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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 485 OF 1999
Cuttack, this the 26th day of May, 2000

Shri S.K.Prasad

Applicant

Vrs.

Union of India and others

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not?

2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?


(J.S.DHALIWAL)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

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CUTTACK BENCH, CUTTACK.

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI J.S.DHALIWAL, MEMBER(JUDICIAL)

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Shri S.K.Prasad, IFS(Retd.), Aged about 62 years, son of
B.Prasad, Plot No.515, Saheednagar, Bhubaneswar-7,
Dist.Khurda, ex-Managing Director, Orissa Forest
Development Corporation Ltd.

.....Applicant

Advocates for applicant -M/s A.K.Misra
J.Sengupta
D.K.Panda
PRJ Dash
G.Sinha

Vrs.

1. Union of India, represented through its Secretary, Environment & Forests, Government of India, CGO Complex, Lodhi Road, New Delhi.
2. State of Orissa, represented through its Secretary, Forest & Environment Department, Government of Orissa, Secretariat, Bhubaneswar, Dist.Khurda.
3. State of Orissa, represented through its Secretary, General Administration Department, Government of Orissa, Secretariat, Bhubaneswar, Dist.Khurda.
4. Managing Director, Orissa Forest Development Corporation Ltd., A-84, Kharavela Nagar, Bhubaneswar, Dist.Khurda.

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Respondents

Advocates for respondents-Mr.A.Routray,
ACGSC for R-1
Mr.K.C.Mohanty,
Govt.Advocate for
R-2 and 3
and
M/s S.K.Patnaik
S.N.Nayak
for R-4.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application the petitioner has
prayed for a direction to the respondents to pay him all his
arrear pension, gratuity and other retiral benefits
forthwith. The second prayer is for granting of interest at

18% per annum from the date of retirement till actual payments are made.

2. Managing Director, Orissa Forest Development Corporation Ltd. (respondent no.4) to which organisation the applicant had been deputed and from which organisation, he superannuated on 31.8.1995, has filed written statement opposing the prayers of the applicant.

3. State of Orissa (respondent nos. 2 and 3) have not filed counter. The learned Government Advocate has filed a memo on 17.5.2000 enclosing copy of letter dated 23.3.2000 in which pension papers of the applicant have been sent to Accountant General, Orissa, by the Forest & Environment Department. In view of this letter, Shri Aswini Kumar Mishra, the learned counsel for the petitioner submitted that no further direction is required to be issued to the State Government for sanctioning the pension and other retiral benefits and his prayer in this petition is limited only to granting of interest for the period of delayed payment.

4. Before going into the facts of the case it is necessary to note two points about this letter dated 23.3.2000. In this letter the Accountant General has been requested to recover an amount of Rs.18,704/- as indicated in his "No Due Certificate" from the gratuity of the applicant and to release other pensionary benefits. The second point to be noted is that in a memo to this letter it has been mentioned that as the order of the Tribunal has already been complied with there is no need for the State Government to send parawise comments for the purpose of filing counter in this case. We have mentioned the second point only to bring out the fact as to how matters like sanction of pension to retired employees which should be

attended to with utmost despatch by the departmental authorities if only for reason that one day they may also be at the receiving end, are being treated casually and without application of mind. In this case the Tribunal had not issued any interim order and therefore there is no question of complying with the order of the Tribunal. It is also to be noted that the petitioner in this case has prayed for interest at 18% on delayed payment and on this point no counter has been filed by the State Government.

5. Facts of this case are that the applicant was working at the level of Chief Conservator of Forests in Orissa Cadre of Indian Forest Service. He was issued retirement notice on 21.7.1995 and he retired on superannuation on 31.8.1995. On 31.8.1995 itself General Manager(A&P), Orissa Forest Development Corporation Ltd. wrote to Principal Chief Conservator of Forests stating that there was no outstanding dues against the petitioner till 31.8.1995 except telephone charges for private calls, if any, from his residential telephone and the same shall be paid by the applicant. On 4.11.1995 the Deputy Secretary, Forest Department wrote to the petitioner that he should clear the telephone bills from 16.7.1995 to 31.8.1995 and vacate the Corporation's leased accommodation occupied by him and return the Motor Car Advance amounting to Rs.16,704/-. It was also pointed out that one Konark T.V. set valued at Rs.17,380/- is lying with the petitioner, and the petitioner was advised to contact Managing Director, Orissa Forest Development Corporation Ltd. to sort out the problems so that pension papers of the petitioner can be processed without any difficulty. The applicant has stated that

