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Central Administrative Tribunal, Allahabad.

Registration O.A.No.51 of 1987

Nathan Sahai Srivastava ... Applicant

Vs.

General Manager, North Eastern Railway  
Gorakhpur and another ... Respondents.

Hon. Ajay Johri, AM  
Hon. G.S. Sharma, JM

(By Hon. G.S. Sharma, JM)

In this petition under Section 19 of the Administrative Tribunals Act, XIII of 1985, the applicant has sought a direction to the respondents to pay him death-cum-retirement gratuity (for short DCRG) and other benefits.

2. The applicant at the time of his superannuation on 31.7.1983 was posted as Assistant Personnel Officer in the Divisional Office of the North Eastern Railway at Sonepur. It is alleged that after his superannuation, disciplinary proceedings were initiated against the applicant which are still pending and have not been concluded. According to him, a sum of Rs.25080 was passed by the Divisional Accounts Officer (for short DAO) Sonepur as payment of DCRG to the applicant but the same has not been paid to him so far. He has further claimed Rs.67.05P as house rent and CCA for June 1980 which was disallowed vide order dated 1.6.1985. He has further claimed 6 more sums of Rs.144,42.40,40,840,2855 and 1482 as will appear from subsequent discussion. The allegation of the applicant is that DCRG automatically becomes payable in full on the expiry of 6 months after retirement under Rule 1053 of the Railway Accounts Code Vol.I and as the charge sheet was issued to him more than 6 months after his retirement and there is no serious charge against him, as such, his DCRG has been wrongly withheld by the respondents and his other amounts have not been paid despite representations.

3. The petition has been contested on behalf of the respondents and in the written statement filed on their behalf by the Sr. Personnel Officer N.E.R.Gorakhpur, it has been stated that as the applicant retired on 31.7.1983, his petition for the same is barred by time. The applicant while posted at Sonepur was involved in a vigilance case and consequently after his retirement a charge sheet for major punishment was issued and proceedings are still pending against him. The DCRG payable to the applicant was accordingly withheld till such time the proceedings are finalised by the competent authority to safeguard the interest of the railway administration. The other sums claimed by the applicant are also barred by time and he is not entitled to recover the same under the rules.

4. In the rejoinder filed by the applicant, it was stated by him that his DCRG was withheld vide letter dated 27.1.1984, copy annexure A, and the fact that it was withheld on 6.9.1984 is not in his knowledge. The delay in filing the petition has already been condoned by the Tribunal and this point cannot be raised by the respondents. The other amounts claimed by the applicant are due and his claim is within time. The disciplinary proceedings against the applicant does not involve any loss to the railway administration nor the charges against him construed a serious misconduct involving financial loss to the Railways. No action can be taken for withholding DCRG in view of the clarification issued by the Railway Ministry under rule 2308-A/R-II as will appear from annexure J. In any case, under the similar circumstances DCRG was paid to A.U.Khan and the respondents cannot make a discrimination against the applicant in this respect and they should pay DCRG and other dues to the applicant with interest.

5. We had heard the learned counsel for the parties and have also perused the written arguments submitted on behalf of the applicant. The first question arising for consideration in this

petition is the question of limitation. The allegation that the Tribunal had condoned the delay in filing the petition and this question is now not open to be raised by the respondents does not appear to be correct. The record shows that this petition was first listed for admission on 30.1.1987 and on the request of the applicant, it was adjourned to 3.3.1987 and again on his request, he was allowed 15 days time to move <sup>some</sup> ~~this~~ application and thereafter, it was listed for admission on 18.3.1987. On that date, the applicant had presented an application to condone the delay in presenting this petition <sup>but</sup> without passing any speaking order on the said application of the applicant the petition was admitted on that date by <sup>one</sup> ~~another~~ Bench. It appears from the report of the Registry that the petition was treated to be in time and there was no report that it was time barred. We are, therefore, of the view that at the time the petition was admitted most probably it could not come to the notice of the Bench that it <sup>was</sup> ~~could~~ be time barred on any ground. In any case, there is no order to condone the delay and unless a speaking order condoning the delay is passed, the mere admission of a time barred petition cannot prevent the respondents from raising the plea that the petition is time barred. Thus, in our opinion, the question of limitation is still open to be examined in this petition.

6. So far as the main claim regarding DCRG of the applicant is concerned, it appears from Annexure A to the petition that on the PPO authority letter dated 18.12.1983, it was noted that the payment of DCRG amounting to Rs.25080 has not to be made. On 21.4.1984, the General Manager(P) wrote to the DAO Sonepure that after recovering Rs.1000 from the DCRG, the balance of the DCRG could be released to the applicant. In their reply, the respondents have taken the stand that the DCRG payable to the applicant has been withheld till such time the disciplinary

proceedings initiated against the applicant are finalised by the competent authority. This shows that the respondents have not refused the payment of DCRG to the applicant but it has simply been deferred for certain time. Till the proceedings are concluded the limitation, as a matter of fact, has stopped running. It further appears from annexure R-3 that the memorandum of charge sheet is dated 28.2.1985 and it should have been served on the applicant sometime thereafter. As the disciplinary proceedings are still pending and have not been concluded, we treat the petition for the payment of DCRG within limitation. In any case, under the peculiar features of this case, we condone the delay in filing the petition for the payment of DCRG to the applicant.

