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**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

✓ O.A/T.A No. 261/2001
R.A/C.P No.
E.P/M.A No.

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SECTION OFFICER (Judl.)

FORM NO. 4

(See Rule 42)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :::: GUWAHATI.

ORDER SHEET

APPLICATION NO. 261 OF 2001

APPLICANT(S) Sri Krishna Pradhan Brahma

RESPONDENT(S) UOI & ORS.

ADVOCATE FOR APPLICANT(S) Mr Adil Ahmed

ADVOCATE FOR RESPONDENT(S) Railway Counsel

Notes of the Registry	dated	Order of the Tribunal
<p>... application is in form but not ... Petition ... filed vide M. P. No. ... C.F. for Rs 50/ deposited vide IPO/BE No <u>69 79/200</u> Dated <u>12/7/2001</u></p> <p><i>[Signature]</i> Dr. Registrar <u>WTS</u> <u>17/7/2001</u></p>	<p>18.7.01</p>	<p>Mr. A. Ahmed learned counsel for the applicant states that the applicant was working as Stock Verifier under the Financial Adviser and Chief Accounts Officer, N.F. Railway, Maligaon. He retired from service w.e.f. 30.11.1996. Before the date of retirement no charge sheet was issued by the authority. The charge sheet was issued in the year 2000. He relied on the Railway Pension Rules and the order passed by this Tribunal in O.A.No.159 of 1998 dated 16.6.2000 for payment of Pensionary benefits. Mr. S. Sarma learned counsel appearing on behalf of the respondents accepts notice. List on 3.8.01 for Admission.</p> <p><i>[Signature]</i> Member</p>

lm

(2)

O.A. No. 261 of 2001

3.8.01

No written statement has been filed. List the case for hearing on 21.9.2001. The respondents may file written statement within three weeks from today.

No written statement has been filed.

By
20.9.01

trd
21.9.01


Vice-Chairman

On the prayer of Mr.A.Ahmed, learned counsel for the applicant, the case is adjourned.

List on 12/10/01 for hearing.

No written statement has been filed.

By
11.10.01

mb
12.10.01


Vice-Chairman

On the prayer made by Mr.S.Sarma, learned counsel appearing for the respondent two weeks time is granted to the respondent to file written statement.

Prayer accepted. List the matter on 21.11.2001 for hearing.

No written statement has been filed.

By
20.11.2001

bb

K C Sharma
Member

21.11.01

The case was posted for hearing to-day by order dated 12.10.01. The respondents was to file the written statement which they did not. Mr.A.Ahmed learned counsel for the applicant submitted that this case is squarely covered by the decision rendered by this Bench in O.A.No.159 of 98 (Shri Gadadhar Mukherjee, Vs.Union of India & Ors.). Mr.S.Sarma learned counsel for the respondents prays for sometime to file the written statement and also to ascertain the matter. Two weeks time is allowed to file written statement. The case shall now be listed for hearing on 7.12.01. If the respondents fail to submit the written statement the case will proceed without written statement. List on 7.12.01 for hearing.

No. loks has been filed.

By
6.12.01

K C Sharma
Member


Vice-Chairman

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O.A.261/2001.

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Notes of the Registry	Date	Order of the Tribunal
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7.12.01

Learned counsel for the applica

-ant is on accommodation.

List again on 16.1.2002 for hearing.

No written statement has been filed.

15.1.02.

Member(J)

Member(A)

pg

16.1.02

No written statement so far filed.

The matter pertains to Pensionary benefits. However, the Railway counsel Mr.S.Sarma again sought for little accommodation for filing of written statement. Prayer is allowed. List on 15.2.02 for hearing.

No written statement has been filed.

14.2.02

lm

Vice-Chairman

15.2.02

This matter pertains to granting of pensionary benefits. The respondents did not file any written statement. Mr U.K. Nair, learned counsel appearing on behalf of the standing counsel, Railways again prayed for time to obtain necessary instruction on the matter. Mr A.Ahmed, learned counsel for the applicant however prays for early disposal and stated that this matter is squarely covered by the decision rendering by this Bench. Reluctantly I allow 10 days time to the respondents to obtain instruction, else the matter should be decided without waiting for written statement.

No written statement has been filed.

14.3.02.

List on 27.2.02 for hearing.

Vice-Chairman

pg

Notes of the Registry Date Order of the Tribunal

27.2.2002

At the request of Mr. S. Sarma, learned counsel hearing is adjourned.

List the case again for hearing on 15.3.2002.

K. Usha
Member

bb

15.3.2002

On the prayer of Mr. S. Sarma, learned counsel for the respondent, the ~~case~~ ^{case} is adjourned to 5.4.2002.

MLA
Atkots
15.3

20.3.2002

5.4.

W/S submitted by the Respondents.

There was a reference. The case is adjourned to 12.4.2002.

MLA
R. B. Reddy
5/4

12.4.02

None present for the applicant. List on 3.5.2002 for hearing.

K. Usha
Member

trd

3.5.2002

Heard counsel for the parties. Hearing concluded. Judgement delivered in open Court, kept in separate sheets.

The application is allowed in terms of the order. No order as to costs.

K. Usha
Member

bb

Agreed with Siddharth Sarma 16/5/02

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 261 of 2001.

Date of Decision 3.5.2002.....

----- Sri Krishna Mohan Brahma. -----
----- Petitioner(S) -----

----- Mr. Adil Ahmed. -----
----- Advocate for the -----
----- Petitioner(s) -----

-Versus-

----- Union of India & Others. -----
----- Respondent(s) -----

----- Mr. S. Sarma. -----
----- Advocate for the -----
----- Respondent(s) -----

THE HON'BLE MR K. K. SHARMA, ADMINISTRATIVE MEMBER.