before his superannuation, on 28.8.1995 he wrote to the Principal Chief Conservator of Forests, Orissa, stating that the T.V.set along with its accessories was handed over to Shri H.S.Sarkar, the then Secretary, Forest & Environment Department, which should be returned to the Orissa Forest Development Corporation Ltd. for verification as per store verification. Subsequently, on 11.12.1995 a letter was addressed to the applicant requiring him to deposit Rs.1892/- towards deduction of house rent at the rate of Rs.473/- per month for the period from 1.9.1995 to 31.12.1995. It was stated that after depositing the same "No Due Certificate" would be issued. The applicant was also asked to furnish an undertaking to the effect that in the event of any decision regarding payment of higher rent at a later date the differential amount would be paid by him. On 12.12.1995 the petitioner furnished an undertaking in which it was pointed out that as per direction he had deposited Rs.1892/- towards deduction of house rent and if any additional house rent subsequent to the payment is required, then he is willing to pay the same. Thereafter on 15.1.1996 he made a representation to the Forest Department stating that he has settled telephone bills and the house rent upto 31.12.1995. With regard to the Motor Car Advance, the petitioner had pointed out that the same is to be recovered by the Accountant General as per rules from the DCRG. He also pointed out in this letter that the Colour T.V. is not available with him. It is now available with Managing Director, Orissa Forest Development Corporation. On 6.2.1996 Managing Director, Orissa Forest Development Corporation Ltd. wrote a letter to Principal Chief Conservator of Forests stating specifically that there is no outstanding dues against the petitioner except additional house rent, if any.

tobe decided by the General AdministrationDepartment and the petitioner has already given an undertaking to pay the same if the additional house rent is charged. Thereafter on 6.2.1996 the petitioner was sanctioned with provisional pension amounting to Rs.3140/- with temporary increase as admissible with effect from 1.9.1995, but till date no final pension and gratuity payment order has not been issued to him. The petitioner made further representation on 2.6.1997 and 9.2.1999 but pension has notbeen paid. The applicant hasstated that there is absolutely no reason for withholding his pension and that is why he has come up in this petition with the prayers referred to earlier.

6. As earlier noted the State Government have not filed any counter. Orissa Forest Development Corporation Ltd. in their written statement have stated that on the date of his retirement on 31.8.1995 the applicant managed to obtain a "No Due Certificate" from the General Manager (A&P) ofOrissa Forest Development Corporation Ltd. who was also relieved from the Corporation on the same day on 31.8.1995 to join his new assignment as Joint Secretary, Woman & Child Development Department. In view of this on 18.9.1995 the Corporation wrote to the Accountant General, Orissa (Annexure-R/1) stating that issuing of "No Demand Certificate" bythe ex-General Manager (A&P) has been highly irregular. They mentioned about telephone bills yet to be received from P&T Department, leased accommodation, Motor Car Advance and Konark TV. In this letter a specific request was made to Accountant General not to settle the pension, DCRG, GPF and Group Insurance of the applicant till issue of the revised "No Demand Certificate" from the office of Orissa Forest Development Corporation Ltd. This is a second instance of non-application of mind because under no

circumstances, Orissa Forest Development Corporation Ltd. or for that matter Government could not have requested the Accountant General not to release the GPF amount to the applicant. In the written statement respondent no.4 has also stated about the T.V.set. It is further stated in the written statement that during the tenure of the petitioner in the Corporation some allegations were made against him along with other officers for involving the Corporation to loss of Rs.1.8 crore by way of default in supply of sleepers to the Railways. On account of default of the Corporation to supply the sleepers within due time, the Corporation had to pay Rs.1.8 crore to the Railways. The matter was referred to the Vigilance who after enquiry have informed the authorities in their letter dated 21.6.1999 that the allegation has not been proved against the applicant. After receipt of the reply from the Vigilance Department, action has been taken at the Corporation level to release "No Due Certificate" and ultimately "No Due Certificate" has been issued on 24.2.2000 with a certificate that an amount of Rs.18,704/- is outstanding which is payable to the Corporation by the petitioner. Lastly it is stated that as "No Due Certificate" has already been issued, there is no necessity to entertain further the present application and the same may be disposed of.

7. We have heard Shri Aswini Kumar Mishra, the learned counsel for the petitioner; Shri A.Routray, the learned Additional Standing Counsel for respondent no.1; Shri K.C.Mohanty, the learned Government Advocate for respondent nos. 2 and 3; and Shri S.K.Patnaik, the learned counsel for respondent no.4 and have also perused the records.

