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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


O.A.NO. 192 of 2006

Cuttack, this the 18th day of August, 2008

Bhagavan Mohapatra Applicant
Versus
Union of India & Ors. Respondents

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the Tribunal?


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


(C.R. MOHAPATRA)
MEMBER (ADMN.)

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C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

Bhagavan Mohapatra, aged about 73 years, S/o. Late Laxminarayan Mohapatra, retired Chief Reservation Supervisor, Kabichandra Street, Paralakhemundi, Dist. Gajapati.

.....Applicant

By legal practitioner: M/s.G.N.Mishra, S.C.Sahoo, T.K.Mishra, Counsel.

-Versus-

1. Union of India represented through its General Manager, East Coast Railway, Railway Vihar, Chandrasekahrpur, Bhubaneswar, Dist. Khurda.
2. Divisional Railway Manager (P), East Coast Railway, Khurda Road Division, Khurda Road, Jatni.
3. Divisional Personnel Officer, East Coast Railway, Khurda Road Division, Khurda Road, Jatni.
4. Station Superintendent (Gazetted), East Coast Railway, Bhubaneswar, Dist. Khurda.

.....Respondents

By legal practitioner: Mr. P.C.Panda, Counsel.

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ORDER

MR. C.R. MOHAPATRA, MEMBER (ADMN.):

Applicant a retired Chief Reservation Supervisor of the Railways has filed this Original Application seeking direction to the Respondents to sanction and disburse the pension, gratuity and other pensionary benefits with effect from 31.5.1991 with interest.

2. Respondents filed their counter stating that Applicant was involved in a CBI case in the year 1981 as a result of which he was placed under suspension with effect from 27.04.1981. Thereafter, CBI registered Criminal Case against the Applicant before the Learned Special Judge, Bhubaneswar bearing T.R. Case No. 20/83. The suspension order of the Applicant was revoked on 03.05.1991 and the Applicant retired from service on reaching the age of superannuation w.e.f. 31.05.1991. It has been stated that in TR Case No. 20/83, Learned Special Judge, Bhubaneswar, vide its order dated 24.11.1994 convicted the Applicant. Being aggrieved by the said order of conviction, the applicant preferred an appeal before the Hon'ble High Court of Orissa which was registered as Criminal Appeal No. 429 of 1994. According to the Respondents, they moved before the Superintendent of Police, SPE, CBI, BBSR in letter dated 02.12.2005 (Annexure-R/1) for getting

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back the seized service sheet of the Applicant to enable them to process and disburse the entitled dues of the Applicant, as per Rules. The Supdt. Of Police, CBI, SPE, BBSR in his letter dated 18.01.2006 (Annexure-R/2) expressed his inability to make available those records as the same have already been sent to the Hon'ble High Court of Orissa in Criminal Appeal No. 429 of 1994. Reiterating the earlier request, the Respondents again moved to the Supdt. Of Police, CBI in letter dated 21.07.2006 (Annexure-R/3) but they are yet to receive neither any reply nor the service sheets of the Applicant. The Respondents have stated that since the Applicant has been convicted by the Special Judge, Vigilance in TR Case No. 20/83, he is not entitled to any dues.

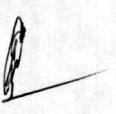
3. Heard Learned Counsel for both sides and perused the materials placed on record.

4. Learned Counsel for the Applicant submits that the Applicant retired from service w.e.f. 31.05.1991. In pursuance of Rule 79 of the Railway Services (Pension) Rules, 1993, the RespondentNo.4 forwarded the relevant papers including photographs and specimen signature of the applicant to the RespondentNo.3 by letter dated 31.05.1991(Annexure-A/3) for sanction of pension in favour of Applicant. In spite of long lapse of time, neither pension