THE HON'BLE

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

Judgment delivered by Hon'ble : Administrative Member.

10/1/02

X

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 261 of 2001.

Date of Order : This the 3rd Day of May, 2002.

THE HON'BLE MR. K. K. SHARMA, ADMINISTRATIVE MEMBER.

Sri Krishna Mohan Brahma
S/o Late Jella Ram Brahma
Retired Stock Verifier
North Eastern Frontier Railways
New Bongaigaon
Chapaguri Road
P.O:- North Bongaigaon
District:- Bongaigaon, Assam. . . . Applicant.

By Advocate Mr. Adil Ahmed.

- Versus -

1. The Union of India
Represented by the General Manager
N.F.Railway, Guwahati-11.
2. The Chief Vigilance Officer
N.F.Railway, Maligoan
Guwahati-11.
3. The Financial Adviser & Chief Accounts Officer
N.F.Railway, Maligaon
Guwahati-11. . . . Respondents.

By Advocate Mr.S.Sarma.

O R D E R

K.K.SHARMA(ADMN.MEMBER) :

The application has been filed to claim pensionary benefits including Pension, Gratuity, leave salary and other pension commutation money to the applicant.

1. The applicant was working as Stock Verifier under the Financial Adviser and Chief Accounts Officer, N.F.Railway, Maligaon. He retired from service on

Contd./2

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30.11.96. He was interrogated by the CBI in the year 1994. It is admitted that till the date of retirement on 30.11.96 neither any memorandum of charge sheet was issued nor any judicial proceeding initiated against the applicant. The applicant has been allowed the payment of provisional pension. The applicant made representation before the authority for drawing of pensionary benefit, but the same was not given to him on the ground that Vigilance clearance was not received. The applicant has stated that one Shri Gadadhar Mukherjee, Retired Executive Engineer of N.F.Railway was also charge sheeted by the CBI in the same case along with the applicant. Shri Mukherjee retired on 30.1.96. As pensionary benefit was not given to Shri Mukherjee, he approached this Tribunal by filing of an O.A.159/98 which was decided on 16.6.2000. In that case a direction was given to the respondents for payment of pensionary benefit to the applicant benefit/as no charge sheet has been issued before the date of retirement and no judicial proceeding has been initiated before the date of retirement against the applicant. The applicant stated that his case is similar to the case of Shri Gadadhar Mukherjee.

2. The respondents have filed written statements. I have heard Mr.A.Ahmed, learned counsel for the applicant and also Mr.S.Sarma, learned counsel appearing for the respondents at length. Mr. S. Sarma submitted that a criminal case has been registered against the applicant for which CVC's 1st stage

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advice was received on 29.8.97 and stated that no charge sheet has been filed so far against the applicant. Mr.Sarma did not dispute the fact that the applicant's case is similar to the case of Shri Gadadhar Mukherjee.

3. I have carefully considered the facts of the case as well as ^{perused} the records and submissions made by the parties. The case of the applicant is exactly similar to the case of Shri Gadadhar Mukherjee. No charge sheet has been issued to the applicant before his date of retirement and no judicial proceeding has been initiated against him till date. Considering all the aspects of the matter the respondents are directed to pay the pensionary benefits to the applicant as per rules. The process should be completed within a period of four months from the date of receipt of the order.

The application is allowed to the extent indicated above.

There shall, however, be no order as to costs.

K.K.Sharma
(K.K.SHARMA)
ADMINISTRATIVE MEMBER

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
17 JUL 2001
गुवाहाटी न्यायोपट
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

(AN APPLICATION UNDER SECTION 19 OF THE CENTRAL
ADMINISTRATIVE TRIBUNAL ACT, 1985)

ORIGINAL APPLICATION NO. 261 OF 2001.

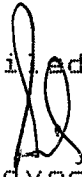
Sri Krishna Mohan Brahma
-Applicant.

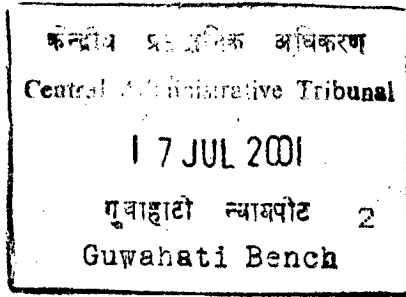
-Versus-

Union of India & Others
-Respondents.

I N D E X

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3]	Annexure-A	- - - 15
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5]	Annexure-C	- - - 17 to 23

Filed by

Advocate. (Abil Ahmed)



Filed by
Shri Krishna Mohan Brahma
through Dilip
(ADIL AHMED)
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GAUHATI BENCH AT GAUHATI.

(AN APPLICATION UNDER SECTION 19 OF THE
CENTRAL ADMINISTRATIVE TRIBUNAL ACT, 1985.)

ORIGINAL APPLICATION NO. OF 2001.

B E T W E E N

Sri Krishna Mohan Brahma,
S/o Late Jella Ram Brahma,
Retired Stock Verifier,
North Eastern Frontier Railways,
New Bongaigaon,
Chapaguri Road,
P.O.- North Bongaigaon,
District- Bongaigaon, Assam.
- Applicant.

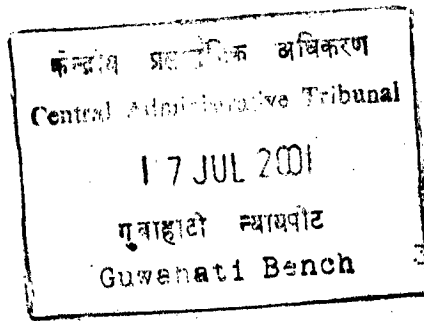
-Versus-

1] The Union Of India,
represented by-
the General Manager, N. F Railway
Guwahati-11.

