

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK


17

Original Application No. 910 of 2013
Cuttack, this the 20th day of November, 2014

Madhab Naik		Applicant
	Versus		
Union of India & Ors.		Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *yes*
2. Whether it be referred to PB for circulation? *yes*


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

16
**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

Original Application No. 910 of 2013
Cuttack, this the 20th day of November, 2014

CORAM
HON'BLE SHRI R.C.MISRA, MEMBER (ADMN.)

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Madhab Naik,
aged about 65 years,
S/o. Late Hari Naik,
At- Penala, P.O.- Godagudu,
P.S.- G. Udayagiri, Dist.- Kandhamal,
At present residing at C/o:- N.Lina Chand, At- Puspa Nivas,
Ramakrishna Naik, 2nd Lane, Berhampur, Ganjam.

...Applicant

(Advocate(s) : M/s. Sanjib Mohanty, B.Biswal, S.C.Mohanty, S.Sethy)

VERSUS

Union of India represented through

1. Director General of Posts,
Department of Posts, Dak Bhawan,
New Delhi.
2. C.P.M.G.,
Orissa Circle, At/Po- PMG Square,
Bhubaneswar, Dist.- Khurda.
3. Director, Accounts(Postal),
At:- Mahanadi Vihar, Po-Nayabazar,
Dist-Cuttack.
4. P.M.G.,
Berhampur Region,
At/Po/PS:- Berhampur, Dist- Ganjam.
5. Superintending of Posts,
Phulbani Division, Phulbani,
At/Po- Bhulabani, Dist:- Kandhamal, Orissa.

... Respondents

(Advocate: Mr. D.K.Behera

Behera

ORDER

SHRI R.C.MISRA, MEMBER (ADMN.):

The applicant, in the present O.A., is a retired employee of the Department of Posts and has approached the Tribunal with the prayer that the order dated 20.11.2013 of the Superintendent of Post Offices, Phulbani Division placed at Annexure-A/9 of this O.A. may be set aside and directions be issued to the Respondent-authorities to release the post retirement dues such as Pension and Gratuity in favour of the applicant within a stipulated period.

2. The short facts of the case are that the applicant retired as B.C.R.P.A. in the Phulbani Postal Division in the year 1996. When he was working as Sub Post Master of Kalinga Sub-Post Office in Kandhamal district, a criminal case was instituted against him on the basis of a complaint made by Superintendent of Post Offices, Phulbani Division. The allegation was made that the applicant collected Rs. 8600/- from the depositors but the same was not deposited in the Savings Bank/Recurring Deposit Book of the depositors. A Criminal case bearing GR Case No. 12/1996 under Section 409 of I.P.C. is pending in the court of SDJM, G. Udayagiri for trial. Simultaneously, a departmental proceeding was also initiated against the applicant and was concluded in the year 1999. In the said departmental proceeding the applicant was awarded the punishment of reduction of pay to the initial scale of time



scale of pay until he is found fit after a period of 5 years. Although the departmental proceeding initiated against the applicant has been concluded the criminal case is still pending before the Court of SDJM, G. Udayagiri. While the matter stood as such, the applicant was given promotion to the higher post by the orders of the Chief Post Master General, Orissa Circle. The applicant has, in the meantime, retired on reaching his age of superannuation on 30th June 2009. The applicant has been sanctioned his provisional pension by an order dated 01.06.2009 of the Superintendent of Post Offices, Phulbani Division. The S.P.O., Phulbani Division also wrote a letter dated 01.07.2009 to the Post Master General, Berhampur Region in which it has been communicated that the applicant retired from service on 30.06.2009 and one Court-case bearing GR No. 12/1996 related to SB/RD fraud committed at Kalinga SO is pending against the applicant in the JMFC, G. Udayagiri as such under the provision of Rule 69 1(C) of CCS (Pension Rules) 1972 payment of Gratuity is held up. However, provisional pension for a period of one month, i.e. 01.07.2009 to 31.07.2009, has been sanctioned in favour of the retired government servant. It is further mentioned in this letter that the next hearing of the Court case is posted to 27.07.2009. The applicant has thereafter submitted representation to the S.P.O., Phulbani, requesting him to release the pension and other pensionary dues along with the



