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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-303/97

New Delhi this the 2nd day of July, 1998.

Hon'ble Sh. T.N. Bhat, Member(J)
Hon'ble Sh. S.P. Biswas, Member(A)

Sh. P.L. Arora,
R/o Associated Apartment,
Flat No.H-5,
Plot No.83, I.P.Ext.
Patparganj,
Delhi-92. Applicant

(through Sh. M.L. Sharma, advocate)

versus

1. Union of India through
General Manager,
Northern Railway,
Headquarters Office,
Baroda House,
New Delhi.
2. Divl. Railway Manager,
Northern Railway,
Allahabad. Respondents

(through Sh. R.L. Dhawan, advocate)

ORDER

Hon'ble Sh. S.P. Biswas, Member(A)

The applicant, a retired Chief Permanent Way Inspector, Aligarh, Northern Railway is aggrieved because of non-payment of provisional pension, leave encashment and gratuity following his superannuation on 30.9.96.

2. The applicant seeks to justify his claim by placing reliance on the case of State of Kerala Vs. Padmanabhan Nair (1985(1) SCC 429) wherein it has been held that pension and gratuity are no longer bounty to be distributed by the

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Government to its employees on their retirement and, therefore, any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment. The learned counsel for the applicant also referred to PS No.6263 dated 10.12.74 issued by respondent Railways which provides grant of provisional pension to a Government servant against whom departmental or judicial proceedings are in progress. The learned counsel for the applicant further contended that although there is a clear provision in the Railway Board's Instructions dated 29.8.85 (Annexure A-4) for simultaneous appointment of inquiry officer subsequent to the issue of the chargesheet but in utter violation of the Board's Instructions the Inquiry Officer was not appointed simultaneously with the issue of the charge memorandum. The applicant argued that the chargesheet was handed over to him only 2 days before his retirement for a cause that arose in 1992-93 and this has seriously prejudiced his case for settlement of pensionary benefits in terms of Hon'ble Supreme Court's order/judgement in the case of State of M.P. Vs. Bani Singh (1991(16) ATC 516. The applicant has also alleged injustice to him on the ground that the payment of gratuity could not be held in abeyance indefinitely by prolonging the disciplinary proceedings as held by the Central Administrative Tribunal, Principal Bench in the case of S. Joginder Singh Vs. U.O.I. & Ors. (1992(19) ATC 850 decided on 13.9.91.

3. The respondents, on the contrary, submitted that in terms of Rule 10 of the Pension Rules, provisional pension not exceeding the maximum amount which would have been normally admissible, has been paid. Accordingly, the applicant was paid provisional pension of Rs.1459+Rs.2160 and the same has been released to him on 3.6.97. It has further been contended that gratuity is not payable until the finalisation of the departmental proceedings pending against the applicant in terms of Rule 10(1) (c) of Pension Rules 1993. With this, the directions of this Tribunal dated 6.6.96, while offering interim relief, has since been complied with. It has also been contended by the respondents that the applicant has been paid Provident Fund dues amounting to Rs.70,424 and the gratuity amount of Rs.7368 on 22.11.96.

4. The main relief sought for by the applicant relates to payment of provisional pension, gratuity and leave encashment. Relief has also been sought in terms of issuance of directions to respondents to finalise the proceedings within a period of 3 months. Other ancillary reliefs have also been sought for.

5. We have since considered the matter. According to Railway Servant's Pension Rules, 1993 ~~and~~ we find that the applicant is entitled to only provisional pension which has already been sanctioned to him by an order dated 3.6.97. The

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present application was filed on 14.2.97. We, therefore, find that there was no inordinate delay in disbursement of provisional pension to the applicant in the context of the fact that a charge memo, in the shape of a major penalty chargesheet was pending against him.

6. As regards payment of gratuity to the applicant, we find that there is specific rule i.e Rule 10 which prohibits the payment of gratuity till the final decision in the departmental enquiry. The relief prayed for in respect of grant of gratuity by the applicant has, therefore, to be disallowed and shall be governed by the final order to be passed in the disciplinary departmental enquiry. In respect of the enquiry, we find that the I.O. has since been appointed on 7.1.97.

7. As regards leave encashment, the same is not admissible under Railway Board's Instructions. From the details of charges and statement of imputations levelled against the applicant, we find that the latter is alleged to have committed serious irregularities which caused losses of 3756.06 mtrs. of Rail on different sections costing approximately Rs.12 lacs. In such a situation, withholding of the leave encashment due to the applicant cannot be considered unjustifiable.

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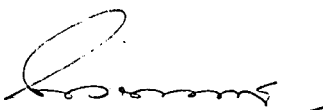
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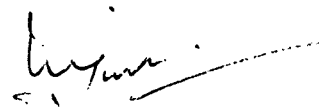
8. Since one of the basic claims of the applicants i.e. payment of provisional pension has now been acceded to, the O.A. could be disposed of with the following orders:-

(a) The applicant shall be paid the amount of leave encashment due to him following his retirement on 30.6.96 less the amount of dues outstanding against the applicant for any account whatsoever.

(b) The respondents are also directed to conclude the disciplinary proceedings and pass a final order within a period of 6 months from the date of receipt of a certified copy of this order considering the delay in completion of the proceedings since the applicant has retired in 1996. We also direct further that in case the respondents fail to carry out the directions to conclude the enquiry within the aforesaid period, the disciplinary proceedings will be deemed to have abated.

The application is disposed of as aforesaid. No costs.


(S.P. Biswas)
Member(A)


(T.N. Bhat)
Member(J)

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