

*Petitioners  
Benefits*

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH**

O.A. No.  
~~T.A. No.~~

740 OF 1988

DATE OF DECISION 15.05.1992.

Shri Indar Bhushan Rishi Petitioner

Shri K.S.Jhaveri Advocate for the Petitioner(s)

Versus

Union of India and Ors. Respondent

Shri N.S.Sheyde Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C.Bhatt : Member (J)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Shri Indar Bhushan Rishi,  
C/o. Shri G.M. Thaker,  
134, Sardar Nagar,  
Chhani Road,  
Vadodara - 390 002.

...Applicant.

( Advocate : Mr.K.S. Jhaveri )

Versus

1. Union of India,  
through General Manager,  
Western Railway,  
Churchgate,  
Bombay - 400 001.
2. Chief Project Manager, Vadodara  
Railway Electrification Project,  
Pratapnagar,  
Vadodara - 390 004.
3. The Chief Project Manager (Estt.),  
Office of the Chief Project Manager,  
Pratapnagar,  
Vadodara - 390 004. ...Respondents.

( Advocate : Mr.N.S. Shevde )

J U D G M E N T

O.A. NO. 740 OF 1988.

Date: 15.05.1992.

Per : Hon'ble Mr.R.C.Bhatt : Member (J)

The applicant, retired District Signal and Telecommunication Engineer Railway Electrification, Baroda, has filed this application under Section-19 of the Administrative Tribunals Act, 1985, seeking the relief that the respondents be directed to pay the retirement dues viz. regular pension, Commutation of pension, Gratuity, etc., as per the revised pay scale. It is alleged by the applicant that during his service with the respondents, he was appreciated and cash award and the

certificate of appreciations for working as Chief Signal Inspector (Maintenance) for Jaipur, and for performing duty as Station Master, were given to him produced at Annexure-A/9, collectively. The applicant retired at Baroda on 30th November, 1986, and the retirement certificate was issued by the respondents on 27th November, 1986, vide, Annexure-A/1. It is the case of the applicant that the respondent no.3, Chief Project Manager, Eastern Railway, by his order dated 19th November, 1986, issued a final certificate vide Annexure-A/2, wherein it is mentioned that there is no DAR/Vigilance, or Special Police Establishment case pending against the applicant. The applicant received on 2nd December, 1986, a charge sheet dated 25th November, 1986, issued by the respondents vide Annexure-A/3. Thereafter, another chargesheet dated 10th February, 1987, was served in place of the earlier one without cancelling the same. It is alleged by the applicant that the Departmental enquiry is pending against him and he is not given retirement dues. The applicant, thereafter, made representations to the Joint Secretary, Railway Board, New Delhi, by letter dated 7th December, 1986, vide Annexure-A/4, then on 20th January, 1987, to the General Manager, Western Railway, vide Annexure-A/5, and on 29th January, 1987, to the

Hon'ble Railway Minister, New Delhi, vide Annexure-A/6. He also then made representation on 20th June, 1987, to the respondent no.1, General Manager, Western Railway, claiming his retirement dues, vide Annexure-A/7, but no action was taken by the respondents. He also made representation Annexure-A/7.a., dated 1st December, 1987, to the CPO, Western Railway, that though he has been paid PF, fully, he is not paid the commuted pension and DCRG. The applicant, - thereafter, on 18th April, 1988, wrote a letter to the Joint Secretary, Railway Board New Delhi, stating therein that the enquiry <sup>has</sup> not made any progress and that he suffers with financial loss due to non release of gratuity and non grant of commutation of pension, and requested to pay the said amount without delay, but he did not receive any reply and hence this application.

2. The respondents have filed reply contending that the applicant was first served with a memorandum dated 25th November, 1986, vide Annexure-A/III A, issued by the Railway Board, proposing to hold an inquiry against the applicant under Rule-9, of the Railway Servants (Discipline & Appeal) Rules-1968. It is contended that in exercise of the powers conferred on him by Rule - 2308 of the Indian Railway Establishment Code Volume-II, the President has accorded sanction of the institution of

