

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 11th day of March 1997.

Original application No. 586 of 1988.

Hon'ble Mr. T.L. Verma, JM
Hon'ble Mr. D.S. Baweja, AM

Gulzari Lal, S/o Sri Bihari Lal,
R/o Purani Railway Colony, Qtr. No.
148, Izatnagar, Bareilly, Dist. Bareilly.

..... Applicant.

C/A Sri A.S. Diwakar

Versus

1. Union of India through General Manager,
N.E. Railways, Gorakhpur.
2. General Manager(Personnel), North Eastern
Railways, Gorakhpur.
3. Deputy Chief Mechanical Engineer, Izatnagar,
Bareilly.

..... Respondents.

C/R Sri Prashant Mathur

ORDER

Hon'ble Mr. D.S. Baweja, AM

This application has been filed praying for the following reliefs:-

- (a) to declare Rule 319(1) (2) of Manual of Railway Pension Rules 1950 as ultra vires of Articles 16 and 21 of the Constitution of India.
- (b) to quash the order dated 18.10.85 withholding the payment of the pension.
- (c) to direct respondents to pay the arrears of pension as well as current pension and other post retirement benefits with interest of 12 per cent per annum.

2. The applicant while working as Grade I Fitter at Izatnagar Bareilly, North Eastern Railway, was involved in a Criminal case under Section 302 IPC. The applicant.

Contd...2....

(9) (16)

was convicted with a sentence of life imprisonment by Session Judge Bareilly. The applicant was under suspension when he was arrested. ~~However~~ Subsequently his suspension was revoked when he was released on bail. However after conviction with a sentence of life imprisonment, the applicant was again arrested. On a appeal filed before Hon'ble High Court the applicant was released on bail. The applicant was again suspended with effect from 20.9.83 and during the suspension period, the applicant retired on 20.6.85. It is understood that the appeal in High Court is still pending. The applicant has been given the retiral benefits of Provident fund and Insurance but full pension has been withheld vide impugned order dated 18.10.85. Being aggrieved, the present application has been filed on 11.5.88.

3. The applicant has challenged the action of the respondents to withheld the payment of pension on the ground that he was dismissed only on the basis of conviction by the Criminal court and not as a result of disciplinary proceedings based on misconduct and as such he is entitled for the pension. The applicant has also contended that no opportunity of hearing was provided to him before taking the action of withholding the pension and the order dated 18.10.85 is non speaking order. The applicant has challenged the provisions of para 319 (1) & (2) of the Railway Pension Rules 1950 on the ground that pension is a right arising out of long service rendered by the public servant and such a right cannot be withdrawn completely as this effects the right to livelihood under ^{the Article} Section 21 ^{the} of Constitution of India. If at all, only part of the pension could have been held after giving due opportunity of hearing.

Contd...3...

(3)

(17)

4. The respondents have filed the counter affidavit admitting the facts with regard to conviction of the applicant with the life sentence, putting him under suspension from 20.9.83 and superannuation on 30.6.85 during the suspension period. It is further added that a show cause notice was issued dated 25.9.83 indicating that on account of conviction in the criminal case, the competent authority considers that applicant's further retention in public service is considered undesirable. The applicant was then given an opportunity to make representation. The applicant represented vide representation dated 5.10.85. The competent authority after considering the representation passed order dated 18.10.85 withholding full pension of the applicant. The respondents further contended that the decision taken by the competent authority for withholding the pension is fully covered under Para 319 of Manual of Railway Pension Rules 1950, wherein it is specifically provided that to maintain good conduct in future is an implied condition for grant of pension. It is further stated that even if staff is convicted after retirement para 319 is applicable and such a staff is not entitled for grant of pension. In the present case, the applicant was convicted during the service and thus he is not entitled for pension. In view of these facts, the grounds taken by the applicant are not tenable and the applicant has failed to point out any legal infirmity in the decision taken by the competent authority to withhold the pension. Any payment of the pension can be considered only after clear acquittal from the criminal proceedings. Further the respondents have also opposed the application on two other grounds. First ground is that the applicant has filed a Writ petition in 1984 challenging the order dated

Contd....4....

(W) (A)

25.9.83 before ^{the Hon'ble} High Court and the same was rejected at the admission stage itself by the Hon'ble High Court. In view of this the present application is barred by resjudicata and deserves to be rejected. Secondly the application is highly time barred. The order withholding the pension was passed on 18.10.85 while the applicant has challenged this order in February 1988 through this application. In view of these ^{facts} the respondents ^{have} prayed that the application not only lacks merit but is also not maintainable and as such deserves to be rejected.

5. The applicant has filed the rejoinder controverting the contention of the respondents. With regard to filing of Writ petition against the order dated 25.9.83, it is stated that the said Writ petition was filed for challenging the suspension and the show cause notice for dismissing the services of the applicant. The present application is for withholding ^{the} pension and therefore the question of attraction of principle of resjudicata does not arise. As regards the application being barred by limitation, it is contended that the payment of pension is a continuing cause of action and as such the application is not barred by limitation. It is further contended that after 1988, the rules have been modified according to which the pension if withheld or withdrawn shall not be reduced to less than Rs. 375/- per month and therefore the authorities are not entitled to withhold the entire pension but minimum had to be paid. The applicant is entitled to be paid pension according to the gravity of conduct and the gravity of conduct cannot be decided without affording opportunity of hearing. The power to withhold pension is to be exercised fairly and cannot

Contd....5...

