

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. 1261/96

Present : Hon'ble Mr. Justice R.N. Ray, Vice-Chairman.

Hon'ble Mr. B.P. Singh, Administrative Member.

Shri Sujit Kumar Biswas,
son of Shri Jitendra Nath Biswas,
Ex-Appraiser & Customs.

- v e r s u s -

1. The Union of India service through the Secretary, Ministry of Finance, Govt. of India through Ministry of Law and Justice, Raja Chamber, 4, K.S. Roy Road, Calcutta-700 001.
2. Chief Commissioner of Customs & Central Excise, Calcutta, Custom House, 15/1, Strand Road, Calcutta-700 001.
3. Commissioner of Customs, Calcutta Customs House, 15/1, Strand Road, Calcutta.

...Respondents.

For the applicant : Mr. S.P. Mukherjee, counsel.

For the respondents : Mr. B. Mukherjee, counsel.

Heard on 20.03.2001

Order on 23.04.2001

O R D E R

B.P. Singh, AM

Shri Sujit Kumar Biswas, Ex-Appraiser of Customs has filed this O.A. against order for non-payment of pension and gratuity to the applicant and prayed that order for full payment of pension and gratuity with interest at the rate of 16% should be passed.

2. The fact of the case as it appears from the O.A. is that the applicant entered the services of customs as Preventive Officer Grade-II around 14.9.1963 and thereafter joined as Preventive Officer Gr.I w.e.f. 8.3.1964 as direct recruit. From 1968 he was asked to work as Examining

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Officer. He was subsequently promoted to the post of Appraiser from April 1977. He was detailed to work as Sales Appraiser, Postal Appraiser and Appraiser in the Cost Recovery Section from one after the other from time to time. He has been allowed to retire on 31.3.1996.

2.1. Since the appointment the applicant has maintained a good record of service and there was no scope of adverse comment till he was served with a purported order of suspension dated 18.5.1983. Before this the applicant was issued a notice dated 3.2.83 under section 108 of the Custom Act of 1962 vide Annexure-AA to give evidence in the investigation. The statement of the applicant was recorded on tape on 3.2.83 and the same was transcribed in black and white on 22.2.1983 but the applicant was induced to put the date on transcribed script as 3.2.83 on 22.2.83. The statement is enclosed as Annexure-B. The applicant challenged this notice and investigation.

2.2. Thereafter the applicant was served with a show cause dated 17.5.83 (Annexure-C), which was issued in connection with an alleged seizure of miscellaneous goods on diverse dates at Calcutta Airport and also from the residence of different parties. The applicant denied his involvement and contended the notice as malafide exercise of power as he joined Calcutta Airport only in August 1982 and alleged clearance of consignment in question is stated to be done before that and whatever he did was permitted under Section 47. The authorities were proceeding on surmise, hypothesis and suspicion in a mechanical way. Their approach was biased and with ulterior motive based on collateral consideration with a view to put down the applicant with the alleged incident and jeopardise his service career.

2.3. The applicant has been placed under suspension vide order dated 18.5.1983 (A/N) (Annexure-D) as a disciplinary proceeding was contemplated and a criminal case was under investigation. The order suffers from

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irregularity as there is no mention about subsistence allowance in the order and the guiding principles for placing under suspension have not been followed. The simultaneous departmental proceedings and criminal proceedings as alleged in the suspension order would interfere with the petitioner's right under Art. 20(3) of the Constitution. The order of suspension and the mention of disciplinary proceeding and criminal proceedings also violates the provisions of Arts. 21, 14, 16, 300-A of the Constitution.

2.4. The applicant was not party to the case as he joined the said posting in Calcutta Customs on 9.8.1982 and he has falsely been implicated. The main accused Shri S.K. Moitra has been let off and has been promoted. Therefore, contemplation of further departmental proceeding after retirement of the applicant will be sheer harassment in getting legitimate pension and gratuity and hence the Hon'ble Tribunal is requested to quash the said order of provisional pension and withholding of gratuity.

2.5. The applicant states that the same benefits as have been given to Shri S.K. Moitra co-accused by various orders of the Hon'ble High Court and Tribunal (enclosed as Annexures-E & F) should be extended to the applicant, though he was not party in the cases before the Hon'ble High Court or Tribunal.

