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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 150 OF 2003
Cuttack this the 8th day of April /2004


Govinda Prasad Naik ... Applicant(s)

-VERSUS-

Union of India & Others ... 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 ? 74


(B.N. SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
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ORIGINAL APPLICATION NO.150 OF 2003
Cuttack this the 8th day of April /2004

CORAM:

THE HON'BLE MR. B.N. SOM, VICE-CHAIRMAN
...

Sri Govinda Prasad Naik, aged about 64 years,
son of late Chintamani Naik retired as ERC-I,
S.E.Railway, Balasore Station - at present
residing at Nuagaon, PO-Mulisting, Dist-Balasore
PIN - 756 045

... Applicant

By the Advocates

Mr.A.Das,

-VERSUS-

1. Union of India service through General Manager,
S.E.Railway, Garden Reach, Kolkata-43
2. Member Staff, Railway Board, Rail Bhawan, New Delhi
3. Divisional Railway Manager, S.E.Railway, Kharagpur
Dist-Midnapur
4. Financial Advisor & Chief Accounts Officer,
S.E.Railway, Garden Reach, Kolkata-43
5. Sr.Divisional Personnel Officer, S.E.Railway,
Kharagpur, Dist-Midnapur

... Respondents

By the Advocates

Mr.R.C.Rath,S.C.

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O R D E R

MR.B.N.SOM, VICE-CHAIRMAN: This Original Application
has been filed by Shri Govinda Prasad Naik praying for
a direction to be issued to the Respondents to pay
interest on delayed payment of commuted value of pension
and D.C.R.G.

2. The case of the applicant in brief is that when
he retired on 31.5.1993 from service on attaining the
age of superannuation, he had received all the retiral
benefits except commuted value of pension and D.C.R.G.
which were withheld as some disciplinary proceedings

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were pending against him on the date of retirement. Before retirement the applicant had submitted a representation dated 1.2.1997 to the disciplinary authority requesting him to finalize the case before his retirement. He had also drawn the notice of the disciplinary authority to the Railway Boards' order to the effect that the disciplinary cases are normally to be finalized within a period of 120 days from the date of its initiation. Notwithstanding his request the case was not finalized in time and it was continued after his retirement also. While disciplinary proceedings were not completed, Respondent No.3 informed the applicant on 12.5.2002 by which time already more than five years had elapsed after the disciplinary proceedings were initiated that till the finalization of the case, he could not be paid D.C.R.G. and commuted value of pension amount. The applicant was exonerated of all the charges and the disciplinary proceedings came to a close on 28.8.2001 and thereafter on 4.4.2002, the Respondents-Department paid him the dues. The applicant, however, by virtue of his representation dated 6.5.2002 requested the Respondents-Department to pay him interest due on the amount of commuted value of pension and DCRG paid to him five years after his retirement (commuted pension and D.C.R.G. amount paid on 2.4.2002 and August, 2002 respectively). But the representation of the applicant remained unanswered and therefore, he has approached the Tribunal seeking the following reliefs.

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"... by an appropriate order or direction, the

respondents be directed to make payment of interest on Rs.1,35,054/- and Rs.1,10,484/- paid in respect of commuted value of pension and DCRG respectively in April, 2002 and August, 2002 in favour of the applicant, who retired on 31.5.1997. The rate of interest will be @ 12% for the years 1997-98, 1998-99, 1999-2000, @ 11% for the year 2000-01 and @ 9.5% for the year 2001-02 as per Railway Board's letters dated 21.1.2000 and 27.6.2002 (Annexure-A/13 and A/14)".

3. The Respondents in their counter reply have admitted that the disciplinary action initiated against the applicant on 12.8.1994 took time to be completed and that the proceedings were dropped by order dated 28.9.2001 of the Deputy Commercial Manager, Kharagpur after indicating Govt.'s displeasure. They have, however, denied that the applicant is entitled to payment of interest on account of delayed payment of D.C.R.G. and commuted value of pension because payment of D.C.R.G. is subject to good conduct of the employee. They have argued that the applicant could not be paid D.C.R.G. as his conduct was questioned and that until the disciplinary proceedings were completed it was not possible to conclude that the applicant was entitled to DCRG amount and the very fact that the displeasure of the Government was communicated to him, he was not fully exonerated and therefore, he was not entitled to interest as claimed in his application.

