

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

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Allahabad : Dated this 3rd day of October 1997

Original Application No.868 of 1995

District : Deoria

CORAM:-

Hon'ble Mr. D.S. Bawia. A.M.

Jai Narain Upadhyaya Son of
Late Shri Ram Jatan Upadhyaya
Resident of Village & Post-Andila,
District-Deoria.

(By Shri Sanjay Kumar, Advocate)

. . . . Applicant

Versus

1. Union of India through General Manager,
N.E. Railway, Gorakhpur
2. The Chief Personnel Officer,
N.E. Railway, Gorakhpur.
3. The Dy. Controller of Stores,
N.E. Railway, Gorakhpur.

(By Shri Govind Saran, Advocate)

. . . . Respondents

ORDER

By Hon'ble Mr. D.S. Bawia. A.M.

This application has been filed under Section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs :-

- (a) to direct the respondents to pay gratuity to the applicant immediately alongwith 18% interest thereon.
- (b) to direct the respondents to pay the applicant all retiral benefits.
- (c) to direct the respondents to pay interest @ 18% per annum for the period from July 1994 to July, 1995 for the late payment of Pension, Commutation of Pension and Leave Encashment.

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(d) to award costs of this application.

2. The applicant while working as Depot Store Keeper Grade III under Dy. Controller of Stores North Eastern Railway Gorakhpur, was issued a charge sheet for major penalty in 1994. An inquiry was conducted. Based on the inquiry report vide order dated 23-3-1994, the disciplinary authority exonerated the applicant from the charges as the same could not be proved during the inquiry. Thereafter vide order dated 13-6-1994, the applicant was allowed the promotion as Depot Store Keeper Grade II w.e.f. 1-3-1993 as due. The applicant retired on 30-6-1994. On retirement the applicant was only paid the Provident Fund and the Group Insurance while the gratuity and pension were withheld. The pension was finally paid in July, 1995. Being aggrieved due to the non-payment of retiral benefits, the present application has been filed on 25-8-1995 praying for the reliefs as detailed earlier in para 1.

3. The respondents have filed a counter reply submitting that the pension of the applicant has already been released vide Pension Payment Order dated 18-5-1995 for payment of the pension w.e.f. 1-7-1994. All other retiral benefits have also been paid except the Death-Cum-Retirement Gratuity (DCRG for short). The DCRG has been withheld on account of the advice received from Vigilance Department through letters dated 4-7-1994 and 19-5-1995. The Vigilance Department had directed to withhold the DCRG as Vigilance Inquiry was in process against the applicant. The respondents have further argued that DCRG is paid only when the services of the employee are found satisfactory by the administration. The payment of DCRG is not ^athe matter of right of the employee and it is payable only at the discretion

(V)

of the administration on satisfactory service. Since the services of the applicant were not found satisfactory, the claim of the applicant for payment of the DCRG is baseless and unfounded. The respondents have further averred that the letters dated 4-7-1994 and 19-5-1995 are confidential letters and are, therefore, not being filed alongwith the counter reply and will be shown to the Bench at the time of hearing of the case. In view of these facts, the respondents pleaded that the applicant is not entitled for the reliefs prayed for and the application deserves to be dismissed.

4. The applicant has filed a rejoinder reply controverting the averments of the respondents and reiterating the pleadings made in the OA. The applicant has contended that the DCRG is not a bounty but it is a matter of right of the employee and, therefore, it cannot be taken as a provision at the discretion of the administration. The action of the Vigilance Department in directing the withholding of the DCRG is wholly illegal and arbitrary. The applicant retired without any inquiry pending against him and as per the extant rules he was entitled for payment of the retiral benefits including DCRG and Pension. The respondents have withheld the payment without any reason and, therefore, the applicant is entitled for payment of interest @ 18% per annum.

5. We have heard Shri Sanjay Kumar Om and Shri Govind Saran, learned counsel for the applicant and respondents respectively. The respondents have made available a copy of the letters dated 4-7-1997 and 19-5-1995 as directed by the order dated 13-7-1997. We have also carefully gone through the material brought on record.