2] The Chief Vigilance Officer,
N. F. Railway, Maligaon,
Guwahati-11.

3] The Financial Adviser & Chief
Accounts Officer,
N F Railway, Maligaon,
Guwahati-11.

-Respondents.



DETAILS OF THE APPLICATION:

1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE:

This instant application is made against non-payment of Pension, Leave Salary, Gratuity and other pension commutation money to the applicant who was retired from service of the Railway Department w.e.f. 30-11-1996 and also prayer for payment of pension, gratuity and other pensionary benefits with 18% interest from the date of his retirement from service.

2. JURISDICTION OF THE TRIBUNAL

The applicant declares that the subject matter of the instant application is within the jurisdiction of the Hon'ble Tribunal.

3. LIMITATION

The applicant further declares that the application is limitation period prescribed under Section 21 of the Administrative Tribunal Act, 1985.

4] FACTS OF THE CASE:

Facts of the case in brief are given below:

4.1 That your humble applicant a citizen of India and permanent Resident of Village Modh Bangaigaon, Chapaguri Road, P.O.-North

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केन्द्रीय न्यायिक आयोग
Central Judicial Service Tribunal

17 JUL 2001

गुवाहाटी बेंच
Guwahati Bench

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Bangaigaon in the District of Bangaigaon, Assam. As such, he is entitled to all the rights and privileges and protection granted by the Constitution of India. He is now aged about 64 years.

4.2. That your applicant begs to state that he was working as Stock verifier under the Financial Adviser and Chief Accounts Officer, N.F. Railway, Maligaon. He retired from service w.e.f. 30-11-1996.

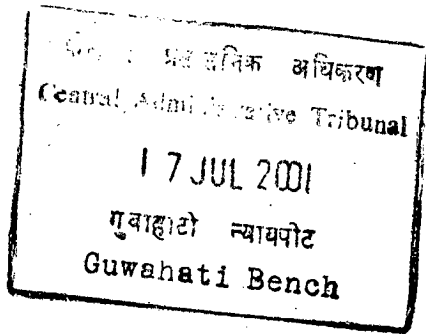
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4.3 That your applicant begs to state that the applicant was interrogated by the Central Bureau of Investigation (C.B.I.) in the year 1994 regarding some short supply of materials. But the C.B.I. neither issued any charge sheet to the applicant before his retirement nor he received any summon or any other communication from any court of judicial authority in respect of initiation of judicial proceedings before his retirement.

4.4 That your applicant begs to state that after his retirement the applicant was not paid his regular pension, gratuity and other pensionary benefits but the Respondents have only provided the provisional pension to the pension.

4.6 That your applicant begs to state that he filed an application before the Respondent No. 3 for non-payment of his regular pension, leave salary, gratuity and pension communication money, etc. The Respondent No. 3 vide his

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letter No. PND/CPB/PP/ KMB/940(Close) dated 12-07-1999 informed the applicant that due to non-receive of vigilance clearance the pension case of the applicant has not yet been settled.

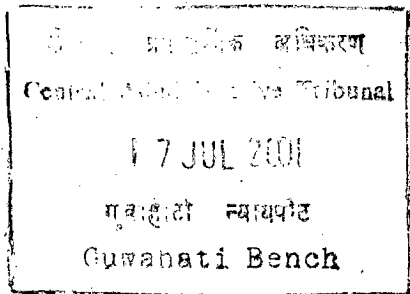
Annexure-A is the photocopy of representation 31-05-1999.

Annexure-B is the photocopy of letter No. PND/CPB/PP/ KMB/940(Close) dated 12-07-1999.

4.7 That your applicant begs to state that in the ~~year~~ ~~year~~ ~~year~~ ~~year~~ year 2000 applicant received the charge sheet from Central Bureau of Investigation. In the said charge sheet your applicant name was listed as accused persons No. 9 (nine).

It is also pertinent to mention here that one Shri Gadadhar Mukharjee, Retired Executive Engineer of N.F. Railway was also charge sheeted as accused No. 6 in the said charge sheet issued by the Central Bureau of Investigation along with the applicant. Shri Gadadhar Mukharjee was retired from service on superannuation with effect from 31.01.1996. Till Shri Gadadhar Mukharjee's retirement, no charge sheet was issued to him. Shri Mukharjee filed an Original Application No. 159 of 1998 before this Hon'ble Central Administrative Tribunal, Guwahati Bench for non-payment of regular pension, gratuity, leave salary, commutation value of pension etc. The Hon'ble

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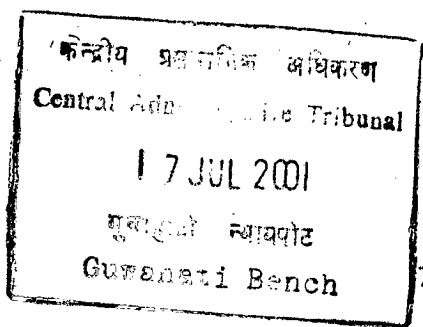


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Tribunal finally heard the matter on 16th June, 2000 and was pleased to allow the said Original Application No. 159 of 1998. The relevant portion of the Hon'ble Tribunal, Guwahati Bench judgement and order passed in said O.A. No. 159 of 1998 given below for kind perusal of this Hon'ble Tribunal.