(5) (19)

be ~~exercised~~ arbitrarily. The applicant has also sought the support of the judgement of Hon'ble Supreme Court in 'Remeshwar Yadav Vs. U.O.I.' 1989 Suppl. (2) Supreme Court Cases 565.

6. We have heard the learned counsel for the parties, and also given careful thought to the material brought on record.

7. Before going into the merits of the reliefs prayed for, we will deal with ^{the} preliminary objections raised by the respondents opposing the application as being not maintainable. The first objection is that application attracts the principle of resjudicata. The respondents have submitted that the applicant had filed a Writ Petition in 1984 before Hon'ble High Court challenging the letter dated 25.9.83 vide which show cause notice was given and the same was dismissed at the admission stage itself. In view of this, the applicant cannot agitate the same matter in a fresh application. We have gone through the Writ Petition brought on record by the respondents and we are unable to agree with the contention of the respondents. This Writ Petition concerns the action proposed as per the show cause notice dated 25.9.83 of imposing punishment on account of conviction in criminal case. The present application has been filed challenging the withholding of pension. Two issues are distinguishable. As such there is no merit in this objection. The second objection is with regard to application being barred by limitation as the cause of action arose in 1985 and the application has been filed in 1988. This objection is also not sustainable. Nonpayment of pension is a continuing cause of action and

Contd...6...

(6)

(20)

it arises every month. In view of this, the application is not considered to be time barred.

8. Having finding no merits in the objections with regard to maintainability of the application, we now go into the merit of the reliefs prayed for.

9. The main facts with regard to conviction of the applicant with sentence of life imprisonment, filing of an appeal by him against the same in High Court, granting bail by Hon'ble High Court, applicant being placed on suspension thereafter and finally retiring on 20.6.85 while still being under suspension. ^{as admitted} The main plank of respondents' defence is that a show cause notice dated 20.9.83 was issued to the applicant after his conviction with sentence of life imprisonment indicating the intention to impose major penalty. The applicant submitted representation dated 5.10.85 against this show cause notice and thereafter the impugned order dated 18.10.85 withholding pension was passed by the competent authority. On perusal of the material on record, these submissions made above by the respondents are not tenable. The applicant was placed on suspension from 20.9.83 after bail being granted by the High Court. While still under suspension the applicant retired on 30.6.85. The explanation to the show cause notice dated 5.10.85 has been furnished by the applicant after he retired from service. The impugned order dated 18.10.85 for withholding the pension has been also passed after his retirement. With this fact-situation, applicant's case is not case of conviction in a criminal case after retirement. The show cause notice dated 25.9.83 had given 15 days time for making representation. However the

Contd...7...

respondents did not take any action in pursuance of the show cause before superannuation. While still under suspension, the competent authority would have decided to impose the punishment of compulsory retirement. dismissal/removal from service. The nature of the punishment would have then determined the payment of retirement benefits and pension as per the extant rules applicable. No explanation has been offered by the respondents as to why no order was passed in pursuance of the show cause notice and ^{the} applicant allowed to retire under suspension. Could this be taken that this was deliberate and the competent authority did not intend to take any action pending the decision on the appeal before the ^{Honble} High Court. Having not done this and the fact that applicant was under suspension when he retired then the case of the applicant falls under the category of railway servant undergoing disciplinary proceedings initiated before retirement. The relevant disciplinary rules are there to apply and not the provisions of para 319 as discussed subsequently in para 10.

10. The respondents have asserted that the action to withhold the full pension has been taken as per para 319 of Manual of Railway Pension Rules 1950 brought on record with ^{the} counter reply. On perusal of the provisions of this para, we find that this para is applicable to the railway staff when the conduct after retirement is not good. This para is to be applied if the pensioner is convicted of serious crime or if found to be guilty of grave misconduct after the Railway servant retired. The applicant was convicted in a criminal case with sentence of life imprisonment before retirement. We are therefore

Contd...8...

fail to apprehend as to how the respondents claim to take action under para 319 to withhold payment ^{of pension} for conviction before retirement. The matter is further made clear in para 320 which states, "Action under para 319 can be taken only if the crime or grave misconduct occurred after the Railway servant retired." The logic put forward by the respondents that as per para 319 even if a railway servant is convicted in a criminal case after retirement, the pension can be withheld, then in case of the servant convicted before the retirement, the pension can be certainly withheld is not plausible. Relevant rules are laid down for taking disciplinary action against the staff convicted in a criminal case during service if the competent authority considers that continuing in public service of such a employee is not desirable. Nature of the major penalty imposed would then determine the entitlement for pension as brought out in para 9 above. Having failed to take action before retirement, the respondents cannot seek the support of para 319. Action taken to withhold pension under para 319 therefore is not legally sustainable and the impugned order dated 18.10.85 deserves to be quashed.

11. The applicant has also challenged that provision of para 319 (1) & (2) of Manual of Railway Pension 1950 is ultra vires being in violation of the Articles 21 and 16 of the Constitution of India. We have already held above that ^{the} action taken by the respondents is not covered by the provision of para 319 and accordingly the order dated 18.10.85 deserves to be quashed. In view of this, we are not going into the merits of this issue.

12. In consideration of the above facts, we allow the application quashing the impugned order dated 18.10.85 withholding the pension. The applicant shall be entitled for the pension as due at the time of retirement. Arrears of the pension shall be paid within four months from the date of receipt of the judgement. Respondents however will be at liberty to take action ^{if so desired} as per extant rules applicable to the railway staff retiring while under suspension. No order as to costs.

Member - A

Sharma

Member - J

Sharma

Arvind.