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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 602 of 1998.

Cuttack, this the 10th day of March, 1999.

Kshitish Chandra Mohanty. ... Applicant.

- versus -

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.

10-3-99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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Central Administrative Tribunal
Cuttack Bench, Cuttack.

ORIGINAL APPLICATION NO.602 OF 1998.

Cuttack this, the 10th day of March, 1999.

CORAM:

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL) ..

Kshitish Chandra Mohanty,
Senior Superintendent of Post
Offices (Retd.), Sundargarh Division,
Sundargarh, At-Similiguda,
ANUGUL-759 122.

...

APPLICANT.

By legal Practitioner :- Mr. D.P.Dhalsamant, Advocate.

-Versus-

1. Union of India represented through
the Secretary, Department of Posts,
Government of India, New Delhi-1.
2. Chief Postmaster General, Orissa Circle,
Bhubaneswar-1.
3. Postmaster General, Sambalpur Region,
Sambalpur-1.
4. Dy. Director of Accounts (Postal),
Orissa, Cuttack-1.

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RESPONDENTS.

By legal practitioner :- Mr. J.K. Nayak, Additional Standing
Counsel (Central).

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O R D E R

MR. G. NARASIMHAM, MEMBER (JUDICIAL):

In this Application, filed on 16th November, 1998 for direction to sanction final pension and all other retiral benefits to the applicant who retired on superannuation as Senior Superintendent of Post Offices at Sundergarh on 28-2-1998, The stand of the Departmental Respondents is that the applicant had been sanctioned an amount of Rs. 11,374/- plus Rs. 270/- towards CGEIS, Rs. 9,071/- towards unutilised Earned Leave, through orders dated 1.9.1998 and Provisional Pension Rs. 5,024/- plus DR each month upto 6/98 and Rs. 5059/- plus DR from 7/98 onwards, by order dated 14.12.1998. As to the non-sanctioned of Full Pension and other retiring benefits the ground averred is that the applicant while working as Supdt. of Post Offices, Cuttack South Division from 24-11-1993 to 2-6-1995, made illegal selection/appointment of EDBPM, Ramkrishnapur Branch Post Office and Tulunga Branch Post Office of which score, there was a complaint and one Shri Pradeep Kumar Biswal alleged payment of illegal gratification of Rs. 10,000/- vide letter received on 18.7.1995. The selection file on being examined by the Circle Vigilance Cell established a prima facie case. For the purpose of enquiry, the applicant was asked to appear before the Asst. Postmaster General (Vigilance) on 20.11.1996 but the applicant remain on leave upto 21.11.1996.

He was again asked to appear on 14-1-1997 but he remained on leave upto 3-3-1997. The applicant was again asked to appear before the Director of Postal Services on 16-04-1998 but he conveyed his inability to attend the enquiry. Again he was asked to appear on 5-5-1998. ^{SCU} But he avoided on some plea or the other. Since no vigilance clearance has been issued in favour of the applicant, and disciplinary proceedings are also warranted, the other retiring benefits have been withheld. In fact, challenging the selection Shri P.K. Biswal, filed OA No. 101/95 before this Bench.

There is, however, no averments about the initiation of any disciplinary proceeding or institution of any judicial proceeding against the applicant. During hearing, also it has been admitted by the Respondents that disciplinary no/proceeding or judicial proceeding is pending or was initiated.

2. The main point for consideration is whether the Department is justified in not sanctioning the pension and retirement dues in full.

3. I have heard Shri D.P. Dhalsamant, Learned counsel for the applicant and Shri J.K. Nayak, learned Additional Standing Counsel (Central) appearing for the Departmental Respondents and also perused the records.

4. There is no dispute that the applicant retired on superannuation on 28.2.1998, under Rule-33 of Central Civil Services (Pension) Rules, 1972 a pension other

than family pension shall become payable from the date on which a Government servant ceases to be borne on the establishment. In other words, the pension is due from the next date of the retirement on superannuation. The only exceptions are provided under Rule 6, 37 and 69 of the Rules. We are not concerned with Rule 37 which deals with regard to persons on absorption in or under a Corporation, company or body. Rule 9 is the power/right of the President to withhold or withdraw pension or gratuity or both. Rule 69 relates to payment of provisional pension where departmental or judicial proceeding is pending.

Under Rule 9, the President reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government, ⁱⁿ if/any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement. This Rule-9 will not come into picture in the case before me because, ^{Departmental} no/proceeding or judicial proceeding has been initiated against the applicant. The Calcutta Bench of the Central Administrative Tribunal, in DEBI PRASAD BANERJEE VRS. UNION OF INDIA AND OTHERS reported in (1997) 36 ATC 104 held that since cognizance of the offence was not taken by the Magistrate on the report of the Police Officer, prior to the retirement of the concerned employee, The Government can not take the advantage of Rule 9 to

withhold the pension or gratuity. Again in DINESH RANJAN DATTA VRS. UNION OF INDIA AND OTHERS reported in (1993) 23 AFC 552 , the Division Bench of the Central Administrative Tribunal, Calcutta held that once an employee has been allowed to retire without initiation of disciplinary proceedings, neither his DCRG can be withheld nor payment of pension be kept provisional and final pension has to be sanctioned to him.

Rule 69 lays down that provisional pension shall be authorised from the date of retirement including the date on which final orders are passed by the competent authority on the conclusion of the departmental or judicial proceedings. This provision has also been interpreted in Datta's case (supra) and the interpretation clearly goes in favour of the applicant in the present case, because no proceeding has been initiated against the applicant.

5. I am not very much impressed ^{with} upon the contention advanced by the learned Additional Standing Counsel (Central), that the proceeding could not have been initiated because of non-cooperation of the applicant while in service. The applicant retired on 28.2.98. The alleged mis-conduct came to the notice of the Department, as admitted, by them on 18.7.1995. One year four months thereafter, date was fixed for appearance of the applicant before the APMG (Vigilance) apparently for preliminary enquiry. Had the Department given serious thought to this complaint, they could have taken steps for preliminary enquiry immediately thereafter. There is no explanation as to why they slept over the matter for one year

and four months. Even otherwise, they could have pursued with the preliminary enquiry after the applicant resumed duty on 3.3.1997. What steps the Department had taken in this regard, thereafter, before retirement of the applicant, on superannuation on 28.2.98 are not at all reflected in the counter. In other words, the concerned official of the Department had not given any serious thought to this complaint or in a way of negligent in pursuing the matter. For this, they can not blame the applicant and withhold his pension and other retiring benefits, contrary to the express provision of rules. It is true that they sanctioned provisional pension but the counter itself would reveal that this provisional pension was sanctioned on 14.12.1998 i.e. after receipt of notice from this Bench in this OA on 2.12.1998.

6. I am, therefore, convinced that non-sanction of pension and other retirement dues in full including gratuity is contrary to the provisions of the Pension Rules (Central Civil Services (Pension) Rules, 1972) and the applicant is entitled to his retiral dues alongwith interest as claimed by him.

7. The Respondents, are therefore, directed to pay the pension and other retiring dues in full of the applicant alongwith interest at the rate of 12 per cent per annum from the date of retirement till the actual payment is made, after deducting the payments already made towards provisional pension, which should be made within a period of 60 days from today.

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8. In the result, the Original Application
is allowed.No costs.

10.3.95
(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.