

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O. A. No.796/2011

Cuttack this the 15<sup>th</sup> April 2015

CORAM

THE HON'BLE MR. A.K.PATNAIK, MEMBER (JUDL.)

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Balaram Rout aged about 80 years S/o Late Bhima Charan Rout, Resident of Plot No. 278-A, At/PO Saheednagar, Bhubaneswar, District Khurda – 751 007.

...Applicant

(Advocate: Mr. L.N. Pattnaik)

**VERSUS**

1. State of Orissa represented through the Special Secretary to Government of Orissa, G.A. Department, At Orissa Secretariat PO Bhubaneswar District Khurda.
2. Union of India represented through the Secretary to Government of India, Department of Personnel and Training, Ministry of Personnel, Pension and Public Grievances, North Block, New Delhi -1.
3. Secretary to Government of India, Department of Pension and Pensioners' Welfare, Ministry of Personnel, Pension and Public Grievances, Lok Nayak Bhawan, New Delhi – 110 003.
4. Director Land Records and Surveys, Orissa At Rajaswa Bhawan, Cuttack-2, Cuttack.
5. Settlement Officer, Cuttack – Puri Major Settlement, At Beda Jobra PO College Square, Cuttack.
6. Accountant General (A&E) Orissa At/PO Bhubaneswar District Khurda.

... Respondents

(Advocates: Mr.G.C.Nayak and Mr. M.K.Das)



**ORDER****A. K. PATNAIK, MEMBER [J] :**

Instead of great details, a recount of the general factual and litigation background would be apt.

(i) The Applicant was an Orissa Cadre IAS Officer and retired from service on reaching the age of superannuation in the afternoon of 31.07.1991. One day before his retirement i.e. on 30.07.1991 his official residence was searched by the State Vigilance and an FIR was lodged on 14.08.1991 alleging offence U/s. 13 (1)(e) of the P.C. Act, 1988 and a PS case No. 32/1991 was registered on 14.08.1991 in which charge sheet was filed on 30.06.1997. The Applicant submitted his pension papers which were forwarded by the Board of Revenue Orissa vide letter dated 06.04.1992 and the same was received by the General Administration Department on 15.4.1992. On the ground of initiation and pendency of the Vigilance Case, Respondent-Department withheld the gratuity and sanctioned provisional pension in his favour. By making representation dated 10.04.2001, the applicant has challenged such action of the Respondent-Department and has prayed for sanction of full pension and release of other retirement dues with interest. Alleging inaction, the applicant filed OA No. 445 of 2011 which was disposed of on 11.08.2011 with direction to



Respondent No.1 to consider and dispose of the representation of the applicant in a well reasoned order. Thereafter, the Respondent No.1 considered the representation of the applicant and vide order dated 31.10.2011 rejected his claim by invoking the provisions enumerated under Rule 6 (2) of the AIS (DCRB) Rules, 1958, as the vigilance case No. 32 dated 14.11.1991 instituted against him is still under *sub judice* before the Learned Special Court, Cuttack vide TR No. 12 of 2008. Being aggrieved, the applicant has filed the instant OA with prayer to quash the order of rejection dated 31.10.2011 (A/4) and to direct the Respondents to grant full pension and other retirement dues with 18% interest.

2. The State of Odisha i.e. Respondent No.1 has filed counter in which it has been stated that applicant retired on 31.7.1991 and after his retirement he was sanctioned provisional pension @ Rs. 2175/-+TI pm w.e.f. 01.08.1991 vide order dated 08.08.1993 which was subsequently revised to Rs. 5,903/- + TI pm w.e.f. 01.01.1996 vide order dated 09.05.2000 and Rs. 13,343/- + DR pm w.e.f. 01.01.2006 vide order dated 04.02.2012. It has been stated that sanction of his final pension and gratuity has been withheld under Rule 6(2) of AIS (DCRB) Rules, 1958 as a



Vigilance PS Case No. 32/91 dated 14.08.1991 u/s. 13(2) read with section 13 (1) (e) of PC Act 1988 has been registered against him for criminal misconduct inasmuch as accumulation of assets by corrupt and illegal means disproportionate to his known source of income. Rule 6 (2) of the AIS (DCRB) Rules 1958 provides that where any departmental or judicial proceedings is instituted against an officer he shall be sanctioned provisional pension not exceeding the maximum pension admissible to him from the date of his retirement till the date of such proceeding with final orders. It has been stated that the representation of the applicant was duly considered but the same was rejected with a reasoned order and communicated to him. It has further been submitted that it is not possible to sanction final pension and gratuity in favour of the applicant till conclusion of the criminal case as instituted against him. Accordingly, Respondent No.1 has prayed for dismissal of this OA.