2.6. The applicant has prayed for interference in the show cause notice dated 17.5.83 (Annexure-C) and suspension order dated 18.5.83 (Annexure-D). Against these orders the petitioner filed C.R. No. 14615 of 1983 before the Hon'ble High Court. The Hon'ble High Court Calcutta passed stay order on suspension on 27.5.1983 and about getting all benefits without joining on 10.6.83. The case was transferred to CAT but again sent back to the Hon'ble High Court on 04.02.1992 and the case remained pending. In the meantime the suspension order was revoked by order dated 17.4.95 with immediate effect (Annexure-G). The revocation order was unconditional. The applicant joined as Appraiser on 17.4.95 and was allowed to draw his salary and other allowances on regular basis.

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The writ Petition No. 14615/83 became infructuous after revocation of the suspension order and the same was to be got withdrawn for ~~prosecution~~ non-presentation of the matter. The applicant was allowed to join back on revocation of the suspension without any condition or penalty and was enjoying all the benefits. He was allowed to retire on superannuation at the age of 58 years on 31.3.1996.

2.7. The retirement benefits in part relating to P.F., leave salary, group insurance were settled and he was paid provisional pension. No order about gratuity and commutation of pension was issued. The applicant represented to respondent about the same vide letter dated 10.4.96 (Annexure-I). The applicant made further request to which reply dated 3.9.96 (Annexure-A) was received with the following orders:-

" I am directed to say that a provisional pension is awarded to you as per Rule 69(1)(b) of the Central Civil Services (Pension) Rules, 1972. As per sub-rule (1)(c) of the said Rule, no gratuity shall be paid to the Government Servant until the conclusion of the departmental or judicial proceedings and issue final orders thereon. As a disciplinary proceedings is contemplated against you and as your case is subjudice in terms of Hon'ble High Courts (Calcutta) Stay order dated 27.5.83, no gratuity could be paid to you."

It is clear from the above that as the case of the applicant is sub judice in terms of Hon'ble High Court stay order dated 27.5.83, no action for departmental/judicial proceedings and final order thereon can be taken.

2.8. The applicant submits even the provisional pension on the last emoluments has not been correctly worked out. He has been paid at the rate of Rs.28.58 p.m. whereas the same should be Rs.5280.00 p.m. On provisional basis according to the provisions of CCS (Pension) Rules, 1972. Entire suspension period from 18.05.83 to 16.4.95 should be treated as duty as suspension was revoked unconditionally and the applicant was

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allowed to draw full pay during the period of suspension by the order of the Hon'ble High Court dated 10.6.83.

2.9. Being aggrieved with the non-sanction and payment of pension even provisional pension and gratuity and commutation of pension by the respondent authorities, the applicant filed this O.A. & prayed for reliefs quoted above.

3. We have heard Shri S.P. Mukherjee, Id. counsel for the applicant and Shri B. Mukherjee, Id. counsel for the respondents. We have gone through the O.A., reply to the O.A., rejoinder to the reply and a note on further developments after filing the O.A.

4. Shri S.P. Mukherjee, Id. counsel for the applicant reiterated the fact and submitted that order withholding payment of gratuity and pension after retirement on grounds of contemplated disciplinary proceeding is bad and not sustainable. The order for grant of provisional pension after lapse of 8 months is also bad in law & should be quashed. The Id. counsel further submitted that pension and gratuity are property of the employee and the same cannot be taken away or withheld on mere contemplation. The Id. counsel again submitted that post retiral benefits are special security to the retired person to avoid hardship and, therefore, the same should be settled promptly.

4.1. The Id. counsel further submitted that after revocation of the suspension order, the stay order granted by the Hon'ble High Court became infructuous and ineffective and, therefore, the pension and gratuity should have been settled without delay.

4.2. The Id. counsel further submitted that as no departmental or judicial proceeding is pending against the applicant, the reduced provisional pension or withholding of gratuity payment amounts to refusal to retirement benefits by encroaching on the constitutional rights as

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enshrined in Art. 300A of the Constitution.

