

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 181 of 2018

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Shri Narottam Giri, aged about 72 years, Son of Late Hadibandhu Giri, Ex-Tax Assistant, Income Tax Office, Baripada and a permanent resident of Ward No. 19, Baghraroad, Baripada, Dist-Mayurbhanj.

.....Applicant.

VERSUS

1. Union of India, represented through the Secretary, (Revenue), Ministry of Finance, Department of Revenue, Central Secretariat, New Delhi-110001.
2. The Chairman, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001.
3. The Principal Chief Commissioner of Income Tax, Odisha Region, Ayakara Bhawan, Bhubaneswar, Dist-Khurda.
4. The Principal Commissioner of Income Tax, Aayakar Bhawan, Shelter Chhach, Cuttack.
5. The Zonal Accounts Officer, CBTD, Aayakar Bhawan, 5th Floor, Rajaswa Vihar, Bhubaneswar.
6. Income Tax Officer, Ward No.1, Baripada, Dist-Mayurbhanj.

.....Respondents.

For the applicant : Mr. J. M. Pattnaik, Ld. Counsel

For the respondents: Mr. C. M. Singh, Ld. Counsel

Heard & reserved on : 12.09.2019

Order on : 05.12.2019

O R D E R

Per Mr. Swarup Kumar Mishra, Member (J)

The applicant has filed this OA seeking the following reliefs:-

“(a) To quash the order of rejection dated 21st October, 2014(Annexure-A/1) and direct the respondents to treat the resignation of the applicant as Voluntary Retirement as per the law laid down by the Hon'ble Apex Court, quoted above, and grant him the minimum pension with effect from the date of retirement within a stipulated period to be fixed by this Hon'ble Court. .

b) Further be pleased to pass any other order/orders as would be deemed fit and proper in the circumstances of the case.

c) To allow this OA with costs; ”

2. In this case, the applicant joined the pensionable establishment under the respondents as UDC on 10.03.1969. Thereafter he became Tax Assistant and while working under the Respondent No.7, he submitted a technical resignation which was duly accepted w.e.f. 01.06.1979. As the applicant by then had completed more ten years regular service in the pensionable establishment, the applicant claims that he is entitled to pension. It is further claimed by the applicant that his prayer for pension and pensionary benefits was rejected vide letter dated 21.10.2014(Annexure-A/1) by invoking the provisions of Rule 26(1) of the CCS Pension Rules, which provides that resignation from a service or post entails forfeiture of past service. Being aggrieved, the applicant filed an appeal on 21.01.2016 vide Annexure-A/2 and as no decision was taken by the authorities concerned, he subsequently, filed another representation dated 19.02.2018 vide Annexure-A/3 for payment of retrial benefits on the ground that the decision taken vide Annexure-A/1 to the application is violative of Fundamental Rights guaranteed under Article 21 of Constitution of India and Right to Property and Article 300(A) of the Constitution of India. He had also filed a representation on 19.02.2018 before the Principal Chief Commissioner of Income tax i.e. Respondent No. 3. Since there was no decision taken, the applicant being aggrieved has approached this Tribunal, paying for the relief as mentioned above.

3. Respondents have filed their counter inter-alia mentioning that the applicant had never applied for pension after acceptance of his resignation. His resignation was accepted on 20.08.1979 and was communicated to him on the same date vide Annexure-R/1. After a gap of 32 years, the applicant applied for grant of pension and other retirement benefits. The decision was communicated by Respondent No.6 vide letter dated 21.10.2014(Annexure-A/1 see) based on the clarification issued by Respondent No.5. The applicant did not challenge the said order and therefore his claim is barred by limitation under Section 21 of the Administrative Tribunal Act, 1985. Respondent No. 5 was not the Appellate Authority for taking decision against his own decision. On the basis of the request made by the applicant as per the letter dated 19.02.2018, he was requested by Respondent No. 3 to produce copies of some documents, viz;

1. *Application for Technical Resignation.*
2. *Acceptance of technical Resignation by the Competent Authority.*
3. *Application for pension.*
4. *Rejection order for pension of the Competent Authority.*

as per the communication vide Annexure-R/2, but no reply has yet been received from the applicant. It is further averred by the respondents in their

counter that “Chapter-III of the CCS Pension Rule 1972 contains ‘qualifying service’. Rule 26 of the said Chapter provides “resignation from a service, or a post, unless it is allowed to be withdrawn in the public interest by the Appointing Authority, entails forfeiture of past service.” On the basis of the above rule, as the applicant has resigned from service, it is not treated as qualifying service for the purpose of pension. His request for grant of pension was turned down by the Accounts Officer(Respondent No.5) accordingly. Rule 49 of the CCS Pension Rule 1972 deals with amount of pension which is based on qualifying service. So without qualifying service, amount of pension is not coming to the picture.”

4. It has been further averred by the respondents that “the respondents are not authorized to sanction pension in the absence of any specific rule formed by the Govt. His resignation is not a technical resignation and the Govt servant has not retired in accordance with the provisions of Rule-49(2) of the pension rules after completing the qualifying service of not less than 10 years, hence not eligible for grant of pension”.

5. The applicant has filed an MA No. 44619 on 19.06.2019 for condonation of delay mentioning that “the claim of the applicant was rejected vide order dated 21.10.2014 (Annexure-A/1 and this OA was filed on 15.03.2018 due to financial crunch.”

6. Applicant has also filed rejoinder to the counter-reply in which he has mentioned that “**the applicant is entitled to the benefit as per the decision of the Hon’ble Apex Court in the case of Praduman Kumar Jain Vs UOI and others as also of the Hon’ble High Court of Calcutta in the case of Dr. Sajal Kanti Chakraborty Vs State of West Bengal. Thus, the stand taken in Paragraphs 6 and 7 are not valid at all.**”

7. It has been submitted by the applicant that entitlement for pension and pensionary benefits is a recurring cause of action. He has also filed MA No. 18/19 for the same purpose mentioning that he belongs to SC community and residing in a remote area of Mayurbhanj District besides, he is a Senior Citizen, and does not know the hypertechnicality of law of limitation.

8. Objection has been filed by the respondents to MA No. 446/19, inter-alia mentioning that the cause of action arose in the year 1979 and the applicant did not taken any step till the year 2011 when he made a representation after about 32 years. It is also mentioned by the respondents that as would be evident from Annexure-A/2 dated 21.01.2016, the applicant has signed the letter stating to be an Advocate. Therefore, the plea taken by him that due to

financial crunch, he could not approach this Tribunal within the prescribed period of limitation is far from truth. On the contrary, after acceptance of his resignation in the year 1979, the applicant was continuing as a lawyer for all these 32 years and this is the reason why he did not approach the respondents for pension within a reasonable time frame. According to respondents, the order dated 21.10.2014(Annexure-A/1) makes it clear that no pension is admissible as per the rules and therefore, repeated representations will not abridge the limitation. Hence, the OA should be dismissed.

9. We have considered the rival submissions. Since the rule does not permit for sanction of pension, the application merits no consideration.

10. The applicant has also relied on decisions of Hon'ble Supreme Court in his favour. The said decisions are not applicable to the facts and circumstance of the present case and accordingly distinguishable.

11. In addition to the above, we would like to observe that this case suffers from delay and latches abnormally which has not been satisfactorily explained in the petition for condonation of delay.

12. In view of the above, the OA is dismissed being devoid on merit with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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