

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.309/10

Monday this the 20th day of September 2010

C O R A M :

HON'BLE Mr.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Poomarathil Vijayan,
Superintendent of Central Excise (Rtd.),
16/54, Harisankar Road, Tharekkad, Palakkad.

...Applicant

(By Advocate Mr.C.S.G.Nair)

V e r s u s

1. Commissioner of Central Excise & Customs,
Central Revenue Buildings, Mananchira,
Kozhikode – 673 001.
2. Deputy Commissioner of Central Excise,
Palakkad I Division, Mettupalayam Street,
Palakkad.
3. Pay & Accounts Officer,
Central Excise, Central Revenue Buildings,
Mananchira, Kozhikode – 673 001.
4. Chief Commissioner of Central Excise & Customs,
Central Revenue Buildings, I.S.Press Road,
Cochin – 682 018.
5. Union of India represented by its Secretary,
Department of Revenue, North Block,
New Delhi – 110 001.

...Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

This application having been heard on 20th September 2010 the Tribunal on the same day delivered the following :-



.2.

ORDER

HON'BLE Mr.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

The short question involved in this Original Application is that whether the pendency of a criminal case in a Criminal Court against a Government employee prohibits the payment of his pensionary benefits especially gratuity or any part of the pension.

2. The applicant while working as Superintendent of Central Excise retired on 31.5.2009. The applicant requested for his pension. The department informed the applicant by a letter dated 22.1.2010 that because of the pendency of the criminal case charge sheeted by the CBI on 18.7.2007, the applicant is not entitled for getting his gratuity or other pensionary benefits. Aggrieved by that letter, the applicant filed this Original Application.

3. This application has been admitted and notices has been ordered to the respondents. On receipt of the notices from this Tribunal a reply statement has already been filed for and on behalf of the respondents. The stand taken in the reply statement is that Rule 69 (1) (C) of the CCS (Pension) Rules provides 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. The further stand taken in the reply statement is that since the criminal case has been taken cognizance by the



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Trial Court, it is not possible to give pensionary benefits and gratuity to the applicant till the finalisation of the criminal case pending against him. It is also stated in the reply statement that the applicant has already been paid an amount of Rs.3,31,960/- on account of his leave salary and he was also sanctioned provisional pension.

4. We have heard Shri.C.S.G.Nair counsel appearing for the applicant and Shri.Thomas Mathew Nellimoottil counsel appearing for the respondents. Learned counsel for the applicant contends that since the criminal case now registered against the applicant has not been taken cognizance of by the Trial Court no criminal case is deemed to have been pending against the applicant so as to debar from getting his pensionary benefits and gratuity. Further, the counsel submits that as per the order passed by this Tribunal in O.A.No.606/09 and also the order passed by the Principal Bench of the Central Administrative Tribunal in O.A.No.1604/09 the applicant is entitled for pension and gratuity. To the above contention counsel appearing for the respondents relies on the reply statement and further reiterates the stand taken in the reply statement. He further contends that as per Sub Section 6 of Rule 9 and Rule 69 of the CCS (Pension) Rules, the applicant is not entitled for his pension or gratuity till the finalisation of the criminal case pending against him. The counsel also submits that the facts discussed by this Tribunal in O.A.No.606/09 and in O.A.1604/09 are entirely different as the above cases are not on the issue raised in this Original Application.



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5. On an anxious consideration of the contentions raised by the counsel appearing for the parties, we have to decide whether the applicant is entitled for the pension and gratuity or not. It is an admitted fact before us that a criminal case has been registered by the CBI under the provisions of Corruption Act, 1947 and registered as CC No.7/07 before the Sessions Court of Special Judge-II, CBI, Ernakulam. Sub section 6 of Rule 9 of the CCS (Pension) Rules, 1972 stipulates that a judicial proceedings shall be deemed to be instituted in the case of criminal proceedings, on the date on which the complaint or report of police officer, of which the Magistrate take cognizance, is made and if a civil proceedings is pending on the date plaint is presented and in such cases the pension and gratuity can be withheld and further Rule 69 of the said Rules contemplates a position that only provisional pension can be ordered in cases where the departmental or judicial proceedings are pending against a Government servant and further it is stated in the said section 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 has been passed. A reading of the above provision would clearly indicate that the case of the applicant is covered by such provisions. To come to this conclusion we may see that the facts of the case itself would show that a criminal case has been registered as CC No.7/07 and it is pending. The final charge sheet has also been given by the CBI and the Sessions Judge has also issued summons for the appearance of the applicant which would show that the criminal case is now pending. These facts would differentiate with the facts

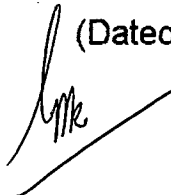


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discussed in O.A.No.606/09 and also in O.A.No.1604/09. In O.A.No.606/09 the fact was that a sanction for prosecution alone has been given and no final charge has been given either by the police or CBI or the investigating agency. The fact in O.A.No.1604/09 would also show that a FIR has been registered as FIR No.18/08 and no final charge has been framed or charge sheeted against the applicant therein. Hence, the facts relied on by the counsel appearing for the applicant are not applicable to the facts of the case in hand.

6. In the above circumstances, we feel that as per the provisions contained in the CCS (Pension) Rules, 1972, we are not inclined to allow this Original Application and consequently the Original Application is dismissed as merit less. No order as to costs.

(Dated this the 20th day of September 2010)



K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE K.THANKAPPAN
JUDICIAL MEMBER

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