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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 11-07-2001

O.A. No. 176/98

Smt. Laxmi Devi wife of late Om Prakash, aged about 62 years, resident of Jatabas, Mahamandir, Jodhpur; LRs of late Om Prakash, last employed on the post of Driver in Loco Shed, Northern Railway, Jodhpur, applicant in OA.

... Applicant.

versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Jodhpur Division, Jodhpur.
3. Divisional Personnel Officer, Northern Railway, Jodhpur Division, Jodhpur.

... Respondents.

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

Mr. Salil Trivedi, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

BY THE COURT:

This application is filed by Shri Om Prakash S/o Shri Ghasi Ram Ji under Section 19 of the Administrative Tribunals Act, 1985, claiming interest @18% per annum on the delayed payment of gratuity, Leave encashment etc. He also prayed for refund of the excess payment for the issuance of medical card with a direction to the respondents to take into account the salary that he was drawing at the time of his retirement without reference to the scale provided under Fifth Pay Commission for receiving such card. The applicant (Om Prakash) died on 22.03.1999, and

accordingly, his wife Smt. Laxmi Devi filed an MA No. 147/2000 for bringing her on record as legal heir alongwith another M.A. No. 148/2000 for condonation of delay. Both the MAs were allowed vide order of this Tribunal dated 08.02.2001 and Smt. Laxmi Devi, wife of the deceased Om Prakash, was brought on record as legal representative.

2. The applicant contended that he entered in the service on 09.02.1954. He was placed under suspension vide order dated 05.12.1989 w.e.f. 04.12.1989 in view of the accident that occurred on 02.12.1989, when the applicant was discharging his duties as Passenger Driver. Subsequently, a Disciplinary Enquiry was also initiated against the applicant by serving on him the Standard Form-5 (S.F-5, for short) on 15.12.1989. Challenging the same, he filed an OA No. 375/1990 before this Tribunal for restraining the respondents from proceeding with the departmental enquiry. In that case, the departmental enquiry was stayed on 05.09.1990 and finally, the said OA was decided on 10.07.1992 directing the respondents not to proceed with the departmental enquiry till the decision in the criminal case. ~~xxxxxxxxxx~~ Meanwhile, the applicant superannuated on 31.05.1990 during the suspension period. The applicant was paid provisional pension. But for full pension and other retiral benefits, the applicant filed another OA No. 302/1993 before this Tribunal, and the same was disposed of on 20.09.1993, directing the respondents to decide the representation filed by the applicant. But the respondents did not decide the representation of the applicant. Thereafter, the applicant filed another OA No. 365/1994 for releasing his entire gratuity and for allowing leave encashment and commutation of pension. This Tribunal vide order dated 10.02.1995 in OA No. 365/1994 directed payment of half of the gratuity admissible to the applicant with a condition that the same could be recovered in the event of applicant not being acquitted in the criminal case and not being exonerated in the departmental proceedings. The applicant stated that ultimately, he has been exonerated in criminal case vide judgment and

order of the learned District and Sessions Judge, Jodhpur dated 16.05.1996 in Criminal Appeal No. 90/1995. Applicant also stated that on the basis of the judgment of the Criminal Court, the S.F-5 was withdrawn by the department vide order dated 05.02.1997 (Annexure A-3). The applicant contended that in pursuance of the directions of this Tribunal in OA No. 365/1994 dated 10.02.1995, the applicant had been paid half of the gratuity amount. The remaining payment of gratuity of Rs. 27,494 has been paid to him on 18.08.1997 vide Annexure A-4 and also the remaining amount of leave encashment of Rs. 10,614 has been paid on 20.01.1998, including the period of suspension, which was counted as L.H.A.P. by the respondents. But apart from that, the department has collected an amount of Rs. 9,725 for issuing medical card after implementation of the Fifth Pay Commission, taking his pay as Rs. 6,650/-.. But as on the date of retirement, the applicant was drawing a pay of Rs. 2,150 only, therefore, excess amount was collected from him towards medical card and the same is liable to be refunded to the applicant. The applicant contended that on the delayed payments of gratuity, leave encashment etc, the applicant is entitled to interest @ 18% per annum, and there may be a direction to that effect.

