

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH ALLAHABAD

Dated: This 11th day of December 2019

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER – J

Original Application No. 330/00735 of 2017

Ram Lakan S/o late Late Ram Naresh aged about 61 years, retired Khalasi/Engg. N. Railway R/o Village & Pati Bahlolpur Bazar, Pratapgarh, presently residing C/o Col. A.N. Yaav 5, Ganpati Awas, Inderpur Road, P.O. Dandi, Allahabad 211008

.....Applicant

By Advocate: Shri Sudama Ram/Shri Shiv Kumar

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Lucknow.
3. Senior Divisional Engineer (II), Northern Railway, Lucknow.
4. Assistant Divisional Engineer, Northern Railway, Pratapgarh.
5. Sr. DFM, Northern Railway, DRM's office, Lucknow.

.....Respondents

By Advocate: Shri Ajay Kumar Rai/Sri G.K. Tripathi/Sri M.K. Singh

ORDER

1. The present O.A. has been filed by the applicant – Ram Lakan seeking following reliefs:-

"(i) ***The Hon'ble Tribunal may graciously be pleased to issue a writ, order or direction in the nature of mandamus commanding the respondents to pay he withheld gratuity Rs.602438 of applicant which has not been paid to the applicant so far and illegally shown in PPO No. 20167030601578 dated 29.12.2016 issued by Sr. DFM/NR/Lucknow, mentioning in column DCRG Rs.602438 "already paid by the Railway, hence no action is required by Bank" but it has not been paid till date by the respondent since his retirement i.e. 31.12.2016 causing sufferings.***

- (ii) ***The Hon'ble Tribunal may further be pleased to direct the respondents to pay 18% compound interest on the delayed amount of his DCRG Rs.602438/- from 01.01.2017 onward till the actual payment of DCRG is made by the respondents.***
- (iii) ***The Hon'ble Tribunal may further be pleased to pass any other suitable order or direction which is deemed fit and proper in the circumstances of the case.***
- (iv) ***Award cost of the application in favour of the applicant".***

2. Case of applicant is that on his retirement on 31.12.2016, he was paid all his retiral dues except D.C.R.G. amounting to Rs.602438/-. As per PPO No. 20167030601578 dated 29.12.2016 issued by Sr. DFM, N.R. Lucknow/respondent No.5, it was mentioned against column DCRG Rs.602438/- "already paid by the Railway, hence no action is required by Bank" but the same has not been paid by the Railway till date. Thus, in PPO, it is wrongly stated that gratuity has been paid to the applicant. The respondents have withheld the amount of DCRG without giving any reason or issuing show cause notice for withholding the same.

3. It is the further case of applicant that on asking the department, he was informed verbally that 'No Due Certificate' has not been given by SSE (P. Way) Northern Railway Pratapgarh but since the applicant was holding a post of Group 'D' as Khalasi/Helper, he was not entrusted with any material which could be in his charge. Hence, the present O.A. for directing the respondents to pay the withheld gratuity of Rs.602438/- along with interest @ 18% compound interest from 01.01.2017 till payment of the said amount.

4. In the counter reply, respondents have taken the plea that applicant was appointed as Store Khalasi in Pratapgarh and after his retirement,

he had handed over the charge of some documents but did not handover the charge of Book related to First Class from Sl. No. 797901 to 798000, therefore the said amount has been withheld by the authority concerned. That an enquiry is going on as per Annexure CA-2 and therefore, applicant is not entitled to disbursement of the gratuity amount along with interest till conclusion of the enquiry. It may be noted that the enquiry referred to in Annexure CA-2 says that "**ft I dh tkp RPF/irki x<+1e0d0 ds vknshud kj½ }kjk dh tk jgh gS**".

5. I have heard and considered the arguments of learned counsel for the parties and gone through the pleadings as well as their written arguments. Learned counsels for the parties have during the course of argument reiterated the pleas taken by them in their respective pleadings.
6. In the present case, it is an undisputed fact that the gratuity has not been disbursed by the respondents. So, the limited question is confined to the dispute as to whether the respondents can withhold the gratuity of the applicant without adopting due process of law.
7. The withholding of gratuity is governed by Rules 9 and 10 of Railway Services (Pension) Rules, 1993 (hereinafter referred to as the 'Rules'), which reads as under:-

"Rule 9. Right of the President to withhold or withdraw pension. (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;

Provided that the Union Public Service Commission shall be consulted before any final orders are passed.