9/

Gratuity in his favour as per the recent decision of the Hon'ble Apex Court in which it has been held that pension and pensionary benefits are property of the employees and by mere executive orders the Respondents have no power to withhold the same. Denying the applicant's right to receive pension affects the Fundamental Rights of an employee under Article 19 of the Constitution of India. Although, the applicant made representation on 23.08.2013, the matter was not looked into by the concerned authorities. However, the applicant was asked to give a copy of the judgment of the Hon'ble Apex Court in this regard to the Respondents. In his letter dated 14.11.2013 the applicant has submitted a copy of the judgment to the S.P.O., Phulbani. Thereafter, the Respondents disposed of the representation dated 23.08.2013 as well as 14.11.2013 vide their communication at Annexure-A/9 in which it was informed that according to Rule 69 (1) (C) of the CCS(Pension) Rules 1972, no Gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon. This decision of the Respondent-authorities has been challenged by the applicant by filing this O.A.

3. Respondents have filed their counter affidavit in which they have submitted that the departmental proceedings initiated against the applicant have already been concluded; however, the criminal proceeding



92

is still pending before the JMFC, G. Udayagiri. After the retirement on 30.06.2009, the applicant was entitled for the cash equivalent of unutilized E.L. and H.P.L. amounting to Rs. 2,15,469/-. Because of the ongoing trial of GR Case pending against the applicant Rs. 20,000/- was withheld for adjustment of any loss on completion of the criminal proceedings and rest of the amount, i.e. Rs. 1,95,469/- was paid to the applicant on 20.07.2009. The applicant was paid his final GPF dues amounting to Rs. 9141/- on 14.10.2009. He was also paid the CGEGIS money amounting to Rs. 31,134/- on 18.01.2010. It is further submitted by the Respondents in their counter affidavit that applicant was paid his provisional pension up to 31.03.2014 by the Director of Accounts (Postal). However, the representation made by the applicant for payment of his Gratuity dues was not acceded to because according to Rule 69(1)(c) of the CCS (Pension) Rules 1972, no Gratuity shall be paid to the government servant until the conclusion of the departmental or judicial proceedings and issue of final order. Accordingly, the applicant has also been informed. With these submissions, the Respondents have submitted that the case made out by the applicant is without any merit.

4. I have heard Ld. Counsels for both the applicant and the Respondents and perused the documents in this case. Ld. Counsels have also filed their written notes of submission in this regard.



23

5. It is the submission of the Ld. Counsel for the applicant that the departmental proceedings have been concluded and the punishment has been imposed on the applicant. After retirement, the Respondents have withheld Rs. 20,000/- for adjustment of any loss on completion of the criminal proceeding as one GR Case is pending against the applicant. It is, therefore, clear that the Respondents have punished the applicant twice for the same offence which amounts to double jeopardy. In the present case, on the one hand the entire Gratuity amount of the applicant has been withheld and on the other hand Rs. 20,000/- has been withheld from the leave dues on the ground that a criminal proceeding is pending against him. This, according to the submission of the Ld. Counsel for the applicant, is not sustainable in law. It is further submission of applicant's Counsel that on the ground of equity, the Tribunal can grant some payment of Gratuity dues in case a criminal case is pending for long years. In the case of K.N.Gosai Vs. Union of India, it has been held that it is required to strike a balance between the demand of an officer and the interest of administration. If the proceedings are pending for 15 years or 20 years, the Government officials should not be denied the benefit of Gratuity and Commutation of Pension. If after 20 years the official is exonerated and then he becomes entitled to get Gratuity and Commutation of Pension, he would become very old and some time he



94
may not even survive till termination of the proceeding. In the case in hand, criminal proceedings were initiated in the year 1996 and till date the trial has not commenced. It is further submission of Ld. Counsel for the applicant that the balance of convenience lies in favour of the applicant as the Respondents have already withheld Rs. 20,000/- from the leave dues of the applicant. Therefore, there is no necessity to withhold the Gratuity amount on the ground of pendency of criminal proceeding. When the statutory rules operates^q harshly against an individual then on consideration of equity some order will have to be passed by the Tribunal to safeguard the interest both of the official as well as ^{of} ~~to~~ the administration.