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nor provisional pension as provided under Rules 91 of the Pension Rules, 1993 was sanctioned in favour of the Applicant. It has been argued that provisional pension can be granted under Rule 10 of the Rule, 1993 where departmental or judicial proceeding is pending. The proceedings which were initiated against the applicant is not related to his service yet, intentionally, deliberately with *mala fide* motive, he has been deprived of his livelihood due to non-payment of his pension and pensionary dues to which he is entitled to under the Rules. In support of his argument that the action of the Respondents *mala fide*, it has been contended that earlier the Applicant along with others filed Writ Petition before the Hon'ble High Court of Orissa bearing OJC No. 22/76 challenging the promotion of another employee of the Railways. On 11.01.1978, the Hon'ble High Court of Orissa allowed the said writ petition yet the Respondents did not comply with the same for which the Applicant filed Contempt Petition No. 19/78 wherein the General Manager was directed to appear in person. Being aggrieved by such action, the applicant was allowed to continue under suspension for ten years and even after his retirement, he was not sanctioned his rightful dues to which he is entitled under Rules. Besides the above, he has argued that the applicant is now aged about 73 years and suffering from various ailments. His sons and



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daughters are all dependent on him. Due to non-payment of his dues he is facing insurmountable difficulties. By stating that when the fine imposed by the order of the Learned Special Judge, Bhubaneswar has been stayed by the Hon'ble High Court in Criminal Appeal No. 429 of 1994 and the applicant is continuing on bail, non-sanction of the retirement benefits in favour of the Applicant is not only against the Rules but also violates the provisions enshrined under Article 21 of the Constitution of India. Accordingly, Learned Counsel for the Applicant very much insisted for issuance of direction to the Respondents to release the pension and other pensionary dues of the Applicant with interest retrospectively forthwith.

On the other hand, Learned Counsel for the Respondents has submitted that as all the records pertaining to the service period of the applicant has been seized by the CBI in connection with the Vigilance case instituted against him and in spite of repeated requests, the same have not been returned back, the Respondents are disabled to process the case of the Applicant, at least to release whatever dues the Applicant is entitled to under the Rules. It has been argued by him that it was completely myth and after thought that the Respondents have intentionally, deliberately with mala fide motive allowed the applicant to continue under suspension and did not

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sanction the pension and pensionary dues in his favour till date. Rather, as stated above, non-sanction of the retirement dues of the applicant was absolutely beyond the control of the Respondents. Further it has been argued that continuance of suspension has nothing to do in the present case and if there was any grievance with regard to his long suspension, he could have agitated at the relevant time before the appropriate forum. Having not done so, raising the finger to substantiate the allegation of mala fide as against the Respondents is nothing but after thought. Accordingly, showing their inability for sanction of any of the dues to which the Applicant is entitled to, for the reasons stated above, he has prayed for dismissal of this OA.

5. Having given our in-depth consideration to the arguments advanced by the parties, we have gone through the materials placed on record so also the Pension Rules of the Railways. Rule 9 of the Railway Services (Pension) Rules, 1993 "hereinafter called as 'Rules, 1993'" provides as under:

"9. Right of the President to withhold or withdraw Pension.

(1) The President reserves to himself the right of withholding or withdrawing a pension or gratuity, or both, either in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Railway, if, in any

departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement;

Provided that the Union Public Service Commission shall be consulted before any final orders are passed.

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees three hundred seventy five per mensem.

(2) The departmental proceedings referred to in sub rule (1)-

(a) if instituted while the railway servant was in service whether before his retirement or during his re-employment, shall after the final retirement of the railway servant, be deemed to be proceeding under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the railway servant had continued in service.

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President;

(b) if not instituted while the railway servant was in service, whether before his retirement or during his re-employment,-

(i) Shall not be instituted save with the sanction of the President;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an

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order of dismissal from service could be made in relation to the railway servant during his service;

(3) In the case of a railway servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in rule 96 shall be sanctioned."

Rule 10 of Rules, 1993 provides as under:

10. **Provisional Pension where departmental or judicial proceedings may be pending.** (1)(a) In respect of a railway servant referred to in sub-rule (3) of Rule 9, the Accounts Officer shall authorize the provisional pension not exceeding the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the railway servant or if he was under suspension on the date of retirement, up to the date immediately proceedings the date on which he was placed under suspension.

(b) The provisional pension shall be authorized by the Accounts Officer during the period commencing from the date of retirement up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

(c) **No gratuity shall be paid to the railway servant until the conclusion of the departmental or judicial proceedings** and issue of final orders thereon; provided that where departmental proceedings have been instituted under the provisions of the Railway Servants Discipline and Appeal Rules, 1968 for imposing any of the penalties specified in clause (i)(ii)(iii) and (iv) of rule 6 of the said rules, the payment of gratuity shall be authorized to be paid to the railway servant.

