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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 506 OF 2001
Cuttack this the 16th day of December 2004

Prahlad Behera ... Applicant(s)

- VERSUS -

Union of India & Ors. ... Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *no*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *no*

M.R. Mohanty
16/12/04
(M.R. MOHANTY)
MEMBER (JUDICIAL)

B.N. Som
(B.N. SOM)
VICE CHAIRMAN

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CUTTACK BENCH: CUTTACK

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Cuttack this the 16th day of December 2004

CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)
...

Sri Prahallad Behera, 61 yrs.
S/o. late Sridhar Behera, Vill/Post-
Kabalpur, Via: Kanakpur, Dist-Jagatsinghpur

... Applicant

By the Advocates

M/s. P.K. Padhi
M.P. J. Ray

- VERSUS -

1. Union of India represented by it's
Chief Post Master General (Orissa Circle)
At/PO-Bhubaneswar, Dist: Khurda, 751001
2. Superintendent of Post Offices, Cuttack
South Division, At: P.K. Parija Marg,
PO-Cuttack G.P.O., Dist-Cuttack, 753001

... Respondents

By the Advocates

Mr. J.K. Nayak, A.S.C.

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O R D E R

MR. B.N. SOM, VICE-CHAIRMAN: Applicant (Sri Prahallad Behera) has filed this Original Application praying for direction to be issued to Respondents, more particularly, Respondent No. 2 to pay him all the retiral benefits including gratuity, leave salary, commutation and other benefits along with interest at the rate of 18% per annum.

2. The fact of the case is that the retirement benefits payable to the applicant have been held up on account of initiation of a disciplinary proceeding against the applicant on the verge of his retirement. According to him, he had received the charge memo dated 26.4.2001 through registered post on 3.9.2001. In the meantime, he retired from service with effect from 30.4.2001, upon which

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he was paid provisional pension at the rate of Rs.3573/- but no other dues were paid to him.

3. It is the case of the applicant that the charges brought against him related to his alleged contributory negligence and occurrence of the transactions related to the years 1995, 1999 and in case of one charge, the events with regard to fraudulent withdrawals from Savings Bank Accounts are spread over from 1991 to 1996. The main perpetrator of the fraud was one Shri Maheswar Behera, the then Sub Post Master, Tindakura S.O., who is now dead. It is in this background, the applicant has prayed for the reliefs, as referred to above.

4. The Respondents have opposed the prayer of the applicant on all counts. They have submitted that the applicant was responsible for commission of fraud in 32 T.D./MIS/SB Acts., as a result of which the Department sustained a loss to the tune of Rs.5,04,211.50 + interest and penal interest accrued on the defrauded amount; and in the departmental investigation the applicant was identified as one of the subsidiary offenders as he was working as Deputy Post Master, Jagatsinghpur H.O. and also Sub Post Master, Tindakura S.O. In consideration of his role in the commission of fraud, a charge-sheet under Rule-14 of CCS(CCA) Rules, 1965 was issued against him on 26.4.2001, when he was working as Sub Post Master, Tindakura S.O. It is the case of the Respondents that the applicant knowing about the contents of the said letter, which was sent through Cuttack GOP RL No.3913 dated 26.4.2001, avoided taking delivery of that letter till he retired from service on 30.4.2001. The remarks of the Postman

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regarding the cause of non-delivery is available on the cover of the letter vide Annexure-R/2. However, the charge memo was finally delivered to him on 3.9.2001. After the issue of the charge-sheet as the applicant had retired on superannuation, the disciplinary proceeding was deemed to have been initiated under CCS(Pension) Rules and in terms of Pension Rules made in this regard, a Govt. servant is not entitled to any retiral benefits except payment of provisional pension. It is in these circumstances that the applicant has not been paid any amount on account of retiral benefits.

5. We have heard the learned counsel for the parties and have perused the materials placed before us. We have also perused Rule 69 of CCS(Pension) Rules, which provides for payment of provisional pension, where departmental proceedings are pending against a retired Government servant. In terms of sub-rule 1 of Rule 69 a Government servant, against whom disciplinary proceedings are pending will be paid provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service upto the date of retirement of the Government servant. The applicant has not made any grievance that he is being paid the provisional pension which is equal to the maximum pension which is equal to the maximum pension which he would have otherwise received from the Respondents-Department. Under sub-rule 1(c) of Rule-69, it has been laid down that no gratuity shall be paid to the Government servant until the conclusion of the departmental proceedings and issue of final orders. With regard to non-pay,ent of

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leave encashment to the applicant, the learned Addl. Standing Counsel for the Respondents has drawn our notice to Rule-39(3) of CCS(Leave) Rules, wherein it is laid down that the authority competent to grant leave may withhold whole or part of cash equivalent to earned leave in the case of a Government servant retired from service on attaining the age of superannuation while disciplinary proceedings are pending against him, if in the view of such authority there is possibility of some money becoming recoverable from him on conclusion of the proceedings against him. As pension is not payable under Rule-69, only provisional pension is payable, the learned Addl. Standing Counsel pleaded that the question of commutation of pension does not arise, because, on conclusion of the disciplinary proceedings payment of provisional pension made under sub-rule-1 of Rule-69 shall be adjusted against final retiral benefits sanctioned to such Govt. servant. The applicant has not been able to rebut the above submissions either through his rejoinder or during oral argument.

6. Having regard to the above facts and ^{position of} law, we are of the view that none of the reliefs asked for by the applicant is admissible until and unless the disciplinary proceeding initiated against him are concluded and final orders passed. Accordingly, the O.A. fails.
No costs.

(M.R. MOHANTY)
MEMBER (JUDICIAL)

(B.N. SOM)
VICE-CHAIRMAN

BJY