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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 25 OF 1999
Cuttack, this the 14th day of February, 2001

Smt. Jyotsna Mahapatra

...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)

S. S. S. S.
(SOMNATH SARKAR)
VICE-CHAIRMAN
14.2.2001.

V3
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 25 O F 1999
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CORAM:

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

.....
Smt.Jyotsna Mahapatra,
aged about 56 years, wife of late P.C.Mahapatra,
IFS(Retd.), at present residing in Plot No. 34, Saheed
Nagar, Bhubaneswar, District-Khurda
.....
Applicant

Advocates for applicant - M/s Manoj Mishra
D.K.Patnaik
B.B.Mohanty
P.K.Nanda
P.K.Das,
B.Mishra

Vrs.

1. Union of India, represented through its Secretary, Ministry of Environment & Forests, Department of Forests & Environment, Government of India, Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi.
2. Principal Secretary to Government of Orissa, Forest & Environment Department, At/PO-Bhubaneswar, District-Khurda.
3. Principal Chief Conservator of Forests, Orissa, Bhubaneswar

.....
Respondents

Advocates for respondents-Mr.S.B.Jena
ACGSC for R-1
&
Mr.K.C.Mohanty
Govt.Advocate for
R 2 and 3

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

J.Som.
In this application the petitioner has
prayed for a direction to the respondents to pay the life
time pension of her late husband and family pension to her
along with post-retirement benefits like DCRG and commuted
value of pension with 18% interest. The second prayer is
for a direction to pay the arrear benefits accrued to the
post held by the applicant's husband with interest at 18%.

2. Respondents 2 and 3 have filed counter and the applicant has filed a rejoinder. The matter came up for hearing on 12.1.2001 when the learned lawyers were abstaining from court work for more than a month protesting against the decision of the State Government to impose professional tax. Going by the law as laid down by the Hon'ble Supreme Court in the case of Ramon Services Pvt. Ltd. v. Subash Kapoor, reported in 2000 AIRSCW 4093 it was not possible to grant any adjournment moreso when this is a pension matter. Accordingly, we perused the record and learned counsel of both sides were given leave to file written note of submission. Accordingly, the petitioner has filed written note of submission with copy to the other side. This has also been perused.

3. The admitted facts can be stated first. Husband of the petitioner was a member of Indian Forest Service (IFS) of 1960 batch and he retired on superannuation on 30.6.1990 as Additional Chief Conservator of Forests. Prior to his retirement, a major penalty chargesheet under Rule 8 of AIS (D&A) Rules, 1969 was issued to him on 26.6.1990 (Annexure-R-2/3). Provisional pension was sanctioned to the applicant's husband in order dated 7.9.1996 (Annexure-3). The petitioner's husband passed away on 21.4.1997. Provisional family pension was sanctioned to his widow, the present applicant, in order dated 18.8.1997 (Annexure-4). After the death of her husband, the applicant represented on 24.1.1998 (Annexure-5) to drop the proceedings against her husband and accordingly in order dated 25.3.1998 the departmental proceedings drawn up against the husband of the applicant were dropped. After this the applicant represented on 26.9.1998 and 7.1.1999

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(Annexures 7 and 8) to grant her all the pensionary benefits due to her husband and on his death to her. But as no action was taken, she has come up in this petition with the prayers referred to earlier.

4. Respondents 2 and 3 in paragraph 6 of their counter have stated that papers for sanctioning family pension as well as commuted value of pension were forwarded to Accountant General, Orissa on 15.5.1999 and family pension and commuted value of pension were sanctioned to her prior to receipt of the order dated 18.5.1999 of the Tribunal directing revision of family pension and grant of family pension within a period of thirty days from the date of receipt of the order. The respondents have further stated that pension payment order and commuted value of pension order have been issued to the applicant in letter dated 2.12.1999 of Accountant General, Orissa. As regards DCRG, the respondents have stated that a sum of Rs.71,787/- was reflected as due from the applicant in the "No Due Certificate" issued by Principal Chief Conservator of Forests. This letter is at Annexure-R-2/5. The Accountant General called for certain informations with regard to House Building Advance taken by the petitioner's husband. That is why DCRG was not released. It is further stated that the required information with regard to drawal of HBA has already been sent to Accountant General, Orissa, in letter dated 29.8.2000 (Annexure-R-2/6) and after scrutiny of the same, DCRG would be sanctioned by Accountant General, Orissa.

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5. From the above recital of pleadings, it is clear that family pension and commuted value of pension have already been sanctioned in favour of the applicant.

The respondents have not made any specific averment with regard to life time pension of the applicant's husband. But as commuted value of pension has been sanctioned it must be held that life time pension due to the applicant's husband has also been sanctioned. The sole question for consideration with regard to these payments is, whether the applicant is entitled to 18% interest on these amounts as they became due till the date of payment, as asked for by her. Before considering the matter, the present position regarding release of DCRG has to be noted. The respondents have stated that DCRG papers as well as further information called for by the Accountant Generall, Orissa, have been submitted to the Accountant General who will sanction the DCRG after proper scrutiny. As the applicant has not made Accountant General, Orissa, a party in this case, it is not possible to issue a direction to the Accountant General to sanction DCRG as per rules by a certain date. In view of this, we direct respondent no.2, Principal Secretary to Government of Orissa, Forest & Environment Department to take up the matter with Accountant General, Orissa, if the DCRG has not yet been sanctioned and pursue the matter for expeditious action at the level of Accountant General. Here also the sole question for consideration is payment of interest.