8. As earlier mentioned in the present application we are only concerned with the residual prayer with regard to payment of interest. Respondent no.4 along with their written statement have filed a letter dated 11.11.1999 from Managing Director, Orissa Forest Development Corporatino Ltd. in which after recounting details about alleged loss of Rs.1.8 crore it ha been stated that "No Due Certificate" can be issued in favour of the applicant only after the matter on supply of sleepers to Railways is resolved at Government level. This stand is wholly without any merit. The issue of "No Due Certificate" could not have been withheld merely because of the fact that some allegation is under enquiry and the Vigilance Department have already informed that the allegation against the applicant has not been made out. The rules provide that even after the applicant retires and is paid his retirement dues, departmental proceedings can be initiated against him with regard to any lapses during his service career subject to the condition that no matter can be a subject-matter of such departmental proceedings which has happened prior to the period of four years from the date of initiation of the proceedings. It is well settled that during the pendency of the departmental proceedings, gratuity can be withheld. But Hon'ble Supreme Court in a large number of cases have clearly mentioned that departmental proceedings can be said to have been initiated only after chargesheet is issued. It is not necessary to refer to those cases because the law on this point is well settled. In view of this, thefact that some allegation against the applicant was under investigation, cannot be a ground for withholding his retirement benefits and for non-issue of "No Due Certificate". As regards payment of Motor Car Advance, under

the rules outstanding amount can be recovered from gratuity even without any consent from the side of the applicant and therefore on this ground, "No Due Certificate" could not have been withheld. It could have been issued, as it has been done ultimately, by mentioning that the outstanding amount of Motor Car Advance should be recovered from his gratuity.

9. The applicant has clearly stated that on 12.12.1995 he had written a letter that he had deposited the house rent of Rs.1892/- as demanded of him and had also given an undertaking that in case at a later stage Government decide charging of higher rent, then he would be prepared to pay the differential amount. In the context of the above facts, it is clear that there has been considerable delay in handling the case of the petitioner. The delay has been at two levels on the part of Orissa Forest Development Corporation Ltd. in issuing "No Due Certificate" and more particularly on the part of the Government in not asking the Orissa Forest Development Corporation Ltd. to issue "No Due Certificate" after recording whatever are the dues against the applicant, in the "No Due Certificate". In view of this, it is clear that a case has been made out for payment of interest.

10. Next question which arises is for which period the interest would be allowed. The applicant has stated that on 12.12.1995 he had deposited the arrear house rent of Rs.1892/-. A word has to be stated about the house rent. As the applicant was occupying leased occupation he was required to pay 7½% of his salary towards house rent. From the petition itself it appears that this liability of the applicant to pay house rent at the rate of 7½% was

mentioned in the terms of his deputation. The instructions also provide that for retention of official accommodation after retirement, the rent payable by the occupant has to be paid in advance. But the applicant had not paid this amount in advance. Ultimately he had intimated that the arrear amount has been paid by him on 12.12.1995. In view of this, we think that it would be fair if interest is allowed from 1.1.1996 till the date of payment of final pension along with arrears and gratuity. Needless to say that with regard to arrears of final pension, interest will be allowed only on the residual amount after deducting the provisional pension which the applicant has received in the meantime. Similarly, on the amount to be recovered from the gratuity, no amount of interest would be payable.

11. The last question for consideration is as to the rate at which interest should be paid and by whom. The Hon'ble Supreme Court in many cases have allowed interest at 18% per annum. The learned counsel for the petitioner has referred to a decision of the Hon'ble High Court of Orissa in the case of Dhruba Charan Panda v. State of Orissa and others, 1999(II) OLR 433, in which their Lordships of the Hon'ble High Court of Orissa, have held that in case of delay in payment of pension, the pensioner would be entitled to 18% interest per annum for the period of delay. Of course this is not an inflexible rule. Taking into consideration the facts and circumstances of the case it is open for the Courts and Tribunals to allow interest at a rate lower than 18%. In this case we find that the applicant has approached the Tribunal four years after his superannuation. He superannuated on 31.8.1995 and this OA

was filed on 14.9.1999 immediately after passage of four years. It is not clear why the applicant delayed filing of this OA for four years. Had the application been filed immediately after a period of six months was over from the date of filing of his representation, then appropriate direction could have been issued to the departmental authorities for settling his pension matter quickly. In view of this, and in the facts and circumstances of the case, we allow simple interest at the rate of 12% per annum from 1.1.1996 till the date of payment on the amounts as indicated above. This amount should be paid by the respondents within a period of 120 days from the date of receipt of copy of this order. We also direct that as in this case both Orissa Forest Development Corporation and State Government are responsible for the delay, the amount of interest should be borne equally by the State Government and Orissa Forest Development Corporation Ltd.

12. In the result, therefore, the Original Application is allowed in terms of the observation and direction above, but without any order as to costs.


(J.S.DHALIWAL)

MEMBER (JUDICIAL)
26.5.2000

(SOMNATH SOM)

VICE-CHAIRMAN