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OA No.279 of 2008

Laxmidhar BhoiApplicant
Versus
Union of India & Others Respondents

ORDER DATED: 30th March, 2010.

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THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (ADMN.)

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Applicant is a retired Indian Forest Service Officer of the State of Orissa. He retired from service in the afternoon of 31.03.2002. By filing the present Original Application under section 19 of the A.T. Act, 1985 he sought the following direction:

- “(i) To direct the respondent Nos.2 & 3 for release of the gratuity assessed by the Pension Sanctioning Authority Respondent No.4 with 12% interest;
- (ii) To direct the Respondent No.2 for finalizing the pension order and release the same in favour of the Applicant.”

2. Although in compliance of the order of this Tribunal dated 30.07.2008 directing notices to be issued to all the Respondents and in fact notices having been served on all the Respondents, no counter was filed by any of the Respondents except by the Respondent No.4. Respondent No.4 in this Original Application is the Accountant General [A & E], Orissa, Bhubaneswar whereas the verification of the said counter has been signed by Shri Guru Charan Samad, Under Secretary to Government, Forest and Environment Department, Orissa Secretariat, Bhubaneswar. It has been contended by the Respondent in the said counter that on 28.12.1997 Vigilance Berhampur initiated investigation U/s.13 (2) and 13(1) of Prevention of Corruption Act and on 31.05.2002 charge sheet was filed before the Special Judge, Vigilance Special Court Bhubaneswar. While the investigation in the said criminal case was in progress, Applicant retired from service with effect from 31.3.2002. As per Sub Rule (2) of Rule 6 of the AIS (Death Cum

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Retirement Benefits) Rules, 1958, no gratuity/DCRG is payable until conclusion of the disciplinary or criminal case instituted against an officer. Vigilance Case No.TR 22/09 instituted against the applicant is under trial in the Court of Special Judge, Vigilance Special Court, Bhubaneswar and after conclusion of the said case, decision can be taken in regard to release of the dues as claimed by the Applicant in this OA. Further contention of the Respondent in the counter is that the provision of Central Civil Services (Pension) Rules relied on by the Applicant is not Applicant to him he being an All India Service Officer. Accordingly, Respondent prayed for dismissal of this OA.

3. By relying on decisions of the Hon'ble Apex Court it was contended by Learned Counsel for the Applicant that payment of pension and pensionary benefits to a retired employee is not a bounty or charity shown by the employer rather it is a valuable right acquired and property in the hands of a retired employee and as such any delay in settlement and disbursement thereof has a serious consequence not only for sustenance of the retired employee but also for all his dependent family members. As such, one is entitled to such payment soon after retirement as it has the direct nexus with the life with decency/dignity as enshrined under Article 21 Constitution of India. According to him though applicant retired from service w.e.f. 31.3.2002. Respondents took near about six years to prepare the pension paper and forwarded the same to the Pension Sanctioning Authority on 11.3.2008. Consequently pension payment order was issued to him only on 7.4.2008 and while forwarding the pension paper to the Accountant General it was instructed to the AG not to release the gratuity amount to the applicant. As such, according to the Applicant, withholding the gratuity even on the face of pendency of the criminal proceeding is hit by Rule 9 of the Central Civil

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Services (Pension) Rules; especially when charge sheet in the Vigilance Court was filed only on 31.5.2002 whereas the date of retirement of the Applicant was 31.3.2002. It was also contended by Learned Counsel for the Applicant that for another reason withholding of retirement gratuity is not sustainable as no approval from the Central Government was obtained by the Respondents. To buttress his argument that in any event withholding of gratuity on the face of the pendency of the Vigilance case is not justified, Learned Counsel for the Applicant has relied on the decision of the Hon'ble High Court of Orissa rendered in the case of **Brajasundar Patnaik v Government of Orissa and others** reported in 2008 (I) OLR 384 and accordingly has prayed for the relief claimed in this OA. Mr. Bose, Learned GA for the State of Orissa by placing reliance on the provision of Sub Rule (2) of Rule 6 of the AIS (Death Cum Retirement Benefits) Rules, 1958 has reiterated the stand taken in the counter filed in this case and has prayed for dismissal of this OA.

4. Since it is the case of the Respondents that as per Sub Rule (2) of Rule 6 of the AIS (Death Cum Retirement Benefits) Rules, 1958 when Vigilance Case is pending against the applicant he was not entitled to gratuity, in my opinion a decision can be taken in the matter on examination of the aforesaid provisions of the Rules vis-à-vis the case in hand. For this purpose Sub Rule (2) of Rule 6 of the AIS (Death Cum Retirement Benefits) Rules, 1958 is quoted herein below:

“(2) Where any departmental or judicial proceeding is instituted under sub rule (1) or where a departmental proceeding is continued under clause (a) of the provision there to against an officer who has retired on attaining the age of compulsory retirement or otherwise, he shall be sanctioned by the Government which instituted such proceedings, during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceeding, final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service upto the date of retirement, or if he was under suspension on the date of retirement upto date

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immediately proceeding the date on which he was placed under suspension; but no gratuity or death cum retirement gratuity shall be paid to him until the conclusion of such proceedings and the issued of final orders thereto.....”

5. It is trite law that departmental or judicial proceeding is taken to be instituted against a person only after serving/filing of charge sheet in the departmental proceeding service of charge sheet on the applicant and in the judicial proceeding filing of charge sheet in the appropriate court of law. As per the Rules pension and pensionary benefits including DCRG is payable to a Government servant soon after retirement. However excuse by way of grant of time in payment of the above dues has been provided in the rules and so far as DCRG is concerned unless within three months the same is paid as per Rule 19-A of the Rules, after three months the officer concerned is entitled to interest on the delay in payment of the DCRG. Admittedly, in the present case, applicant retired from service w.e.f. 31.3.2002 and charge sheet was filed in the Vigilance case before the Special Judge, Vigilance Special Court, Bhubaneswar only on 31.05.2002. In other words, as per the settled law that proceedings are stated to be initiated only after filing of charge sheet, there was no disciplinary or criminal case against the applicant on the date when he retired from service. Provision of Sub Rule (2) of Rule 6 of the AIS (Death Cum Retirement Benefits) Rules, 1958 clearly provides that ‘where any departmental or judicial proceeding is instituted under sub rule (1) or where a departmental proceeding is continued under clause (a) of the provision there to against an officer who has retired on attaining the age of compulsory retirement or otherwise, he shall be sanctioned by the Government which instituted such proceedings, during the period commencing from the date of his retirement to the date on which , upon conclusion of such proceeding, final orders are passed’. As discussed above, since no proceedings were pending in the eyes of law on or before the retirement of the Applicant withholding of

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Gratuity is not at all justified because it is well settled principle of law that where the language used in a statute is clear and unambiguous, the question of taking recourse of any principle of interpretation would not arise. In view of the above, I feel no necessity to go to the other points advanced by the Learned Counsel for the Applicant in course of hearing. At the same time, I may state that the applicant is not entitled to interest as claimed by him in this OA because as per Rules/Law one is entitled to interest on retirement dues only where the delay in making payment was due to culpable negligence of the Respondents. But here is a case, the Respondents withheld the gratuity amount of the applicant, for the discussions made above, on the presumption of applicability of the Rules quoted above.

6. In the light of the discussions made above, the Respondents are hereby directed to release the withheld gratuity amount of the Applicant forthwith at any rate within a period of 30 (thirty) days from the date of receipt of this order; failing which the Applicant shall be entitled to interest @ 8% per annum from the date the amount became due to him till the actual payment is made.

7. In the result, this OA is allowed to the extent stated above. There shall be no order as to costs.


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