

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.ANO.2149/94

(b)

New Delhi, this the 6th day of February, 1995

Hon'ble Shri J.P. Sharma, Member (J)
Hon'ble Shri B.K. Singh, Member (A)

Shri Ajit Singh,
s/o Shri Naurata Singh
Retd.A.P.O.(Const.)
Office of Chief Administrative
Officer(Constituted)
Northern Railway, Kashmiri Gate,
Delhi.

... Applicant

By Advocate: Shri M.L. Sharma

Vs.

1. Union of India
through General Manager,
Northern Railway, Headquarters office,
Baroda House, New Delhi.
2. The Chief Personnel Officer,
Northern Railway Headquarters Office,
Baroda House, New Delhi. ... Respondents

By Advocate: Shri R.L. Dhawan

JUDGEMENT

Hon'ble Shri J.P. Sharma, Member (J)

The applicant has since retired on 30.6.94 from the post of A.P.O. (Const.) under Northern Railway, New Delhi. The grievance of the applicant is non payment of the service benefits i.e. the pension, gratuity, leave encashment and also the provisional pension w.e.f. 1.7.94. A notice was issued to the respondents for filing the reply in four weeks on 28.10.94. The respondents after service however did not appear. The case was adjourned to 17.11.94 and Shri R.L. Dhawan, counsel for the respondents appeared but no reply was filed. Again on 22.12.94 the respondents were allowed to file the reply but no reply was filed and the matter was taken up on 3.2.95 when the learned counsel Shri R.L. Dhawan orally opposed the admission of the application stating that

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the provisional pension has since been sanctioned to the applicant by the order dated 20.12.94. He also stated that the applicant is not entitled to other retirement benefits as he has been served a chargesheet on 31.1.91 having been placed under suspension in March, 1990 by the order dated 29.3.90. This enquiry was finalised on 19.6.92 and he was asked to make representation against the report of the Inquiry Officer which was delivered to him on 22.1.93. The disagreement note of the disciplinary authority against the finding of the Inquiry Officer was also served on the applicant which he received on 13.5.94. The applicant also made a representation against the said note on 28.5.94. Since the applicant has retired on 30.6.94, the disciplinary authority shall pass the order after following the procedure laid down under rules and that will take some time. It is stated that the applicant is not entitled to gratuity, leave encashment till the final decision in the departmental enquiry.

2. The learned counsel for the applicant placed reliance on the case of State of Kerala Vs. Padmanabhan Nair 1985(1)SCC 429 that pension and gratuity are no longer bounty to be distributed by the Government to its employees on their retirement and therefore any culpable delay in settlement and disbursement thereof must be visited with a penalty of payment of interest at the current market rate till actual payment. The learned counsel for the applicant also pointed out that the respondents have no right to withhold the provisional pension and referred to P.S.No.6236 dated 10.12.74 which provides for grant of provisional pension to retired Railway servants against whom departmental or judicial proceedings are in progress. The learned counsel for

applicant has also placed the reliance on the Railway Servant Pension Rules, 1993 and highlighted ~~of~~ ^{the} provisions of Rule 10 which provides for the payment of provisional pension where departmental or judicial proceedings are pending. This rule also provides that no gratuity shall be paid to the railway servant till the conclusion of the departmental or judicial proceedings and issue of final orders thereon. In case where judicial proceedings or departmental enquiry are initiated under the Railway Servants Discipline and Appeal Rules, 1968 for imposing any major penalty specified in rule 6 of the said rules, we have considered the matter according to Railway Servant Pension Rules, 1993 and we find that the applicant is entitled to only provisional pension which has already been sanctioned to the applicant by issuing a PPO and the order of sanction is dated 20.12.94. The applicant has retired from the service on 30.6.94. The present application was filed by the applicant in October, 1994. We, therefore, find that there is no inordinate delay in disbursement of provisional pension to the applicant.

3. As regards the payment of gratuity to the applicant we find that there is specific rule 10 which prohibits the payment of gratuity till the final decision in the departmental enquiry. The departmental enquiry has since/concluded ^{been} and only the order is to be passed by the disciplinary authority after observing certain formalities under rule 9 of the Railway Servant Pension Rules, 1993. Since the applicant is a gazetted officer the UPSC has also to be consulted before any final orders are passed by the President of imposing any penalty for withdrawing of pension and gratuity or both either in full or part by permanently or for specified period.

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In view of the aforesaid provision, no direction can be issued to the respondents to pay the amount of gratuity/due to the applicant and the authority relied upon by the applicant of 1985(1)SCC 429 does not apply to the case of the applicant.

4. The question remains regarding the payment/leave encashment and packing allowance etc. The leave encashment is also earned by the employee by not availing of the earned leave and accumulating the same which is encashed at the time of retirement to the extent of 240 days. We have perused the article of charges framed against the applicant which is only with respect to appointment of seven casual labourers (new faces) without obtaining personal and specific approval of General Manager in each case. We do not want to refer to the finding of the Inquiry Officer or the note of difference of disciplinary authority as a note of disagreement on the findings of the Inquiry Officer as that is not subject to be considered in the present case. What is relevant is that that the disciplinary authority has by analysing the evidence and the report of the Inquiry Officer that the charge officer did not obtain General Manager's sanction before issuing the letter of engagement of seven Casual labourers and has therefore been guilty of not maintaining devotion to duty and violating rule 3(1)(iii) of the Railway Services(Conduct) Rules, 1966. However, we are not considering the legality of the opinion of the disciplinary authority but the fact remains that there is no charge against the applicant for causing any pecuniary loss to the railways. In such an event withholding of leave encashment amount ^{due} to the applicant will not be justified. The learned counsel for the respondents could not show any rule that the amount of leave encashment due to the applicant cannot be paid.

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during the pendency of departmental enquiry when no pecuniary loss to the railways is alleged in the memo. of charges. Regarding the packing allowance etc., the respondents have to deal with the matter as per retired government service as the rules laid down for payment of allowance in such cases.

5. The application is therefore disposed of as follows:-

- (i) The provisional pension has already been sanctioned to the applicant by the order dated 20.12.94 and the relief prayed for by the applicant has since been allowed and no further judicial review in this regard is necessary.
- (ii) The relief prayed for for grant of gratuity by the applicant is disallowed and shall be governed by the final order to be passed in the disciplinary departmental enquiry.
- (iii) That the applicant shall be paid the amount of leave encashment due to him on his retirement on 30.6.94 less the amount of dues outstanding against the employee for any account whatsoever.

The respondents are directed to comply with the directions within a period of 3 months from the date of receipt of this order. It is expected that the respondents shall not further delay passing of the final order in the disciplinary departmental enquiry against the applicant.

Cost on parties.

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(B.K. SINGH)
MEMBER(A)

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J. P. SHARMA
MEMBER(J)