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees three thousand five hundred per mensem.

(2) The departmental proceedings referred to in sub-rule (1)

(a) if instituted while the railway servant was in service whether before his retirement or during his re-employment, shall after the final retirement of the railway servant, be deemed to be proceeding under this rule and shall be continued and concluded by the authority by which they commenced in the same manner as if the railway servant had continued in service.

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President;

(b) if not institute while the railway servant was in service, whether before his retirement or during his re-employment-

(i) shall not be instituted save with the sanction of the President; (ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which and order in relation to the railway servant during his service.

(3) In the case of a railway servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in rule 10 shall be sanctioned.

(4) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one third of the pension admissible on the date of retirement of a railway servant.

(5) For the purpose of this rule -

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the railway

servant or pensioner, or if the railway servant has been placed under suspension from an earlier date, on such date; and

(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 cognizance, is made; and

(ii) in the case of civil proceedings, on the date the plaint is presented in the Court.

Rule 10. Provisional Pension where departmental or judicial proceedings may be pending.

(1) (a) In respect of a railway servant referred to in sub-rule (3) of Rule 9, the Accounts Officer shall authorise the provisional pension not exceeding the maximum pension which would have been admissible on the bases of qualifying service up to the date of retirement of the railway servant or if he was under suspension on the date of retirement, upto the date immediately preceding the date on which he was placed under suspension.

(b) The Provisional pension shall be authorised by the Accounts Officer during the period commencing from the date of retirement upto and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

(c) No gratuity shall be paid to the railway servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon; provided that where departmental proceedings have been instituted under the provisions of the Railway Servants Discipline and Appeal Rules, 1968, for imposing any of the penalties specified in clauses (i), (ii), (iii a) and (iv) of rule 6 of the said rules, the payment of gratuity shall be authorised to be paid to the railway servant.

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such railway servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period".

8. Rule 9 postulates two situations where the gratuity can be withheld i.e. departmental proceedings instituted while the Railway servant was in service or when the Railway servant was not in service and which second condition would be governed by Rule 9 (2) (b) of the Rules. Rule 9 further lays down that recovery can be directed from the gratuity for any pecuniary loss caused to the Railways, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service and that too by the order of the President.

9. Rule 9 also lays down that departmental proceedings shall be deemed to be instituted on the date on which statement of charges is issued to the pensioner and judicial proceedings shall be deemed to be instituted when the Magistrate takes cognizance in a criminal case and in case of civil proceeding, on the date of presentation of the plaint in the Court.

10. Learned counsel for the applicant has referred to **State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr. 2013 (3) AISLJ, 370, Gella Ram Vaswani Vs. Municipal Corporation of Delhi – 2005 (2) AISLJ 39** and **F.R. Jesuratnamm Vs. Union of India and others, 1990 Supreme Court Cases, (L&S) 370** in support of his contention. Undisputedly principle of law held in the above cited case laws are very clear that entitlement to gratuity is a constitutional right and being property cannot be withheld. Further the gratuity must be paid without waiting for 'no dues certificates' and that interest is to be paid on delayed payment of gratuity.

11. In the present case, what to speak of a finding being recorded against the applicant in a departmental or judicial proceedings, no

such proceedings were pending against the applicant at the time of his superannuation. Therefore, there was no valid reason for the respondents to withhold payment of gratuity to the applicant. Respondents are liable to disburse the gratuity amount to the applicant. It also can be seen from the facts of the case that the delay in payment was not on account of any fault of the applicant but due to inaction of the respondents in its disbursement, accordingly, applicant is also entitled to interest for the delayed payment of his gratuity.

12. In view of the facts and circumstances of the case, the O.A. is allowed. Respondents are directed to disburse the gratuity amount as per the P.P.O. Respondents are also directed to pay interest @ 8% on the gratuity amount w.e.f. 30 days after the date of superannuation till the date of payment. No order as to costs.

(RAKESH SAGAR JAIN)
Member (J)

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