

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCHCIRCUIT BENCH AT RANCHIOA/051/00107/2017Date of Order:- 30 -Nov-2018**C O R A M**

HON'BLE MR. JAYESH V.BHAIRAVIA, MEMBER (JUDL.)

HON'BLE MR. B.V.SUDHAKAR, MEMBER (ADMN.)

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Shri Ram Pratap Singh, son of Shri Shree Krishna Singh, aged about 61 years, resident of House no.6, East Abhiyanta Nagar, PO & PS-Ashiyana Nagar, District-Patna.

.....Applicant.By Advocate:- Mr. Ravi Kumar Singh

Vs.

1. Union of India through Secretary, Ministry of Forest, New Delhi.
2. The State of Jharkhand through its Chief Secretary, Project Bhawan, PO & PS-Dhurwa, District-Ranchi.
3. The Principal Secretary, Department of Forest, Environment and Climate Change, Office situate at Nepal House, PO & PS-Doranda, District-Ranchi.
4. The Principal Chief Conservator of Forest, Jharkhand Office situate at Van Bhawan Doranda, PS-Doranda, District-Ranchi.
5. The Accountant General (A&E), Jharkhand, Post & Police station-Doranda, District-Ranchi.Respondents.

By Advocate:- Mr. H.K.Mehta, Sr. Standing Counsel for U.O.I.

Mr. R.A.Gupta, Standing Counsel for Govt. Of Jharkhand.

Mr. Suresh Kumar, counsel for Accountant General.

O R D E R**Per B.V.Sudhakar, Member (Admn.):**

2. The OA is filed for non grant of retirement benefits to the applicant who has superannuated from service on 31.10.2016.

3. The brief facts of the case are that the applicant was appointed as Assistant Conservator of Forest on 19.05.1981 in the pay scale of Rs.700-1300. On re-organisation of the State of Bihar he was allotted

to Jharkhand cadre. A vigilance case was lodged against the applicant vide Case No.35/2003 which is still at the stage of trial. The applicant retired from service on 31.10.2016 when he was working as Special Secretary, Tourism, Art, Culture, Sports and Youth Affairs with salary of Rs.2,05,600/- per month. The applicant claims that a sum of Rs.50,22,400/- is due to him from the respondent organisation. As the same has not been released to the applicant, the present OA has been filed.

4. The contention of the applicant is that though he has retired on 31.10.2016 but his retirement benefits have not been released. A sum of Rs.20 Lakhs towards gratuity, Rs.22 lakhs towards leave encashment and a sum of Rs.8,22,400/- towards pension, totalling to Rs.50,22,400/- is due to the applicant from the respondents. Despite representing to the 2nd & 3rd respondents for release of the retirement benefits, there has been no relief. The pending Vigilance Case No. 35/2003 does not have any substance against the applicant. Therefore, this should not be the ground to hold his retirement benefits. For a similarly situated officer Doodh Nath Pandey, who was accused in fodder scam, the Hon'ble Jharkhand High Court vide its judgment dated 28.08.2007 has settled the issue by ordering that the employer i.e. the State of Jharkhand does not have any power to withhold leave encashment and pension. At the moment there is no disciplinary case against the applicant. Similarly, in respect of Shri Anand Kumar, an Indian Forest Service Officer of 1978 Batch, the respondents have released the entire retirement benefits to him

although a Vigilance Case No. 29/1994 is pending against him. Therefore, in view of the colleague officers being paid the retirement benefits, the applicant claimed that he should also be treated in a similar manner and the retirement benefits have to be released for him too. In essence, the applicant claims that the respondents have no authority to withhold the retirement benefits and not releasing them indicates the vindictive and bias attitude of the respondents.

5. The respondents contend that in accordance with the orders of the Patna Bench of this Tribunal dated 10.08.2017 the applicant was paid the amount of Rs.20,97,120/- due towards leave encashment of 300 days vide notification no. 3466 dated 18.08.2017 of the Department of Forest, Jharkhand. The provisional pension of 90% of the total pension was also sanctioned vide letter no. 3467 dated 21.08.2017 and the Pension Payment Order dated 30.08.2017 was also released in favour of the applicant. As the applicant was involved in a Vigilance Case the respondents approached the Finance Department which opined release of provisional pension and leave encashment due to the applicant as per Rule 6 of AIS (Death-cum-Retirement Benefits) Rules, 1958. There was delay in releasing the cited benefits because of procedural formalities.