"Under Rule 10(I)(c) of the Rules of 1993, gratuity would not be paid to a Railway servant until the conclusion of the judicial proceedings and issue of final orders thereon. This provision would, however, be applicable only if a judicial proceeding is pending against an employee on the date of superannuation. Under Rule 87(5) of the Rules of 1993 gratuity becomes due immediately after retirement in case no judicial or departmental proceeding is pending against an employee. In the present case the charge sheet was submitted to Court by the CBI on 5.3.1998. Thus no judicial proceeding or departmental proceeding was pending against the applicant on the date of retirement, i.e., 31.1.1996. The applicant thus became entitled to receive payment of pension and gratuity immediately after retirement. In the present case, therefore, non-payment of regular pension and gratuity immediately on superannuation of the applicant is not valid. The Respondents could not have stopped payment of DCRF\G, regular pension and also commuted value of pension because of pendency of CBI inquiry. CBI inquiry is not a judicial proceeding and only on pendency of

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judicial proceeding payment of gratuity could have been stopped by the respondents. In view of this the impugned order dated 17.7.1998 (Annexure A/4 to the O.A.) is not in accordance with law and the same is quashed.

The Learned counsel for the respondents submitted that a charge sheet has been submitted by the CBI in the Court of the Special Judge and a criminal case is pending against the applicant and in case the criminal case ends in conviction, the Present would not be able to withhold the pension and gratuity for which power is given under Rule 9 of the Rules of 1993. To my mind, this argument of the learned counsel for the Respondents has no merit as Rule 8 of the Rules of 1993 takes care of such a situation.

The learned counsel for the applicant submitted that the applicant is entitled to interest on gratuity and also interest on the commutation value of pension as the applicant was not allowed to commute his pension immediately on retirement.

The learned counsel for the Respondents, on the other hand, submitted that the applicant is not entitled to any interest on commutation value of pension as the applicant was being paid provisional pension, which is the full amount of pension admissible to the applicant.

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Central Administrative Tribunal
17 JUL 2001
Gauhati Bench

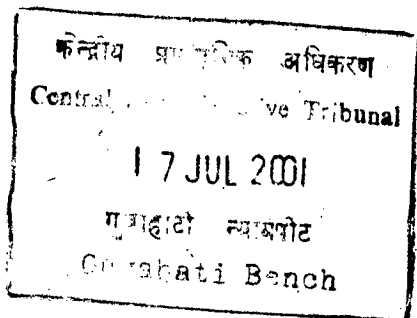
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Under Rule 87 of the Rules of 1993, interest is payable on gratuity in case the same is authorised after three months from the date when its payment became due on superannuation. The applicant retired on 31.1.1996. Consequently, the gratuity amount should have been paid within three months. As the same was not paid within the same period of three months due to no fault of the applicant, the applicant is entitled to interest on the gratuity amount on expiry of the three months period i.e., with effect from 1.5.1996.

As the applicant was being paid the full amount of pension as provisional pension though he was entitled to receive the same amount as regular pension, the applicant is not entitled to any interest thereon. However, the applicant is entitled to receive the said amount as regular pension.

As regards commutation value of pension the applicant is entitled to the same, but the applicant is not entitled to any interest thereon. Had the applicant commuted the one-third of pension on retirement he would not have received full amount of pension, whereas the applicant was getting the full amount of pension as provisional pension throughout the period. Consequently, on the commuted value of pension he will not be entitled to any interest.

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In view of the discussions made above, the impugned order dated 17.7.1998, Annexure A/4 to the O.A., is quashed. The Respondents are directed to pay to the applicant the gratuity amount with interest at the rate of 12% per annum with effect from 1.5.1996 till the date of payment. The Respondents are further directed to pay to the applicant the amount of pension not as provisional pension, but as regular pension. The Respondents are also directed to allow the applicant the commuted value of pension.

The compliance of the aforesaid direction shall be made by the Respondents within a period of three months from the date of communication of this order.

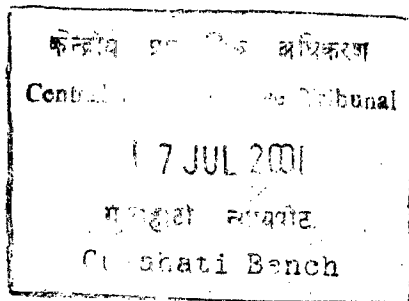
The O.A. stands allowed accordingly.
No order as to costs."

Annexure-C is the photocopy of judgement and order of the Hon'ble Tribunal, Guwahati Bench in O.A. No. 159 of 1998 dated 16th June, 2000.

4.8 That, from the above it is a fit case for interference of the Hon'ble Tribunal regarding payment of pension and other benefits to the applicant immediately.

4.9 That your applicant submits that he is running from pillar to post for getting his

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legitimate pensionary benefits but till today the respondents have not taken any sympathetic view in this matter.

4.10 That this application is filed bona fide and for the interest of justice.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISION:

5.1 For that, the action of the Respondents for not paying the pension to the applicant is illegal, arbitrary, mala fide and violative of the principles of natural justice.

5.2 For that, the Respondents have deprived the applicant from his legitimate claim of pension and as such the act of the Respondents is not maintainable in the eye of law.

5.3 For that, the Respondent have violated the fundamental rights of the applicant and as such the action of the Respondents is illegal, mala fide with a motive behind.

5.4 For that, the applicant's case is a genuine and also need a sympathetic consideration of the matter by the Respondents and hence the Respondents cannot deny it.

5.5 For the, in any view of the matter the action of the respondents are not sustainable

✓ *KL*

केन्द्रीय प्रशासनिक अधिकरण
 Central Administrative Tribunal
 17 JUL 2001
 गुवाहाटी न्यायपीठ
 Guwahati Bench

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and hence the same is liable to be set aside and quashed.

5.6 For that in similar case the Hon'ble Tribunal directed the respondents for payment of pension to similarly situated persons who is also co-accused with the applicant in the charge sheet filed by the Central Bureau of Investigation. As such, the Respondents ought to give the same benefit to the applicant without approaching this Hon'ble Tribunal. Hence, the action of the Respondents are illegal, arbitrary, mala fide with a motive behind.