6. On the question of payment of interest, the applicant's case is that even though the proceedings were initiated against her husband on 26.6.1990 before his retirement, provisional pension was sanctioned to him only on 7.9.1996 after a delay of more than six years. It is further stated that even though the applicant's husband passed away on 21.4.1997, provisional family pension was

sanctioned to her after delay of about four months in order dated 18.8.1997. It is further stated that even though the applicant's husband passed away on 21.4.1997, the respondents took about one year to drop the proceedings in order dated 25.3.1998 and even thereafter delayed in release of final pension and terminal benefits. On the above grounds, the applicant based her claim for payment of interest at 18%. The respondents have stated that during the incumbency of the applicant at Berhampur, he drew three cheques to the value of Rs.32,029/-, Rs.8,843/- and Rs.90,402/- without any sanction of appropriate authority. Out of these, he encashed two cheques and returned the cheque amounting to Rs.90,402/- as the successor of the applicant's husband informed the State Bank of India not to honour the cheque. These facts were also brought to the notice of the State Government by Principal Chief Conservator of Forests. We also note that in the disciplinary proceedings against the applicant's husband, the charge was that he had drawn three cheques referred to above and committed misuse of cheque drawing power and criminal breach of trust. The applicant in her rejoinder has wrongly stated that the two cheques of Rs.32,029/- and Rs.8,843/- were not subject-matter of the departmental proceedings against her husband. This is not correct as the chargesheet at Annexure-R-2/3 clearly shows. But the fact of the matter is that the disciplinary proceedings against the applicant's husband could not be finalised and were dropped after his death. Thus, the proceedings could not be brought to its logical conclusion and the charge has not been proved. With regard to the cheque for Rs.90,402/-, the applicant has made the following averment

in paragraph 4.4 of her OA:

"4.4. That in course of tenure in charge of Berhampur Circle, the husband of the applicant availed his consequential financial benefits to the tune of Rs.90,402/- accruing from admittedly declared out-of-turn promotion as Conservator of Forests with retrospective effect from the due date of 9.5.79 and consequently the said amount was refunded on 23.6.90 as the drawal of money was pointed out to be financial irregularity by the Principal C.C.F. (Respondent no.3)."

In paragraph 3 of her rejoinder the applicant has stated that this cheque was never encashed and was immediately surrendered on 23.6.1990 prior to reporting of the matter by his successor to the State Bank of India, Berhampur. This averment is also not borne out by record because the respondents have stated and this has not been denied by the applicant that the successor of the petitioner's husband informed the State Bank of India in his letter dated 12.5.1990 to dishonour the cheque for Rs.90,402/-. This was also reported to Principal Chief Conservator of Forests by the successor of the applicant's husband in letter which is at Annexure-R-2/1. From the above it appears that the applicant admits that her husband issued a cheque for Rs.90,402/- towards drawal of consequential arrear financial benefits accruing from his out-of-turn promotion as Conservator of Forests with retrospective effect from 7.5.1979. The respondents have denied that the applicant's husband was given out of turn promotion to the rank of Conservator of Forests from 7.5.1979. Even if it be so, a Government servant, who has cheque drawing power, cannot draw money sanctioning amounts to himself. For every drawal there has to be a sanction and only on the basis of sanction, the cheque drawing officer can issue a cheque. This aspect would not have arisen for our consideration as

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this charge has not been proved because the proceedings were dropped but for the specific admission of the applicant with regard to this transaction in the above paragraph of her O.A. The Hon'ble Supreme Court in several decisions have pointed out that pension is not a bounty and a retired employee is bound to be sanctioned pension and other terminal benefits expeditiously. There are also several decisions of the Hon'ble Apex Court in which interest on terminal benefits have been allowed where avoidable delay has occurred in sanctioning such terminal benefits. The point for consideration is whether under the circumstances of the present case interest is to be allowed. The fact of the matter is that the departmental proceedings for major penalty were initiated against the applicant's husband during his service career. During the pendency of the proceedings, provisional pension was sanctioned to the applicant's husband after delay of six years. But the applicant's husband had made no grievance in this matter even though provisional pension was sanctioned in September 1996 and the applicant's husband passed away in April 1997. He had not approached any legal forum for payment of interest on delayed payment of provisional pension. After the death of the applicant's husband, provisional family pension was sanctioned to the applicant within four months which cannot be held as an instance of unreasonable delay considering the circumstances of the case. From the "No Due Certificate" issued by the Principal Chief Conservator of Forests in his letter at Annexure-R-2/5 it seems that certain amounts are

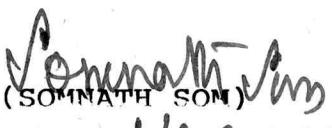
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outstanding against the applicant's husband and these amounts are to be recovered from the Gratuity as per rules. In the instant case, delay is primarily attributable to initiation of departmental proceedings against the applicant's husband and there are reasonable grounds for initiation of departmental proceedings against the husband of the applicant. As we have already noted, for delayed payment of terminal benefits, interest is normally due. But when such delay is also attributable to the action/inaction of the employee, he cannot claim payment of interest as of right. In the instant case, the applicant's husband admittedly committed a gross irregularity, as mentioned by the applicant herself in her O.A., by drawing money utilising his cheque drawing power without any sanction, that too on a supposed claim of out of turn promotion which has been denied by the respondents. Under the circumstances of the case, we decline to allow payment of interest on the terminal benefits received by the applicant.

7. In the result, therefore, the Original Application is disposed of with the observation and direction above, but without any order as to costs.


(G.NARASIMHAM)

MEMBER (JUDICIAL)


(SOMNATH SOM)
14.2.2001
VICE-CHAIRMAN