

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE- 560 038.

Dated: 29 DEC 1994

APPLICATION NO: 1988 of 1994.

APPLICANTS:- Sri. J. N. Ramaswamy,
V/S.

RESPONDENTS:- The Collector of Central Excise, Bangalore-1

I.

1. Sri. A. N. Venugopala Gowda,
Advocate, no. 8/2, first floor,
R. V. Road, BANGALORE-560004.

2. The Collector of Central Excise,
Central Revenue Bldgs, PB. No. 5400,
Queen's Road, Bangalore-560001.

3. Sri. M. Vasudera Rao,
Central Govt Shg Counsel,
High Court Bldg,
Bangalore-560001.

Subject:- Forwarding of copies of the Order passed by the
Central Administrative Tribunal, Bangalore.
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Please find enclosed herewith a copy of the ORDER/
~~STAY ORDER/INTERIM ORDER~~ passed by this Tribunal in the above
mentioned application(s) on 15.12.94


Issued on

29/12/94



/c

for


DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

ORIGINAL APPLICATION No.1988/1994

THURSDAY, THIS THE 15TH DAY OF DECEMBER, 1994

SHRI JUSTICE P.K. SHYAMSUNDAR .. VICE CHAIRMAN

Sri T.N. Ramamurthy,
aged about 60 years,
S/o late T.M. Natesan,
No.659, Puttamma Layout,
Subbannapalayam,
Maruthisevanagar,
Bangalore - 560 033.

... Applicant

(By Advocate Shri A.N. Venugopal Gowda)

Vs.

The Collector of Central Excise,
Central Revenue Buildings,
Queens Road, P.B.No.5400,
Bangalore - 560 001.

... Respondent

(By Advocate Shri M. Vasudeva Rao,
Addl. Central Govt. Stg. Counsel)

ORDER

The applicant was an Inspector in the Central Excise who suffered an order of Compulsory Retirement as a consequence of which he was consigned to pre-mature retirement with effect from 22.7.1990. It is common ground, the said order of compulsory retirement was passed in exercise of powers of the department under F.R.56(j) vide Annexure-'A'. In these proceedings, there is no contention about the aforesaid indictment under F.R.56(j). But, what is urged is regarding the grievous plight of the applicant who has retired nearly 4 years back, but is continuing in a cash roll called Provisional Pension and at the same time denying the substantial cash of D.C.R.G. money to which every retiring employee is entitled to in a usual course.



2. The department, taking notice of certain proceedings pending against the applicant, in the Court of the Special Judge at Mysore ordered payment of Provisional Pension but denied him payment of the D.C.R.G. amount vide Annexure-'B' which reads:

"OFFICE OF THE COLLECTOR OF CENTRAL EXCISE:
CENTRAL REVENUES BUILDING: QUEEN'S ROAD:
P.3.NO.5400: BANGALORE - 560 001.

C.No.II/25/26/90 D.4

Dated: 25-9-90.

To

Shri T.N. Ramamurthy,
Inspector of Cen.Excise (Retd.),
No.195, Subbannapalayam,
M.S.Nagar, Bangalore-560 033.

Sub: Non-receipt of retirement benefits-reg.

Ref: Your letter dated 17-9-90.

- - -

In accordance with Rule 69 of C.C.S (Pension) Rules, 72 you have been sanctioned provisional pension.

As per Rule 69(c) of the said rules and rule 4 of C.C.S (Commutation of Pension) Rules, 1981, no gratuity/commutation of provisional pension is payable until the conclusion of the Departmental or Judicial proceedings and issue of final orders.

Sd/-
(L. JEYASEELAN)
ADDITIONAL COLLECTOR(P&V)."

From the order of Annexure-'B', I am told, the applicant made a spate of representations complaining of the grave hardship and financial distress caused to him in not releasing the D.C.R.G. amount due besides denying him the benefit of commuted value of Pension. It transpires that little or no heed paid to his representations by the department with the result as on today, he neither has the full pension nor D.C.R.G. he should have ordinarily obtained and having been denied the same, he has come up with the application.

3. Shri A.N. Venugopal Gowda, appearing on his behalf straneously contends that money just due to his client should not

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From the order of Annexure-'B', I am told, the applicant made a spate of representations complaining of the grave hardship and financial duress caused to him in not releasing the D.C.R.G. amount due besides denying him the benefit of commuted value of Pension. It transpires that little or no heed paid to his representations by the department with the result as on today, he neither has the full pension nor D.C.R.G. he should have ordinarily obtained and having been denied the same, he has come up with the application.

3. Shri A.N. Venugopal Gowda, appearing on his behalf strenuously contends that money just due to his client should not

be kept in cold storage for ever or until the department gets a green signal in the Judicial proceedings which I am told is pending before the Special Judge, Mysore, since 1976, an aspect which is not in dispute. The position is, the man is being crucified by denying him the terminal benefits to which he was otherwise entitled to, only because of the pendency of a criminal proceedings, the end of which is not in sight even after 18 long years.

4. Shri M.V. Rao, the learned standing counsel tells me that the department cannot be blamed for the static state of affairs as the criminal proceedings was initiated by the C.B.I. which is totally in control of the same. He says that the department, in those circumstances was as helpless as the applicant himself and a rule enjoins non-payment of Gratuity amount till the conclusion of a judicial or departmental proceedings. Reference in this connection is made to Rule 69(c) and Rule 9(4) of Pension Rules, which read as follows:

"Rule 69(c) : No gratuity shall be paid to the Govt. servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon:

Rule 9(4): In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings continued under sub-rule (2), a provisional pension as provided in Rule 69 shall be sanctioned."