7. Now coming to the merits of the case of the applicant, it has been strenuously contended on behalf of the applicant that under the rules, the DCRG cannot be withheld as it is no more a bounty and soon after the retirement of a Government servant, it is payable to him. Placing reliance on rule 318 of the Railway Pension Rules, a copy whereof has been filed as annexure W-2 with the written arguments, it was contended that para 315 does not apply to gratuity or DCRG. The contention of the learned counsel for the applicant is that DCRG cannot be withheld under rule 318. This rule, however, suggests that the DCRG can be forfeited to the Government. So there is no question of its <sup>not</sup> withholding for certain time. Clause (c) of rule 69 of Central Civil Services Pension Rules provides that no gratuity should be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon. Similar provision is contained in rule 2308-A of the Indian Railway Establishment Code Vol.II. We are, therefore, of the view that there is <sup>a</sup> specific provision under the rules for withholding the payment of DCRG till the conclusion of the departmental proceedings against a retired Government servant and as the disciplinary proceedings against the applicant have been initiated after the superannuation under the permission of the President, he is not entitled to get the DCRG as of right before such

proceedings are concluded and disposed of finally.

8. The applicant has claimed parity with A.U.Khan and has filed a confidential letter dated 12.10.1982 of the Dy.Director (Establishment) Railway Board to the General Manager N.E.Railway which states that in terms of rule 2308-A/R II it is not permissible to withhold the DCRG in a case where departmental or judicial proceedings have not been initiated and as no action was initiated against A.U.Khan, his withheld DCRG be released. In the case of the applicant, such proceedings have been initiated. The benefit of Annexure J, <sup>moreover, &</sup> cannot be extended to the applicant. In any case, if the Railway Board is willing to show any favour in this respect, he may approach the Railway Board and we may make it clear that this order shall not prevent the Railway Board from passing any suitable orders on such request from the applicant. So far as this Tribunal is concerned, we do not find it to be a fit case for ordering the payment of DCRG to the applicant before disciplinary proceedings against him are concluded.

9. Now coming to the seven <sup>other &</sup> payments claimed by the applicant, it appears that the payment of Rs.67.05 is regarding June 1980 for which the applicant had made a representation on 26.6.1985. The limitation for this claim expired on 31.5.1986. The claim for Rs.144 for DA from Feb.1980 to June 1980 is based on supplementary bill dated 1.7.1980 and the limitation for this expired much before the Tribunal was established. The same will be the position regarding the sum of Rs.4220 claimed by the applicant under the supplementary bill dated 1.7.1980 as difference of pay from 12.5.1980 to 31.5.1980.

10. The sum of Rs.40 has been claimed by the applicant on the basis of bill dated 27.1.1982 in respect of group insurance and this claim also became time barred before the establishment of the Tribunal. The sum of Rs.840 has been claimed by the applicant as difference in pay from Aug.1981 to March 1982 as shown in

annexure F. It is alleged that this amount was to be credited to the provident fund but has not been paid in spite of the sanction dated 5.10.1983 of the General Manager. The respondents are expected to honour the sanction of the General Manager as contained in annexure H. The reply of the respondents in this connection is that the amount as admissible has been paid to the applicant and nothing more is payable to him. In the rejoinder the applicant has stated that this reply is misleading. We leave this fact to be considered by the respondents as model employers but so far as this case is concerned, this claim of the applicant is also time barred and the limitation for it had expired on 30.4.1986.

11. The sum of Rs.2885 has been claimed as difference in pay from April 1982 to July 1983 in respect of the dearness allowance and the contention of the respondents is that the applicant has already been paid the necessary allowances and his claim is time barred. In our opinion, the limitation for this claim also expired on 30.4.1986. The last sum of Rs.1482 has been claimed by the applicant as arrears of pay as shown in annexure I. This amount is for the period commencing from April 1982 to July 1983 and its limitation also expired on 30.4.1986. In the application moved by the applicant for condoning the delay, the main or rather the only cause shown by the applicant is that as the disciplinary proceedings were to be initiated against him and they were initiated later on and <sup>could</sup> ~~cannot~~ be concluded, the applicant could not make his claim earlier. This can be a good ground for not claiming the DCRG but it cannot be a good ground for the other amounts claimed by the applicant in this petition. We, therefore, see no good ground for condoning the delay for the other reliefs and leave it only to the good gesture of the respondents to consider his claim for such amounts on merits and if any amount is found to be due to him, they may pass suitable orders for its

payment but on account of the bar of limitation, we cannot issue such directions to the respondents.

12. In view of the above considerations, the applicant is not entitled to any relief in this petition and the same is accordingly dismissed without any order as to costs.

21/3/88  
MEMBER (A) 21/3/88.

21/3/88  
MEMBER (J)

Dated: March 21, 1988  
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