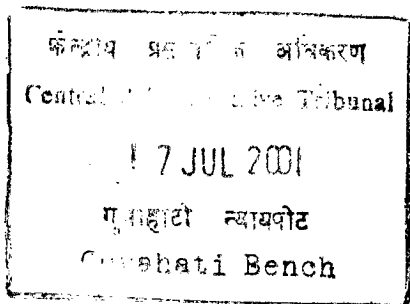
5.7 For that being a model employer the Respondents cannot deprive the applicant to give the similar benefit with similarly situated persons.

The applicant craves leave of this Hon'ble Tribunal to advance further grounds at the time of hearing of this instant application.

6. DETAILS OF REMEDIES EXHAUSTED:

That there is no other alternative and efficacious remedy available to the applicant except invoking the jurisdiction of this Hon'ble Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

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7. MATTERS NOT PREVIOUSLY FILED OR
PENDING IN ANY OTHER COURT:

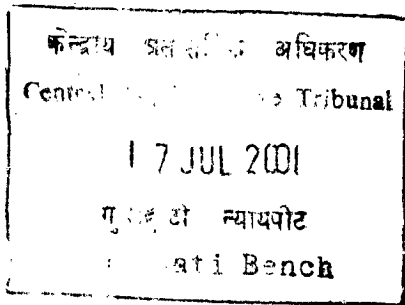
That the applicant further declares that she has not filed any application, writ petition or suit in respect of the subject matter of the instant application before any other Court, authority, nor any such application, writ petition or suit is pending before any of them.

8. RELIEF SOUGHT FOR:

Under the facts and circumstances stated above the applicant most respectfully prayed that your Lordship may be pleased to admit this petition and may call for records of the case, issue rule calling upon the Respondents to show cause as to why the relief should not be given to the applicant and after hearing the parties on the cause or causes that may be shown and on perusal of records your Lordships may be pleased to grant the following relief to the applicant.

8.1 To direct the Respondents to issue regular pension, gratuity, leave salary, and pension commutation money to the applicant immediately without any further delay.

8.2 To direct the Respondents to pay 12% interest in the gratuity amount to the applicant as per similar case decided by the Hon'ble Tribunal in O.A. No. 159 of 1998.



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8.3 Cost of the application.

8.4 To pass any other relief or reliefs to which the applicant may be entitled and as may be deem fit and proper by the Hon'ble Tribunal.

9. INTERIM ORDER PRAYED FOR:

The applicant does not seek any interim relief from this Hon'ble Tribunal at this stage. The Hon'ble Tribunal may be pleased to pass any order or orders as deem fit and proper.

10. Application Is Filed Through Advocate.

11 Particulars of I.P.O.:

I.P.O. NO. 66791208

Date Of Issue 12.7.2001

Issued from Guwahati. G.P.O.

Payable at Guwahati

12. LIST OF ENCLOSURES:

As stated above.

-Verification.

Krishna Mohan Brahma,

VERIFICATION

I, Sri Krishna Mohan Brahma, S/o Late Jella Ram Brahma, Retired Stock verifier, North Eastern Frontier Railways, New Bongaigaon, Chapaguri Road, P.O.- North Bongaigaon, in the district of Bongaigaon, Assam do hereby solemnly verify that the statements made in paragraphs 4.1, 4.2, 4.3, 4.4, are true to my knowledge those made in paragraphs 4.6, 4.7 are being matters of records are true to my information derived therefrom which I believe to be true and those made in paragraph 5 are true to my legal advice and I have not suppressed any material facts.

And I sign this verification today on this the 17th day of July 2001.

Krishna Mohan Brahma
Declarant

To, 'The FA & CAO/CPB'
N.F. Rly, Maligaon -

Sub.:- Non-payment of ^{retirement} gratuity & Pension
Commutation money.

Sir, I have the honor to inform you that I was serving
as a Stock Verifier under you at NBQ & I retired
from service on 30-11-76 (A.N.). But sorry to
inform you that my above mentioned monies have been
withheld by you.

I hereby request you once again kindly to arrange
early payment as I am suffering from acute financial
constraints.

Yours faithfully,

Krishna Mohan Brahma
31/5/77

(KRISHNA MOHAN BRAHMA)

Ex. SV/NBQ.

Chapaguri Road

P.O. North Bongaigaon

Dist. - Dibrugarh, Assam

PH. - 701340.

8/10/77

Attd

1
A. K. S.

- 16 -
N.F. Railway.

ANNEXURE - B

Office of the
FA & Chief Accounts Officer
N.F. Railway/Maligaon.

NO. PNO/CPB/PP/KMB/940 (Closed) Dated. 12.1.99.

Sari Krishna Mohan Brahma,
Chapaguri Road,
P.O. Noth Bongaigaon,
Dist. Bongaigaon,
Assam, Pin-783380.

Sub:- Payment of your withheld, leave
salary, gratuity & Commutation.

Ref:- Your appeal dt. 31.5.99.

With reference to your above appeal dt. 31.5.99
on the subject it is informed you that the vig. clearance
against you has not yet ~~received~~ ~~from the competent authority.~~ ~~As a result the~~ ~~been~~
received from the competent authority. As a result the
finalisation of payment of your above dues has not yet been
~~settled.~~ ~~settled.~~

However, as soon as the clearance from vig.deptt.
is received your case will be settled accordingly.

This is for your information please.

Received

* FA & Chief Accounts Officer/CPB
N.F. Railway/Maligaon.

Attended
SL *12/1/99*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.159 of 1998

Date of decision: This the 16th day of June 2000

The Hon'ble Mr D.C. Verma, Judicial Member

Shri Gadadhar Mukherjee,
C/o Md. A. Khan, Pragjyotish Nagar,
P.O. Guwahati University,
District- Kamrup.

