

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 869 of 2016

Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)

1. Sri Debendranath Mohanty, aged about 67 years, Son of Late Nrusingha Charan Mohanty, At: Pitambarpur, PO: Rahadinga, PS: Tirtol, dist. Jagatsinghpuru, retired Senior Clerk, Office of Senior Personnel Officer/Construction, East Coast Railways, Bhubaneswar.

.....Applicant.

VERSUS

1. Union of India, represented through the General Manager, East Coast Railways, Rail Bhawan, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Chief Personnel Officer, East Coast Railways, Rail Bhawan, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
3. Chief Administrative Officer, East Coast Railways, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
4. Senior Personnel Officer/Construction, East Coast Railways, Rail Vihar, Chandrasekharpur, Dist. Khurda.

.....Respondents.

For the applicant : Mr. B. P. Satapathy, Advocate

For the respondents: Ms. S. Rajaguru, Advocate

Heard & reserved on : 28.02.2020

Order on : 18.05.2020

O R D E R

Per Mr. Swarup Kumar Mishra, Member (J)

The applicant has prayed for the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

- (i) *Let the impugned order dated 23/26.09.2016 passed vide Annexure-A/9 in the facts and circumstances of the case be declared as illegal and as such liable to be set aside;*
- (ii) *Let the respondents be directed to pay interest at the prevailing Bank interest rate on the amount as due to the applicant towards his retirement benefits for the period from 01.03.2009 to till the date of payment and release the same within a stipulated time;*
- (iii) *Let the respondents be further directed to sanction and release the productive linked bonus as due and admissible for 2008-09 within a stipulated time;*
- (iv) *Let the respondents be further directed to sanction the benefit of MACP in favour of the applicant w.e.f. 01.09.2008 and release the*

financial benefits as due and admissible on such sanction within a stipulated time;

- (v) *Let any other appropriate order/orders, direction/directions may kindly be passed which would be deemed fit and proper in the facts and circumstances of the case.*

2. The case of the applicant as averred in brief is that the applicant had joined in Railway service on 01.01.1983 and confirmed in service on 09.01.1991 under the then South Eastern Railways. The applicant was then empanelled for promotion/regularization as Junior Clerk after he was selected on basis of written examination vide order dated 22/23.01.1998 at Annexure-A/2. Subsequently the applicant was regularized as Junior Clerk w.e.f. 01.02.1992 and promoted as Senior Clerk on adhoc basis w.e.f. 01.02.1994 vide office order dated 11.06.1998 Annexure A/4. The Deputy Chief Personnel Officer (Construction), SE Railways vide office order dated 24.07.2002 Annexure A/4 passed an order revising the date of promotion of the applicant as Senior Clerk with a further direction to recover the promotional benefit. The applicant then approached the Hon'ble Tribunal by filing OA No. 691/2002 wherein the Hon'ble Tribunal disposed of the OA vide order dated 08.02.2008 by quashing the order of recovery and directing to maintain the office order at Annexure A/3 intact. The respondents then challenged the order of the Tribunal before the Hon'ble High Court in W.P. (C) No. 12691/2008 which upheld the order of this Tribunal. Meanwhile during the pendency of the writ petition before the Hon'ble High Court the applicant retired from his service w.e.f. 28.02.2009. The respondents had withheld all the retirement benefits, productive linked bonus for the year 2008-09 and benefit of MACP, and he was not allowed increment of grade pay as due and admissible after 01.01.2006 on the ground of pendency of writ petition. After disposal of writ petition by Hon'ble High Court the respondents vide office order dated 02.06.2014 at Annexure A/5 took a decision to re-fix the pay of the applicant from the date he worked as Senior Clerk and for payment of retirement benefits. The applicant was released with retirement benefits on different dates starting from 14.08.2014 to 15.04.2015. The applicant filed OA No. 241/2016 in this Tribunal claiming interest on amount due towards his retirement benefits for the period from 01.03.2009 to 15.04.2015 (date when final payment was made to him), release of productive linked bonus for 2008-09 and benefits of MACP w.e.f. 01.09.2008. The said OA was disposed of with direction to the Respondent No. 4 to dispose of the claim of the applicant. After the respondent No. 4 vide order dated 30/31.05.2016 intimated the applicant that representation of the applicant dated 02.11.2015 has not been received, the applicant submitted another representation on 20.06.2016 (Annexure A/8) which was rejected by the Respondent No. 4 vide order dated 23/26.09.2016 stating that claim of the applicant for the payment of interest was delayed due

to pendency of the matter in the court and not due to administrative lapses. Hence he filed this OA.

3. Respondents in their counter inter alia averred that the retirement benefits to the applicant had been withheld owing to pendency of the Writ petition before the Hon'ble High Court and not because of administrative lapses by the Respondents. During pendency of the writ petition neither gratuity nor final pension could be sanctioned in favour of the applicant due to stipulation in the Railways Rule 10 (1) (c) and Rule 10 (2) Annexure R/1. It is further averred by the respondents that productivity linked bonus for the financial year 2008-09 was paid to the applicant on 12.03.2018. As regards to MACP claim the respondents averred that the applicant had joined in the post of Khalasi (equivalent grade pay of Rs. 1800/-) and then availed regular promotion to the post of Junior Clerk (equivalent grade pay Rs. 1900/-) and thereafter availed one ad-promotion to post of Senior Clerk (equivalent grade pay of Rs. 2800/-) and since the applicant retired in equivalent grade pay of Rs. 2800/- he was eventually drawing higher grade pay than what he would have availed had he got third MACP benefit, hence he is not entitled for any further MACP benefits.

4. Heard the learned counsels for both the sides and perused the records and rejoinder. Rule-10 of Railway Services (Pension) Rules, 1993 reads as follows:

“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 basis of qualifying service up to the date of retirement of the railway servant or if he was under suspension on the date of retirement, up to 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, 1965, for imposing any of the penalties specified in clauses (i), (ii) 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”.

5. Perusal of above rules makes it very clear that the delay in settlement of pension is not attributable to the Railway Administration. It is because, order dated 24.7.2002 reversing the retrospective promotions of the applicant from 01.02.1992 and 01.02.1994 respectively, having been quashed by this Tribunal vide order dated 8.2.2008 in O.A.No.691 of 2002, was the subject matter of challenge before the Hon'ble High Court in W.P.C. No.12691/2008. The Hon'ble High Court vide judgment dated 09.01.2014 upheld the orders of this Tribunal whereafter, the respondents took action for releasing the pensionary benefits. It is because, due to pendency of the Writ Petition before the Hon'ble High Court, the applicant's status and qualifying service required to be reckoned for the purpose of pensionary benefits on the date of retirement, i.e., 28.02.2009 remained indeterminate and as soon as the matter was set at rest by the Hon'ble High Court, the respondents released all the dues in favour of the applicant. (apart from the leave salary, which, they had already disbursed in favour of the applicant on 28.01.2009.)

6. In the conspectus of facts as narrated and analysed above, this Tribunal is of the opinion that the delay being not attributable to the Railway Administration, the applicant is not entitled to interest on delayed payment of pensionary benefits. In view of this, the O.A. being devoid of merit is dismissed, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)