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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.143 OF 1998

Cuttack, this the 10th day of March, 1999

Sri Gajendranath Jena Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes .
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? NO .

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 10.3.99

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CENTRAL ADMINISTRATIVE TRIBUNAL,
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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)

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Sri Gajendranath Jena, aged about 64 years,
son of late Laxman Jena,
Village-Barabaria, PO-Patapapur,
Via-Bahugram, District-CuttackApplicant

Advocate for apploicant-Mr.Gopabandhu Das

Vrs.

1. Union of India, represented through
the Secretary to Government of India,
Ministry of Railway, Rail Bhawan,
New Delhi.
2. The General Manager, S.E.Railways,
Garden Reach, Calcutta.
3. The Divisional Railway Manager,
S.E.Railways, Khurda Road,
PO-Jatani, District-Khurda.
4. The Divisional Personnel Officer,
S.E.Railways, Khurda Road,
PO-Jatani, District-Khurda.....Respondents

Advocate for respondents-Mr.R.Ch.Rath

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

5/3/99
In this application under Section 19 of
Administrative Tribunals Act, 1985, the petitioner has
prayed for a direction to the respondents to pay interest
on pension and other pensionary benefits at 18% from the
due date till the date of payment of the retiral benefits
to the applicant.

2. The case of the petitioner is that he
retired on superannuation on 1.8.1991 while holding the
post of Office Superintendent (Grade I). He submitted all

his pension papers, but no pensionary benefit was sanctioned to him. He approached the Tribunal in OA No. 420/91, which was disposed of in order dated 31.3.1992 (Annexure-1). The respondents in that case took the plea that the applicant had to hand over charge of store materials and during handing over charge shortage to the tune of Rs.9,65,421/- was detected. Because of this shortage, instruction was issued to stop payment of all retirement dues payable to the petitioner unless the petitioner satisfactorily accounts for the store materials which are said to be missing. The Tribunal in their order dated 31.3.1992 held that at this stage it would not be just and proper to direct the respondents to release the retiral benefits of the petitioner. It was also ordered that if the petitioner satisfactorily explains the missing store materials within three months from the date of the order and no dues are assessed to be recovered from the petitioner, then the respondents should release the retiral benefits of the petitioner. The petitioner states that after delivery of the judgment the applicant filed a representation explaining the missing store materials, but no action was taken. Divisional Railway Manager in his letter dated 11.10.1993 directed Senior Personnel Officer to take appropriate action in the matter, but without any result. Encashment of leave salary was sanctioned in letter dated 9.5.1994 at Annexure-3. The applicant represented on 12.12.1994 (Annexure-4). Divisional Railway Manager in his letter dated 21.1.1995 informed the applicant that his reliever was posted well in advance but he completed the handing over of the stores only on 6.9.1991 and thereafter shortage of stores valued at Rs.11 lakh came to light. It

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was also stated that a departmental enquiry committee had probed into the matter and further action is in progress. At the end of this letter it was stated that the total debit amount against the applicant is Rs.13, 26, 657/-. This letter dated 21.1.1995 is at Annexure-5. Ultimately, the applicant was sanctioned pension on 17.3.1997 along with other benefits and commuted value of pension on 20.5.1997, and the commuted value was paid to him in July 1997. On receipt of pension and other pensionary benefits, the applicant filed representation on 17.8.1997 praying for payment of interest on pension and retiral benefits as these were paid to the applicant six years after his retirement, but the representation was not considered. That is how the applicant has come up in this petition with the prayers referred to earlier.

3. Respondents in their counter have stated that the applicant was serving as Office Superintendent(Grade I) under Divisional Stores,Cuttack, when he retired on 31.7.1991 on superannuation. The applicant submitted his pension papers, but according to the respondents he had not handed over charge of Railway materials. At the time of obtaining clearance in favour of the applicant, it came to light that he was held responsible for shortage of Railway stores valued at Rs.9,65,421/- in Divisional Railway Manager's letter dated 26.6.1991 at Annexure-R/1. Thereafter payment of retiral dues was withheld as per Rule 9 of Chapter II of Railway Services (Pension) Rules, 1993 . The applicant filed OA No.420/91 in which in order dated 31.3.1992 the applicant was directed to explain about missing store articles within a period of three months. It was also ordered that if no dues are assessed against the applicant, his retiral benefits should be paid. According

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to the observations of the Tribunal, the applicant was called upon to appear before Divisional Railway Manager (Engineering) in June 1992. He was also informed that amount payable towards leave salary could not be assessed due to seizure of leave records by the Vigilance Organisation. In consideration of the representation of the petitioner, in order dated 21.6.1995 (Annexure-R/2) it was ordered that provisional pension would be paid to the applicant. The respondents tried to initiate departmental proceedings against the applicant. But it was clarified in letter dated 29.8.1995 at Annexure-R/4 by the Chief Personnel Officer that as the applicant retired in July 1991, after passage of four years the departmental proceedings cannot be initiated against him under the Rules. Thereafter action was taken to make payment of the retiral dues and the dues were paid on the dates indicated below:

- (i) Leave salary of Rs.34,240/- paid on 24.10.1996
- (ii) Pension plus arrear pension of Rs.2,09,791/- paid on 17.3.1997
- (iii) Gratuity of Rs.43,829/- was paid on 10.4.1997
- (iv) Pension commutation of Rs.47,205/- paid on 28.7.1997.