Relying on these rules, the learned standing counsel maintains that the department could not possibly be faulted at all for having refused payment of gratuity and the commutation value of pension. No doubt, these rules are made in exercise of the executive powers of the state to safeguard its interests particularly, where the retiring official is a person tainted with a blasphemous record and hence the benefit due to such a person is



required to be withheld till a decision in regard to this error, crimes or defaults committed by such a person is pending adjudication in this judicial proceeding or departmental enquiry as the case may be, are concluded and final orders passed, but, until then the department is entitled to a reprieve in regard to payment of the retiral benefits that would otherwise accrue to the retiring official, as a matter of right, of course. But, I must recall that, in a sense, the rule enjoining non-payment of retiral benefits to an official involved in judicial proceedings or departmental enquiry, although harsh and in a manner of speaking penal in character, has nonetheless to pay heed to the equality clause. For example, the judicial proceeding or a departmental enquiry may protract and become almost interminable in nature as it has happened in this case, since even after 18 years of pendency, there is no light at the end of the tunnel. I am told by Shri A.N. Venugopal Gowda that even now the trial itself is yet to commence, the question therefore is as to whether the claims of the applicant be treated as totally indefensible and all reliefs denied to him. I find there is no controversy attached to clause (c) of Rule 69 which empowers Govt. to pay the gratuity, in case departmental proceedings have been instituted under Rule 16 of CCS (CCA) Rules for imposing any penalty. The position, therefore, is that a person subjected to a departmental enquiry under Rule 16 would be entitled to payment of gratuity. But, the position is otherwise, ~~if~~ that person is involved in a trivial incident resulting in the commencement of a judicial proceeding pending before a court. Indeed a judicial proceeding can be of a trial at which a person can be given a capital sentence or it may be as simple as an offence of intimidation which may not call for anything more than a reprimand. If that is the situation, without regard to the gravity of the indictment in a judicial proceeding, can a delinquent officer be denied the gratuity amount, indeed a benefit never to be

allowed. Whereas, if he were to simply end up with a domestic enquiry under Rule 16, he would be eligible for payment of pension and receipt of gratuity. Surely, this comparative step of normative assessment of the Govt. officer's right to seek and obtain payment of gratuity appears to vary in a somewhat unbalanced fashion that might certainly trigger off an argument that Rules 16 and 69(c) are provisions which are wholly arbitrary and must meet with an appropriate end by being declared to be violative of the equality clause on the contrary. But, then I do not wish to go that far into the almost dimensionless parameters of the equality clause in Article 14 and its impact on Rule 69(c) which is, however, not in challenge. But, suffice it to say that in the facts and circumstances of the case, I find that for no fault of the applicant, the judicial proceeding is pending before a Court at Mysore for the last 18 years and is even today nowhere near conclusion since it is said to be not even taken up so far. I, therefore, think it appropriate to direct the Govt. to release the amount of gratuity payable to the applicant and also fix up and pay the commutation value of pension subject to the applicant furnishing an Indemnity Bond and a surety equivalent to the amount due to the applicant under both heads, viz., the gratuity and commutation of pension. I notice that there is authority for the position. A reference in this connection may be invited to the case of Jeet Singh Virdi Vs. Union of India & Ors. reported in (1992) 21 ATC 620 in which the Principal Bench of this Tribunal had ordered payment of all retiral benefits on furnishing of Indemnity Bond. The department will now therefore quantify the retiral benefits due towards gratuity and payment of commuted value of pension and call upon the applicant to furnish a surety and an Indemnity Bond to cover the amounts payable to him under the above heads. This exercise should be done within 8 weeks from the date

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of receipt of a copy of this order by the respondent. Thereupon, the applicant will take steps to comply with the direction to furnish the appropriate Indemnity Bond and a surety and in consequence the department will arrange for payment of the retiral benefits indicated above. No order as to costs.

Sd/-
(P.K.SHYAMSUNDAR)
VICE CHAIRMAN



TRUE COPY

[Signature]
29/12/94
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE - 560 030.

Miscellaneous Appln.No.119/95 in

Dated: 21 MAR 1995

APPLICATION NO. 1988 of 1994.

APPLICANTS: T.N.Ramamurthy,

V/S.

RESPONDENTS: Collector of Central Excise, Bangalore.

To

1. Sri.A.N.Venugopala Gowda, Advocate, No.8/2,
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Subject:- Forwarding copies of the Orders passed by the
Central Administrative Tribunal, Bangalore-38.

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Stay Order/Interim Order, passed by this Tribunal in the above
mentioned application(s) on 09-03-1995.

Issued on
21/03/95
DK

g/c

for

DEPUTY REGISTRAR
JUDICIAL BRANCHES.

**In the Central Administrative Tribunal
Bangalore Bench
Bangalore**

Sri. J. N. Ramamurthy vs Collector, Central Excise, Blore
Application No. 1988 of 1994

MA NO. 119145 ORDER SHEET (contd)

Date	Office Notes	Orders of Tribunal
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(Ks) ve (TVR) MA

9.3.1995.

Heard both sides.

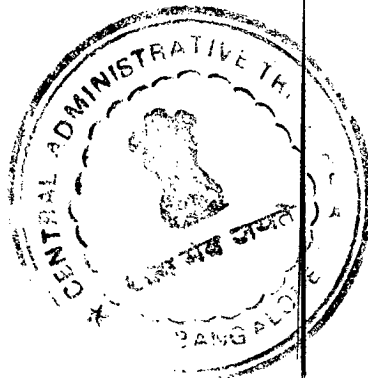
Time for compliance is
extended by one more month.
No further extension.

Sd/-

Sd/-

MOS

ve,



TRUE COPY

[Signature]
21/3/95
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore