

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O. A. No.477 OF 2013
Cuttack the 24th day of July, 2013

CORAM
HON'BLE MR. A.K. PATNAIK, MEMBER (J)
HON'BLE MR. R. C. MISRA, MEMBER (A)

Shri Padmanava Sethi aged about 71 years, retired Deputy Commissioner of Income Tax from the office of the Chief Commissioner OF Income Tax, Odisha at present residing at Plot No. 121, Nayapalli, Sabar Sahi, Madhusudan Nagar, Bhubaneswar-751 012, Dist. Khurda.

...Applicant

(Advocates: M/s.B.Panda & B.B.Sahu)

VERSUS

Union of India represented through –

1. The Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi-110 001.
2. The Chairman, Central Board of Direct Taxes, Department of Revenue, North Block, New Delhi-110 001.
3. The Union Public Service Commission represented through its Secretary at Dholpur House, Shahjahan Road, New Delhi-110 011.
4. The Central Vigilance Commissioner, Satarka Bhawan, GPO Complex, Block-A, INA, New Delhi-110 001.
5. The Secretary, Department of Personnel and Training, North Block, New Delhi-110 001.

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6. The Chief Commissioner of Income Tax, Orissa having office at Aayakar Bhawan, Central Revenue Building, Rajaswa Vihar, Vani Vihar Road, Bhubaneswar-751 007, Dist. Khurda.

.....Respondents

(Advocate: Mr.U.B.Mohapatra)

ORDER

A.K. PATNAIK, MEMBER (J):

It is the case of the Applicant that he while working as Deputy Commissioner of Income Tax (Hqrs), on attaining the age of retirement, superannuated from service w.e.f. 31.1.2002. Therefore, he should have been paid all his retiral dues nosooner he retired from service. But due to disciplinary proceedings he could not be paid all his retirement dues. He was imposed with the punishment of 20% cut from his pension vide order dated 19.10.2006. He challenged the said order of punishment before this Tribunal in OA No.187 of 2007 which was disposed of on 3rd February, 2010 and in compliance of the said order an amount of Rs.1, 92,580/- towards Leave Salary and Rs.3,17,757/- towards Gratuity was disbursed to him only on 15.1.2007 i.e. after five years of his retirement. It has been stated that since the delay in making payment was not attributable to the applicant by making representations one after the other he has prayed for interest but

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the Respondents have ~~prayed~~ ^{paid} ~~deaf~~ ^{ear} to such prayer of the applicant. Hence being aggrieved by such inaction, the applicant has approached this Tribunal in the instant OA praying for direction to the Respondents to pay 15% interest on the aforesaid amount.

2. Copy of this OA has been served on Mr.U.B.Mohapatra, Learned Senior CGSC for the Union of India to appear for the Respondents in this case. We have heard Mr.Basudev Panda, Learned Senior Counsel appearing for the Applicant assisted by Mr.B.Panda, Learned Advocate and Mr.U.B.Mohapatra, Learned Senior CGSC appearing for the Respondents and perused the records.

3. Mr.Panda by reiterating the stand taken in the OA has submitted since the delay in payment is not attributable to the Applicant, as per the Rules and various judge made laws, he is entitled to interest. On the other hand, Mr.U.B.Mohapatra, Learned Senior CGSC appearing for the Respondents has strongly opposed the prayer of the applicant and in this connection by drawing our attention to the order dated 3rd February, 2010 in OA No. 187 of 2007 has submitted that the prayer made in the instant OA was also one of the prayer in the earlier OA but the same was

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not allowed by this Tribunal and, therefore, this OA being hit by constructive res judicata is liable to be dismissed in limine.

4. Mr.Panda countered the arguments advanced by Mr.Mohapatra by stating that though the applicant prayed for interest, no whisper having been made by this Tribunal in the said order on the said prayer for payment of interest the order of this Tribunal cannot stand as a bar to reagitate the same. To the above Mr.Mohapatra's contention is that the said prayer is deemed to have been rejected as the Tribunal came to certain conclusion after taking note of the prayer for payment of interest.

On perusal of the order dated 3rd February, 2010 in OA No. 187 of 2007 earlier filed by the Applicant, we find that the prayer of the Applicant in the said OA was to quash the order of punishment dated 19.10.2006 by which a penalty of 20% cut in pension for a period of three years was imposed on the applicant and to direct the Respondents to release the withheld retirement dues with 18% interest and, this Tribunal after considering the arguments advanced by the respective parties and materials placed on record directed as under:

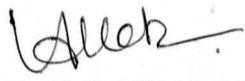
"17. For the reasons discussed above, we are of the view that the order dated 19.10.2006 followed by the order dated 12.3.2007 are liable to be quashed declaring the applicant entitled to full pension. Ordered

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accordingly. Respondents are, therefore directed to pass appropriate orders releasing full pension as if applicant had not been penalized on account of disciplinary proceedings. It is, however made clear that if 20% cut in pension has been effected the same shall be worked out as arrears pension and paid to the applicant within a reasonable time, at any rate, within three months from the date of receipt of copy of this order."

5. In view of the above, we are fully agreed with the contentions advanced by Mr.Mohapatra that the prayer of the applicant for payment of interest having not been ordered by this Tribunal in the earlier OA is deemed to have been rejected and therefore, this OA is squarely hit by constructive res judicata. Accordingly, this OA stands dismissed. There shall be no order as to costs.


(R.C.MISRA)
Member (Admn.)


(A.K.PATNAIK)
Member (Judicial)