.....Applicant

By Advocates Mr R Dutta and Ms G. Dutta.

- versus -

1. The Union of India, represented by the General Manager, N.F. Railway, Maligaon, Guwahati.
2. The General Manager (Construction), N.F. Railway, Maligaon.
3. The Chief Vigilance Officer, N.F. Railway, Maligaon.
4. The Financial Adviser & Chief Accounts Officer, N.F. Railway, Maligaon.

.....Respondents

Advocate Mr J.L. Sarkar, Railway Counsel.

.....

ORDER

D.C. VERMA (JUDICIAL MEMBER)

Vide this O.A. the applicant has prayed for quashing of the order dated 17.7.1998 (Annexure A/4 to the O.A.) by which payment of DCRG, commutation value of pension and regular pension has been refused.

2. The brief facts of the case are that the applicant retired from the post of Executive Engineer on 31.1.1996. After his retirement, the applicant claims to have been appointed as Consultant in Broad Gauge Construction from 1.3.1996 to 31.6.1996. The applicant was granted provisional pension, but the gratuity amount and the commutation value of pension has not been paid to the applicant till date. Hence this O.A.

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Advocate



3. The respondents' case is that two CBI cases were pending enquiry against the applicant. The first case was treated as closed. In the second case the CBI forwarded the chargesheet No.17 dated 5.3.1998 to the Special Judge, Assam, Guwahati for prosecution against the applicant. The respondents' case is that pension as well as gratuity cannot be released if an employee/officer is not free from CBI/Vigilance case and as such only provisional pension has been sanctioned in favour of the applicant.

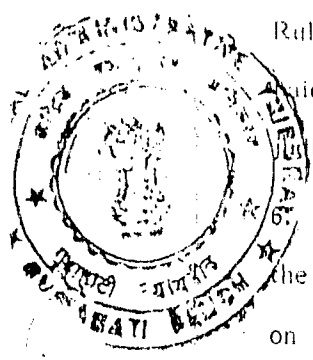
4. Heard the learned counsel for the parties at great length. Learned counsel for the applicant has submitted that as no departmental proceeding or judicial proceeding had been instituted against the applicant on or prior to the date of superannuation of the applicant, the payment of regular pension, commuted value of pension and gratuity cannot be withheld by the respondents.

5. The learned counsel for the respondents has, on the other hand, submitted that as per Rule 10(1)(c) of Railway Service (Pension) Rules, 1993 (hereinafter referred as Rules of 1993) no gratuity can be paid to a Railway servant until the conclusion of the departmental or judicial proceeding and issue of final order thereon.

Admittedly, no departmental proceeding was pending against the applicant. Only an enquiry by CBI was pending against the applicant on the date of superannuation. The applicant himself has admitted that in 1994, the applicant was interrogated by CBI regarding two transactions relating to issue of some material and acceptance of some material from another Chief Permanent Way Inspector during the period the applicant worked as Chief Permanent Way Inspector. When the applicant superannuated on 31.1.1996 even on that date the enquiry was pending with the CBI. The question which arises is whether pendency of an enquiry with the CBI amounts to 'judicial proceeding' as is referred under Rule 10(1)(c) of the Rules of 1993.

7. For answer to the above question, consideration of relevant provisions of the Rules of 1993 is necessary. The relevant portion of

Rule 10.....



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Rule 10(1)(c) of the Rules of 1993 is as below:

"No gratuity shall be paid to the railway servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon....." (emphasis bold)

Under Rule 9 of the Rules of 1993 the President has power to withhold or withdraw pension. The relevant portion of Rule 9 is quoted below:

"9(1). The President reserves to himself the right of withholding or withdrawing a pension or gratuity, or both, either in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Railway, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement." (emphasis bold)

8. Rule 9(5)(a) provides the point from which a departmental proceeding or a judicial proceeding shall be deemed to be instituted. Rule 9(5)(a) is in respect of departmental proceeding and Rule 9(5)(b) is in respect of judicial proceeding. We are, here, concerned with judicial proceeding. Hence Rule 9(5)(b) of the Rules of 1993 is being reproduced below:

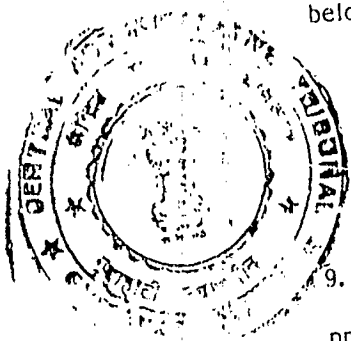
"9(5)(b). judicial proceedings shall be deemed to be instituted,-
(i) in the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognisance, is made; and
(ii) (not relevant)."

From reading of Rule 9(5)(b) it is clear that a criminal judicial proceeding shall be deemed to have been instituted on the date on which a complaint or report of a Police Officer, of which the Magistrate takes cognisance, is made.

10. The learned counsel for the applicant submitted that cognisance is taken on chargesheet. Consequently, the report of the Police Officer referred to in Rule 9(5)(b)(i) as 'report of a Police Officer' indicates the chargesheet. On the other hand, the learned counsel for the respondents submitted that this refers to the F.I.R. which is made to the Police Station.

11. To resolve the issue reference is to be made to the relevant provisions of the Code of Criminal Procedure, 1973 (hereinafter referred as Cr.P.C.). Chapter XII of the Cr.P.C. is on the subject of "Information to the police and their powers to investigate". Section 154 of Cr.P.C.

provides....