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Departmental proceedings against the applicant, as per order dated 10th February, 1987, vide Annexure-A/III B, produced by the applicant. The charges against the applicant are for violating Rule - 3.1. (I), 3.(I) (II) and 3 (III), of the Railway Services (Conduct) Rules, 1966. It is contended by the respondents that since DAR case is pending against the applicant, the provisional pension is allowed and the same is being paid to him but no other pensionary benefits can be given to him during the pendency of DAR proceeding. The respondents have denied that the charge sheet issued to the applicant dated 25th November, 1986, was received by him on 2nd December, 1986, and contended that the said charge sheet was attempted to be served on him before retirement i.e., before 30th November, 1986 personally and by speed post as he was out of his Head Quarters, viz. Baroda. And therefore, it could not be delivered to him before 30th November, 1986, and when he came back to Baroda it was received by him on 2nd December, 1986. It is contended that as the applicant retired on 30th November, 1986, the Railway Administration had to approach the President of India to approve the issue of charge sheet to the applicant a retired Railway employee, and the President of India accorded sanction of the

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institution of the departmental proceedings against the applicant. It is contended that as the charge-sheet dated 25th November, 1986, was received by the applicant by post on 2nd December, 1986, i.e., after his retirement, it has become illegal, null and void and a fresh charge-sheet dated 10th February, 1987, was served on the applicant after obtaining sanction of the President of India, and the departmental inquiry is pending against the applicant. The respondents have contended in para- 11, of their reply that the applicant is being paid provisional pension and has also been paid the amount of Rs.69,149.45, being his PF, Leave salary, G.I.S.

3. The applicant has filed rejoinder to it, contending that as per Railway Board circular dated 21st July, 1986, the Railway Board has directed not to withhold the retirement dues which are claimed by the applicant in the present case, the copy of which is produced at Annexure-A/X. It is contended that even as per the said circular, the Railway Board has directed to the subordinate to initiate the departmental inquiry atleast before 15 days in advance of the date of retirement of the employee. It is therefore, contended that the respondents could not withhold the payment of DCRG to the applicant as the departmental inquiry was initiated against him after he retired.

4. The respondents have filed reply to the rejoinder of the applicant contending that a formal charge-sheet memorandum dated 25th November, 1986, was attempted to be served upon the applicant before his retirement, as he reported sick at Bombay, under private medical practitioner up to 30th November, 1986. The respondents have produced at Annexure-R/1, the copy of Rule-2308 and 2308-A, of the Indian Railway Establishment Code, and at Annexure-R/2, the Railway Board's letter dated 17th May, 1978. The learned advocate for the applicant submitted that on 30th November, 1986, admittedly the applicant has retired from his service and the respondent no.3, had issued a final certificate that there was no DAR/Vigilance/Special Case pending against the applicant in this project. He submitted that therefore, the respondents could not with-hold the DCRG and commutation of pension amount for the charge-sheet issued on 10th February, 1987, after the retirement of the applicant. Learned advocate for the respondents submitted that the letter Annexure-A/2, dated 19th November, 1986, only stated that there was no DAR/Vigilance/Special case pending against the applicant in the said project which should not mean that no case against the applicant was pending. He submitted

that the memorandum dated 25th November, 1986, Annexure- A/3.A, issued by the Railway Board proposing to held an enquiry against the applicant was attempted to be delivered to the applicant <sup>before</sup> Z the date of his superannuation viz., 30th November, 1986, personally at Pratapnagar, as he was residing there but he was not available there at his residence at that time and hence it was sent to the applicant by Speed Registered post Acknowledgement and on 1st December, 1986, <sup>he</sup> Z presented the medical certificate of private doctor. He therefore, submitted that disciplinary inquiry was <sup>initiated</sup> Z against him before retirement. Learned advocate for the applicant submitted that the respondents have categorically <sup>in</sup> contended Z their reply that as the charge sheet dated 25th November, 1986, was received by the applicant by post on 2nd December, 1986, i.e., after his retirement on 30th November, 1986, the said charge-sheet has become illegal, null and void and a fresh charge-sheet dated 10th February, 1987, was served on the applicant after Z obtaining the sanction of the President of India. He therefore, submitted that the respondents could not contend that the departmental inquiry was initiated by way of charge-sheet against the applicant before retirement. I agree with the submission of the learned advocate for the applicant that the



respondent's contention that there was inquiry against the applicant before his retirement could not be accepted because of the contention taken in para-7, of the reply and because a fresh charge-sheet dated 10th February, 1987, was issued to the applicant.

earlier  
In short, the charge sheet no longer existed in view of the new charge-sheet dated 10th February, 1987, after obtaining the sanction of the President of India to initiate inquiry against the applicant.