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The respondents have stated that delay in disbursement of the retiral dues is not intentional but because of the applicant's involvement in the missing store materials which resulted in loss to the Railways. In view of the above, the respondents have opposed the prayer of the applicant.

4. We have heard Shri G.B.Das, the learned counsel for the petitioner and Shri R.Ch.Rath,

the learned counsel appearing for the respondents, and have also perused the records.

5. The admitted facts of this case are that the petitioner retired on 31.7.1991 and at that time he was holding the post of Office Superintendent Grade I at Divisional Stores, Cuttack. It is also the admitted position that the respondents took the stand before the Tribunal in OA No. 420/91 that the retiral dues of the applicant have been withheld because the applicant has not satisfactorily explained the missing store materials valued at Rs.9,65,421/-. The Tribunal in their order dated 31.3.1992 directed the petitioner to explain the missing store materials within three months from the date of the order and it was indicated that if no amount is found due against the applicant, his retiral benefits should be paid by the respondents. Thereafter the departmental authorities decided to initiate departmental proceedings against the applicant for the missing store materials, but the matter was delayed and even after passage of four years from the date of retirement, departmental proceedings were not initiated against him. Because of this, the Chief Personnel Officer pointed out that after passage of four years from retirement the departmental proceedings cannot be initiated. Clause (b) of sub-rule (2) of Rule 9 of Railway Services (Pension) Rules, 1993 lays down the following:

"(2) The departmental proceedings referred to in sub-rule (1) -

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(b) if not instituted while the railway servant was in service, whether before his retirement or during his re-employment, -

(i) shall not be instituted save with the sanction of the President;

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(ii)

shall not be in respect of any event which took place more than four years before such institution; and

(iii)

shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the railway servant during his service."

Thereafter payment of retirement dues was taken up and made on different dates mentioned by the respondents in their counter and indicated by us above. The sole question for consideration in this case is whether the departmental authorities were justified in withholding payment of retiral dues of the applicant. In this case, the liability of the applicant for missing store materials to the tune of Rs.9,65,421/- has not been established. But even if it is taken for argument's sake that the petitioner was responsible for such shortage, then the respondents should have sanctioned provisional pension to him. Once the departmental proceedings are initiated with the sanction of the President, at the conclusion of the departmental proceedings, if the applicant is found guilty, his pension can always be reduced. There is, therefore, no justification whatsoever for not sanctioning provisional pension to the applicant immediately after his retirement. Rules no doubt provide for withholding of gratuity and leave salary in case departmental proceedings are pending against a Railway

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servant who has retired. But in this case the respondents have not initiated departmental proceedings against the applicant. Efforts to initiate disciplinary proceedings were taken after passage of four years from the date of retirement. In view of this, the applicant cannot be said to be responsible for missing store materials because his liability has not been fixed in any departmental proceeding initiated against him. In the absence of any departmental proceedings, the respondents had no justification to withhold retirement dues of the applicant. In this case, in order dated 31.3.1992 the Tribunal directed the applicant to explain the missing store materials within a period of three months from the date of the order. The applicant has taken a stand in paragraph 4(iii) of the application that after the judgment in OA No.420/91 delivered on 31.3.1992 he filed a representation explaining the missing of store articles. This averment has not been specifically denied in paragraph 9 of the counter. After the applicant had explained about the missing store articles within a period of three months from the date of the order in OA No.420/91, delivered on 31.3.1992, the respondents should have taken another three months to consider the representation and in case the applicant's explanation was found unsatisfactory, the respondents should have initiated departmental proceedings within another three months. But as they have not done so and they have tried to initiate departmental proceedings four years after the retirement of the applicant, there is no justification for withholding the pensionary benefits and therefore, in fairness ~~the~~ interest should be paid to the applicant on the retiral benefits from 1.1.1993 till the date of actual payment of different amounts as mentioned by us earlier.

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6. The next question which arises for consideration is the rate at which such interest amount should be paid. The Railway's circular already provides for payment of interest at 12% per annum. It is seen from the order dated 31.3.1992 that in earlier OA No 4 20/91 the applicant had asked for interest at 12½%. In the present OA the applicant has asked for interest at 18%. In consideration of the facts of this case, we feel that it would be fair to allow interest at 15% on the amounts and for the periods indicated above. We direct accordingly. This interest amount should be paid to the applicant within a period of 120 (one hundred twenty) days from the date of receipt of copy of this order.

7. In the result, therefore, the Original Application is allowed in terms of the observation and direction given above. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
10.3.99
VICE-CHAIRMAN

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