4.3. The Id. counsel submitted that the applicant was placed under suspension on 18.5.83 and till revocation of the suspension in 1995, the respondents could not initiate any proceeding which proves that there was no *prima facie* case. After revocation of suspension the pending case before the Hon'ble High Court became infructuous and it needed a mere formality to withdraw the same on ground of non-prosecution and, therefore, on this formal pendency reduced pension and withholding of gratuity should not have been allowed to continue. Even Rule 69(1)(i) of the Pension Rules, 1972 provides for sanction of provisional pension equal to the maximum pension but in the case of the applicant the provisional pension was reduced as a punitive measure against the provisions of the rules hence the same should be set right. The action of the respondents was against the decisions of the Hon'ble Apex Court and provisions of Art. 14 of the Constitution.

4.4. In view of the above submissions the Id. counsel submitted that the respondent authorities have violated the provisions of Pension Rules as well as Arts. 14, 16, 21 & 300A of the Constitution by not sanctioning the full pension and ordering payment of gratuity and commuted value of pension. The respondent authorities should pay the same without delay with interest at the rate of 16% thereon from the date they became due viz. from the date three months after the date of retirement.

5. Shri B. Mukherjee, Id. counsel for the respondents contested the application by filing the reply. The respondents denied all the allegations except those admitted or based on official records. The Id. counsel submitted that the respondent authorities kept a watch and followed up the plan for smuggling of various consumer goods by one Shri Raj Kumar Dhanuka partner in the firm A.R. Exports Calcutta-5. Shri Dhanuka and the clearing agents representative stated that the

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packages containing the consumer goods were being cleared in connivance with the Shed Appraiser Shri S.K. Biswas III the applicant and Shri S.K. Moitra, Examiner. Relying on this statement show cause notice dated 17.5.83 was issued against both and they were liable for penal action under section 112 of the Customs Act. On the basis of the show cause notice the applicant was suspended on 18.5.83 contemplating disciplinary proceeding and investigation of criminal case. The applicant approached Hon'ble High Court, Calcutta which passed order on 27.5.83 restraining the respondents from giving any effect of taking any steps to the suspension order as well as show cause notice. The respondents moved an application and the said order was modified on 10.6.83 to the extent that the applicant will not join office and will get full pay and allowances until the case is decided. This modified order was implemented by the respondents. The court case remained sub judice since 1983. Inspite of repeated efforts of the respondents the case could not be heard. Suspension order against the applicant was revoked on 17.4.95. The draft charge sheet against the applicant could not be issued due to stay order dated 27.5.83 of the Hon'ble High Court Calcutta. The applicant superannuated on 31.3.96 when the case before the Hon'ble High Court was still pending. The applicant filed a representation regarding payment of gratuity and commutation of pension on which action was taken according to Rule 69 of the CCS (Pension) Rules, 1972 which does not allow final payment till the judicial proceedings are pending. Since judicial proceeding before the Hon'ble High Court Calcutta in the case filed by the applicant was still pending on the date of retirement of the applicant the retiral benefits regarding final pension, commutation of pension and payment of gratuity were not finalised as per provisions of Rule 69 of CCS (P) Rules, 1972. The respondent authorities are acting according to the provisions of the rule and as soon as judicial proceedings and other proceedings against the applicant are over he would be sanctioned due amount on account of retiral benefits. The Id. counsel also denied violation of any provisions of the Constitution.

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6. The Id. counsel for the applicant has also filed the rejoinder to the reply, in which he has repeated the same pleas and facts as have been done in the O.A. He has submitted that the reply has not been verified by the competent authority. We find this statement worth notice as the verifying authority has not disclosed his status or designation in the verification, which was a must. He is supposed to be at least a gazetted Gr.A Officer under the respondents as per legal requirements. We are pained to note that even then Id. counsel for respondents has failed to notice it and correct this apparent mistake. This speaks very adversely against the Id. counsel and his way of handling his briefs and preparing papers for submission in the court. We trust the Id. counsel will note this point and avoid its repetition in future. Be it as it may, we don't want to delay the matter any more and, therefore, treat the verification as the verification from the competent authority as the same was not agitated to the extent of treating the reply as no reply at the time of hearing and averments made in reply are not at variance with but are corroborating those stated in the O.A.

