

**CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH LUCKNOW**

**(HEARING THROUGH VIDEO CONFERENCING)**

**O.A. 332/00262/2018**

**Sl. No. 4**

**Dated: 16.12.2020**

**HON'BLE MR. A. MUKHOPADHAYA, MEMBER (A)**

Israr Ali Khan, aged about 61 years, S/o late Shri Abdul Gaffar Khan, R/o P-27, New Guraura Colony, Shaheed Path, Kanpur Road, Lucknow.

By Advocate : Shri Praveen Kumar.

....Applicant.

VERSUS

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Chief Works Manager, Loco Workshop, Northern Railway, Charbagh, Lucknow .
3. The Senior Accounts & Finance Advisor, Loco Workshop, Northern Railway, Charbagh, Lucknow.

...Respondents.

By Advocate: Shri. Alok Shukla.

**ORDER (ORAL)**

**HON'BLE MR. A. MUKHOPADHAYA, MEMBER (A)**

The brief facts of this O.A. are that the applicant, who retired as Senior Clerk with the respondent Railways on 31.07.2017, was not paid his gratuity, allowed

commutation of pension, or sanctioned his regular pension at the time of his retirement. Learned counsel for applicant Shri Kumar stated that when the applicant approached the competent authority for this purpose on 23.05.2018, he was finally given the Provisional Pension Payment Order, (Annexure A-3), 10 months after his retirement, but still no payment of gratuity was made. A representation made by the applicant to the respondents earlier on this account had also been rejected vide the impugned letter/order dated 10.08.2017; (Annexure-A-1A).

2. Shri Kumar, learned counsel for applicant argued that while a criminal case is indeed pending against the applicant under Sections 147, 148, 149, 302 and 307 IPC, in a court of law, this has nothing to do with his official duties and that it is a settled position established in a number of cases in this Tribunal as well as in the higher courts and the Apex Court that where criminal proceedings are pending against a retiree on matters which have nothing to do with his official duties, such pendency shall not come in the way of the retiree being given due retirement benefits such as gratuity, regular pension etc. In support of his arguments, Shri Kumar cited the judgments and orders of this Tribunal in the case of Sharda Prasad Vs. U.O.I,(O.A. 332/00100/2018) dated 26.4.2018 and Dhru Prasad Vs. Union of India and Others (O.A. No. 461 of 2011) dated 8.5.2015. In the latter case, Shri Kumar, pointed out that the order of this Tribunal dated 8.5.2015 had been confirmed by the Hon'ble High Court of Allahabad, (Lucknow Bench), in W.P. No. 1782/2015(S/B) vide its order dated 26.11.2015. Learned counsel for the applicant Shri Kumar also pointed out that in the earlier mentioned 26.04.2018 order in the case of Sharda Prasad (supra), there is reference to the Hon'ble Apex Court's ruling on this issue in the case of **State of U.P. and Others Vs. Dharendra Pal Singh 2017, 2017 (1) SCC-49** (para-9 of the Tribunal's order dated 26.04.2018 in the case of

Sharda Prasad (supra) refers), where, the Hon'ble Apex Court has laid down that where a criminal case is pending against a retiree for purported actions which have nothing to do with his official duties, the same shall not come in the way of payment of retiral benefits such as gratuity, pension etc.

3. Per contra, Shri Alok Shukla, learned counsel for the respondents, submitted that as the impugned letter/order dated 10.8.2017 at Annexure A-1A itself clearly shows, the payment of gratuity and final pension to the applicant has been correctly kept pending presently in accordance with the provisions of Rule 10(c) the Railway Services (Pension) Rules 1993, hereafter referred to as the Rules, because of the pendency of the criminal proceedings against him.

4. At this, Shri Kumar pointed out that in the present case, while the incident in question leading to the criminal proceedings against the applicant took place in the year 2002, no disciplinary proceedings of any kind were instituted against the applicant on this account till his superannuation from the respondents' service on 31.7.2017. Learned counsel for the applicant argued that this goes to show that even the respondents do not believe that the criminal case in question had anything to do with the applicant's official functions, because if it had, surely the competent respondent authorities would have initiated departmental proceedings against him.

6. I have carefully considered the rival submissions of the opposing counsel in this case.

7. It is presently a settled position in law that the stoppage of retiral benefits to retirees from government service on account of criminal proceedings pending against them in a court of law are valid only where these

proceedings relate to event of transactions which are related to the retiree's official duties or service with the government. It is undisputed that such is not the case here. In the circumstances, bearing in mind, the ruling of the Hon'ble Supreme court on the subject in the cited case of Dhirendra Pal Singh (Supra) as pointed out by the learned counsel for the applicant, as well as the final orders passed in the case of Sharda Prasad Vs. U.O.I,(O.A. 332/00100/2018) dated 26.4.2018 and Dhru Prasad Vs. Union of India and Others (O.A. No. 461 of 2011) dated 8.5.2015, I am of the view that the existence of the criminal case in question against the applicant in this case cannot be allowed to be an impediment in the way of his obtaining his legitimate retiral dues in the shape of gratuity or final pension along with commutation of the same as per rules as it has not been disputed by the respondents that this case does not relate to the applicant's official functions while in service.

8. In the result, this O.A. is allowed and the respondents are directed to make requisite payments of gratuity as well as payment of final pension as well as commutation of the same as per rules within a period of three months from the date of receipt of a certified copy of this order.

9. There shall be no order as to costs.

(A.MUKHOPADHAYA)  
MEMBER (A)

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