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(d) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such railway servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or pension is reduced or withheld either permanently or for a specified period.

(emphasis supplied)

Rule 70 & 71, of the Rules, 1993:

70. Retirement gratuity or death gratuity, -(1)(a) In the case of a railway servant, who has completed five years' qualifying service and has become eligible for service gratuity or pension under rule 69, shall, on his retirement, be granted retirement gratuity equal to one fourth of his emoluments for each completed six monthly period of qualifying service subject to a maximum of sixteen and one half times the emoluments and there shall be no ceiling or reckonable emoluments for calculating the gratuity.

71. Persons to whom gratuity is payable -
(1)(a) The gratuity payable under rule 70 shall be paid to the person or persons on whom the right to receive the gratuity is conferred by making a nomination under rule 74;

Rule 78 of Rules, 1993 provides as under:

"78. Preparation of Pension Papers.-Every Head of Office shall undertake the work of preparation of pension papers I Form 7, two years before the date on which a railway servant is due to retire on superannuation, or on the date on which he proceeds on leave preparatory to retirement, whichever is earlier."

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Rule 79 of Rules, 1993 obliges/authorizes the Head of the Office for completion of the pension papers within a specified period. Similarly Rule 91 binds the Head of the Office to follow Rule 79 rigorously. Relevant portion of Rule 91 is extracted herein below:

"91.....If the Head of the Office in such a case is of the opinion that the railway servant is likely to retire before his pension or gratuity or both can be finally assessed and settled in accordance with the provisions of these rules, he shall without delay take steps to determine the qualifying years of service and the emoluments qualifying for pension after most careful summary investigations that may be made. For this purpose, he shall -

- (i) rely upon such information as may be available in the official records; and
- (ii) ask the retiring railway servant to file a written statement on plain paper stating the total length of qualifying service including details of emoluments drawn during the last ten months of service but excluding the breaks and other non-qualifying periods of service;
- (2) The railway servant while furnishing the statement, as in clause (ii) of sub rule (1) shall, at the foot of the statement, make and subscribe to a declaration as to the truth of the statement;
- (3) The Head of Office, shall thereafter determine the qualifying years of service and the emoluments qualifying for pension in accordance with the information available in the official records and the information obtained from the retiring railway servant under

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sub rule (1) and he shall, then determine the amount of provisional pension and the amount of the provisional death cum retirement gratuity.

- (4) After the amount of pension and gratuity have been determined under sub clause (3), the Head of Office shall take further action as follows:--

....."

6. In the instant case admittedly the Applicant was placed under suspension w.e.f. 27.04.1981 due to institution of criminal case U/s. 5(1)(e) of the Prevention of Corruption Act (Amended as Section 13 of Act No. 49 of 1988) before the Learned Special Judge, Bhubaneswar. The order of suspension was revoked w.e.f. 02.05.1991 and the Applicant retired from service on 31.05.1991. Pension paper of applicant was sent by Respondent No.4 on 31.05.1991. On 24.11.1994, the Applicant was convicted by the Learned Special Judge, Bhubaneswar. On going through the Rules, it is clear that the Applicant although was entitled to provisional pension from the date of retirement till conviction, the same was not sanctioned in his favour. According to the Respondents as the service records of the Applicant was seized by the CBI no retirement dues, as per rules, was sanctioned and paid in favour of the Applicant which action cannot be countenanced because Rule ⁹¹~~79~~ of Rules, 1993 clearly envisages as to how the authorities meet a

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situation and sanction the provisional pension in favour of a retired Government servant in such a contingency. But sub rule (c) of Rule 10 of the Rules, 1993 clearly prohibits for sanction of gratuity as criminal case is instituted against the applicant while he was in service and continued even after retirement.

7. Above being the position of fact and Rules, the Respondents are hereby directed to consider the case of Applicant for grant of provisional pension with reference to Rule 10 read with Rule 91 of Railway Pension Rules, 1993, extracted above, and pass a reasoned order within a period of 30 (thirty) days from the date of receipt of a copy of this order.

8. In the result this OA stands allowed to the extent stated above.

There shall be no order as to costs.

K. Thankappan

(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

C.R. Mohapatra
(C.R. MOHAPATRA)
MEMBER (ADMN.)