3. Respondent No.6 i.e. Accountant General (A&E), Odisha has filed a counter in which it has been stated that the Secretary, Department of Pension and Pensioners' Welfare/Respondent No.3 is authorized for grant of pensionary benefits of retired employees on the basis of the pension papers along with sanction communicated by

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respective pension sanctioning authority. In the instant case special secretary to Govt. Of Odisha GA Department i.e. Respondent No.1 is the Pension Sanctioning Authority of the Applicant who has not yet furnished the pension papers of the applicant to the office of the Accountant General (A&E), Odisha albeit several letters followed by reminders on different dates were sent for furnishing the pension papers of the applicant. Hence in absence of the order of the Pension Sanctioning Authority, Respondent No.6 cannot be held responsible for non disbursement of final pension and gratuity etc.

4. Applicant has filed rejoinder to the counter filed by Respondent No.1 more or less reiterating the stand taken in the OA trying to substantiate his claim made in the OA.

5. Heard Mr. L.N.Patnaik, Learned Counsel for the Applicant, Mr. G.C.Nayak, Learned Government Advocate appearing for the Respondent Nos. 1, 4 and 5 and Mr.M.K.Das, Learned Additional CGSC appearing for the Respondent No.2,3 and 6 and perused the records.

6. Mr.Patnaik submitted that withholding of final pension and gratuity of the applicant cannot countenance in Rule or Law since there was no disciplinary or vigilance case

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instituted against the applicant except search and seizure of his house as on the date of retirement i.e. 31.7.1991. It has been submitted that as per Rule 6(2) of AIS (DCRB) Rules, 1958, after retirement, payment of final pension and gratuity can be withheld if Departmental or Criminal proceeding has been instituted against the officer concerned. By drawing my attention to the provision enumerated in explanation (b) of Rule 6 (1) (c) of the Rules, 1958 it has been contended by him as per the provision, as aforesaid, the date of institution of the criminal case is to be taken as the date on which charge sheet is submitted to the Criminal Court. As charge sheet was filed against the applicant on 30.06.1997 i.e. after six years of his retirement, therefore, it can be safely construed that there was no proceeding against him as on the date of his retirement and as such the Respondents should have sanctioned final pension and gratuity in his favour. In view of the above, Mr.Patnaik has strenuously argued that the Respondents have intentionally and deliberately, by misinterpreting the Rules, withheld payment of final pension and gratuity and rejected the representation without due application of mind. In this connection by placing reliance on the decision of the Hon'ble Apex Court in the cases of **Praduman Kumar Jain Vrs Union of India and others** reported in (1994) 2 ATT



(SC) 96; **Union of India Vrs Justice S.S. Sandhawalia (Retd.) and Others**, (1994) 2 ATT (SC) 337; **Ex. Capt. R.S.Dhull Vrs State of Harayana and others**, AIR 1998 SC 2090; **Dr. Uma Agrawal Vrs State of UP and another**, reported in AIR 1999 SC 1212 and **State of Jharkhand and Ors Vrs Jitendra Kumar Srivastava and Anr**, reported in AIR 2013 SC 3383, Mr.Patnaik while praying for grant of the relief claimed in this OA has also prayed for interest @ 18% per annum on the arrears.

(ii) On the other hand, Mr.Nayak submitted that though the applicant retired from service on 31.7.1991 his pension papers (incomplete) were forwarded by the Board of Revenue Odisha vide letter dated 06.04.1992 and the same was received by the GA Department on 15.04.1992. As in the meantime GA (Vigilance) Department has intimated that a vigilance case has been registered vide Vigilance PS Case No. 32/1991 on 14.08.1991 u/s 13 (2) r.w. 13(1)(e) PC Act for criminal misconduct, as per AIS (DCRB) Rules, 1958 final pension and gratuity of the applicant was withheld. By placing reliance on the provisions of rule 6(2) of the AIS (DCRB) Rules, 1958, Mr. Nayak submitted as vigilance case was instituted against the applicant it was not feasible to sanction final pension or gratuity in favour of

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the applicant. Accordingly, Mr. Nayak has prayed for dismissal of this OA.

