

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. M.A.57 of 1997
(O.A.32 of 1997)

Present : Hon'ble Mr. Justice A.K.Chatterjee, Vice-Chairman.
Hon'ble Mr. M.S.Mukherjee, Administrative Member.

UNION OF INDIA & ORS.
(Eastern Railway)

Vs.

BARUN KUMAR ROY

For the petitioner : Mr.C.Samadder, counsel.

For the respondent : Mr.Madhusudan Banerjee, counsel.
(original petitioner) Mr.N.K.Roy, counsel.

Heard on : 4.9.1997

Order on : 18.9.1997

O R D E R

A.K.Chatterjee, V.C.

The petitioner, while working as a PWI, Gr.III, under Divisional Engineer, Eastern Railway, Howrah, was issued with a major penalty charge sheet dated 16.1.1992 only days before his retirement and after the enquiry report dated 22.2.1994, was given, an order was made on 27.8.1996 by and in the name of the President to withhold 25% of the monthly pension on permanent basis. The petitioner has filed the O.A., in connection with which the present M.A. has been filed, to quash the order dated 27.8.1996 and for other reliefs.

2. In this O.A., an interim order was passed on 9.1.1997 after hearing both the parties, that gratuity, leave salary and commuted value of pension, as admissible under the rules, and taking into consideration the order of the President dated 27.8.1996 shall be released to the petitioner. The instant M.A. has been filed by the respondents of the O.A. for vacating ~~the order~~ ^{or} modifying the above interim order on the ground that when the ~~stay order~~ ^{or} was passed, the respondents' counsel was not properly briefed and it could not be brought to the notice of the Tribunal that certain amendment has been made to Rule 2308 of Indian Railway Establishment Code empowering the President to withhold gratuity also in the circumstances already stated in the rule and corresponding amendment has been made in the Manual of Railway Pension Rules. In such circumstances, in the instant application filed by the respondents of the O.A., a prayer is made that the interim order passed on 9.1.1997 may be modified by deleting gratuity and commuted value of pension from its purview.

3. The application is opposed on behalf of the petitioner of the O.A.

4. It appears on hearing the 1st.counsel for both the parties and on perusal of the record that the interim order dated 9.1.1997 directed release of gratuity, leave salary and commuted value of pension, as admissible under the rules, taking into consideration the order of the President dated 27.8.1996. Therefore, if really any amendment has been made to the Rule and that too long before this order was made, it is taken care of by the interim order as it specifically directs release of such gratuity, leave salary and commuted value of pension, as admissible under the rules. In such circumstances, it does not appear to us that any modification in the order is called for ^{due to the} amendment in the Rule said to have ^{been made} ~~taken place~~.

5. The 1d.counsel for the petitioner of the O.A. who is the respondent in the present M.A., has inter alia urged that the M.A. was not maintainable as it was not clear who were the petitioners and that it was verified by an official who was not competent to do so and that Mr.Samadder, 1d.counsel for the petitioners of the M.A. had not filed the power.

6. There is no doubt that the miscellaneous application has arisen out of the O.A. and it clearly described Union Of India & Ors. as respondents/petitioners. In such situation, it should be absolutely clear to a person of ordinary prudence or even to a person of sub-standard prudence that the respondents of the O.A. were the petitioners of the M.A.

7. The 1d.counsel for the petitioner has also stated how the person who had verified the miscellaneous application was competent to do so as ^{but} on scrutiny ^{of} it transpired that the power ~~which was given to him~~ ^{Mr. Samadder} was not filed, he undertook to file the power which he stated was unfortunately not filed earlier by his clerk.

8. We accept the undertaking. In view of what has been stated in the preceding paragraphs, we do not consider it necessary to dwell on the contention raised in the reply to the M.A.

9. For reasons indicated above, no order is called for modifying or vacating the interim order dated 9.1.1997 passed in O.A.32 of 1997.

10. M.A. is thus disposed of. No order is made as to costs.

Mukherjee
18/9/1997
(M.S.Mukherjee)
Administrative Member

A.K. Chatterjee
18.9.97
(A.K.Chatterjee)
Vice-Chairman