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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.415 of 2007
Cuttack, this the 06th day of April, 2009

D.Sukhamaya Mohanty Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


(C.R. MOHAPATRA)
MEMBER (ADMN.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.415 of 2007
Cuttack, this the 06th day of April, 2009

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Dr. Sukhamaya Mohanty, aged about 61 years, son of Shri Harekrishna Mohanty, At-House No.17, Bhabani Enclave, Phase II, Sector-8, Cuttack-753 014.

.....Applicant

By Advocate : M/s.S.P.Mohanty,P.K.Padhi,A.K.Nanda,
R.Mohanty, P.Lenka, S.K.Das,
P.K.Lenaka.

- Versus -

1. Union of India represented through the Secretary, Health, Government of India, Nirman Bhavan, New Delhi-110001.
2. Director General of Health Services, Nirman Bhawan, New Delhi-110 001.
3. Director, Administration and Vigilance, Directorate of Health Services, New Delhi-110 001.
4. Director, All India Institute of Hygiene and Public Health, Kolkata-700001.
5. Senior Regional Director, Regional Office for Health and Family Welfare, 20 Gariahat Road, Kolkata-700 019.

....Respondents

By Advocate - Mr.S.B.Jena,ASC.

O R D E R

Per- MR.C.R.MOHAPATRA, MEMBER (A):-

Applicant, while working as Additional Director, All India Institute of Hygiene and Public Health, Kolkata, retired from service on reaching the age of superannuation w.e.f. 31.05.2006. After his retirement he was sanctioned and paid his legitimate retirement dues on the following dates:

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04.10.2006 - Commutation of pension paid;
31.10.2006 - Pension was sanctioned;
22.12.2006 - DCRG withholding Rs.39,407 towards the disputed bills of telephone;
23.02.2007 - Leave Salary;
03.05.2007 - CGEGIS
2. Being aggrieved by such delayed payment of his dues and withholding of Rs.39, 407/-, he has approached this Tribunal in the present Original Application seeking the following reliefs:

"(i) Admit this OA;
ii. Call for the relevant records; and
iii. After hearing the counsel for the parties be further pleased to quash the impugned order under Annexure-A/8 and direct the respondents to refund Rs.39,407/- withheld/deducted from the DCRG of the applicant with interest with a further direction to pay interest for the delayed payment of pensionary benefits vide Annexures-A/12, A/13, A/14, A/15 and A/9;
iv. Pass such or such other order/orders as may be deemed just and proper in the facts and circumstances of the case."
3. It reveals from the record that this OA was listed before the Bench for considering the question of admission. Prima facie case having been found, this Tribunal vide order dated 25.10.2007 directed notice to the Respondents calling upon them to file their reply. Mr.S.B.Jena, Additional Standing

Counsel also filed his appearance Memo on behalf of the Respondents. On 13.11.2007 notice was issued to the Respondents. Thereafter the matter was listed before the Registrar for completion of pleadings as per rules on 23.1.2008, 5.3.2008, 21.4.2008. In spite of grant of time since no counter was filed, the matter was placed before the Bench on 19.5.2008 when Mr.Jena, Learned ASC sought four weeks time to file counter. On his request the matter was adjourned to 27.06.2008. The matter was listed on 27.6.2008 and as usual the Respondents' counsel sought three weeks time to file counter and as last chance his prayer was allowed and the matter was adjourned to 13.8.2008. On 13.8.2008 when the matter was listed Learned Counsel for Applicant sought ten days time; as by that time there was some development in regard to the grievance of Applicant. Thereafter, on 29.8.2008 by filing Miscellaneous Application, the applicant has brought to the notice of this Tribunal that meanwhile he has been sanctioned and paid the amount of Rs.33,963/- vide cheque dated 27.2.2008 by deducing an amount of Rs.5,444/- over and above the amount of Rs.15,667/- paid by him towards the disputed telephone bills. He, therefore, confined his prayer for payment of Rs.5444/- illegally withheld/deducted from his DCRG amount as also

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interest for delayed payment of his retiral dues. Even after filing the aforesaid MA, this matter has been listed on 11.9.2008, 15.9.2008, 15.10.2008, 24.10.2008, 17.11.2008, 8.12.2008, 9.1.2009, 14.1.2009, 28.1.2009 and 30.1.2009 but no reply either to the OA or to the MA was filed by the Respondents. However, on 2.3.2009 the matter was finally heard in absence of the counter on behalf of the Respondents.