7. The applicant has also furnished a note relating to further development on 20.3.2001 i.e. on the date of hearing. He has attached a copy of the Hon'ble High Court order dated 8.8.2000 in CR No. 14615 of 1983. The operative portion of the decision is quoted as under:-

"xxx I cannot allow this proceeding to continue.

Accordingly for the aforesaid reasons I set aside the impugned show cause notice and I direct the respondent authorities to disburse all the retiral benefit, if not, already done treating the petitioner was in services. However, there is no question of paying any salary since the petitioner retired after having received all the salaries. The retiral benefit, if not paid already, shall be disbursed within a period of three months from the date of communication of this order.

The Rule is hereby made absolute.

There will be no order as to costs."

The respondents informed the applicant on 20.12.2000 that they have accepted the order and directed the applicant to contact Accounts Deptt. (page B-7 of the note). The applicant contacted the Accounts Deptt.

but no payment was made, hence he issued reminder dated 8.01.2001 through the Advocate (page 9 of note). The applicant was paid a cheque for Rs.3,97,632/- on 23.01.2001 towards the withheld gratuity and commutation of pension (page 12 of the note). No statement of account was supplied to the applicant. He expected some more payment in the form of various arrears and requested for the same vide letter dated 30.01.2001 (page 12 & 13 of the note). The Administrative Officer (Acctt) in the office of the Commissioner of Customs, Calcutta informed vide his letter dated 16.02.2001 (Page 14 of the note) regarding the balance of arrears on account of leave encashment (Rs.14560/-), pay and allowances (Rs.4110/-) and pension (Rs.1,32,981/-) and directed the Pay and Accounts Officer to disburse the same and the same was disbursed on 16.02.2001. All the statements of accounts were also enclosed with the copy of the letter to the applicant. Thus all the due payments were made to the applicant alongwith statements of accounts of all the arrears.

8. The applicant prayed for interest on the due amount from the date after three months of retirement of the applicant. This request is not maintainable as the CR No. 14615 was pending in the Hon'ble High Court at Calcutta till 8.8.2000 when the same was finally disposed of. Therefore, any claim for interest should arise after three months from the date of final decision of the Hon'ble High Court, Calcutta on 8.8.2000. The final decision in the case was given by the Hon'ble High Court Calcutta on 8.8.2000 and copy of the order was made available on 20.9.2000 and received in the Office of the respondent on 22.09.2000 (vide Annexure-1 of the note). The retiral benefit was to be paid within three months from the date of communication. It was thus to be paid by 21.12.2000 whereas first instalment of Rs.3,97,632/- was paid on 23.01.2001 and the balance of Rs.1,51,651/- was paid on 16.02.2001 and there is no mention that any amount is still to be paid. In other words,

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all the payments have been received by the applicant. There was thus delay of about one or two months in the payment. For the delayed payment the respondents are duty bound to pay the interest.

9. From the above discussions it is clear that the applicant was not paid final pension, gratuity and commutation of pension as C.R. No. 14615 of 1983 was pending before the Hon'ble High Court, Calcutta and the same was finally disposed of after order dated 8.8.2000 which was communicated to the respondents on 22.09.2000. The respondents were directed by the Hon'ble High Court to pay the retiral benefits within three months by 21.12.2000 from the date of communication of the order on 22.09.2000. The payment of allowances was made in two instalments with delay on 23.01.2001 and 16.02.2001. Therefore, the applicant is entitled to get interest on the delayed payment of the total amount from 22.12.2000 to 22.01.2001 on the total due amount and from 23.01.2001 to 16.02.2001 on the balance amount. We, therefore, direct the respondent to make payment of the interest for the above mentioned amount and period at the rate of 12% to the applicant within a period of six weeks from the date of communication of this order. We would also like the Id. counsel for the respondents to note our observations in para 6 above. We do not pass any order as to cost in the case. The O.A. is accordingly disposed of.

Singh
(B.P. Singh) 23042001
Member (A)

(R.N. Ray)
Vice-Chairman.

a.k.c.