6. Heard the learned counsel for both the sides. Learned counsel for the applicant contended that the gratuity amount has still not been released though he is eligible to receive the same. The counsel for the respondents vehemently opposed the same stating that the extant rule does not permit the same.

7. The applicant has been granted the leave encashment and 90% provisional pension by the respondents. However, the bone of contention is about release of gratuity amount. In this regard Section 60 of the Gratuity Act states that no **gratuity** payable under the **Act** shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court. It may also be noted that **Section 60(1) (g)** of the Code of Civil Procedure also protects gratuities payable to pensioners of any employer from attachment.

In fact the observation of the Honourable High Court of Andhra Pradesh in D. Vimala vs Canara Bank, Mettuguda, on 23 June, 1997 reported in 1997 (6) ALT 62 in regard to deduction from the gratuity, wherein Honourable Supreme Court observation find a mention, given here under fully covers the present case.

“5. In the decision of the Supreme Court reported in [Union of India v. J. C. Fund & Finance](#) , it was observed by their Lordships that the Provident Fund **amount**, pensions and other compulsory deposits which are payable to an employee will retain their character until they reach the hands of such employee even if he has already retired from service. The earlier decisions of the Supreme Court reported in [Union of India v. Radhah Kissen](#) was also referred to by their Lordships in the above cited decision reported in [Union of India v. J. C. Fund & Finance](#) (supra) and it was observed that so long as the **amount** of provident fund dues, the nature of such dues is not altered till they are actually paid to the Government

servant who is entitled to it on retirement or otherwise; that the Government is a trustee for such **amounts** due to the Government employee even after his retirement. The learned Counsel for the revision petitioner has also tried to rely upon another decision of the Supreme Court reported in [Calcutta Dock Labour Board v. Sandhya Mitra](#) 1985 I CLR 229 in which the question that arose for consideration is whether the **gratuity amount** due to an employee is liable for **attachment**. After referring to the relevant provisions of the [Payment of Gratuity Act](#), 1972 and also the provisions of [Section 60\(1\)](#) (proviso) (g), C.P.C., it is observed by their Lordships that [Section 13](#) of the Payment of **Gratuity** Act gives total immunity to **gratuity** from **attachment**. In the case concerned in that decision, the **gratuity amount** was payable to workman employee under the Calcutta Dock Labour Board and such **amount** was sought to be **attached** in the execution proceedings taken against the widow and son of the deceased employee after his death for rearranging the **amount** due under a decree passed against the employee. It is, therefore, clear from the observations made by their Lordships in the above cited decision of the Supreme Court that even in a case where the **attachment** of the **gratuity amount** is sought in the execution proceedings launched against the legal representatives of the deceased employee to whom the **gratuity amount** was payable, such **gratuity amount** is not

liable for **attachment**. As already stated above, these decisions of the Supreme Court were evidently not brought to the notice of the Kerala High Court when the matter was argued in the above said matter relating to the decision reported in *Satyavathy v. Bhargavi (supra)*.gratuity.”

Further, the applicant has quoted the Hon’ble Supreme Court judgment in **Union Bank of India & Ors. Vs. C.G.Ajay Babu and Another ((2018) 9 SCC 529)** in support of his contention. Thus, as per the Act and judgments of the superior judicial forum cited above, it is irregular to deduct or hold the gratuity amount of any employee. Therefore, the OA succeeds in view of the aforesaid discussion. The respondents have already granted relief to the applicant in regard to payment of provisional pension and leave encashment. The only element left out is gratuity. Hence, the respondents are directed to consider as under:-

- (i) To release the gratuity amount to the applicant within period of 60 days from the date of this order;
- (ii) The OA is thus, allowed to this extent with no order as to costs.

Sd/-

(B.V.Sudhakar)
Member (Admn.)

Sd/-

(Jayesh V.Bhairavia)
Member (Judl.)

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