4. Learned Counsel for the Applicant by drawing our attention to various communications made with the authorities has strenuously argued that deduction/withholding of Rs.5444/- was not at all justified. Besides that, he has contended that although the retirement dues of the applicant were sanctioned and paid beyond the permissible limits provided in the Rules, he was not paid the interest. According to him, payment of interest was also logical as such dues of a retired employee is the only means of his livelihood and had it been paid on time and he would have kept it in any of the nationalized bank it could have generated the interest. Therefore, he is entitled to interest besides refund of the illegally deducted amount of Rs.5444/-. More emphatically, it was submitted by the Learned Counsel for the Applicant that even conceding that

the Applicant was to pay Rs.5444/- yet withholding of Rs.33,963/- cannot be countenanced in rule/law and as such, the Applicant is also entitled interest on the amount of Rs.33,963/-. This was strongly opposed by Learned Additional Standing Counsel for the Respondents by stating that in fact there was no delay in sanction and disbursement of the retirement dues of the Applicant.

5. The fact remains that the Applicant superannuated from service w.e.f. 31.5.2006. There was no disciplinary or criminal case pending against him till his retirement or even after his retirement. In fact even after sufficient opportunity, the Respondents did not choose to file any reply. It is a fact that a permissible period has been provided in the Rules by which retirement dues of the applicant could have been sanctioned and disbursed to him. According to record, Rs.33, 963/- has been paid to the Applicant only on 27.2.2008. But learned Counsel for the Applicant failed to specify in accordance with rules, as to the outer limit provided for payment of the dues beyond which one is entitled to interest.

6. The settled position of law is that after retirement the employee has a right to get his gratuity and any order directing

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withholding of gratuity must precede with a finding that the retired employee committed grave misconduct or negligence-

D.V.Kapoor v Union of India and others, AIR 1990 SC 1923.

Further it is trite law that one is entitled to interest on the delayed payment of pension and pensionary benefits vide **State of Kerala and Others v M.Padmanabhan Nair**, AIR 1985 SC 356 & **Dr. Uma Agarwal v State of UP and Another**, AIR 1999 SC 1212.

7. In view of the above, the Applicant is entitled to payment of interest on the delayed payment of pension and pensionary benefits beyond the permissible limit under Rules. So far as withheld amount of Rs.5444/- from the gratuity is concerned, it is seen that according to the Applicant as per the demand under Annexure-A/6 he has already deposited the amount proportionately accrued to him and, therefore, deduction/withholding of such amount is unjustified. Since no counter has been filed by the Respondents in spite of adequate opportunity, this Original Application is disposed of with liberty to the Applicant to make an exhaustive representation to the Respondent No.1 (Secretary, Health, Government of India, Nirman, Bhawan, New Delhi) who is directed to calculate and

pay the interest on the delayed payment of the pension and pensionary dues beyond the permissible limits provided in the rules; besides the above, he shall give a fair consideration so far as release of the withheld amount of Rs.5444/- which according to the applicant, he was not liable to pay. This should be done within a period of 60 days from the date of receipt of such representation from the Applicant.

8. Since on one hand there was inordinate delay on payment of the admitted gratuity amount of Rs.33, 963/- and on the other hand no counter was filed thereby allowing the applicant to suffer by approaching this Tribunal in the present OA, we think it just and proper and substantive justice would be met if we direct cost of Rs.1000/- towards litigation and suffering of the Applicant. Ordered accordingly.

9. With the observations and directions made above, this OA stands disposed of.

K. Thankappan
(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

C. R. Mohapatra
(C. R. MOHAPATRA)
MEMBER (ADMN.)