

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 16th day of November 2005.

Original Application No. 749 of 2004.

Hon'ble Mr. K.B.S. Rajan, Member (J)

Vijay Kumar Mathur, S/o Late Shri K.B. Mathur,
R/o 325-E, Block, Panki Kanpur.
Retired as Permanent Way Inspector-Now redesignated
As Senior Section Engineer,
P. Way, N.E. Rly.,
IZATNAGAR.

.....Applicant

By Adv: Sri A.K. Dave

V E R S U S

1. Union of India though the General Manager,
N.E. Rly.,
GORAKHPUR.
2. The Divisional Railway Manager (P),
N.E. Rly.,
IZATNAGAR.
3. Senior Divisional Engineer (Co-ordination),
North Eastern Railway,
IZATNAGAR.

.....Respondents

By Adv: Sri A.K. Gaur

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O R D E R

By K.B.S. Rajan, JM

The applicant, despite having an order of acquittal in his favour, is denied the gratuity and commuted value of pension and other terminal benefits, including commutation of pension and regular pension (which is paid as provisional at present), on the sole ground that a Criminal Revision Defective Petition 195 of 2002 is pending before Hon'ble High Court of Judicature at Allahabad. The challenge is against the said withholding of terminal benefits.

2. It is an admitted fact that the applicant while working as Senior Section Engineer (P. Way) was to face a criminal charge against him which culminated into his acquittal in appeal, vide judgment dated 30.03.2002 in Criminal Revision No.94 of 2002 in the Court of District and Session Judge Farrukhabad. On receipt of the said judgment, the applicant had sent across a copy of the same to the Competent Authority for information and necessary action. Later on, the applicant superannuated on 31.01.2004. On superannuation of the applicant, the Respondents Railways had granted only provisional pension to the applicant and withheld the DCRG leave encashment and other retiral benefits on the ground of 'pendency of Criminal case'. According to the applicant law is



very clear that it is only when departmental proceedings or criminal case is actually pending that DCRG etc. can be withheld and in his case, since the District and Session Court had acquitted the applicant, no criminal case can be said to be pending. The filing of criminal revision Defective No. 195/2002 cannot amount to criminal case being pending for the purpose of withholding of the terminal benefits, contends the applicant.

3. Respondents have contested the OA and according to them pendency of Criminal Revision Defective Petition against order of acquittal before the Hon'ble High Court would amount to pending criminal case.

4. Arguments were heard and the written submissions scanned through. The specific law on the subject is contained in Rule 10 of the Railway Service (Pension) Rules 1993 which reads as under:-

"Rule 10: Provisional Pension where departmental or judicial proceedings may be pending-

i. (a) In respect of a Railway Servant referred to in Sub-rule (3) of Rule 9, the Accounts Officer shall authorize 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, upto



the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorized 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) and (iv) of rule 6 of the said rules, the payment of gratuity shall be authorized to be paid to the Railway Servant.

(d) 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 is reduced or withheld either permanently or for a specified period."

5. The order of acquittal dated 30.03.2002 is in fact on an appeal against the order dated 05.12.2001 in Case No. 2547 of 2001 of the ACJM Railway Fatehgarh. Thus, the respondents have filed only a Revision Petition before the Hon'ble High Court, which is pending. While an appeal could be considered as a continuation of the Original Criminal Case in which event it would be considered that a criminal case is pending, the same character

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cannot be fastened to a Revision Petition. When the applicant has an order of acquittal in his favour and no stay against the same has been obtained by the Respondents, under no starch of imagination can it be stated that criminal proceedings are pending. The respondents are thoroughly in misconception when they contend that in his case criminal case is pending within the meaning of provisions contained in Rule 10 extracted above.

6. In view of the above the OA succeeds. The respondents are directed to release the withheld DCRG, leave encasement and other retiral benefit within a period of three months from the date of communication of this order. They shall also allow the applicant to commute his pension, if he so desires and the pension payable shall be regular and not provisional. Though the applicant has prayed for interest, in view of the fact that the respondents are under a genuine misconception of the legal position, his prayer for payment of interest is rejected. However, if the terminal benefits are not released within three months as directed above the applicant will be entitled to interest on the terminal benefits at the rate of 9% from the date of expiry of the said three months till the date of payment. In case payment is not made within three months either in full or part thereof, the

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respondents shall make a proper application for extension of time, spelling out therein the extent of action already taken till the date of filing of the applicant and the extent of action to be completed so that further time could be granted for the same subject to payment of interest as aforesaid.

No cost.



Member (J)

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