6. Ld. Additional Central Govt. Standing Counsel has opposed the claim made by the applicant mentioning that the provision of Rule 69(1)(C) of CCS (Pension) Rules 1972 is very clear that no Gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceeding and issue of final order. The Respondents have no jurisdiction to override the statutory rules made by the Government of India. Ld. ACGSC has also submitted that the applicant had submitted the copy of the judgment in CA No. 6770/13 passed by the Hon'ble Apex Court in the case of State of Jharkhand and others vs Jitendra Kumar Srivastava and another. The representation of



the applicant was duly examined with reference to the judgment of the Hon'ble Apex Court. However, after examination the representation was not acceded to in view of the statutory provisions.

7. The issue to be decided here is ^pthat whether the Respondents are right in not releasing the Gratuity dues of the applicant in view of the statutory provision cited above and whether the order of rejection passed by the Respondents requires any intervention by this Tribunal. It is also required to examine the case that the Ld. Counsel for the applicant has cited to support his claim.

The decision of the C.A.T., Bombay Bench in O.A. No. 243/95 reported in 2000(1) SLJ CAT 460 has in this context been gone through. In this case, the question before the Tribunal was whether in view of the pendency of the criminal appeal in the High Court the applicant was entitled to get DCRG and Commuted Value of Pension. It is mentioned in the order that the applicant was prosecuted for an offence of taking bribe under the Prevention of Corruption Act before the competent Criminal Court. The case ended in acquittal by the Special Judge on 29.04.1988. Against this order of acquittal, State preferred an appeal before the Hon'ble High Court, which has been admitted in CA No. 813/88 in the Hon'ble High Court of Bombay. This means that the order of acquittal has not become final. In this context this judgment


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notes that balance has to be struck between the demand of an officer and the interest of the administration. In the case before them, the Bench found that trap was laid in the year 1985 and even after a lapse of 14 years the proceedings have not come to an end. Further, even if there is an order of High Court in one way or the other, the aggrieved party may still go to further appeal to the Supreme Court and it may take some more years for proceedings to come to an end. The question is whether the payment of amount should be deferred indefinitely. In view of the above reason, the Tribunal has held that in the case before them 50% of the Gratuity and Commuted Value of Pension should be released. Ld. Counsel for the applicant has drawn upon the precedent to make a claim that in the case before us the departmental proceedings have been completed and the GR Case No. 12/96 is still pending in the Court of SDJM, G.Udayagiri. Therefore, based upon the case decided in the Bombay Bench, a part of the Gratuity should be ordered to be released in favour of the applicant. However, on comparison of the facts of the case, I find that in the case before the Bombay Bench of the Tribunal, the case filed under Prevention of Corruption Act had ended in acquittal by the judgment of the Special Judge. However, the Respondents filed an appeal challenging this order of acquittal in the Hon'ble High Court of Bombay. The facts of the present case are different in the sense that the G.R. case



91
is still pending in the Trial Court and, therefore, it appears that the applicant cannot take the advantage of the decision given by the Bombay Bench in O.A. No. 243/95 as reported in view of the statutory provision as incorporated in Rule 69 (1)(C) of the CCS (Pension) Rules 1972.

8. Ld. Counsel for the applicant has also cited the judgment of the Hon'ble Apex Court in the case of State of Jharkhand and others vs Jitendra Kumar Srivastava and another in CA No. 6770/13. This judgment of the Hon'ble Apex Court has been reported in 2014 (2) SCC (L&S) 570. In this judgment a reference has been made to the case of D.S. Nakara vs Union of India (1983 (1) SCC 305) in which it has been laid by the Hon'ble Apex Court that the grant of pension does not depend on anyone's discretion. It is not a bounty or gratuitous payment depending upon the sweet will or grace of the employer. Referring to this judgment, the Hon'ble Apex Court has concluded that the executive instructions cannot ^{be termed as} ~~turn~~ as law within the meaning of Article-300(A) of the Constitution of India and the applicant cannot withhold a part of Pension or Gratuity. In that case, insofar as statutory rules were concerned there is no provision for withholding of Pension or Gratuity in the given situation and had there been any such provision in these rules the position would have been different.



