

18

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A. No.925 of 2010

Cuttack, this the 23rd day of May, 2013

CORAM

HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL.)

HON'BLE MR. R. C. MISRA, MEMBER (ADMN.)

.....

Sri Jagannath Raut,
Aged about years,
Son of Late Sidheswar Raut,
At-Maitry Vihar,
Sidhya Mahavir Patna,
Dist-2.

....Applicant

(Advocate(s)-M/s.S.Patnaik,L.Mishra,S.K.Singh,S.Das)

-Versus-

Union of India represented through -

1. Divisional Railway Manager,
East Coast Railway,
Khurda Road,
Po.Jatni,
Dist. Khurda.
2. Sr. Divisional Security Commissioner,
East Coast Railway,
Khurda Road,
Po.Jatni,
Dist. Khurda.



3. Sr. Divisional Personnel Officer,
East Coast Railway,
Khurda Road,
Po.Jatni,
Dist.Khurda.
 4. Sr. Divisional Electrical Engineer (G),
East Coast Railway,
Khurda Road,
Po.Jatni,
Dist. Khurda.
-Respondents

(Advocate(s)- Mr.M.K.Das)

O R D E R

A.K. PATNAIK, MEMBER (J):

This Original Application has been filed by the Applicant who is a retired employee of the Railway seeking direction to the Respondents to give effect to the order of promotion under Annexure-3 (series) to Train Light Fitter (Gr.I) notionally and consequently pay him the differential arrears after fixation of his pay, pension and payment of final pension. He has also sought a direction to the Respondents to pay 40% commutation value of pension, leave salary due as on the date of retirement and DCRG.

Alley

2

2. Respondents filed their counter & Additional Counter, in which they have stated that the Applicant is not entitled to the relief as claimed by him in this Original Application as the Applicant while working as TLF Gr.II under the Senior Section Engineer (Electrical) Puri, was caught red handed by RPF (Post) Puri while committing theft of Railway properties for which RPF, Puri registered a Case against him U/S. 3 (a) R. P (U. P) Act. The Applicant faced trial in the court of Learned JMFC, Puri and after completion of trial; the Learned Court found him guilty and convicted for the offence U/S. 3 (a) R. P (UP) Act 1996. Consequently, he was placed under suspension w. e. f 03-7-96 followed by a Major Penalty Charge Sheet. However, the order of suspension was revoked w. e. f 10-8-96. Later on, the Applicant was convicted by the Learned JMFC, Puri on 12-4-05 U/S. 2 (c) C. C No. 76-96 and sentenced to undergo rigorous Imprisonment (R. I) for one year and payment of fine of Rs. 2,000/- or

Alles

in default, to undergo simple Imprisonment (S.I) for four months. After disposal^{of} the Case, the Applicant approached the Learned Addl. Sessions Judge, FTC. No. 1, Puri and filed Criminal Appeal 33/39 of 05 (challenging the order dated 12-4-05 in 2 (c) C. C 76/96). The Learned Addl. Sessions Judge, FTC No. 1, Puri set aside the order of conviction and exonerated the applicant from the charges vide order dated 15-4-06. After disposal of the Criminal Case, in order to finalize the D&A Case, Sr. DEE (G) KUR requested Sr. DSC (RPF) KUR vide his Letter No. KUR/E.L/D&A/653/Suspn. /J.R/133 dt. 26-6-06 to inform as to whether Administrative Appeal is filed against the Judgment dt. 15-4-06. In turn, the Sr. DSC (R. P. F) KUR informed the Sr. DE E (G) KUR vide his Letter No. R.P.F/Puri/Pro./2-96/2158 dt. 21/22-3-11, that the CSC (RPF) BBS submitted a proposal to the Secretary, Home Department (Law), Govt. of Odisha, BBSR for preferring Appeal before the

Allee

Hon'ble High Court of Orissa. After approval of the proposal Appeal was filed against the Order dtd 15.4.2006 of the Learned Additional Sessions Judge FTC No. 1, Puri before the Hon'ble High Court of Orissa which was registered as **CRLREV No. 1486/07** (converted to CRLLP No.6 of 2009 vide order dated 6.1.2009) which is still subjudice. Accordingly, the Applicant was informed vide Letter No. Settl./Elect./N.R/299/10 dt. 15-12-07 that due to want of D & A clearance and clearance from RPF Department, he has been sanctioned with provisional Pension only. Further, it is submitted that regarding fixation of pay in the Promotional Grade and revision of Pensionary benefit, the same can only be done after obtaining the above mentioned clearance from the concerned Department/RPF Department.

