? No.

Narasimhaiah
(N. SAHU) 11-4-96
MEMBER (ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

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Cuttack this the 11th day of April, 1996

C O R A M:

THE HONOURABLE MR. N. SAHU, MEMBER (ADMINISTRATIVE)

...

Pramoda Chandra Kanungo,
Aged about 59 years,
S/o. Late Sidheswar Kanungo
Village: Chandapur,
PO: Rahama
Dist: Jagatsinghpur

...

Applicant

By the Advocate;

Mr. U.K. Nanda
Mr. C.R. Behera

Versus

1. The Director,
Central Rice Research Institute,
At: Bidyadharpur,
Post: CRR I, Cuttack-6

2. The Under Secretary (TRG)
Ministry of External Affairs
Akbar Bhawan, New Delhi

...

Respondents

By the Advocate;

Mr. Ashok Kumar Mishra,
Standing Counsel

...

O R D E R

MR. N. SAHU, MEMBER (ADMINISTRATIVE): In this application filed on 7.4.1994, the applicant seeks a direction to Respondent No.1, the Director of Central Rice Research Institute, Bidyadharpur, Cuttack, to pay forthwith the following retirement benefits :

1. Death-cum-Retirement Gratuity
2. Leave Encashment
- Amr*

3. Last one month's pay
4. Interest; and
5. Transport charges after retirement

2. The applicant retired on ^{31.01.1993}~~31.1.1995~~ as Administrative Officer on attaining the age of superannuation. He was looking after the day-to-day management in the Administration of CRR I. The first point on which the retirement benefits are withheld are some alleged irregularity in handling the allowances received for foreign trainees. The applicant received amounts from the Under Secretary, Training, Ministry of External Affairs, Akbar Bhawan, New Delhi (Respondent No.2) towards defraying the living expenses and for making purchases in this behalf of foreign trainees who received training at CRR I. The applicant spent the amount and submitted the vouchers to Respondent No.2 following previous practice in this regard. This was accepted earlier. The Director, CRR I, Respondent No.1, for the first time stated that unless the Ministry of External Affairs accepts the accounts and vouchers, his retirement benefits would not be paid. The applicant gave an undertaking for retention of DCRG, Leave Encashment due and last one month's pay. The point to be noted is that the Ministry of External Affairs never doubted the veracity of the expenditure. It is prayed in this application that withholding of the dues was arbitrary and discriminatory. The applicant waited for sufficiently long for a confirmation and clearance from the M.E.A. In the absence of such a

clearance his retirement dues were withheld.


3. The next point is that the CRR I receives the stock of medicine as per the indent and prescriptions of its Doctors from a Medical Store owned by the Central Government. Sometimes these stores supplied substitute medicines when the prescribed medicines were not available in the stock. "The applicant in the capacity of Administrative Officer and the Accounts Officer took indent and purchased substitute medicines in 1992 and kept them in the store and stock of the Institute." He was served with a letter on 9.7.1993 that the medicines were not accepted by the Doctors of the Institute, and therefore, the applicant was asked to return the medicines to the medical store owned by the Central Government. The applicant made an effort to explain his present situation. He stated that ^{as} the medicines sought to be now returned are 9 and half months after the date of expiry, he wanted an official letter for returning the medicines. The response of the respondents was disciplinary proceedings as he did not return the medicines.

4. The claim of the applicant is that the Ministry of External Affairs have no complaints regarding non-receipt of vouchers and accounts and they have never doubted about the genuineness of the vouchers. They did not cast any aspersion about the misuse of money. Therefore, the Director, CRR I was not justified in withholding payment of his legitimate dues. The move of the Director, CRR I

to deduct the prices of the substitute and date-expired medicines purchased from the applicant's legitimate dues and asking the applicant to return back the stock of medicines without any official letter to the Medicine Store is claimed to be illogical and illegal.

5. The stand taken by the applicant is that the cheques from the M.E.A. had been received in the name of the Administrative Officer and not in the name of the Director. The headwise expenditure to be incurred has been stated by the Ministry in their letter and hence concurrence of Finance and Accounts Officer of the CRR I is not required. The second point is that the vouchers in token of the expenditure were never previously checked by the Finance and Accounts Officer since the acceptance of the vouchers rested with the Ministry of External Affairs. He further stated that a formal No Due Certificate had been issued by the regular Finance and Accounts Officer. Even earlier these vouchers were submitted to the Ministry directly without routing through the F & A.O. As per the directives of the Ministry, all vouchers are to be sent to the Ministry after completion of training programme. Para 7 of the rejoinder is extracted hereunder :

" That the facts stated in para-10 of the counter are disputed. The undertaking was given to withhold Gratuity, Leave Encashment and Commuted value of Pension till the confirmation of adjustment is received from the Ministry by the Institute.



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After the Ministry of External Affairs accepted the vouchers for adjustment they have reimbursed the excess amount paid by the Institute. The charges of handing the vouchers, violating regulations and committing serious financial irregularity is baseless. To the knowledge of the applicant no letter from Ministry for delayed submission of vouchers was ever received. The copy of the accounts statement has been endorsed to the Finance and Accounts Officer and on the basis of which outstanding advances shown in the O.B. Register were deleted. The disallowed amounts Rs.1050/- can be realised from the DCRG."