9. It is relevant here to quote Rule 69(1)(C) of the CCS(Pension) Rules 1972, which reads thus:

69(1)(C) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon:

Provided that where departmental proceedings have been instituted under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, for imposing any of the penalties specified in Clauses (i), (ii) and (iv) of rule 11 of the said rules, the payment of gratuity shall be authorized to be paid to the Government servant.

10. It is an admitted fact that there is a judicial proceeding pending against the applicant in the present case and no final order has been issued. Therefore, under the authority of Rule 69 (1)(C) of the CCS (Pension) Rules, the Respondents are within their competence to withhold the payment of Gratuity of the applicant.

However, a point has been raised by the applicant's Counsel that the Respondents have also withheld Rs. 20,000/- from the leave dues on the ground of pendency of the criminal proceeding. In the counter affidavit also Respondents have submitted that from the cash equivalent of unutilized E.L. and H.P.L. Rs. 20,000/- has been withheld for adjustment of any loss on completion of criminal proceedings. The question here is when the Respondents have already withheld the



Gratuity under the authority of Rule 69 (1)(C) of the CCS (Pension) Rules 1972, it is further not sustainable that they should withhold another Rs. 20,000/- from the leave encashment dues of the applicant. The Ld. Counsel for the applicant has pleaded that if the Gratuity amount is withheld under the law at least the amount of Rs. 20,000/- withheld from leave encashment dues should be paid back to the applicant since withholding of this amount is not sustainable under the law. In this regard, it is important to note that in a judgment passed by the Punjab & Haryana High Court in the case of Punjab State Supplies Corporation Ltd. and others vs ^{y. re l} Praya Lal as reported in AIR 2014 P&H (1) 147, the Hon'ble High Court has observed that a person cannot be deprived of his pension without the authority of law and the attempt of the applicant to take away a part of Pension or Gratuity or even Leave Encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced. This judgment of the Punjab & Haryana High Court was passed in the context of the Punjab Civil Service Rules in which it was a part of the Statute that leave encashment as a retiral dues^Q can be withheld in case of pending criminal or departmental proceeding. Therefore, the Hon'ble High Court decided that since the right to withhold the leave encashment is part of statutory rules it satisfies the test laid down by the ^{Honble R} Supreme Court. It is, therefore, clear that leave


30

encashment dues are a part of the retiral dues, which cannot be withheld unless the law authorizes the Respondents to do so. In the present case, Respondents have relied upon the provision of rule 69(1)(c) of CCS (Pension) Rules 1972, which mentions that no Gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final order thereon. Therefore, the withholding of Gratuity on the basis of pendency of judicial proceedings is authorized under the statute in the present case. No such statutory authority is available to the Respondents for withholding the leave encashment dues. It will be, therefore, construed that the withholding of Rs. 20,000/- from the leave encashment dues of the applicant was on the basis of only an administrative instruction, which goes against the ratio decided by the Hon'ble Apex Court. Therefore, this action of the Respondents is held to be unsustainable under the law.

11 In view of the aforesaid discussions, I hold that the Respondents are right while withholding the payment of Gratuity under Rule 69(1)(c) of the CCS (Pension) Rules 1972 because of the pending criminal proceedings against the applicant. However, they are wrong in withholding another Rs. 20,000/- from the amount of cash equivalent to unutilized leave of the applicant. Accordingly, the Respondents are directed to release the amount of Rs. 20,000/- withheld from the leave



9/ encashment dues forthwith to the applicant. Thus, the O.A. is partly ^{ly} allowed. No order as to costs.


(R.C.MISRA)
MEMBER (Admn.)

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