

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.258/2001

Tuesday, this the 16th day of April, 2002.

CORAM :

HON'BLE SHRI A.V. HARIDASAN, VICE CHAIRMAN

E.K. Sankaran Nair,
Retd. Senior Section Engineer(Permanent Way),
South Eastern Railway,
Khurda Road Division, Jatni P.O.,
Khurda District, Orissa-752050,
residing at Enjakkattu House,
Trikkariyur P.O.,
Ernakulam District, Kerala.

... Applicant

(By Mr. T.C. Govindaswamy)

Vs

1. Union of India rep. by
The General Manager,
South Eastern Railway,
Garden Beach,
Calcutta - 43.
2. The Divisional Railway Manager,
South Eastern Railway,
Khurda Road Division, Jatni P.O.,
Khurda District, Orissa-752050.
3. The Senior Divisional Personnel Officer,
South Eastern Railway,
Khurda Road Division, Jatni P.O.,
Khurda District, Orissa-752050.

... Respondents

(By Mr. P. Haridas)

The application having been heard on 16.4.2002, the Tribunal on the same day delivered the following :

ORDER

HON'BLE SHRI A.V. HARIDASAN, VICE CHAIRMAN

The applicant retired as Senior Section Engineer(Permanent Way), Khurda Road Division, South Eastern Railway on 31.7. 2000. On 17.7.2000, the 3rd respondent issued an order No.ENGG./60/EKSN.2000 RET, wherein it was stated that there was no SPE, Vig or D&A cases pending against him. A corrigendum was issued after two days, i.e on 19.7.2000(A2), wherein it was stated that inadvertently in Annexure A1 memorandum it was stated that "there was no SPE/Vig/D&A case etc. pending against the

applicant" and that as per the clearance report received from the department, one CBI case was pending against the applicant. Aggrieved by Annexure A2 order, and also on account of non disbursement of applicant's pension, D.C.R.G. and other terminal benefits, the applicant made representations A4 to A8 to various authorities. Finding that the retirement benefits of the applicant have not been released for any justified reason, the applicant has filed this application seeking the following reliefs :-

(i) Call for the records leading to the issue Annexure A2 and quash the same;

(ii) Declare that the refusal on the part of the respondents

(a) to grant the applicant's regular pension,

(b) to grant the applicant the commuted value of pension as on 1.8.2000, and

(c) to release the applicant's retirement gratuity is arbitrary, discriminatory, contrary to law and unconstitutional.

(iii) Direct the respondents to forthwith grant the applicant's regular pension, to release and pay the commuted value of pension as on 1.8.2000 and also to release and pay the applicant's retirement gratuity, with 18% interest, to be calculated with effect from 1.8.2000, upto the date of full and final settlement of the same;

(iv) Award costs of and incidental to the application.

(v) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

2. It is alleged in the application that departmental proceedings initiated against the applicant in the year 1995 was closed and the applicant was exonerated of the charges as evident from A3 order of the Divisional Railway Manager, Engineering Branch, Khurda Road Division dated 4.9.1999, and as no judicial proceedings against the applicant has been instituted or is pending, the action on the part of respondents in not releasing D.C.R.G., Pension and other retirement benefits of the applicant is unreasonable, unjust and unsustainable in law.

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3. The respondents in the reply statement did not dispute the disciplinary proceedings against the applicant had been closed before his retirement but seek to justify the action of withholding of pension, D.C.R.G. and payment of provisional pension on the ground that C.B.I., Bhubaneswar has not issued the clearance report in the case of the applicant and relying on provisions under Rule 9 and 10 of the Railway Servants Pension Rules, 1993.

4. I carefully gone through the application, the reply statement and the materials placed on record. The sole reason for non-disbursement of pension and D.C.R.G. to the applicant, according the respondents is that C.B.I., Bhubaneswar has not given the clearance. There is no case for respondents that any judicial proceedings have been initiated or ^{is} pending against the applicant. Respondents are relying on sub rule 3 of Rule 9 of Railway Services(Pension) Rules, 1993 for payment of provisional pension and for not granting the final pension and D.C.R.G. The provision in sub rule (3) of Rule 9 of Railway Services(Pension) Rules, 1993 is as follows :-

"In the case of a Railway servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule(2), a provisional pension as provided in Rule 96 shall be sanctioned."

Sub rule 5 of Rule 9 of Railway Services(Pension) Rules, 1993 as follows :-

"For the purpose of this rule, -

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Railway servant or pensioner, or if the railway servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted,

(i) in the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognizance, is made; and

(ii) in the case of civil proceedings, on the date the plaint is presented in the Court.

5. It is evident from a reading of above provision that criminal proceedings can be said to have instituted only when a Magistrate take cognizance of the offence. In this case, there is no case for respondents that any Magistrate has taken cognizance of any offence against the applicant. I therefore find that the action taken on the part of the respondents in not granting the applicant's retirement benefits just because they did not get a clearance from the C.B.I., Bhubaneswar regarding closure of their investigation, is unsustainable.

6. In the light of what is stated above, the application is allowed and Annexure A2 is set aside. The respondents are directed to grant the applicant his final pension and other retirement benefits as early as possible at any rate within a period of six weeks from the date of receipt of a copy of this order. On the belated payment of D.C.R.G., respondents shall pay to the applicant the interest at the rate of 12% per annum from the date three months after the retirement of the applicant till the date of payment. No costs.

Dated the 16th April, 2002.



A.V. HARIDASAN
VICE CHAIRMAN

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A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of the letter No.ENG/60/EKSN.2000 RET dated 17.7.2000 issued by the 3rd respondent.
2. A-2: True copy of the Memo No.Engg/69/EKSN/2000/Ret dt.19.7.2000 issued by the 3rd respondent.
3. A-3: True copy of the letter No.Engg/Estab/D&A/EKSN/2/95/33/56 dt.4.9.99 issued by the Sr.Divl. Engineer (Co-ordn), S.E.Railway.
4. A-4: True copy of the letter dt.5.8.2000 submitted by the applicant to the 3rd respondent.
5. A-5: True copy of the representation dt.14.8.2000 submitted by the applicant to the Sr.Divl.Engineer (Coord).
6. A-6: True copy of the representation dt.16.8.2000 submitted by the applicant to 2nd respondent.
7. A-7: True copy of the representation dt.16.10.2000 submitted by the applicant to the 2nd respondent.
8. A-8: True copy of the representation dt.28.1.2000 submitted by the applicant to the 2nd respondent.
9. A-9: True copy of the letter No.SR/2/2000/274 dt.28.11.2000 issued by the Section Engineer (Works), South Eastern Railway, Cuttack.

Respondents' Annexures:

1. R-1: True copy of the confidential letter No.Con/SDE/KUR/EKS/95 dated 17.5.2000 issued by the Sr.Divisional Engineer (Coord)/Khurda Road.

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