6. With regard to the indented substitute medicines the applicant's counsel submits that the substitute medicines were purchased as per the advice of the authorities of M.S.D., Government of India, Calcutta, as some of the indented medicines were out of stock. Applicant clearly explained to this effect in the file under what circumstances the substitute medicines were purchased. After retirement, the applicant met with an accident and therefore, he could not pursue the matter although he wrote letters to the Director, CRR I for accepting the substitute medicines. The M.S.D., Calcutta, it is averred would accept back the substitute medicines provided they are sent officially.

7. By the counter-affidavit dated 16.1.1995, it is mentioned that the Institute received clearance from the Ministry of External Affairs. The retirement benefits of the applicant is being released by deducting a sum of Rs.1050/-. This amount out of the vouchers sent by the applicant was the only amount not accepted by the M.E.A. The cost of all indented medicines amounting to Rs.91,530/-

is withheld till the time they are returned to M.S.D., Calcutta, by the applicant.

8. I have carefully considered the submissions of rival counsel. I am of opinion that the applicant is entitled to succeed. I am clearly of the opinion that withholding of retirement dues is arbitrary, illegal and without any basis. Rule 9 of the CCS (Pension) Rules only permits the President to withhold or withdraw pension or gratuity either in full or in part. The condition precedent for such a step is that "if in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service." Then there is the first proviso which says that the UPSC shall be consulted before any final orders are passed. The second proviso says that a minimum of Rs.375/- per month shall be paid to the applicant by way of provisional pension. The departmental proceedings, if not instituted while the Government servant was in service, can only be instituted with the previous sanction of the President. The second condition is that it shall not be in respect of any events which took place more than four years before such institution. To a person who retired and against whom departmental or judicial proceedings are instituted, a provisional pension under Rule-69 shall be sanctioned. In all these Sections pension includes gratuity. Rule 69 authorises provisional pension where Departmental or judicial

proceedings are pending. Rule 63 states that the Head of Office, after ascertaining and assessing the Government dues as in Rule 71 shall furnish the particulars thereof to the Accounts Officer at least two months before the date of retirement of a Government servant. After the pension papers are submitted to the Accounts Officer, if any event occurs that justifies recovery, that shall also be promptly reported to him by the Head of Office. Rule 68 speaks of interest rate for delayed payment of pension and gratuity which is 7 per cent beyond three months and upto one year, 10 per cent beyond one year. Rule 71 speaks of recovery and adjustment of Government dues. The expression Government dues include, dues pertaining to Government accommodation and other dues viz., balance of House Building or conveyance or any other advance and over-payment of pay and allowance and leave salary.

9. Admittedly there is no proceeding pending at the time when the Government servant retired. There is no departmental proceeding or disciplinary proceedings against the applicant. The so-called undertaking taken from the applicant on 27.1.1993 does not justify the withholding of the retirement dues. Any undertaking taken or given cannot obliterate legal rights conferred by statute. The Ministry of External Affairs have already cleared the applicant and in retrospect it seems that action of withholding pension on this count is patently

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illegal. That apart, this is not a case where Government dues are pending for recovery as per Rule 63 read with Rule 71.

10. With regard to the withholding on account of substitute medicines, I am surprised that the CRR I has taken the extreme step of withholding the retirement dues.

I will assume without admitting that substitute medicines were ^{wrongly} obtained from the Government Medical Stores Depo, Calcutta. These medicines could have been returned by the Doctors or by the authorities after they are not found acceptable or useful to them. The matter ended there. The applicant did not commit any crime by obtaining the substitute medicines when the indented medicines were not available. Mere procedural irregularities, either real or imagined, would not justify withholding the retirement dues. What was the authority doing when the applicant obtained these substitute medicines and why they took up this matter long after the applicant retired? If anybody had to explain this, it is the respondents who have to explain for harrassing the applicant on such a trivial matter. There is no charge of misutilising money or powers. The applicant secured some medicines from a Government authorised medical store. The simple point is whether such medicines were useful or acceptable.

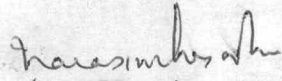
If not, they should have been returned. The CRR I possibly has to be educated on the basic distinction

between personal responsibility versus official

accountabilities. If the applicant as the Administrative Officer

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secured the substitute medicines, he did so on behalf of the Institute. He has nothing personally to gain in the entire episode. During his tenure the Director should have asked him to return back the medicines officially. Why did the Director keep quiet ? What were the doctors doing ? After he was allowed to retire honourably, there was no justification to direct him to refund the medicines.

In my view the entire episode is totally indefensible. I direct forthwith Respondent 1 to release all the retirement benefits with an interest rate as stipulated under rule 68 of the Pension Rules. In the result the application is allowed. Parties to bear their own costs.


(N. SAHU) 11.4.96.
MEMBER (ADMINISTRATIVE)

B.K.Sahoo//