3. By filing reply, the respondents have denied the case of the applicant. They have stated that the applicant was under suspension as on the date of retirement and as such, he has been rightly given only the provisional pension, as the applicant was not entitled for payment of gratuity, leave encashment etc, in view of Rule 316 of the Manual of the Railway Pension Rules, until the conclusion of judicial and/or departmental proceedings. Further, he has been paid half of the gratuity in pursuance of the directions of this Tribunal vide order dated 10.02.1995 in OA No. 365/1994, and the remaining amount of gratuity and leave encashment has been paid after conclusion of the criminal case on 18.02.1997. Since both departmental enquiry and criminal case was pending against the applicant, gratuity and leave encashment was rightly withheld and the applicant is not entitled to any interest, as prayed for. They have stated that so far as commutation of pension is

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concerned, the applicant has not pressed the same in OA No. 365/1994 and the same cannot be reagitated in the present OA, and accordingly, they prayed for dismissal of the OA.

4. Heard the learned counsel on both the sides and perused the records of the case.

5. From the pleadings of the applicant himself, it is clear that in view of the accident occurred on 02.12.1989, the applicant was placed under suspension vide order dated 05.12.1989 w.e.f. 04.12.1989. The applicant was discharging the duty of Passenger Driver of the Train, which met with the accident. Thereafter, the departmental proceedings were initiated against the applicant and there was also a criminal case against him in Criminal Appeal No. 90/1995 in the Court of District and Session Judge, Jodhpur. The applicant himself had obtained stay of departmental proceedings by filing OA No. 375/1990, until the conclusion of the criminal case, and ultimately, the applicant was acquitted in the criminal case on 16.05.1996 and on that basis S.F-5 was withdrawn vide order dated 05.12.1997. In view of the Rule 316 of Manual of the Railway Pension Rules, the applicant was entitled to only a provisional pension and gratuity or D.C.R.G. were not to be paid to him until the conclusion of such proceedings and the issue of final orders thereon. I think it appropriate to extract the Rule 316 of the Manual of the Railway Pension Rules, as under :-

"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 of 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 up to the date of retirement, or if he was under suspension on the date of retirement up to 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."

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6. It is not in dispute that notwithstanding the Rule 316, as directed by the order of this Tribunal in OA No. 365/1994, the applicant received half of the gratuity amount and after conclusion of the criminal case and withdrawal of S.F.5, the remaining gratuity of Rs. 27,494/- was paid to him on 18.12.1997 vide Annexure A-4, and the remaining amount of leave encashment of Rs. 10,614 was paid to him on 20.01.1998. These payments are admitted to have been received by the applicant himself in Para 4.12 and 4.13 of the O.A. Thus, I find that withholding of gratuity and leave encashment etc. was in view of specific Rule 316 of the Manual of the Railway Pension Rules and as such, the applicant would not be entitled to any interest on such payment. Alleged delay in making the payment of gratuity and leave encashment was only due to the pendency of the criminal case and departmental proceedings against the applicant. Moreover, Hon'ble the Supreme Court in 1999 (9) SCC 43 (R. Virabhadram Vs. Govt. of A.P.) has laid down the law by interpreting the Rule 52(1) (c) of A.P. revised Pension Rules, 1980, by holding that no gratuity shall be payable to a Government servant until the conclusion of the judicial proceedings and passing of a final order thereon. Those provisions were similar to Rule 316 of the Manual of the Railway Pension Rules. In view of the Rule 52 (1) (c) of A.P. Revised Pension Rules, Hon'ble the Supreme Court further held that on such delayed payment of gratuity, due to the pendency of departmental proceedings, no interest was payable by the department. In view of this law declared by Hon'ble the Supreme Court, the applicant is not entitled to any interest or delayed payment of gratuity and encashment of leave etc. more so, when he himself got stayed the departmental proceedings in O.A. No. 375/1990. So far as commutation of pension is concerned, the applicant himself has not pressed the same in OA No. 365/1994 before this Tribunal, and the same cannot be reagitated in the present OA. The applicant was suffering from number of diseases, and the medical card ~~was~~ issued to him has been used by him. If he was really not interested in paying the amount of Rs 9,725/- for issuance of the said medical card, the applicant should no

have deposited the said amount. Since the applicant has used the said card for his personal advantages, now applicant cannot turn around and say that an excess payment was paid by him for issuance of the said medical card. He is estopped to do so.

7. For the above reasons, I do not find any merit in this application. Accordingly, I pass the order as under :-

"Application is dismissed. But in the circumstances,
without costs.


(Justice B.S. Raikote)
Vice Chairman


cvr.

14.7.01
R/C 84
on 9/7
2000

Part II and III destroyed
in my presence on 15.5.02
under the supervision of
Section Officer (R) as per
order dated 13/3/02
H.G.R.C.
Section Officer (Record) 2