(iii) Mr. Das submitted that in the instant case Special Secretary to Govt. Of Odisha GA Department i.e. Respondent No.1 is the Pension Sanctioning Authority of the Applicant as he did not furnish the pension papers of the applicant to the office of the Accountant General (A&E), Odisha albeit several letters followed by reminders on different dates this respondent no.6 cannot be held responsible in any manner for non disbursement of the final pension and gratuity in favour of the applicant.

7. Before dealing with the contentions advanced by the respective parties, it is worthwhile to take the extract of the provision of Rule 6(2) of Rules, 1958 which inter alia provides as under:

“6(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 proviso thereto 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 proceeding, 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

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qualifying service upto the date of retirement, or if he was under suspension on the date of retirement, upto the date immediately preceding 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 proceeding and issue of final orders thereon.

**Provided** that where disciplinary proceeding has been instituted against a member of the Service before his retirement from service under rule 10 of the All India Service (Discipline and Appeal) Rules, 1969 for imposing any of the penalties specified in clause (i)(ii) and (iv) of sub rule (1) of Rule (6) of the said rules and continuing such proceeding under sub rule (1) of this Rule after his retirement from service, the payment of gratuity or DCRG shall not be withheld."

8. The impugned order dated 31.10.10.2011 which is sought to be quashed in this OA reads as under:

**"Government of Orissa  
General Administration Department  
ORDER  
Bhubaneswar, dated 31/10/2011.**

**No.AIS.VII(Misc) 27/11/AIS.I, WHEREAS Shri Balaram Rout, IAS, Ex- Settlement Officer, Cuttack-Puri Major Settlement has retired from Government service w.e.f. 31.7.1991 on attaining the age of superannuation.**

**AND WHEREAS, considering his admissibility he has been sanctioned provisional pension @ Rs. 2175/-+TI Per month w.e.f. 1.8.1991 vide G.A. Department order No. 17113 dtd. 6.8.1993. Subsequently, his provisional pension has been revised to Rs. 5,903/- p.m. + TI w.e.f. 1.1.1996 vide G.A. Department order No. 16628 dtd 9.5.2000.**

**AND WHEREAS, Vigilance P.S. Case No. 32/91, dtd. 14.8.91 U/s 13(2) read with section 13(1)(e) of Prevention of Corruption Act, 1988 has been registered against Sri Rout for criminal misconduct in accumulation of assets by corrupt and illegal means, disproportionate to his known source of income.**

**AND WHEREAS, the pension of Shri Rout, IAS (Retd) is regulated under the AIS (DCRB) Rules, 1958.**

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**AND WHEREAS, Sri Balaram Rout, IAS (Retd) filed an Original Application baring O.A. No. 445 of 2011 before Hon'ble CAT Cuttack Bench, Cuttack and sought for relief as follows :**

- i) Direction may be issued to the respondent No. 1 to sanction final pension in favour of the applicant within a specified period.**
- ii) The respondent No. 1 may also be directed to sanction and pay the retirement gratuity of the applicant with interest at a rate to be fixed by the Hon'ble Court within a period of one month failing which the rate of interest may be enhanced at the direction of the Hon'ble Court.**

**AND WHEREAS, the Hon'ble CAT, Cuttack Bench, Cuttack vide their order dtd. 11.8.2011 has disposed the OA with a direction to the Respondent No. 1 to consider the pending representation and pass a reasoned order within a period of 90 days from the date of receipt of the copy of order.**

**AND WHEREAS, the Director-cum-D.G. & I.G. of Police (Vigilance), Orissa, Cuttack has been requested by this Department to indicate the present status of Cuttack Vigilance P.S. Case No. 32/1991 vide letter No. 15940/AIS.I dtd. 20.8.2011. The office of the Director-cum-D.G. of Police (Vigilance), Orissa, Cuttack vide their letter No. 8174/Vig. Cell dtd. 30.9.2011 has intimated that the Vigilance P.S. Case No. 32 dtd. 14.8.1991 instituted against Sri Rout is under sub-judice in the Special Court, Cuttack vide T.R. No. 12/2008.**

**AND WHEREAS, rule 6(2) of AIS (DCRB) Rules, 1958 provides that where any departmental or judicial proceeding is instituted against an officer, he shall be sanctioned provisional pension not exceeding the maximum pension admissible to him from the date of his retirement to the date of conclusion of such proceeding with final orders.**

