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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

Original Application No. 722 of 1994

Cuttack this the 22nd day of September, 1995

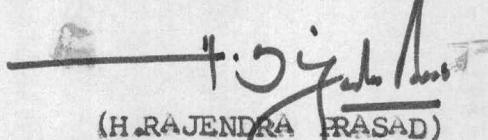
Nilakantha Mishra ... Applicant(s)

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 No. the Central Administrative Tribunal or not ?


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

Original Application No. 722 of 1994
Cuttack this the 22nd day of September, 1995

C O R A M:

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN)

Nilakantha Mishra, aged about
63 years, S/o. Late Purna Chandra
Mishra, S 127 - Goutam Nagar
Bhubaneswar

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Applicant

By the Advocate: M/s. B.S. Tripathy
K.P. Mishra,
A. Das
P.K. Mohapatra
P. Mohapatra

Versus

1. Union of India, represented through
its General Manager, S.E. Railway,
Garden Reach, Calcutta
2. Sr. Divisional Operating Manager,
S.E. Railway, Khurda Road,
P.O. Jatni, Dist: Khurda
3. Divisional Railway Manager
S.E. Railway Manager
S.E. Railway, Khurda
PO: Jatni, Dist: Khurda

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Respondents

By the Advocate: Mr. L. Mohapatra,
Standing Counsel
(Rly. Administration)

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O R D E R

MR. H. RAJENDRA PRASAD, MEMBER (ADMN): In March, 1989, a major penalty
was imposed on the applicant, Shri Nilakantha Mishra, who
was then working as Guard 'A' (Special) in the S.E. Railway.
The applicant thereupon filed an Original Application
(118/89) which was disposed of on 29.1.1990 by quashing

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the order of punishment and remitting the case back to the disciplinary authority with a direction to start the proceedings afresh from the stage of supply of a copy of the inquiry report to the official. It was further directed that the case against the applicant shall be disposed of within three months.

The applicant retired on superannuation on 28.2.1989. Since the disciplinary case was not finalised within three months, as directed by this Tribunal, a Contempt Petition (52/91) was filed by the applicant which was disposed of with a direction that the applicant should file his defence by 15.10.1991 and that the disciplinary authority should pass final orders by 8.11.1991.

2. The respondents decided to drop the proceedings against the applicant on 7.11.1991. It was decided to pay him full terminal benefits as if he had retired in the normal course without any blemish.

Subsequently, D.C.R.G. was paid to the applicant and on 1.11.1993 arrears of leave salary and commutation of pension on 31.1.1994. Earlier, an undisbursed pay for 10 days relating to February, 1989, was paid to him on 4.10.1993.

3. It is the grievance of the applicant that if his pension had been settled in time and on the date it became due, he would have received nearly Rs.78,000/- whereas by the time the commutation was allowed and sanctioned, he became entitled to only Rs.69,000/- (approximately). The applicant seeks a direction for

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payment of reasonable interest on DCRG, leave-salary and undisbursed pay, besides the issue of a direction to the respondents to enhance his commutation of pension to the original amount he was entitled ^{to} i.e., from Rs.109.08 to Rs.125.52.

4. The respondents, in their counter-affidavit state that a part of the delay in the settlement of the benefits are due to the fact that the applicant himself failed to file a representation/defence in time after the inquiry report was supplied to him, as directed by this Tribunal. He did so only after certain directions were issued to him in the C.P. 52/91. He was thereafter exonerated.

It is explained that when the time of commutation of pension came, the applicant had attained the age of 63 years and the commutation was duly granted to him on that basis. They point out that the applicant had received his full pension from the date of his retirement, i.e., on 28.2.1989 to 31.1.1994. They add that the delay in payment was not intentional but due to unavoidable circumstances and internal departmental procedures.

5. It is seen that the applicant was exonerated of charges and disciplinary proceedings were dropped on 7.11.1991, prior to which the case was before the Tribunal in two applications/petitions and certain orders/directions were passed in them. It is also

T. S. Jadhav

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noticed that, although the Tribunal had clearly directed him to submit a representation against the inquiry report within certain time-limit, he failed to do so which necessitated additional orders from the Tribunal in the Contempt Petition. He is also seen to have been given a personal hearing on 14.10.1991. Final orders were passed on 7.11.1991 by the Sr.Divisional Operating Manager, S.E.Railway. The interval between the date of superannuation, 28.2.1989 and 7.11.1991 was thus unavoidable, and the reasons for the delay adequately explained. It is held, therefore, that the applicant is not entitled to any interest upto the date of exoneration, i.e. 7.11.1991.

It is also recognised that certain minimum period would be required to scrutinise the claims and issue the necessary sanctions in respect of retiral benefits. This process could not have started earlier to the above date, i.e., 7.11.1991. A period of 60 days is considered reasonable for the purpose. Any delay beyond this, specially on account of dilatory internal procedures within the department, cannot justify the denial of due and legitimate interest to the applicant on his original entitlements.

6. It is, therefore, directed that interest at the rate of 12 per cent be paid to the applicant from 6.1.1992 to the date of actual payment made to the applicant by way of DCRG, encashment/difference in leave salary and undisbursed pay.

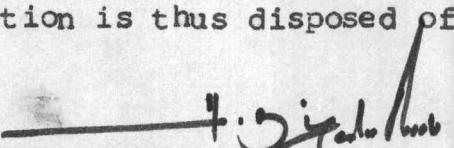
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No orders are passed on the issue of commutation of pension since (a) a part of delay was owing to the applicant himself and (b) it would be incorrect to interfere with the well-settled formula of sanctioning the commutation with reference to the age-factor. When the applicant had already attained the age of 63 years, it would not be possible to hold that he should be paid commutation from the age of 58, retrospectively, specially because (a) he partly contributed to the delay in finalisation of the disciplinary case against him by his own inaction, (b) he had been given the provisional/full pension from the date of retirement.

Interest at the rate indicated above shall be calculated and paid to the applicant within 90 days from the date of receipt of copy of these orders by Respondent No.2.

The application is thus disposed of.

No costs.


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

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