

17

Central Administrative Tribunal, Principal Bench

O.A. No.2652/2004

New Delhi this the 7/12 day of ~~December~~, 2004

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

Shri Desh Raj Sharma
S/o Shri Sant Ram
R/o D-22, Krishan Vihar,
Near Pooth Kalan,
Delhi-110 041.

...Applicant

By Advocate: Shri Sachin Chauhan.

Versus

1. DTRM,
Northern Railway,
Pahar Gang,
New Delhi.
2. Senior DAO,
Northern Railway,
Pahar Ganj,
New Delhi.

...Respondents

By Advocate: None.

ORDER

The applicant has filed the OA for a direction to the respondents to release regular pension and other retiral dues.

2. The facts are short and simple. The applicant was working as a Head Booking Clerk with the respondent Railways when he retired on 31.3.2001 on attaining the age of superannuation. At the time of his retirement, he was facing departmental enquiry for major penalty. As a consequence, he was granted provisional pension but his gratuity, commutation of pension and leave encashment were withheld. In the departmental enquiry, the disciplinary authority held one charge out of three charges proved against the applicant but since he had retired from service, the disciplinary authority took a lenient view and decided not to impose penalty so the matter was referred to the President for approval and with the approval of the President, the order was issued on 22.2.2005 it was decided that no order of reduction or withholding of the pension may, be passed. Thereafter, the respondents on 21.6.2005 have paid a sum of Rs,1,42,750/- to the applicant by a cheque towards his dues of gratuity and commutation of pension. The

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only relief which survives is about payment of amount of leave encashment and the claim of interest on account on delay in the payment.

3. In para 2.9. of para 2 of para-wise reply of the counter of the respondents it was stated that only 30 days leave was due for encashment which worked out to be Rs.8531/- and the same was being released after finalisation of the major charge-sheet. It is strange that although the appropriate authorities have already decided not to impose any penalty on the applicant as envisaged under the disciplinary rules on 21.2.2005 and the amount of leave encashment has already been determined still the payment has not been released by the respondents to the applicant. The learned counsel for the applicant has submitted that the other grievances, i.e., grant of regular pension, release of amount commuted value of pension and the amount of gratuity have already been redressed by the respondents and that the only relief that survived is about release of leave encashment amount at the interest on the delayed payment.

4. The applicant has claimed interest at the rate of 24% per annum on account of delay in payment of his retiral dues from the date of his retirement to the date of his actual payment.

5. Admittedly, the department proceedings for major penalty were pending when the applicant retired from service on 31.3.2001. As per sub-rule (3) of Rule 9 of Railway Services (Pension) Rules, 1993, in case of a Railway servant against whom a departmental or judicial proceedings were instituted and were continuing on the date of his retirement, a provisional pension as provided in Rule 10 would be sanctioned. Accordingly, the applicant has been rightly sanctioned a provisional pension and his grievance against this is not tenable. Any way the regular pension order has already been issued after the department with the approval of the President has decided not to impose any punishment on the applicant in the departmental proceedings.

6. Similarly clause (c) of sub-rule (1) of Rule 10 of Railway Services (Pension) Rules, 1993 has stated that no gratuity will be paid to a railway servant until the conclusion of the departmental or judicial proceedings and issue of final order thereon except in a case of disciplinary proceedings for certain minor penalties. Withholding of the amount of gratuity till the final order in the departmental proceedings was passed by

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the President as per Rule 9 of the said Pension Rules, therefore, is perfectly in accordance with the Rules.

7. Coming to the claim of commutation of pension, Rule 5 of Railway Services (Commutation of Pension) Rules, 1993 says that no railway servant against whom any departmental or judicial proceedings as referred to in Rule 9 of the Railway Pension Rules, have been instituted before the date of retirement, shall be eligible to commute a fraction of his provisional pension authorized under Rule 10 of the said Pension Rules or the pension, as the case may be, during the pendency of such proceedings. As such, the claim of the applicant for commutation of pension was also not tenable till the departmental proceedings came to an end and finally concluded by the passing of the order with the approval of the President.