**AND WHEREAS, due to pendency of the criminal case instituted vide Cuttack Vigilance P.S. Case No. 32/1991, it is not possible to sanction final pension or gratuity in favour of Sri Balaram Rout, IAS (Retd.).**

**NOW THEREFORE in view of the facts and circumstances stated above, the representation dated 10.4.2011 of Shri Balaram Rout, IAS (Retd) being devoid of any merit, is hereby rejected.**

**Sd/-  
Special Secretary to Government"**

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9. It is the case of the Respondents that due to pendency of the criminal case instituted vide Cuttack Vigilance PS Case No. 32/1991, in terms of Rule 6 (2) of AIS (DCRB) Rules, 1958; it is not possible to sanction the final pension or gratuity in favour of the applicant. It is case of the applicant that as there was no criminal case as on the date of his retirement Rule 6 (2) of Rule 1958 has no application and therefore withholding of final pension and gratuity is not sustainable. It appears from the record that the applicant retired from service on 31.07.1991. One day before his retirement i.e. on 30.07.1991 his official residence was searched by the State Vigilance and an FIR was lodged on 14.08.1991 alleging offence U/s. 13 (1)(e) of the P.C. Act, 1988 and a PS case No. 32/1991 was registered on 14.08.1991 in which charge sheet was filed on 30.06.1997. Rule 6 (2) of Rules, 1958 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 proviso thereto 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 proceeding, 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 the date immediately preceding 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 proceeding and issue of final orders thereon **provided** that where disciplinary proceeding has been instituted against a member of the Service before his retirement from service under rule 10 of the All India Service (Discipline and Appeal) Rules, 1969 for imposing any of the penalties specified in clause (i)(ii) and (iv) of sub rule (1) of Rule (6) of the said rules and continuing such proceeding under sub rule (1) of this Rule after his retirement from service, the payment of gratuity or DCRG shall not be withheld." When Disciplinary/criminal case is said to have been initiated against an employee is no more *res integra* and it would suffice place reliance on the decision of the Hon'ble Apex Court in the case of **Union of India –Vrs- K.V.Jankiraman**, AIR 1991 SC 2010 that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee it can be said that the departmental



proceedings/criminal prosecution is initiated against the employee. Further in the case of S.K. Sinha, Chief Enforcement Officer vs Videocon International Ltd (2008) 2 SCC 492, the Apex Court held that during the course of investigation, the alleged offender is not termed as 'accused'. It is only when the charges are framed that the offender is termed, "accused."

10. In view of the law cited above, at no stretch of imagination it can be said that criminal case was instituted against the applicant on the date of his retirement i.e. on 31.07.1991. As held by the Hon'ble Apex Court criminal case is said to have been instituted after cognizance is taken on the report filed by the Police by the appropriate Court. In the instant case report was filed by the police after six years of filing of FIR/Registration of the PS Case but when cognizance was taken on the report is not forthcoming from record. No doubt the search and seizure was made before one day of the date of retirement of the applicant the same cannot be construed to be the date of institution of the criminal case. Even if the date of the FIR is taken to be the institution of the criminal case which is after the date of retirement of the applicant then also Rule 6(2) of Rules, 1958 does not attract at all to the case of the applicant.

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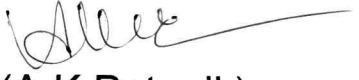
11. It is also not known when criminal case shall be ended. The applicant by now is aged about 82 years. It is not the case of the Respondents that the delay in conclusion of the criminal case is attributable to the applicant. It is settled law that pension is hard earned benefit which accrues to an employee and is in the nature of property. This right to property cannot be taken away without due process of law as per provisions of Article 300-A of the Constitution of India.

12. In view of the discussions made above, the impugned order dated 31.10.2011 is hereby quashed. The Respondents are directed to take immediate steps for sanction/release of final pension and gratuity in favour of the applicant within a period of 90(ninety) days from the date of receipt of this order. Since the delay in disbursing the final pension and gratuity was due to bona fide misunderstanding of the provision of the Rules, I am not inclined to order payment of interest, as prayed for by the applicant. However, I make it clear that in case the Respondents fail to disburse the final pension and gratuity within the period stipulated, as above, then the applicant shall be entitled to 8% interest per annum from the date when the amount became due and till the actual payment is made and the interest amount shall be recoverable from the

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salary of the officer(s)/Official(s) who are responsible for such delay.

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

  
(A.K. Patnaik)  
Member (Judicial)

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