

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK
O.A.No.260/630/2015

Date of Reserve:11.01.2019

Date of Order: 22.01.2019

CORAM:
HON'BLE SHRI SWARUP KUMAR MISHRA, MEMBER(J)

Kahnu Charan Patnaik, aged about 71 years, S/o. Late Nanda Kishra Patnaik of Village-Dadhi Machhagadia, PS/Dist-Khurda – at present C/o.Gitanjali Patnaik, Flat Block 1/5D, Dream Excellency Kalipark, Bablatala Rajarhat, Kolkata-700 136.

...Applicant

By the Advocate(s)-M/s.N.R.Routray
L.N.Patel
P.K.Das
S.Mohanty

-VERSUS-

Union of India represented through:

1. The Comptroller and Auditor General of India (CAG), Ministry of Finance, Deen Dayal Upadhya Marg, New Delhi.
2. Accountant General (A&E), Odisha, Bhubaneswar, Khurda.

...Respondents

By the Advocate(s)-Mr.S.K.Patra

ORDER

PER SWARUP KUMAR MISHRA, MEMBERA(J):

In this Original Application under Section 19 of the Administrative Tribunals Act, 1985, applicant has sought for the following reliefs:

- i) That the order dated 27.7.2015 under Annexure-A/3 be quashed.
- ii) That the respondents be directed to release the gratuity amount with interest @ 9% per annum.
- iii) That to grant such other/further relief(s) to which the applicant may be found entitled in the facts and circumstances of the case.

2 The genesis of the matter is that the applicant while working as Accountant on deputation to the O/o. Deputy Director, Central Government Health Scheme(CGHS), Bhubaneswar during the year 1997-98 had been charge-sheeted for sustaining loss to the Government to the tune of

Rs.2,51,457.33 under Section 420/120B IPC by the CBI, Bhubaneswar which formed the subject matter in R.C.No.25(A) of 2001. However, the Special C.J.M. (CBI), Bhubaneswar vide judgment dated 23.09.2008 convicted the applicant to undergo R.I. for two years and to pay a fine of Rs.2000/- in default to undergo R.I. for three months under each count. Against this judgment, the applicant preferred Criminal Appeal No.65/2008 before the Sessions Judge, Khurda. Vide judgment dated 23.04.2014 of the Sessions Judge, Khurda set aside the sentence of imprisonment and fine as ordered by the Special C.J.M.(CBI), Bhubaneswar and thus, acquitted the applicant. The applicant, consequent upon his acquittal, submitted a representation to Respondent No.2 on 05.05.2015 for release of withheld gratuity along with interest in his favour. In response to this, the applicant was intimated vide letter dated 27.07.2015 (A/3) as under:

“Sub: Status of CBI, Bhubaneswar Branch Case no.RC.25(S)/2001-BBS against judgment of Additional Sessions Judge, Bhubaneswar in Criminal Appeal No.69-13/65-08 by Sri Kanhu Charan Patnaik, Retired Supervisor of this Office:

In continuation of this office Memo No.Admin.1-16-76-KCP (P-204)/543 dated 13.07.2015, Sri Kanhu Charan Patnaik, Retired Supervisor is intimated that the CBI has already filed Revision/Appeal before the Honourable High Court of Odisha, Cuttack against the acquittal judgment dated 23.08.2014 of Ld.Additional Sessions Judge, Bhubaneswar in the Criminal Appeal No.69-13/65-08 filed by Shri K.C.Patnaik as intimated by the Addl.S.P., CBI, ACB, Bhubaneswar vide his letter No.5717/RC.25(S)/2001/Trial-CBI/BBS dated 15.07.2015.

Pending decision of Hon'ble High Court, his held over gratuity cannot be released”.

3. Aggrieved with this, the applicant has filed this O.A. praying for the reliefs as mentioned above.

4. Heard the learned counsels for both the sides and perused the records. During the course of hearing, learned counsel for the applicant brought to my notice the order dated 14.03.2018 passed by the A.D.R.(Judl) of the Hon'ble High Court of Orissa in CRLREV No.439 of 2015 which reads as under:

"The defects as pointed out by the S.R., not having been removed during the stipulated period, the CRLREV stands dismissed pursuant to Court's Order No.3 dt. 29.6.2016".

5. From the above, it is clear that the Criminal Revision/Appeal filed by the CBI against the judgment dated 23.08.2014 of the Additional Sessions, Judge, Bhubaneswar in the Criminal Appeal No.69-13/65-08 has since been dismissed. Further, during the course of argument, learned counsel for the applicant brought to my notice a judgment dated 6.4.2010 of the Hon'ble Gujarat High Court in Rajnagar Textile Mills & Gunvant Lalchanddas Kayastha [2010 (127) FLR 1011] in which it has been held as under:

"There is no provision made in Gratuity Act which give power to employer to withhold amount of Gratuity. There is only provision made in section 4(6) which give power to employer to forfeiture of amounts of gratuity but there is distinction between forfeiture and to withhold amount of gratuity. Therefore, action of petitioner withholding amounts of gratuity because of CBI case is pending is without jurisdiction and contrary to provision of Gratuity Act, 1973".

6. In this case, however, the criminal revision/appeal filed by the CBI, as noted above, has already been dismissed. In view of this, there is no embargo on the part of the respondents to release withheld gratuity in favour of the applicant.

7. Having regard to what has been discussed above, the communication dated 27.07.2015 (A/3) whereby it has been stated that pending decision of the Hon'ble High Court held over gratuity cannot be released is quashed and set aside. Respondents, are therefore, directed to release the withheld amount

of gratuity in favour of the applicant within a period of thirty days from the date of receipt of this order.

8. As regards payment of interest on the withheld gratuity is concerned, respondents are directed to consider the same in the light of relevant rules and instructions on the subject and pass a reasoned and speaking order within a period of thirty days from the date of release of withheld gratuity in favour of the applicant. However, if the applicant is considered entitled to interest, the same shall be paid in his favour with the simultaneous issuance of the speaking order.

9. In the result, the O.A. is allowed as above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

BKS