

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. 796 OF 1996
M.A. 230 OF 1998
M.A. 351 OF 2001

Date of order : 4.3.03

Present : Hon'ble Mr. B.P.Singh, Member (A)
Hon'ble Mr. N. Prusty, Member (j)

A.K.BHATTACHARJEE

VS
UNION OF INDIA & ORS (S.E.RLY)

For the applicant : Mr. P.B. Misra, Counsel

For the respondents : Mr. S. Sen, Counsel

O R D E R

B.P.Singh, A.M.:

With the consent of the ld. counsels for both the parties, the OA and the connected MAs are taken up together after treating the OA as on day's list.

2. M.A. 230 of 1998 has been filed by the applicant of the OA praying for an interim order directing the respondent authorities to pay him encashment of unutilised leave due after retirement with interest. Ld. counsel for the respondents submits that since a disciplinary proceeding is pending against the applicant, leave encashment dues could not be paid to the applicant so far.

3. M.A. 351 of 2001 has been filed by the respondents of the OA stating that the disciplinary proceeding pending against the applicant has reached at the final stage and is ready for passing the final order. It is, therefore, prayed that the interim order passed by this Tribunal on 21.1.98 may be vacated and the respondent authorities may be permitted to pass the final order and communicate the same to the applicant. It is submitted that unless the final order is passed in the DA proceeding, the dues payable to the applicant after retirement could not be paid to him. It is further stated that the applicant is at present receiving only provisional pension.

4. In the OA, the applicant, who was working as Principal Foreman, under the S.E.Rly., has prayed for quashing the charge-sheet dt. 18.5.90 and the enquiry proceeding started on its basis as also

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the order of the President dt. 16.1.96 (annexure-A13) by which the President disagreed with the findings of the enquiry officer and asked the charged official (the applicant) to represent against the reasons of disagreement. The applicant submitted his representation in reply to this communication but before any final decision could be taken, the litigation started by filing of this OA. By an interim order passed on 21.1.98, this Tribunal granted liberty to the respondents to proceed with the enquiry but it was directed that no final order shall be passed without the leave of the Court. In addition to the above prayers, the applicant has also prayed that the respondents be directed to pay him full retirement benefits including leave salary and all other consequential retirement benefits with interest at the rate of 18% p.a. for delayed payment.

5. Ld. counsel for the applicant submits that the applicant retired in January 1991 and all his retirement benefits have been withheld so far and the applicant is suffering. He has further submitted that the charge sheet and the enquiry proceeding are per se illegal and it should be quashed. However, we find that this Tribunal by its order dt. 21.1.98 only directed the respondents not to pass the final order without the leave of the Court. Unless this interim order is vacated and the respondent authorities are permitted to pass the final order and communicate the same to the applicant, no follow up action for payment of retirement benefits to the applicant can be taken. Therefore, in our opinion, it is absolutely necessary that the said interim order should be vacated with a direction to the respondents to pass the final order in the disciplinary proceeding and communicate the same to the applicant so that his retirement benefits can be settled in accordance with the said decision.

6. Ld. counsel for the applicant submits that the applicant apprehends that there will be an order of cut in pension. He, therefore, submits that he may be permitted to file a supplementary application challenging such final order when passed and the OA should not be disposed of at this stage. We are, however, of the view that

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the order of the competent authority in the disciplinary proceeding cannot be challenged in this OA by filing a supplementary application as the same will further delay the payment of other retiral benefits due to the applicant, which will be dependent on the final decision in the pending disciplinary case. We are, therefore, of the view that both the MAs and the OA should be disposed so that the respondents can pass the final order in the disciplinary proceeding and the applicant gets an opportunity to make appeal before appropriate forum against such final order, if it goes against him.

7. In view of the above, we hereby vacate the interim order dt. 21.1.98 passed in the OA with a direction to the respondent authorities to pass the final order in the pending disciplinary proceedings against the applicant within 3 months from the date of communication of this order and to communicate the same to the applicant within 2 weeks thereafter. We also direct the respondent authorities that all the retiral benefits of the applicant including leave encashment etc. should be settled as per rules based on the final outcome of the disciplinary proceeding within a period of 2 months from the date of passing final order in the said proceedings. We, however, give liberty to the applicant that in case he is aggrieved by any of the orders of the respondents, he will be free to approach appropriate forum for redressal of his grievance according to law.

8. The OA and the connected MAs are disposed of accordingly. There will be no order as to costs.



(N. BRUSTY)

MEMBER(J)



(B.P. SINGH)

MEMBER(A)