

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. 198/1996

Present : Hon'ble Mr. Sarveshwar Jha, Member (A)

Hon'ble Mr. Mukesh Kumar Gupta, Member (J)

Anwarul Hasan Khan,
Son of late M.H. Khan,
Retired Preventive Officer,
Grade-I (confirmed) from the
Office of the Calcutta Customs,
Calcutta, residing at Flat No.A/2,
197, Park Street, Calcutta-700 017. Applicant

Vs.

1. Union of India through
The Secretary, Ministry of
Finance and Revenue,
Government of India,
New Delhi-110 001.

2. The Commissioner of Customs,
Calcutta Customs,
Custom House,
15/1, Strand Road,
Calcutta-700 001.

3. Mr. I. Dasgupta,
Deputy Commissioner of Customs,
for Vigilance Unit,
Calcutta Customs, Custom House,
15/1, Strand Road,
Calcutta-700 001.

Respondents

For the applicant : None

For the respondents : Ms. K. Banerjee

Heard on : 20.9.2004

Order on : 30.9.2004

O R D E R

Per Mukesh Kumar Gupta, Member (J)

1. None appeared for the applicant even on second call. A perusal of the order sheet shows that on various occasion none appeared for the applicant and, therefore, we decided to invoke Rule 15(1) of the CAT (Procedure) Rules, 1986, and proceed with the matter based on pleadings available on record and after hearing learned counsel for the respondents.

2. In this application the applicant who retired on attaining the age of superannuation with effect from 30.11.1994 seeks the following reliefs:

i) Direction upon the respondents and/or each one of them and their servants, agents, and subordinates to pay retirement benefits, including pension and gratuity of the applicant forthwith with interest from the date of his retirement on and from 30th November, 1994, and to go on paying pension month by month.

3. It is stated in the application that the applicant was a confirmed Preventive Officer Grade I in the Calcutta Customs, Calcutta and served for 35 years. On attaining the age of superannuation with effect from 30.11.1994, he made various representations for releasing his retirement benefits but the same yielded no positive result. For ulterior motive the respondents denied his settlement of retirement benefits alleging that three cases were pending before the Hon'ble High Court of Calcutta. It was contended that no criminal case or criminal revision petition was pending before Hon'ble High Court and the one criminal revision filed was already disposed of much before the date of his retirement. Since neither departmental proceedings nor judicial proceedings were pending before the court or departmental authorities, the respondents had no power or justification to withhold the pension as well as gratuity either in full or in part. Two writ petitions filed by the applicant one in the year 1980 and another in 1994 were not pending before the High Court and the said petitions have become infructuous due to his being allowed to join duties.

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4. The respondents contested the said claim and stated that the applicant was transferred on 30th September 1980 and pending contemplation of disciplinary enquiry the applicant was placed under suspension vide order dated 4.10.1980 which was challenged vide CR No.10613(W)/80 before the High Court of Calcutta. Vide order dated 7.10.1980 an order of injunction was passed thereon restraining the respondents from giving effect to the transfer as well as suspension order dated 4.10.1980. Later on when an application for vacation/variation of the said order dated 7.10.1980 was made, vide order dated 17.12.1990 the earlier interim order was modified and it was directed that the applicant would not be entitled to attend his post at the docks which he was holding. However, he was made entitled to salary and allowances. The said petition is still pending before the Hon'ble High Court.

5. Since a complaint under Section 136(1) of Customs Act 1962 read with provisions of IPC was filed against the applicant and other persons, he moved an application under Section 401 read with Section 482 Criminal Procedure Code before the High Court in case bearing No.353 of 1982, wherein vide order dated 22.3.1982 Rule was issued and interim order of stay of all further proceedings in the said criminal case was passed.

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Pending contemplation of disciplinary proceedings, the applicant was placed once again under suspension vide order dated 30.6.84, which were challenged in C.R.No.9483(W)/84 which are also pending, contended the respondents. Vide order dated 13.7.1984 the Hon'ble High Court directed that the suspension order shall not be given effect until the interim order in C.R.No.10613(W) of 1980 was varied/modified. However, it was made clear that petitioner shall not join duties and he would report to the Assistant Director, DRI, whenever he called upon to do so. In the meantime the disciplinary proceedings for imposition of major penalty was instituted vide memorandum dated 10.7.1984 and based on findings recorded by the authorities a penalty of reduction to lower grade of Preventive Officer (Ordinary Grade) until he would be found fit was imposed. The said penalty was again challenged before the Hon'ble High Court of Calcutta which was set aside with liberty to continue the proceedings afresh in accordance with law. Later fresh proceedings were carried and penalty was imposed, which was upheld by dismissing O.A.No.243 of 1987 vide order dated 23.9.1988. He also filed O.A.No.198 of 1996 and in terms of interim order, he was paid provisional pension.

6. The applicant submitted his rejoinder and contested the averments made by the respondents and stated that since the respondents had failed and neglected to pay his gratuity though he retired on

30.11.1994 and since no departmental and judicial proceedings were pending the respondents were not justified in withholding the said gratuity.

7. We perused the application and heard learned counsel for the respondents.

8. Smt.K. Banerjee, learned counsel appearing for the respondents submitted that the applicant had undertaken to submit copies of the decisions in the judicial proceedings that had been initiated by him and pending before the Hon'ble High Court of Calcutta, which orders and judgments he has failed to submit. Our attention was drawn to Rule 69(1)(c) of the CCS (Pension) Rules, wherein it is prescribed that -

"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." (emphasis supplied)

The applicant has not categorically stated that no judicial proceeding is pending before any court, ² ₁ ⁸ either in para 5(m) of the O.A. he stated that "those writ petitions have become infructuous due to permitting the applicant to join in his service". We find that subsequently in his rejoinder he repeated time and again that the cases filed by him "were disposed of by the Hon'ble High Court at Calcutta before my superannuation from service." (refer page 11 of

rejoinder). We find that neither the dates when such proceedings were disposed of were mentioned nor any other sheet is filed/produced in support of the said contention. Therefore, we find justification in the respondents' stand that the applicant is not entitled to said gratuity unless and until the judicial proceedings are concluded one way or the other.

Since the applicant retired on 30.11.1994 i.e., almost a decade back we deem it fit to dispose of the present application with a direction to the respondents to release the pension as well as gratuity, due to him under the rules, on production of certified copies ^{of} k the relevant orders in cases pending against him before the High Court of Calcutta or any other court. It was brought to our notice by the learned counsel for the respondents that the applicant has been paid provisional pension during the pendency of the present application. This being the facts, we hold that as far as pension is concerned the respondents shall adjust the amount already paid to him on account of the said provisional pension.

5. In the result the present application is disposed of with the aforesaid direction. No costs.



MEMBER (J)



MEMBER (A)

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