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6. From the rival contention, it is an admitted fact that the applicant was exonerated of the charges vide order dated 23-9-1994 and was also given the due promotion before retirement on 30-6-1994. Thus, at the time of retirement, there was no disciplinary proceedings pending against the applicant. With this fact situation, I would examine the merit of the reliefs prayed for.

7. The applicant during the hearing indicated that the relief no.(b) with regard to retiral benefits is not being pressed as the required payments have already been made.

8. Taking the relief of payment of Leave Encashment, Pension and Commutation of Pension, it is an admitted fact that the pension was released vide Pension Payment Order dated 18-5-1995 and the actual payment of pension started in July, 1995. The Leave Encashment was paid on 25-2-1995 and the Commutation of Pension was paid on 18-4-1995. The respondents have not come with any explanation as to why the payment of pension and other benefits was delayed. The counter reply simply states that all the retiral benefits have been paid and the pension has also been released. During the hearing, the learned counsel for the respondents was asked pointedly as to the reasons for delay in making these payments, but he could not disclose any satisfactory explanation for delay in payment. Referring to Railway Servants (Pension) Rules, 1993, I find that in para 10, it is provided that even where the disciplinary proceedings were pending against the employee, the provisional pension is to be released. There is no provision to withhold the pension under any circumstances. In view of this, the pension was payable to the applicant

alongwith payment of Commutation of Pension and the Leave Encashment as due. In view no satisfactory explanation coming from the respondents and also the fact that there is no averments that the applicant was responsible for delay in any way, the applicant deserves the payment of interest due to delay in payment. Allowing the period of three months from the date of retirement, the applicant is entitled for payment of interest @ ^{balanced} 12% ^{per annum} for the delayed period. In case of the payment of pension, interest will be payable till the date of Pension Payment Order. The payment of the interest ^{shall} be done within three months from the date of receipt of the order.

9. As regards none payment the DCRG, the respondents have contended that Death-Cum-Retirement-Gratuity is not a matter of right and is payable only at the discretion of the administration considering the nature of services. It is further contended that the services of the applicant were not satisfactory and, therefore, he is not entitled for payment the DCRG. The applicant has repelled this contention of the respondents stating that DCRG is not a bounty but payment of the same is a matter of right. I am inclined to agree with the contention of the applicant. The respondents have not quoted any rule under which the payment of DCRG could be withheld. The respondents have relied only on the letter dated 4-7-1994 from the Vigilance Department directing to withhold the DCRG as some Vigilance Inquiry is in progress. Any direction to withhold DCRG even if issued by the Vigilance Department has to be in accordance with the rules. Any instructions issued in violation of the rules cannot deprive the employee of his right of getting the DCRG on retirement. Referring to Rule 10, Railway Servants (Pension) Rules, 1993, Sub-rule (c), provides that gratuity shall not be paid only where the departmental /

judicial proceedings are in progress till the conclusion of these proceedings. In the present case, the disciplinary proceedings had been dropped before retirement and the respondents have not made any averment that any other proceedings were pending against the applicant. In such a situation, withholding of the DCRG is not understood. The payment of DCRG has been withheld and delayed without any reason and, therefore, the applicant is entitled for payment of the DCRG immediately and also entitled ^kfor payment of the interest for delay. The DCRG will be released within a period of three months from the date of receipt of the order. Allowing the period of three months from the date of retirement for the balance period till the date of actual payment of DCRG payment of interest of 12% per annum will be done.

10. In view of the above deliberations, the application is allowed with the direction for payment of interest on account of delay in payment of pension, Commutation of Pension and Leave Encashment as contained in para 8 above and the payment of DCRG and interest thereon as directed in para 9 above.

11. The applicant during the hearing vehemently pleaded that the applicant has been forced to agitate the matter for seeking legal remedy for payment of retiral dues, which have been delayed by the respondents without any reason. In view of this, the applicant made a prayer that the applicant should be awarded costs of this application. Considering the facts of the case, I award costs of Rs.1000/- to the applicant.

A. B. Singh
Member (A)

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