8. The Railway Servants (Discipline and Appeal) Rules, 1968 do not prescribe any statutory limitation on the period during which the disciplinary proceedings should be finalized. If the period during which the proceedings should conclude is provided in some administrative instructions, its non-observance would not render the disciplinary proceedings invalid if they are prolonged beyond the stipulated time. Since the applicant has retired, the final authority to decide about the pension of the applicant as per Rule 9 of Railway Services (Pension) Rules, 1993, is the President. In the instant case the departmental proceedings were held against the applicant on three charges including the charge of his accepting illegal gratification but only one charge of over charging a decoy passenger by the applicant was held as proved and the applicant was held guilty of the said charge. Other two charges remained not proved for want of evidence except Rs.31/- was found in excess with him. The disciplinary authority was of the view that since the applicant has retired, penalties prescribed in Rule 6 of Railway Servants (Discipline and Appeal) Rules, 1968, could not be imposed upon him and he also did not find it to be a fit case for withholding his pension partly. The matter was accordingly referred to the President on receipt of consent/approval of the action and the departmental proceedings were disposed off accordingly and the applicant was communicated this vide order on 21.2.2005 (Annexure CA-3) of the counter-reply. The departmental proceedings, as such came to an end on 21.2.2005. The delay has been explained by the respondents. It is stated that the delay occasioned because the final order as per Rule 9 of the Pension

Rules, 1993 was to be passed by the President and after the approval of the President was obtained, the order was issued.

9. Three months' period thereafter seems to be reasonable for processing the case and releasing the commuted value of pension and the amount of gratuity. In the instant case the amount has been released on 21.6.2005. The three months' period calculated from 21.2.2005 expired on 21.5.2005, therefore, the delay in releasing the commuted value of pension and the gratuity is only about one month and the applicant would be entitled to claim interest on the delayed payment of amount of gratuity and the amount of commutation of pension for the aforesaid period.

10. As regards the amount of leave encashment it is clear from the counter-reply that a sum of Rs.8531/- was payable to the applicant and the respondents had stated that the amount would be paid as the departmental proceedings were finalized. The respondents have not cited any rule which allowed them to withhold payment of leave encashment to the applicant during the pendency of the department or judicial proceedings. CPC Leave Rules/Liberalised Leave Rules, 1949 applicable to the applicant have provided that a Railway servant may be paid cash equivalent of leave salary in respect of leave on average pay at their credit at the time of retirement on superannuation subject to certain conditions enumerated. This payment is *sou motu*. In the instant case it is neither a case of the respondents nor any document has been produced to show that the leave encashment was withheld by a competent authority in exercise of the power vested by rules applicable to the Railway servant. The Pension Rules or Leave Rules do not provide for withholding of amount of leave encashment during the pendency of the department proceedings. As a result, withholding of the leave encashment amount does not seem to be justified. The applicant, therefore, would be eligible to the release of the amount of leave encashment and also to the grant of interest on account of delay in the making payment of leave encashment amount.

11. The next question is what should be the amount of interest payable by the respondents to the applicant on account of the delay in releasing the aforesaid retiral dues.

12. The O.M. dated 25.8.1994 has provided that where the payment of DCRG has been held beyond three months from the date of retirement, interest at the rate applicable

to GPF deposits would be paid to the retired public servant or if deceased, to his dependants. The same instructions may be applied to the delayed payment of amount of commuted value of pension. Accordingly, the applicant would be entitled to be granted for the period from 22.5.2005 to 21.6.2005 interest at the same rate at which it is payable in GPF account, on the amount of DCRG and the commuted pension.

13. Since there is no explanation from the side of the respondents for delay in payment of the amount of leave encashment, the applicant would be entitled to interest on the amount for the period of delay in making payment of leave encashment, i.e., from the date of retirement to the actual date of payment. The rate of interest which is payable on GPF seems to be the reasonable in the light of the above discussion.

14. Accordingly, the OA is disposed off with the following directions:-

(i) The respondents shall release the amount of leave encashment of the applicant, if not already released along with interest on the amount of leave encashment at the same rate at which it is payable on the GPF from the date of retirement to the date of the actual payment.

(ii) The applicant shall also be paid interest at the rate at which it is payable on GPF on the amount of DCRG and commuted value of pension for the period 22.5.2005 to 21.6.2005.

(iii) The order shall be implemented within two months from the date of receipt of a certified copy of this order.

However, the parties are left to bear their own costs.


(M.A. Khan)
Vice Chairman (J)

Rakesh