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provides for information in respect of cognizable cases. After information in respect of cognizable offence is made to police, the police has to follow the procedure laid down in the subsequent sections, for investigation of the case and thereafter the report of investigation is to be submitted by the investigating officer. In case there is insufficient evidence a report under Section 169 Cr.P.C. is required to be submitted to the Magistrate. But in case evidence is sufficient the report is to be submitted under Section 170 of the Cr.P.C. to a Magistrate empowered to take cognisance of the offence upon a police report. Report under Section 170 is required to be submitted in the form prescribed by the Government stating therein the details as per Section 173(2) of the Cr.P.C. After such a police report is submitted the Magistrate may take cognisance of the offence under Section 190 of the Cr.P.C. Section 190 provides that cognisance can be taken by the Magistrate-

- a) upon receipt of a complaint of facts which constitute such offences;
- b) upon a police report of such facts.

..... (not relevant)



His cognisance is taken by the Magistrate under Section 190 of the Cr.P.C. upon a police report submitted under Section 170 in the form prescribed under Section 173(2) of Cr.P.C. Thus investigation is concluded prior to submission of report under Section 170. So, if the provisions contained in Rule 9(5)(b) of the Rules of 1993 and Section 190(1)(b) of the Cr. P.C. are read together it becomes clear that the words "complaint or report of a Police Officer, of which the Magistrate takes cognisance", used in Rule 9(5)(b)(i) of the Rules of 1993 refers to the police report under Section 170/173 of the Cr.P.C., which is commonly called as chargesheet. Thus the submission of the learned counsel for the respondents, that the report of a Police Officer referred to in Rule 9(5)(b)(i) of the Rules of 1993 is F.I.R. as contained in Section 154 of the Cr.P.C., has no merit. In Section 154 of the Cr.P.C. no police report is submitted. It provides only recording of an F.I.R. police report on which the Magistrate takes cognisance is as referred to in Section 190(1)

of.....

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 J. S. ...
 A. ...

of the Cr.P.C.

12. In view of the discussions made above, it is held that the words "complaint or report of a Police Officer, of which the Magistrate takes cognisance" referred to in Rule 9(5)(b)(i) of the Rules of 1993 is as required under Section 190(1) of the Cr.P.C. After coming to this conclusion, it becomes clear that the judicial proceedings shall be deemed to be instituted as per Rule 9(5)(b) of the Rules of 1993 only after a complaint or report of a Police Officer is made to the Magistrate and not prior to that.

13. In view of the above, under Rule 10(1)(c) of the Rules of 1993, gratuity would not be paid to a Railway servant until the conclusion of the judicial proceedings and issue of final orders thereon. This provision would, however, be applicable only if a judicial proceeding is pending against an employee on the date of superannuation. Under Rule 87(5) of the Rules of 1993 gratuity becomes due immediately after retirement in case no judicial or departmental proceeding is pending against an employee. In the present case the chargesheet was submitted to the Court by the CBI on 5.3.1998. Thus no judicial proceeding or departmental proceeding was pending against the applicant on the date of retirement, i.e. 31.1.1996. The applicant thus became entitled to receive payment of pension and gratuity immediately after retirement. In the present case, therefore, non-payment of regular pension and gratuity immediately on superannuation of the applicant is not valid. The respondents could not have stopped payment of DCRG, regular pension and also commuted value of pension because of pendency of CBI enquiry. CBI enquiry is not a judicial proceeding and only on pendency of judicial proceeding payment of gratuity could have been stopped by the respondents. In view of this the impugned order dated 17.7.1998 (Annexure A/4 to the O.A.) is not in accordance with law and the same is quashed.

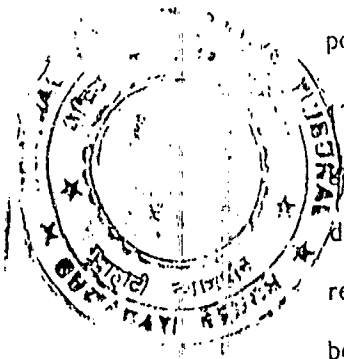


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14. The learned counsel for the respondents submitted that a chargesheet has been submitted by the CBI in the Court of the Special Judge and a criminal case is pending against the applicant and in case the criminal case ends in conviction, the President would not be able to withhold the pension and gratuity for which power is given under Rule 9 of the Rules of 1993. To my mind, this argument of the learned counsel for the respondents has no merit as Rule 8 of the Rules of 1993 takes care of such a situation.

15. The learned counsel for the applicant submitted that the applicant is entitled to interest on gratuity and also interest on the commutation value of pension as the applicant was not allowed to commute his pension immediately on retirement.

16. The learned counsel for the respondents, on the other hand, submitted that the applicant is not entitled to any interest on commutation value of pension as the applicant was being paid provisional pension, which is the full amount of pension admissible to the applicant.



17. Under Rule 87 of the Rules of 1993, interest is payable on gratuity in case the same is authorised after three months from the date when its payment became due on superannuation. The applicant retired on 31.1.1996. Consequently, the gratuity amount should have been paid within three months. As the same was not paid within the said period of three months due to no fault of the applicant, the applicant is entitled to interest on the gratuity amount on expiry of the three months period, i.e. with effect from 1.5.1996.

18. As the applicant was being paid the full amount of pension as provisional pension though he was entitled to receive the same amount as regular pension, the applicant is not entitled to any interest thereon. However, the applicant is entitled to receive the said amount as regular pension.

19. As regards commutation value of pension the applicant is entitled to the same, but the applicant is not entitled to any interest thereon.....

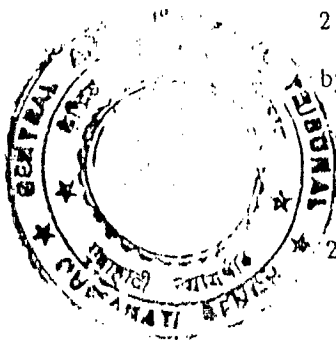
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thereon. Had the applicant commuted the one-third of pension on retirement he would not have received full amount of pension, whereas the applicant was getting the full amount of pension as provisional pension throughout the period. Consequently, on the commuted value of pension he will not be entitled to any interest.

