

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

O.A. 21 OF 96

Present

Hon'ble Dr. B.C. Sarma, Member (A)

Hon'ble Mr. P. Dutta, Member (J)

JIBAN CH. SARBAJNA

-Vs-

UNION OF INDIA & ORS

For Applicant Mr. B. Chatterjee, Sr. Counsel.  
Mr. D.P. Bhattacharyya, Counsel.

For Respondents Mr. C. Samaddar, Counsel.

Heard on : 17-6-96

Ordered on : 17-6-1996

O R D E R

B.C. Sarma, AM

The dispute raised in this application is about the grant of interest on the DCRG amount sanctioned to the applicant after retirement and also on the value of commutation of pension. The applicant has also prayed for compensation amounting to Rs.40,000/- for withholding post retirement complementary passes for 8 sets for the period of 4 years. The case, in brief, is as follows.

2. The applicant, who was functioning as OS Gr. I under the respondents, had retired on attaining the age of superannuation on 31-7-91. However, about 20 days before his retirement, a charge memo dtd 12-7-1991 for minor penalty was issued and a disciplinary proceeding was instituted against him. On the same day, the applicant had replied to the said charge memo and the disciplinary authority imposed on him the penalty of Censure on the same day itself. However, the appellate authority initiated revisional proceeding under Rule 21 of RSDA Rules, 1968, and to that effect, he was intimated on 20-7-91. The applicant had replied to the notice issued by the Revisional authority; but, ultimately, an order/<sup>was</sup> passed on 2-2-95 intimating him that the matter was dropped. Thereafter, the applicant was given his DCRG amount and other benefits on 19-2-95. The applicant now contends that the grant of DCRG and other benefits and illegally was unduly/delayed by the respondents and as per the extant

instructions, he is entitled to receive interest @ 18% per annum. Hence, the case.

3. The respondents have resisted the case at the stage of admission by filing a reply. The stand taken by them has been that after the passing of the order of the disciplinary authority censuring the applicant, the Addl. Divisional Railway Manager, who was the appellate authority, had reviewed the punishment imposed by the disciplinary authority in terms of Rule 25 of RSDA Rules, 1968, and considering that the said punishment was inadequate, by an order dtd 20-7-91, directed the applicant to submit a written statement on the charge which was framed on the basis of the earlier charge. The respondents further contend that on retirement, the applicant was given Provident Fund, G.I.S. <sup>on em</sup>, Leave Salary, and also Provisional Pension. They have contended that at the time of retirement of the employee, there was a disciplinary proceeding pending against him, and, as such, his DCRG amount was withheld. The respondents have, therefore, prayed for dismissal of the applicant since it is devoid of merit.

4. During hearing, Mr. Chatterjee, 1d. Sr. Counsel for the applicant, invited our attention to the provision of Rule 2308 of R-II. According to Mr. Chatterjee, the disciplinary proceeding envisaged in that rule is a proceeding which was not yet concluded. In his case, the proceeding was concluded, and, therefore, by virtue of Rule 25 of RSDA Rules, 1968, the respondents are precluded from initiating any proceeding during the appeal period. Mr. Chatterjee submits that the applicant did not file any appeal against the order of the disciplinary authority dtd 12-7-91. The period of appeal is 45 days, and, therefore, by initiating the revisional proceeding, the respondents had violated the provisions of Rule 25 of the RSDA Rules, 1968. Therefore, the action taken by the respondents is clearly unsustainable in the eye of law. However, Mr. Samaddar, 1d. counsel for the respondents, submitted that at the time of

retirement of the applicant, there was a proceeding, which was a revisional proceeding, and although it is true that the disciplinary authority had concluded the disciplinary proceeding initiated against the applicant, the initiation of the revisional proceeding had revived the disciplinary proceeding and, therefore, it cannot be said that there was no proceeding on the date of retirement of the applicant i.e., 31-7-1991. Mr. Samaddar further submitted that the order of the disciplinary authority has not been challenged in this application, and, therefore, the applicant is not free to raise the merit or otherwise of the said order passed by the disciplinary authority or by the revisional authority.

5. We have examined the matter carefully after hearing the submission of the ld. counsel for both the parties, perusing records and considering the facts and circumstances of the case. It is true that the applicant has made a limited prayer before us and that pertains to grant of interest on the delayed payment of DCRG and the commuted value of pension; but, certain facts will have to be re-borne <sup>in mind</sup> in this case. Undisputedly, there was a disciplinary proceeding initiated against the applicant while he was in service. The disciplinary authority had also passed an order censuring the applicant while he was in service. The applicant did not submit any appeal against the said order of the disciplinary authority. This indicates that the applicant was not at all aggrieved by the said order of the disciplinary authority. However, the respondents thought that the penalty imposed by the disciplinary authority was not adequate and, therefore, they had invoked the provision of Rule 25 of the RSDA Rules, 1968. We have perused the contents of the order dtd 26-10-92 (Annexure R-I to the reply) and the said order indicates that a notice was issued to the applicant.

6. We have given careful consideration to the submission of Mr. Samaddar to the effect that the applicant has not challenged the order of the revisional authority and, therefore, the applicant is not free to take advantage of such a challenge. As we have already discussed, the applicant, first

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of all, did not feel aggrieved by the order of the disciplinary authority. We also note that the revisional authority had initiated the revisional proceeding within the prohibited period of filing appeal which was in violation of the provision to Rule 25 of RSDA Rules, 1968. The ultimate order passed by the revisional authority is dropping the revisional proceeding. Therefore, the applicant cannot be aggrieved by the action of the revisional authority. If Mr. Samaddar's contention is accepted by us, then, the only stage at which the applicant would have come to this Tribunal was the moment when the revisional proceeding was initiated. But, then again, it is only a notice, and, therefore, it would have been futile if the applicant would have come for redressal <sup>at that stage;</sup> after his real cause of action had arisen only after the disposal of the revisional proceeding and the respondents had made the payment regarding gratuity as well as commuted value of pension. It is true, if a cause of action is not challenged, no relief should normally be granted <sup>on that</sup>. In this case, we find that the respondents had relied on certain proceeding against the applicant in clear violation of statutory rules and, therefore, such a proceeding was void ab initio. In such a situation, if no relief is granted to the applicant, we are afraid, that would amount to travesty of justice and, therefore, it is a fit case, in our view, to intervene in this matter.

7. We now come to the proceeding initiated by the revisional authority against the applicant. Sub-Rule (2) of Rule 25 of RSDA Rules, 1968, states as follows:-

"(2) No proceeding for revision shall be commenced until after -

- i) the expiry of the period of limitation for an appeal; or
- ii) the disposal of the appeal where any such appeal has been preferred:

Provided that the provisions of this Sub-rule shall not apply to the revision of punishment in case of Railway accidents.

Admittedly, the proviso as regards initiation of revisional proceeding in case of Railway accidents is not applicable in this case. By virtue of the said sub-rule, the respondents are clearly debarred from initiating any proceeding within the

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prohibited appeal period. We also find that on the basis of such proceeding, which is invalid, the respondents have denied a valuable right to the applicant in not granting interest. We are, therefore, of the view that the said action is not sustainable in the eye of law and it has to be quashed.

8. For the reasons given above, the application succeeds. The respondents are directed to pay interest @ 10% per annum from the date immediately falling due from the date of expiry of three months of his retirement to the date of actual payment of such DCRG. We pass no order as to costs. The application is, thus, disposed of at the stage of admission itself.

Paritosh SLP

(P. Dutta)  
Member (J)



(B.C. Sarma)  
Member (A)

crd/