

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI-5

O.A. No. 60 of 1998

Date of decision 16.9.98

Shri Sudhir Ranjan Choudhury,

PETITIONER(S)

Mr. R. Dutta

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India & Ors.

RESPONDENT(S)

Mr. G. Sarma, Addl. C.G.S.C.?

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE MR. JUSTICE D.N.BARUAH, VICE-CHAIRMAN.

THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether the Judgement is to be circulated to the other Benches?

Judgement delivered by Hon'ble VICE-CHAIRMAN.



**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 60 of 1998.

Date of decision : This the 16th day of September, 1998.

HON'BLE MR. JUSTICE D.N.BARUAH, VICE-CHAIRMAN.

Shri Sudhir Ranjan Choudhury,
Ex-Superintendent of Customs Preventive,
S/o Lt . Saday Chandra Choudhury,
Village : Shyamali Bazar near Medical Godown,
West TripuraApplicant

By Adovcate Mr. R. Dutta.

-versus-

1. Union of India
represented by the Secretary of
of Ministry of Finance,
Govt. of India,
New Delhi.
2. The Secretary of Central Board,
Central Excise and Customs,
New Delhi. New Delhi.
3. The Principal Commissioner(Customs),
North Eastern Zone,
15/1, Strand Road,
Calcutta-1.
4. The Commissioner of Central Excise,
Morello Compound,
Shillong-1.
5. The Pay and Accounts Officer,
(Customs & Central Excise),
Pay and Accounts Office,
Manbha Villa, Laitumkhrah Main Road,
Shillong.
6. The Superintendent(Vigilance Cell),
Customs and Central Excise,
Shillong-1.
7. The Assistant Commissioner,
Customs Preventive Division,
Mantri Bari Road,
Agartala-799 001. Respondents

By Advocate Mr. G.Sarma, Addl. C.G.S.C.

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O R D E R

BARUAH J. (V.C.).

This application has been filed by the applicant challenging the action of the Government in withholding the pension which he is entitled to draw and seeking directions to the respondents to pay the commuted pension and gratuity and other pensionary benefits. The facts are :

At the relevant time the applicant was Superintendent of Customs and posted at Sonamura, Agartala. In the year 1995 certain complaint had been made to the department concerned against the applicant. However, no departmental proceeding was initiated. The complaint was in respect of misappropriation of money. Though the complaint was made against against the applicant, no action had been taken by the department. No disciplinary proceeding had also been initiated. On 30.4.1997 the applicant attained the age of superannuation, accordingly the applicant retired from service on 31.4.97 (A/N). After retirement, the applicant requested the authorities to pay his pensionary benefits including gratuity. The provisional pension was however given but he was not given the actual pension which he was entitled to. His pensionary benefits have been withheld on the ground that certain



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allegations were made against the applicant and the authority decided to take a disciplinary actions. In spite of that no action has yet been taken. Till now the authority has not initiated any departmental proceedings against the applicant regarding the alleged misappropriation of the applicant. As no departmental proceeding has been initiated, the applicant approached the authorities for release of his pensionary benefits. In spite of repeated requests nothing has been done.

2. Being aggrieved by the inaction of the respondents, in giving pensionary benefits, the applicant submitted representations before the authority, namely, respondent No.4 - Commissioner of Central Excise. The representation was disposed of by Order Annexure 3 order dated 14.7.95. However, 4th respondent did not dispose of the representation. Representation of the applicant was disposed of by the 5th respondent. It is informed to the applicant that as disciplinary proceedings was contemplated the pensionary benefits could be given only after completion of the disciplinary proceeding. Even though the Annexure-3 letter was issued, till now no disciplinary proceeding has been initiated.

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Hence the applicant has approached this Tribunal.

3. I have heard Mr. R.Dutta, learned counsel appearing on behalf of the applicant and Mr. G.Sarma, learned Addl. C.G.S.C. appearing on behalf of the respondents.

4. Mr. Dutta submits that on the date of retirement or immediately after retirement of Government employees are entitled to get his pensionary benefits.

In the instant application the applicant retired in the year 1997 but the pension and the other pensionary benefits have not been given. Mr. Dutta further submits that the authority have avoided payment on one or other pretext. As per Annexure-3 order dated 14.7.97 the applicant was informed that as the disciplinary proceeding was contemplated, the applicant would be entitled to get pensionary benefits only on completion of the proceeding. However, authority have not done anything in this regard thereby most arbitrarily withheld the pensionary benefits.

5. Mr. G.Sarma on the other hand only submits that from the correspondences it appears that the applicant committed misappropriation to the tune of Rs.6.5 lakhs. Under the circumstance, pensionary benefits of the applicant has been withheld.

6. On the rival contention, it is to be seen whether respondents are competent to withheld the

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pensionary benefits in the present facts and circumstances of the case. In this connection Mr. Dutta has drawn my attention to the Central Civil Services, Pension Manual, Rule 9. As per the said provision of Rule 9(2)(b) departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment shall not be instituted save with the sanction of the President and in the present case, Mr. Sarma fairly submits that no Presidential sanction has yet been obtained. The departmental proceedings has also not yet started and this averments made by the applicant has not been disputed by Mr. G. Sarma. He is also not in a position to show anything from the records that a departmental proceeding has already been started. The applicant since retired, as per Rule 9 (6) (a) departmental proceedings shall be only deemed to be instituted on the date on which the statement of charges is issued to the pensioner and in the present case, admittedly no statement of charges have been issued. If the departmental proceeding were not started while in service, Presidential sanction is necessary to initiate a departmental proceedings on the applicant who had already retired from service. In the absence of Presidential sanction there can be no disciplinary proceeding.


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7. Under the circumstances, in my opinion, withholding of pension and pensionary benefits is illegal and cannot sustain.

8. Mr. Dutta also submits that the applicant is entitled interest on the delayed payment of Provident Fund amount.

9. In view of the above, in my opinion the submission of Mr. Dutta has sufficient force that the respondents have no authority to withhold the pensionary benefits and accordingly I hold that the applicant is entitled all the pensionary benefits alongwith interest including interest for delayed payment of Provident Fund at the same rate and this must be done as early as possible at any rate within a period of two months from the date of receipt of the copy of this order.

With the above directions, the Original application is disposed. Considering the facts and circumstances of the case, however, I make no order as to costs.


(D.N.BARUAH)
Vice-Chairman

trd