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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

Original Application No.260/00872 of 2014
Cuttack, this the 4th day of September, 2015

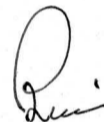
Sri N. SahooApplicant

-Versus-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *No*
2. Whether it be referred to PB for circulation? *No*



(R.C. MISRA)
MEMBER(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No.260/00872 of 2014
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CORAM
HON'BLE MR. R.C. MISRA, MEMBER (A)

Sri Narasingh Sahoo,
Aged about 66 years,
Son of late Krushna Ch. Sahoo,
At/P.O. Markandeswar Sahi, Puri,
P.S. Basali Sahi,
Town/Dist.Puri.

...Applicant

(Advocate: M/s. S.K. Ojha, S.K. Nayak)

VERSUS

Union of India Represented through

1. Director General (Posts),
Dak Bhawan, Sansad Marg,
New Delhi-110001.
2. Chief Post Master General,
Odisha Circle, Bhubaneswar,
Dist-Khurda-751001
3. Senior Superintendent of Post Offices,
Puri Division, At/Po/Dist-Puri-752001
4. Director of Accounts (Post),
Office of the D & A (Post),
At./P.O./Dist. Cuttack-4.

... Respondents

(Advocate: Mr. S.K. Singh)

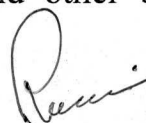
ORDER

R.C. MISRA, MEMBER (A)

The applicant in this O.A. is a retired official of the Department of Posts. He has approached this Tribunal praying for the following reliefs:-

“i) To allow the Original Application.

- ii) To declare that the interest recovered from the amount paid to the applicant on Gratuity & Severance is illegal and liable to be refunded to the applicant;
- iii) To direct the Respondents to pay the compound interest @12% per annum from 01.02.2009 to 31.05.2014 on delayed payment of pension and other benefits within a stipulated period;



iv) To direct payment of Medical allowance and arrears thereof within a stipulated period with interest;"

2. The facts of the case in short are that applicant was working as Postman at Puri, HO and retired from service on superannuation w.e.f. 31.01.2009 after rendering more than 27 years of Extra-Departmental service and 9 years of regular/qualifying service in the Department. Upon his retirement, he was not sanctioned any pension. However, a sum of Rs.1,44,949/- was sanctioned towards his retirement gratuity out of which an amount of Rs.1,17,299/- was disbursed in his favour. Applicant's grievance for pensionary benefits having not been considered by the Respondents, he filed O.A. No.601/11, which was disposed of by the Tribunal on 12.09.2011 with a direction to the Respondents to dispose of the grievance of the applicant. The Department, however, did not grant any relief in their order dated 16.03.2012. Therefore, the applicant by challenging this decision, again filed O.A. No.756/12 before the Tribunal. The Tribunal after hearing this matter, disposed of the said O.A. vide order dated 29.01.2013 in the following terms:-

“ From the discussion held above, I do not find any reason as to why the Respondents have not considered the prayer of the applicant in the light of the orders passed by the Tribunal although there was a specific direction from the Tribunal that the representation should be disposed of taking into account the views expressed by the Tribunal in O.A. No.310/2010. The respondents in that O.A. have taken into account the service rendered as ED Employee in order to make up the short fall for qualifying service of 10 years for the sanction of pension to the applicant. In consideration of this, it is directed that the Respondents shall compute the qualifying service of 10 years by bringing the service which falls short from the service rendered as E.D. Employee for grant of pension and pensionary benefits to the applicant and accordingly, issue necessary orders within a period of sixty days from the date of receipt of this order.



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So far as payment of Rs.20,000/- towards severance allowance is concerned, the same could be adjusted easily once the pensionary benefits admissible to the applicant are determined and sanctioned, which however, should be done only after giving the applicant a suitable notice in compliance with the principles of natural justice."

3. Not^e being satisfied with the above decision, the Respondents challenged the same before the Hon'ble High Court of Orissa in W.P. (C) No.7993/13. The Hon'ble High Court of Orissa decided the matter on 27.06.2013 by observing that there was no error in the impugned order so as to be interfered with by issuance of a writ of certiorari. The writ petition was accordingly, dismissed being devoid of merit. Thereafter, the Respondents approached^e to the Hon'ble Apex Court challenging the order of the Hon'ble High Court by filing SLP (Civil) No.5478 of 2014. The said SLP was, however, dismissed by the Hon'ble Apex Court by their order dated 15.04.2014. Thereafter, Respondents-authorities implemented the orders of the Tribunal by extending the pensionary benefits to the applicant after some alleged delay, even after the decision of the Hon'ble Apex Court. It may be recalled that the Tribunal in Paragraph-10 of its order dated 29.01.2013 had directed that payment of Rs.20,000/- towards severance allowance could be adjusted easily once the pensionary benefits admissible to the applicant are determined and sanctioned, which however, should be done only after giving the applicant a suitable notice in compliance with the principles of natural justice. The Respondents authorities vide order dated 12.08.2014 brought out a sanction order for payment of Rs.4660/- plus DR as pension in favour of the applicant. This was towards the provisional pension for a period of six months i.e., from 01.06.2014 to 30.11.2015. On the same date, the applicant was also asked to communicate his willingness for recovery of

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Service Gratuity and Severance Allowance that had already been paid to him along with interest coming to a total amount of Rs.1,96,538/- so that final order for payment of arrear provisional pension could be issued. In response to this letter applicant sent a letter to the Chief Postmaster General, Odisha Circle on 18.08.2014 making a mention as follows:-

“ I do admit that the interest as charged by the department is recoverable from me, simultaneously; the department is also liable to pay the interest on the dues which was retained by the department for a long period”

4. The Department thereafter, took further action for releasing pension and pensionary benefits to the applicant after deducting the amount already paid along with compound interest without having regard to further condition for paying interest to the applicant as indicated in his letter of willingness. The applicant was conveyed with a calculated sheet on 20.10.2014 clearly indicating therein that the applicant is entitled to receive a sum of Rs.2,76,376/- towards arrear pension after adjustment of Rs.1,96,538/- paid towards the Gratuity and Severance amount + Compound interest. Further, the Department also did not make payment of any Medical allowance which is admissible to the applicant. Hence, this Original Application.

5. Respondents in their counter affidavit have admitted the facts as stated in the O.A. They have asserted that the pensionary benefits have been extended to the applicant by virtue of the order of the Tribunal which has been upheld in the Hon'ble High Court and Hon'ble Apex Court. However, the service gratuity which ^w ^l has already paid to him for Extra Departmental period of service is no longer admissible which needs to be recovered from the applicant along with interest. They have also further submitted that there is no conditional representation submitted by the applicant towards payment of interest on arrears

Dec

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of pension w.e.f. 01.02.2009 and there is no such provision in CCS (Pension) Rules, 1972.

6. Having heard the Ld. Counsels of both the sides, I have also perused the records. Learned Counsels of both sides have submitted their written notes of submissions which I have gone through.

7. Learned Counsel for the applicant has argued that it has been settled by the Hon'ble Apex Court in several cases like Dr. Uma Agarwalla – vrs- State of Haryana and S.K. Dua –vrs.- State of Haryana that pension and pensionary benefits are not the bounty given by the employer and on the other hand, it is the property of an employee. Therefore, interest is payable on the delayed payment of pension to the applicant. It is also observed by the Hon'ble Apex Court that the Court can direct payment of interest on delayed payment, even in the absence of any specific provision in the statute to that effect. It is further pointed out by the Ld. Counsel that the applicant in his letter dated 18.08.2014 has given a conditional willingness that the Department can recover the interest from dues already paid to him and at the same time the Department is also liable to pay interest on the dues retained by the Department for a long period. Ld. Counsel for the applicant has cited the law decided by the Hon'ble Apex Court in Food Corporation of India – Vrs- Ram Kesh Yadav reported in (2007)² SCC (L&S) 559² to the effect that once conditional offer is given, the authority can not accept a part and ignore the other part. In the present case, the Ld. Counsel by stressing on the applicability of this case law has argued that if the Department has recovered interest on the amount which was earlier paid to the applicant, they also have to pay interest at the same rate to the applicant on the delayed payment of pensionary benefits.



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8. Ld. ACGSC for the Respondents has on the other hand, argued that based upon the orders of the Tribunal dated 29.01.2013 which was upheld by the Hon'ble High Court of Orissa as well as by the Hon'ble Apex Court, pensionary dues have been sanctioned and the provisional pension had been paid to the applicant on 15.07.2014. In the absence of any specific provision in CCS (Pension) Rules, 1972, applicant is not entitled to receive any interest on the pension. On the other hand, the service gratuity and severance allowance had been adjusted from the arrear pension on 20.10.2014 with G.P.F. interest in accordance with the provisions laid down vide Govt. of India's decisions in Para No.3 & 6 under Rule 17 of the CCS (Pension) Rules, 1972. However, it is the case of the Respondents that there is no provision of charging interest on pension under the relevant rules.

9. In this regard, it is required to refer Para-10 of the orders of this Tribunal dated 29.01.2013. It was directed therein that the amount already paid towards severance allowance could be adjusted easily once the pensionary benefits admissible to the applicant are determined and sanctioned. It is important to note that service gratuity and severance allowance already paid would not have been recovered in normal course, unless it was decided in the meantime that the applicant is entitled for pensionary benefits. Before sanction of pension, the dues paid earlier were admissible for the extra-departmental period of service. That is the reason why the Tribunal had disposed of the earlier O.A. directing adjustment of severance allowance already paid. The applicant in his letter of willingness in response to the notice issued by the Department submitted that if interest is recovered from him on the amount already paid, he should also be paid interest at the same rate



on the arrears^{of} provisional pension. Therefore, this becomes a matter of equity and reciprocity and in the fitness of things, it is for the Department to apply the same principle with regard to the payment of interest on the arrear pension notwithstanding the fact that there is no provision of charging payment of interest on pension under the relevant rules.

10. In the peculiar facts and circumstances of this case, having recovered the amount already paid to the applicant along with interest, on the same analogy, the liability of the respondents to make payment of interest at the same rate on the arrears^{of} pension cannot be ruled out. This, in my considered view, would meet the ends of justice, equity and fair-play. Accordingly, I direct the Respondents, particularly Respondent No.2 to grant interest at the same rate as has been worked out and recovered on gratuity and severance allowance, on the arrears provisional pension from 01.02.2009 to 31.05.2014, which shall be paid to the applicant within a period of three months from the date of receipt of this order.

11. In so far as payment of medical allowance is concerned, the same may be considered and the claims due and admissible be released in favour of the applicant.

12. In the result, the O.A. is allowed to the extent indicated above. No costs.


(R.C. MISRA)
MEMBER(A)