

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

O.A.No.465/2001

Dated this Friday the 15th Day of March, 2002.

Hon'ble Shri Justice Birendra Dikshit, Vice Chairman  
Hon'ble Smt. Shanta Shastry, Member (A).

Abdul Karim Adam Nawab,  
Retd. Supdt., Central Excise (Gr.B),  
residing at:  
United Tower C.H.S. Ltd.,  
11th Floor, 1105,  
S.V. Road, Jogeshwari (West),  
Mumbai - 400 102.

.. Applicant.

( By Advocate Shri S. Natarajan )

Versus

1. Union of India, through  
Secretary, Ministry of Finance,  
Department of Revenue,  
North Block, New Delhi-110001.
2. The Commissioner of Customs,  
New Custom House,  
Ballard Estate, Mumbai-400001.
3. The Commissioner of Central Excise,  
Mumbai-I,  
115, Central Excise Building,  
M.K. Road, Opp. Churchgate Station,  
Mumbai - 400 020.

.. Respondents

( By Advocate Shri M.I. Sethna )

ORDER (Oral)  
{ Per : Shanta Shastry, Member (A) }

The applicant who had initially been appointed as Sub-Inspector of Central Excise in 1959 and promoted as Superintendent in 1987 was further deputed to Airpool at Sahar Airport on 1.2.1992. He retired from service on 30.4.1994. After his retirement a show cause notice was issued to the applicant on 16.1.1996 for withholding his pension issued by the Collector of Customs and order was

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issued on 18.3.1996 withholding his pension temporarily. It was further modified on 17.3.1999 withholding the pension for 10 years. The applicant had preferred an appeal against the order dated 18.3.1996 and 17.3.1999. His appeal was disposed of by an order dated 14.2.2001 setting aside the impugned penalty in view of the procedural lacunae which may be rectified by taking action by the competent authority. Thereafter the applicant made a representation for payment of pension including arrears vide letter dated 16.3.2001. He received the reply that the matter was under consideration vide letter dated 21.5.2001. Thereafter a show cause notice was issued on 21.5.2001 for withholding of the pension of the applicant in full, permanently. The applicant gave his reply to the show cause notice on 24.5.2001. At this stage the applicant approached this Tribunal on 20.6.2001 with a prayer for direction to the respondents to restore his pension for the period from 18.3.1996 and to pay the arrears alongwith interest of 18%. By way of interim order on 27.9.2001 the Tribunal passed the order, directing the respondents to pay current pension i.e. from the date of issue of the Appellate Authority's order dated 14.2.2001 to the applicant within 15 days from the date of the order. It

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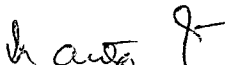
was also observed that the question of payment of arrears will be considered at the time of final hearing of the O.A.

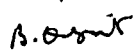
2. Before the O.A. could be heard, we were informed that further orders have been passed by the Disciplinary Authority for rectifying the lacunae because of which the Appellate Authority had set aside the earlier order of 18.3.1996. As per this order the competent authority has ordered the withholding of payment of pension to the applicant in full permanently with immediate effect. The order is dated 13.2.2002.

3. The applicant has received the pension from February, 14, 2001. The applicant is now claiming the arrears of pension from 18.3.1996 till 13.2.2001.

4. Respondents are opposed to the same. According to them after following the proper procedure, the Disciplinary Authority has imposed the penalty of withholding the pension permanently and therefore the applicant is not entitled to any pension from 18.3.1996. The Appellate Authority has set aside the earlier order only because the order had not been passed by the competent authority, therefore, it has to be held that penalty gets imposed from the date of the earlier order dated 18.3.1996.

5. We have perused the order of the Disciplinary Authority. It clearly states in the order that the pension is withheld in full, permanently with immediate effect. It does not say that it would take effect from the date of retirement of the applicant. We cannot read what is not there in the order of the Disciplinary Authority. Moreover, the earlier order dated 18.3.1996 by which the applicant's pension had been withheld was set aside by the Appellate Authority and as such there was no penalty operative during the period from 18.3.1996 till the present order dated 13.2.2002 has been passed. In our considered view, therefore, the applicant is entitled to the arrears of pension from 18.3.1996 till 13.2.2001. The applicant has claimed interest, since the proceedings were continuing in the case of the applicant and there was no intentional delay on the part of the respondents in not paying the arrears, we are not inclined to grant any interest on the arrears. In view of the above matter the respondents shall pay the arrears of pension to the applicant from 18.3.1996 till 13.2.2001 without any interest within a period of 3 months from the date of receipt of copy of this order. The O.A. is accordingly allowed, no costs.

  
( Smt. Shanta Shastri )  
Member (A)

  
( Birendra Dikshit )  
Vice Chairman.

H.