4. I have heard the learned counsel appearing on behalf of the rival parties and also perused the materials placed on record. The short question that needs to be answered is whether the applicant is entitled to payment of interest on account of delay in payment of commuted value of pension and DCRG when a disciplinary case was pending against him.

From the facts of the case, it is seen that the applicant was charge-sheeted for his alleged misconduct. But after inquiry into the matter, the disciplinary authority came to the conclusion that the applicant had committed irregularity in the official transaction at the counter, but he did not do so out of ill motive; it was a case of gross negligence of duty. Under Rule 9 of the Pension Rules, the President is the authority to withhold a part or whole of the pension payable to a pensioner/Government servant if it is proved that the pensioner is guilty of gross misconduct or has caused pecuniary loss to the Government. The word 'misconduct' has also been defined by the Apex Court in the case of Union of India v. J.Ahmed, 1979 SLJ 308, where their Lordships have held that 'misconduct' means conduct arising out of ill motive. It has also been held that the acts of negligence, or errors of judgment, or innocent mistake, do not constitute such misconduct. This definition was further upheld in the case of K.G.Samatri v. Union of India (1993 (25) ATC 117) and Purusottam Sadasiv Kakaside v. Union of India, 1995 ATC 8. As the Respondents have admitted that the disciplinary authority did not find any ill motive in the alleged conduct of the applicant, I am of the opinion that no case of misconduct let alone grave misconduct has been made out against the applicant to vary in any way his entitlement for pension and other retiral benefits. The Respondents have also gone to the extent of stating in their counter that as Government's displeasure was communicated to the applicant, it could not be said that he was fully exonerated from all the charges and that he retired with

a blemishless service and therefore, he had no case to ask for interest on delayed payment. I am not impressed by this argument advanced by the Respondents, because, the Apex Court has already laid down in the case of Padmanavan Nair vs. State of Kerala reported in 1985 SCC(L&S) 278 the law with regard to delayed payment, as under.

"...Pension and gratuity are not any bounty to be discriminated by Govt. to its employees. Any coupled delay in settlement must be visited with penalty on payment of interest at the market rate till actual payment is made. Liability to pay interest on these dues commences two months from the date of retirement".

From the above observation of their Lordships it is clear that the Respondents had erred in thinking that it was left to the discretion either to pay or not to pay D.C.R.G. to the applicant or if DCRG is paid whether they could decide not to pay interest on delayed payment for some reason. The law as laid down in the pension rules and by the order of the Apex Court as referred to above, a retired Govt. servant has the right to payment of all the retiral benefits which include pension, DCRG, leave encashment etc. and if any part thereof is to be withheld that decision can only be taken by the President of India in consultation with the Union Public Service Commission and by no other authority below him. In view of the above, it is clear that the Respondents, by denying payment of interest on delayed payment of commuted value of pension and DCRG had denied justice to the applicant. It is high time that they should redress his grievance

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without further delay, in terms of Railway Board's Circular issued from time to time in this regard vide Annexure-A/14 of this Original Application.

5. This Bench in its order dated 12.11.2993 passed in O.A.892/2002 have held in an identical issue that the applicant is entitled to interest on the delayed payment of his retiral dues and the Respondents therein have been asked to pay interest to the applicant at the rate of 12% per annum from the date of his retirement till the date of actual payment. In this view of the matter, it would not be proper to take any other view than the view already taken by this Tribunal in the aforementioned O.A. However, I direct the Respondents to make payment of the interest to the applicant on the delayed payment of commuted value of pension and D.C.R.G. as per extant rules till the date of actual payment.

6. With this observation and direction, the O.A. is disposed of. No costs.


(B.N. SOM)
VICE-CHAIRMAN

BJY