5. The Proviso-b of Article-2308, of the Railway Establishment Code permits initiation of fresh proceedings against the public servant after his retirement with the sanction of the President in respect of any event which took place not more than 4 years before such institution, subject to the conditions mentioned therein. In the instant case such sanction is being taken by the respondents. Learned advocate for the applicant submitted that in view of the Railway Board circular dated 21st July, 1986, vide Annexure.A/X, the respondents could not withhold the DCRG and commuted pension of the applicant. He submitted that as per the said circular the Railway Board has directed to the subordinate to initiate departmental inquiry atleast before 15 days in advance of the date of retirement of the employee. He submitted that in the instant case as no departmental inquiry had been initiated against

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the applicant before retirement, the question of not giving the pension or DCRG did not arise nor the benefit of the commutation could be withheld.

Learned advocate for the respondents submitted that the applicant is paid the provisional pension which is as good as regular pension. However, he submitted that in view of Rule-2308-A, no DCRG and commutation value of pension is admissible, if the disciplinary/judicial proceedings has been instituted or continued against the Railway servant even after the retirement till the conclusion of such proceedings. He also relied on Railway Boards letter dated 17th May, 1978, produced at Annexure-R/2. The learned advocate for the respondents submitted that the Railway Board's circular-Annexure-A/X, on which the learned advocate for the applicant relied does not say anything about the payment of DCRG or commutation of pension amount when the departmental proceedings is initiated against Railway employee under Rule-2308 of the Railway Establishment Code-Volume-II. He submitted that the inquiry against the applicant is under Rule-3 of the Railway Service (Conduct) Rules, 1966, and the Articles of charges shown in the charge-sheet are the charges of grave misconduct. He submitted that as per the amendment of Article-2308 on 18th June, 1983, it is clarified that the term

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pension includes death cum retirement gratuity, and in view of the amended Article-2308 (A) CSR, Page-351 (B) no gratuity or death-cum retirement gratuity shall be paid to him until the conclusion of such proceeding and the issue of final orders thereon. The learned advocate for the applicant, on the other hand, submitted that the respondents should follow their own circular Annexure-A/X. Learned advocate for the respondents submitted that in view of Rule-1202 of the Railway Manual of Pension Rules read with Rule-2308, and Rule-2308 (A) of the Indian Railway Establishment Code, Volume-II, the applicant is not entitled to the gratuity amount and the commuted pension amount.

6. In the instant case, no order is passed by the President to withhold the DCRG amount or gratuity amount. Learned advocate for respondents submitted that such order depends on result of the inquiry against applicant. The grievance of the applicant is that the respondents could not postpone the payment of this amount till the inquiry is over, as the departmental inquiry against the applicant was initiated after his retirement. Though, it is true that the departmental inquiry against the applicant was initiated after his retirement, it cannot be over looked that the applicant is facing a departmental inquiry regarding the charges for violating

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under Rule-3 of the Railway Service (Conduct) Rules-1966, which are considered as the charges for grave misconduct or negligence and therefore, at this stage, the full amount could not be ordered to be paid to the applicant. However, as the inquiry is not over even 5 years after the charge sheet issued against the applicant, in my opinion, some amount of the gratuity normally payable to the applicant, some amount of commuted pension should be paid to the applicant on some conditions. The proceedings against the applicant should have concluded within a reasonable period. Therefore, in the interest of justice, equity and fair play, the applicant should be allowed to get some amount of DCRG and commuted pension amount in the following terms :

7. Hence the following order :

ORDER

"The application is partly allowed.

The respondents are directed to pay the applicant atleast one half of the gratuity normally payable to him within a period of four months of the date of receipt of this order, subject to his executing a bond of indemnity with two surities to the effect that he will refund the amount to the Govt. in case the DCRG payable to him as a result of the final orders on the charge sheet dated 10th February, 1987, is less than

this amount. The respondents are also directed to allow the applicant to commute one half of one third of the pension that the applicant is otherwise entitled to commute under Rules. The applicant shall ~~kindly~~ make an application in this regard to the competent authority and execute the similar bond of indemnity together with two surities. The amount of commuted pension shall be released with <sup>in</sup> a period of four months from the date of this application on above terms. The amount of gratuity and commutation of pension released to the applicant will be liable to adjustment depending on the final orders passed on the charge sheet dated 10th February, 1987. The application is disposed of accordingly. No order as to costs."



( R.C.Bhatt )  
Member(J)

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