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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH;CUTTACK.

Original Application No.621 of 1994

Cuttack this the 3rd day of November, 1995.

KULAMONI SWAIN

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APPLICANT

VERSUS

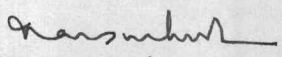
UNION OF INDIA AND OTHERS

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RESPONDENTS

(FOR INSTRUCTIONS)

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


(N. SAHU)
MEMBER (ADMINISTRATIVE)

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his retirement, there was an audit inspection of the stores he was incharge immediately before retirement. Although he made over the charge, according to the Respondents, the charge-report has been signed on different dates and it has not been countersigned by the S. D. O. (Phones). The last two pages of the said Charge-Report have been received blank. The applicant has been asked to credit the shortage of stores as detected by the Audit as per Annexure-R/1 namely Rs.84,382.70 which are non-credited store items. The applicant has stated that he has replied to the letter of the Respondents as at Annexure-3 by his letter in Annexure-4 wherein the complete making over of the charge has been mentioned. The receipt of this was denied by the Respondents.

3. The Original Application bearing No. 70 of 1993 was dismissed by the Central Administrative Tribunal . The Tribunal upheld the non-disbursement of the retirement benefits to the petitioner. It is claimed that the same issue should not have been reagitated in the form of a Miscellaneous Application as has been done by the applicant vide Miscellaneous Application No.148 of 1994. It is stated that the applicant's case for initiating

humbly

disciplinary proceedings has already been processed for presidential sanction and after receiving presidential sanction, the Respondents will proceed against the applicant under Rule-14 of the C.C.S(C.C.A.) Rules. Under Rule-73 of C.C.S(Pension) Rules and Government of India decision dated 25.8.1958, it is claimed that the Respondents are empowered to delay the payment of pension as there is no satisfactory explanation for the alleged unaccounted stores of Rs.85,000/-.

4. This Tribunal has been pleased to direct the Respondents vide its order dated 27. 4. 1994 passed in Miscellaneous Application No. 148 of 1994 arising out of Original Application No. 70 of 1993 to pay provisional pension within 60 days from the date of receipt of a copy of the order. Since this was not done, a Contempt Petition was filed. It is stated that this provisional pension has been sanctioned subsequently. In fact the applicant, had quoted the Government of India Office Memorandum No.11(6)-E.V(A) 1973 dated 22. 7. 1994. Under Rule-69 of the C.C.S (Pension) Rules, 1972 grant of cent percent provisional pension is mandatory even if departmental or judicial proceedings are continued. Therefore, the action of the Respondents in withholding the provisional pension

of the applicant is wholly illegal. Rule-9 of the C.C.S (pension) Rules, authorises the President to withhold pension or gratuity, or both, either in full or in part, if the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement. In Rule-9(2) of the C.C.S(Pension) Rules, it has been provided that if the departmental proceedings are instituted before his retirement, they shall be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced. Under Rule-9(2)(b), it has been provided that these proceedings shall not be instituted after retirement without sanction of the President. Under Rule-9(4), it has been stipulated that in the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted, a provisional pension under Rule-69 shall be sanctioned.

5. Upholding non-disbursal of retirement benefits which this Bench had done in Original Application No. 70 of 1993 is different from payment of provisional pension.

"Retirement Benefits" is a broad category and a general concept. Right to provisional pension can be distinguished. In fact, this Bench had already allowed provisional pension while disposing of the Miscellaneous Application No.148 of 1994. I am only to consider to make this retrospective.

6. Before retirement, there is no finding about "grave misconduct". No departmental proceedings whatsoever were instituted; no charge-sheet was issued; there was no sanction of the President; there ~~was~~^{is} no sanction of the president even till now. It is illegal on the part of the Respondents to withhold the provisional pension. The matter is conclusively decided by the Honourable Supreme Court in the Case of D.V.KAPOOR VRS. UNION OF INDIA REPORTED IN AIR 1990 SUPREME COURT 1923 wherein the Hon'ble Supreme Court was pleased to observe as follows:-

"The exercise of the power by the President is hedged with a condition precedent that a finding should be recorded either in departmental enquiry or judicial proceedings that the pensioner committed grave misconduct or negligence in the discharge of his duty while in office, subject of the charge. In the absence of such a finding the President is without authority of law to impose penalty of withholding pension as a measure of punishment either in whole or in part permanently or for a specified period, or to order recovery of the pecuniary loss in whole or in part from the pension of the employee."

7. In State of Kerala Vs. Padmanabhan Nair (1985 SCC L & S 278, 1985 (1) SCC 429) the Hon'ble Supreme Court held that pension and gratuity are no longer a bounty to be distributed by the Government to its employees on their retirement but have become under the decisions of this Court valuable rights of property in their hands.

8. I have, therefore, no hesitatch in directing payment of pension with retrospective effect as prayed for. In the circumstances of the case, there can be no order as to costs.

N. Sahu
(N. SAHU)
MEMBER (ADMINISTRATIVE)

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