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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 151 OF 1998

Cuttack, this the 1st day of January, 1999

Sri Parsuram Mohapatra Applicant

Vrs.

General Manager, South Eastern
Railway 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*

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(G. NARASIMHAM)
MEMBER (JUDICIAL)

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(SOMNATH SOM)
VICE-CHAIRMAN

1.1.99.

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.**

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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 Parsuram Mahapatra, aged 59 years,
son of late Manindramohan Mahapatra,
Sr.Goods Guard,
S.E.Railway, Cuttack, At/PO-Talatenga Bazar,
P.S Purighat, Town/Dist.Cuttack Applicant

Advocates for applicant - M/s A.K.Mahapatra,
K.N.Panda, M.Misra, P.K.Mohanty
N.C.Rout

Vrs.

1. General Manager, S.E.Railway, Garden Reach,
Calcutta-43.
2. Divisional Railway Manager, S.E.Railway,
Jatni Khurda, Dist.Khurda
3. Sr.Divisional Accounts Officer, S.E.Railway,
Jatni, Khurda Road, Dist.Khurda.
4. Sr.Divisional Personnel Officer,
S.E.Railway, Jatni, Khurda Road, Dist.Khurda

..... Respondents

Advocate for respondents - Mr.R.Ch.Rath.

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O R D E R

SOMNATH SOM, VICE-CHAIRMAN

S. SOM
In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for a direction to the respondents to pay him gratuity, leave salary and commutation with 18% interest and with cost within a stipulated time.

2. Facts of this case are not in dispute.

The applicant retired on superannuation as Senior Goods Guard

at Cuttack on 31.3.1997. When the applicant was in service, he was penalised with stoppage of increment for a period of three years with non-cumulative effect in a disciplinary proceeding. Against this punishment, the applicant filed O.A.No.681 of 1993 before the Tribunal and obtained interim order staying the punishment dated 2.11.1993. This O.A. has been heard and reserved for orders. In the meantime, the applicant retired on 31.3.1997. He has been provident fund, C.G.E.I.S. and last wages, but final pension, D.C.R.G. and leave salary have not been paid to him. The applicant has come up for payment of these amounts with interest. In this O.A. he has stated that he had made several representations but without any result.

3. The respondents have stated that provisional pension has been sanctioned to the applicant in accordance with sub-rule (3) of Rule 9 of Railway Services (Pension) Rules, 1993. This sub-rule (3) of Rule 9 is quoted below:

"(3) In the case of a railway servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in rule 96 shall be sanctioned."

The respondents have further stated that in view of pendency of OA No.681/93, gratuity, commutation and leave salary could not be paid to the applicant for the time being.

4. We have heard Shri A.K.Mohapatra, the learned counsel for the applicant, and Shri R.Ch.Rath, the learned counsel for the respondents, and have also perused the records.

5. Sub-rule (3) of Rule 9 of Railway Services (Pension) Rules, 1993 lays down that provisional pension will be sanctioned to a Railway servant who has retired on

attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2) of Rule 9. On a plain reading of this sub-rule, it is clear that the applicant's case does not come under this sub-rule. This sub-rule speaks of a situation when against a retiring Railway servant departmental proceedings or judicial proceedings are instituted and are continued beyond his period of superannuation. In this case, the departmental proceedings started against the applicant have already been concluded and the punishment has been imposed. OA No.681 of 1993 filed by the applicant challenging his punishment order cannot be taken to be a judicial proceeding instituted against the Railway servant. The Original Application has been filed by the applicant himself. The plain meaning of this sub-rule is that in a case where departmental proceedings or judicial proceedings have been instituted and are continuing and the guilt of the retired Railway servant is yet to be established, provisional pension would be sanctioned. In this case, the departmental proceedings have been concluded and punishment has been imposed and therefore, the applicant's case does not come under this sub-rule (3) of Rule 9 of Railway Services (Pension) Rules, 1993.

6. The respondents have stated that the punishment of stoppage of increment for three years with non-cumulative effect has been imposed on 2.11.1993. The applicant has retired on superannuation with effect from 31.3.1997. The punishment of stoppage of increment is

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without cumulative effect. In other words, after three years, the applicant's salary would be restored to the stage at which it would have come had not the punishment been imposed. Therefore, on the date of superannuation, i.e., 31.3.1997, which is beyond three years of imposition of punishment of stoppage of increment for three years with non-cumulative effect, his salary would have been restored to its due position had the punishment been allowed to be worked out. In this event, there is no difficulty on the part of the respondents to work out his leave salary, final pension as also commutation thereof. In view of the above, it is ordered that the applicant's leave salary, final pension and commutation should be worked out within a period of 90 (ninety) days from the date of receipt of copy of this order.

7. As regards payment of gratuity, clause(c) of sub-rule (1) of Rule 10 of Railway Services (Pension) Rules, 1993 provides that no gratuity shall be paid to the Railway servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon. It is further provided that where departmental proceedings have been instituted under the provisions of the Railway Servants (Discipline & Appeal) Rules, 1968 for imposing any of the penalties specified in clauses (i), (ii), (iii) and (iv) of Rule 6 of the said Rules, the payment of gratuity shall be authorised to be paid to the Railway servant. As we have earlier noted, in this case no

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departmental proceedings or judicial proceedings against the applicant are pending and, therefore, gratuity cannot be withheld. It is also seen that the punishment which has been imposed after conclusion of the departmental proceedings is stoppage of increment for three years without cumulative effect. This punishment comes under clause (iv) of Rule 6 of Railway Servants (Discipline and Appeal) Rules, 1968. In view of this, payment of gratuity cannot be withheld under Clause (c) of sub-rule (1) of Rule 10 of Railway Services (Pension) Rules, 1993. At the same time, it has to be noted that the applicant has been imposed with penalty of stoppage of increment for three years and the punishment order has been stayed by the Tribunal in OA No.681 of 1993, which is still pending. In consideration of that, it is ordered that the respondents should pay the applicant his provisional gratuity after deducting from the amount due his increments for three years which he has received because of the stay order of the Tribunal. This amount should be held back till the disposal of OA No.681/93. This payment of provisional gratuity should be made to the applicant within a period of 90 (ninety) days from the date of receipt of copy of this order.

8. The applicant has prayed for payment of interest on his retiral dues. In this case we note that the respondents have withheld the aforesaid dues on a bona fide misunderstanding of the provisions of the Railway Services (Pension) Rules, 1993 referred to by us above. In view of this, the prayer for payment of interest

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is held to be without any merit and is rejected.

9. In the result, therefore, the Original Application is partly allowed as above but without any order as to costs.

(G. NARASIMHAM)
MEMBER(JUDICIAL)

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(SOMNATH SOM)
VICE-CHAIRMAN
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