3. We have heard Ms.Saswata Patnaik, Learned Counsel appearing for the Applicant and Mr.M.K.Das



3

(Learned panel Counsel for the Railway) appearing for the Respondents and perused the records.

4. Ms.Patnaik, Learned Counsel for the Applicant submitted that the applicant retired from service on reaching the age of superannuation on 30.6.2004. The Disciplinary Proceedings were initiated against the applicant vide Memorandum dated 9.8.1996. The CRLLP No.6 of 2009 was dismissed on 3.2.2012. It was contended by her that there was no bar on the part of the Respondents to conclude the departmental proceedings even before completion of the Criminal Case. Even after one year of dismissal of the CRLLP filed by the State no step has been taken by the Respondents to conclude the proceedings. Further contention of the Learned Counsel for the Applicant that there is no reason to withhold the statutory dues of the applicant in the name of pendency of the disciplinary proceedings as the charge in the disciplinary proceedings^{is} no longer in existence. In this

Alar

24

connection, Ms.Patnaik, Learned Counsel for the applicant has placed reliance on the decision of the Hon'ble Apex Court in the case of **G.M.Tank Vrs State of Gujarat and Others**, 2006 SCC (L&S) 1121. Accordingly, Learned Counsel for the Applicant has prayed for the relief claimed in this OA.

5. On the other hand, by drawing our attention to various provisions of the Rules, Mr.M.K.Das, Learned panel Counsel for the Railways/Respondents opposed the contentions advanced by Learned Counsel for the Applicant on merit as also on the maintainability of this OA. Similarly, by placing reliance on the decision reported in 2003 Lab IC P-1202 (**CMD UCO Bank Vrs P.C.Karkar**); 2004 (7) SCR(1) (**Supreme Court Allahabad Dist, Co-Operative Bank Vrs V.V Mishra**); 2003 Lab IC 281 (**Commissioner of Police Hyderabad Vrs Rocha konda Ranga Subbaiah**) and 1999(3) SLJ SC-153 (**Captain Paul Anthony vrs BGML & others**), while

Alles

opposing the stand of the applicant that after dismissal of the CRLLP the Respondents/Department is estopped to proceeding in the criminal case, it was contended by Mr.Das that departmental proceeding can be legally continued even after acquittal in a criminal case. Accordingly, Mr.Das reiterated his prayer for dismissal of this OA being devoid of any merit.

6. After considering rival submissions of the parties, we have perused the relevant rules and materials placed on record. We find no fault on the Respondents in not releasing the dues claimed by the applicant in this OA as the same was due to pendency of the criminal case and disciplinary proceedings as well. We find that after the CRLLP filed by the State before the Hon'ble High Court of Orissa has been dismissed on 3.2.2012, a decision could have been taken on the disciplinary proceedings which have been pending since 9.8.1996. According to the Respondents

Alles


the claim of the applicant has not been settled due to pendency of criminal case and departmental proceedings and now when the criminal case has been set at rest by the order of the Hon'ble High Court of Orissa vide order dated 3.2.2012 in dismissing the CRLLP filed by the State, therefore there is no embargo to conclude the Departmental Proceedings initiated against the applicant. Hence on the oral prayer of the Learned Counsel for the Applicant, without going to the nitty-gritty of the law and to avoid multiplicity of litigation and further delay, this OA is disposed of with direction to the Respondents to conclude the departmental proceedings initiated against the applicant vide Memorandum dated 9.8.1996 within a period of 90(ninety) days from the date of receipt of copy of this order subject to rendering necessary cooperation by the applicant in not taking unnecessary adjournment(s) without any valid ground. Thereafter, release the dues/grant the benefit to the

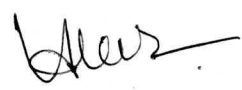


28

applicant, to which he is entitled to under the Rules within a period of 60(sixty) days therefrom.

7. With the aforesaid observation and direction this OA stands disposed of. There shall be no order as to costs.


(R.C.MISRA)
Member(Admn.)


(A.K.PATNAIK)
Member (Judl.)