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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH: JODHPUR

Date of Order : 30.8.95

O.A.No.175/95.

Inder Lal ...Applicant.

VERSUS

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 Inder Lal has prayed in this application under Section 19 of the Administrative Tribunals Act, 1985, for a direction to the respondents to release the retiral benefits i.e. the amount of commutation of pension, gratuity etc. due to him.

2. The applicant has come out with a case that while serving as Mail/Express Train Driver in the Jodhpur Division of the Northern Railway, there was an accident and the engine of the train ~~got~~ detached ~~there~~ from and it dashed against another engine standing nearby on 5.11.91. A criminal case was instituted against the applicant on the basis of First Information Report, which is still pending. The applicant was served with a charge-sheet for major penalty in the same matter ~~Ch~~ grounded on the same facts. The applicant filed an O.A.

No. 215/93 challenging the charge-sheet and the proceedings relating to it and vide order dated 29.7.93, the OA was decided with a direction to the respondents to wait for the decision in the criminal proceedings. The applicant had sought voluntary retirement with effect from 26.3.92 after a direction by this Tribunal in OA No. 216/92 to the respondents for treating the notice of voluntary retirement as accepted. The applicant has already been granted leave encashment but he has not been paid the other retiral benefits, e.g. commutation of pension, gratuity etc. which have been withheld in an arbitrary manner, according to the applicant.

3. On the contrary, the respondents have stated that the accident was due to the negligence of the applicant in not taking safety measures and, therefore, a charge-sheet for major penalty was issued to him. The disciplinary proceedings are still pending. A criminal case in the Court of Railway Magistrate, Jaipur, under Sections 336, 337 of the Indian Penal Code and Section 175 of the Railway Act is still not decided. However, the departmental proceedings have been stayed by an order of the Tribunal in OA No. 215/93 till the decision of the criminal case. Since the applicant was given voluntary retirement from service with effect from 26.3.92, the amount of Provident Fund and Group Insurance Scheme have been paid to him. Provisional pension with effect from 27.3.92 has also been allowed. His retiral benefits e.g. gratuity and commutation of pension have not been paid due to the pendency of the departmental criminal case proceedings and the l in terms of Rule 316 of the Manual of Railway Pension Rules, 1950 (the Rules, for short).

4. We have heard learned counsel for the parties and 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 on (1994) 28 ATC 799 (P.R.Das vs. Union of India & Ors.) 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 26.3.92. The learned counsel for the applicant has stated that the applicant is now aged 60 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.

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 ~~Government~~ President's order to recover the amount of gratuity

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that may be paid to him. Payment 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 this amount.

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

Usha Sen
(USHA SEN)
MEMBER (A)

Gopal Krishna
(GOPAL KRISHNA)
VICE CHAIRMAN

cvr/vs