

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH: JODHPUR

Date of order : 30.8.1995

OA NO. 174/95

Bheru Lal ... Applicant.

v e r s u s

Union of India & Ors. ... Respondents.

Mr. J.K. Kaushik, Counsel for the applicant.

Mr. S.S. Vyas, Counsel for the respondents.

CORAM:

Hon'ble Mr. Gopal Krishna, Vice Chairman.

Hon'ble Ms. Usha Sen, Administrative Member.

Per Hon'ble Mr. Gopal Krishna:

Applicant Bheru Lal has filed this application under Section 19 of the Administrative Tribunals Act, 1985, challenging the order at Annexure A/1 dated 6.12.94 by which his request for grant of leave salary was not acceded to due to the pendency of DAR proceedings for major penalty against him. Applicant has also prayed for a direction to the respondents to release retiral benefits i.e. the amount of commutation of pension, gratuity, leave encashment etc. due to the applicant under the rules.

2. Applicant's case is that while serving as Goods Train Driver in the Jodhpur Division of the Northern *Circular* Railway, due to sudden failure of brakes there was an

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accident on 5.11.91 as a result of which the engine got detached from the train and it dashed against another engine standing nearby. A criminal case No.207/92 State versus Inderlal & others was registered on the First Information Report made in the matter and the same is still pending. Thereafter, the applicant was served with a charge-sheet for major penalty in regard to the same incident. The applicant moved an OA No. 216/93 in this Tribunal which was disposed of with a direction to the respondents to wait for the decision in the criminal proceedings. The applicant sought voluntary retirement on 17.1.92 and on expiry of the period of notice, he retired from service with effect from 16.4.92. The applicant has been granted provisional pension treating the notice of voluntary retirement as accepted. The applicant had filed another OA No.303/93 before this Tribunal which was disposed of vide order Annexure A/4 dated 22.9.93. The applicant, thereafter, made representation for payment of retiral benefits and since disciplinary proceedings for major penalty are pending, only provisional pension has been paid to the applicant. The action of the respondents in withholding commutation of pension, gratuity, leave encashment and other retiral benefits has been assailed as being illegal.

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3. The respondents have contested this application stating in their reply that despite the red signal the applicant had negligently entered into the Section violating the safety aspects and had caused the accident by his recklessness. He was, therefore, charge-sheeted by the department and the disciplinary action initiated against him is still pending. A criminal case has also been instituted against the applicant and the same has not been decided. The disciplinary proceedings have been stayed due to the pendency of the criminal case in the Court of Railway Magistrate at Jaipur. The applicant has already received the provident fund and the amount of Group Insurance Scheme. The provisional pension is being paid to the applicant with effect from 17.4.1992. The applicant has not been granted retirement gratuity, commuted value of pension and leave encashment in terms of the provisions contained in Rule 316 of the Manual of Pension Rules, 1950 (the Rules, for short). The contention of the respondents is that the payment of retirement gratuity and commutation of pension has rightly been withheld till the final decision of the criminal case as well as the departmental proceedings against him.

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4. We have heard learned counsel for the parties and

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have gone through the records. The parties counsel have agreed to this case being disposed of at the stage of admission. It has been urged on behalf of the respondents that Rule 316 of the Rules authorises the respondents to withhold the amount of gratuity till the final decision in the criminal case and the departmental proceedings pending against the applicant. Rule 316 of the Rules reads as follows :-

"316 (1) Where any departmental or judicial proceeding is instituted under Para 315 or where a departmental proceeding is continued under clause (a) of the proviso thereto against a Railway servant who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceedings, final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service upto the date of retirement, or if he was under suspension on the date of retirement, upto the date immediately preceding the date on which he was placed under suspension; but 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.

"(2) Payment of provisional pension made under clause (1) shall be adjusted against the final retirement benefits sanctioned to such Railway servant upon conclusion of the aforesaid proceeding but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period."

The learned counsel for the applicant placed reliance *G.K. Nishre* on (1994) 28 ATC 799 (P.R. Das vs. Union of India &

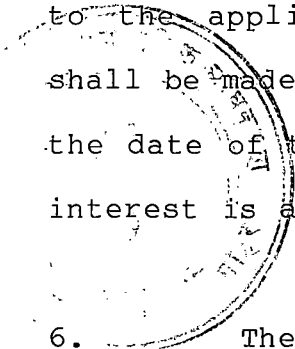
Others) and contended that the provisions contained in the aforesaid Rule 316 of the Rules are not mandatory. Agreeing with the decision rendered by the Bombay Bench of the Tribunal, we are also inclined to think that though there is a prohibition in the rule that prohibition has to be regarded as directory but even directory provisions are to be complied with and it would not be open to the Tribunal to refuse to enforce the rule. The only way in which the rule can be enforced in the present circumstances is by putting some conditions which would give effect to the object which was to be achieved by framing the rules. The applicant has taken voluntary retirement with effect from 16.4.1992. The learned counsel for the applicant has stated that the applicant is now aged 58 years. It is not known as to how much time the trial of criminal case may take. The learned counsel for the applicant does not at the moment press the claim for grant of commutation of pension in this case. According to the learned counsel for the applicant, there is no provision in the relevant rules for withholding the leave encashment. The learned counsel for the respondents has also not been able to cite any provision under which the same can be withheld.

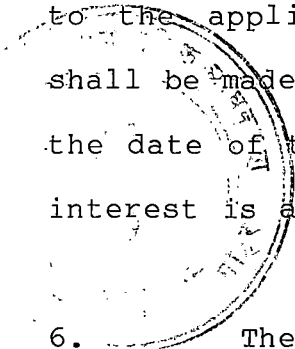
C.K. 5. In view of the decision rendered by the Bombay

Bench of the Tribunal in the case of P.R. Das vs.

Union of India & Others reported in (1994) 28 ATC 799 cited supra; we direct the respondents to release half of the amount of death-cum-retirement gratuity admissible to the applicant on his executing an indemnity bond with two sureties to the effect that the applicant will refund the amount to the respondents in the event of his being convicted by the Criminal Court and the President's order to recover the amount of gratuity that may be paid to him. The respondents are further directed to release the leave encashment due to the applicant under the rules. These payments shall be made to the applicant within four months from the date of the receipt of a copy of this order. No interest is allowed to be paid on these amounts.

6. The OA, therefore, succeeds to the extent stated above. No order as to costs.

  
(USHA SEN)  
MEMBER (A)

  
(GOPAL KRISHNA)  
VICE CHAIRMAN

cvr.