20. In view of the discussions made above, the impugned order dated 17.7.1998, Annexure A/4 to the O.A., is quashed. The respondents are directed to pay to the applicant the gratuity amount with interest at the rate of 12% per annum with effect from 1.5.1996 till the date of payment. The respondents are further directed to pay to the applicant the amount of pension not as provisional pension, but as regular pension. The respondents are also directed to allow the applicant the commuted value of pension.

21. The compliance of the aforesaid directions shall be made by the respondents within a period of three months from the date of communication of this order.

22. The O.A. stands allowed accordingly. No order as to costs.



16.6.2000

sd/MEMBER(J)

nkim

Certified to be true Copy

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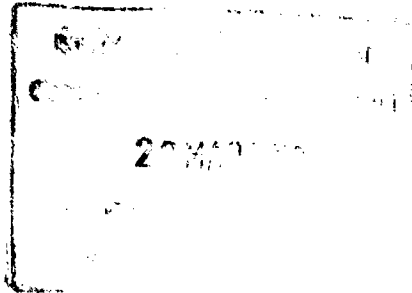
Section Officer (J)

কানুনমাণ অধিকারী (ন্বাভিকস দ্বাৰা)
Central Administrative Tribunal

কেন্দ্ৰীয় প্ৰশাসনিক অধিক্ষেত্ৰ
Guwahati Bench, Guwahati-8
গুৱাহাটী ন্বাভিকস, গুৱাহাটী-৮

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28/6/2000

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Filed by
Jishnu Kumar

By your order, the undersigned, Deputy Chief Accounts Officer, Ministry of Railways, Government of India, has been authorized to sign and file the above documents on behalf of the undersigned.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH

O.A No. 261/2001

Sari Krishna Mohan Brahma

...Applicant

versus

Union of India & Ors.

...Respondents

Written statement on behalf of Respondents

The answering Respondents beg to state as follows:

1. That the answering Respondents have gone through the copy of the OA as served and they have understood the contents thereof. Save and except the statements which are specifically admitted hereinbelow, other statements made in the OA are categorically denied. Further the statements which are not born on records are also denied.

2. That with regard to the statements made in paragraph 1 of the OA, the answering Respondents does not admit anything contrary to the records of the case. It is further stated that the CVO/MLG vide his letter No. Z/Vig/168/2/Pt. XXIX dated 8.11.96 intimated that a prosecution case has been registered against the Applicant, BV and others in respect of shortage of CST-9 pots by SP/CBI/Shilling. Railways comments on CBI's report has been sent to Railway Board vide their letter No. Z.Vig/94/1/178/92 with GM's recommendation for major penalty proceeding against the Applicant. Board's

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advice is still awaited. So, due to non-receipt of clearance from Vigilance pensionary benefits except provisional pension could not be given to the Applicant.

3. That with regard to the statements made in paragraphs 3, 4.1 and 4.2 of the OA, the Respondents does not admit anything contrary to the relevant records and reiterate and reaffirm the statements made hereinabove.

4. That with regard to the statements made in paragraph 4.3 of the OA, it is stated that CBI recommended for prosecution of the Applicant, Ex-stock verifier along with other charged officials including two Gazetted officers vide their letter No. 3/5(A)/94-SMG-2131 dated 14.12.95. Accordingly, the case was sent to Railway Board along with connected documents for processing CVC's stage 1 advice on 8.2.96 (CVC's 1st stage advice was necessary since two of the co-accused involved in the subject case was Gazetted officers). CVC's 1st stage advice was received on 29.8.97 agreeing with CBI's recommendation for prosecution of the Applicant. As per advice of CVC sanction for prosecution from competent authority in the case of the Applicant was obtained on 14.10.97 and sent to CBI for further action. In the mean time he retired from service on superannuation on 30.11.96.

Due to the time required for completing the aforesaid process, no chargesheet could be issued to

the Applicant, while he was still in service.

5. That with regard to the statements made in paragraphs 4.4, 4.5 and 4.6 of the OA, the Respondents does not admit anything contrary to the relevant records and reiterate and reaffirm the statements made hereinabove.

6. That with regard to the statements made in paragraph 4.7 of the OA, it is stated that the case referred to by the Applicant is not applicable in the instant case.

7. That with regard to the statements made in paragraphs 4.8, 4.9 and 4.10 of the OA, the answering Respondents does not admit anything contrary to the relevant records and reiterating and reaffirms the statements made hereinabove.

8. That under the facts and circumstances stated above the instant OA is not maintainable and liable to be dismissed with cost.

Verification

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VERIFICATION

I Shri ROBIN DEKA, aged about 42 years, son of Late Sh. K. H. Deka, resident of Maligaon, Guwahati-11, presently working as Dy. CAO/G, N.F. Railway do hereby verify and state that the statement made in paragraphs 1, 3 & 5 & 8 are true to my knowledge and those made in paragraph 2 and 4 being matters of records are true to my information derived therefrom, which I believe to be true and the rest of my humble submissions before this Hon'ble Tribunal. I am also authorised to competent to sign this verification on behalf of all the Respondents.

And I sign this verification on this 19th day of March, 2002.

✓ Deba

Deponent

গুৱাহাটী বাজাৰ (১০),
 শ্ৰীমতী কীৰ্তীয়া দেৱী, পানিবাহী, গুৱাহাটী-১
 Deputy Chief Accounts Officer
 N.F. Maligaon Guwahati-1