

**Central Administrative Tribunal, Lucknow Bench, Lucknow**

**Original Application No.485/2005**

This the 9<sup>th</sup> day of February, 2012

**Hon'ble Sri Justice Alok Kumar Singh, Member (J)**

**Hon'ble Sri S.P.Singh, Member (A)**

Parmeshwar Deen aged about 60 years son of Sri Bandhu r/o Village Mariha, Tehsil and District- Hardoi.

Applicant

By Advocate: Som Kartik

Versus

1. General Manager, North Eastern Railway, Gorakhpur.
2. Divisional Railway Manager, North Eastern Railway, Ashok Marg, Lucknow.
3. Senior Divisional Engineer III, North Eastern Railway, Lucknow

Opposite Parties

By advocate: Sri Narendra Nath

(Reserved on 7.2.2012)

**ORDER (RESERVE)**

**BY HON'BLE SHRI JUSTICE ALOK KUMAR SINGH, MEMBER (J)**

This O.A. has been filed for the following reliefs:-

- (a) to direct the opposite parties to fix the petitioner's salary after counting his entire service period and also to fix his salary after granting annual increments and promotional pay scale and accordingly pay arrears of salary.
- (b) To direct the opposite parties to pay the petitioner his regular pension after fixing the same by counting the entire service period.
- (c) To direct the opposite parties to pay death-cum-retirement gratuity and other post retirement benefit available under the law to the petitioner.
- (d) To issue such other order or direction deemed just and proper in the facts and circumstances of the case.

2. The case of the applicant is that he is "Dhanger" by caste (Scheduled Caste). A caste certificate was also issued by the District Magistrate, Hardoi on 9.10.1967 in his favour. He was selected by the Railway Service

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Commission for the post of Assistant Permanent Way Inspector and was posted at Khadda vide order dated 31.5.1972. Subsequently, he was promoted as Permanent Way Inspector Grade II and then Grade I in the year 1982. In the year, 1988, one Sri K.K. Pandey and few others who were also Permanent Way Inspector, mala fidedly obtained incorrect caste certificate of the applicant issued by the District Magistrate, Hardoi in the year 1963 showing the applicant as Gadariya (OBC) and lodged a complaint dated 14.6.88. On that basis, a vigilance enquiry was held and thereafter, a charge sheet dated 21/28-3-1989 was issued by Sr.Divisional Engineer, NER, Samastipur in respect of allegedly obtaining appointment and promotion by furnishing incorrect caste certificate. After conducting the enquiry, he was dismissed from service vide order dated 25.6.91. The applicant preferred a departmental appeal which too was rejected on 8.11.1991. Both these orders were challenged by filing O.A. No. 54/92 which was allowed by this Tribunal vide judgment dated 12.5.1997 (Annexure -2). The opposite parties filed a writ petition No. 896 (SB) of 1997 which was ultimately dismissed on merit on 13.10.99 upholding the judgment of this Tribunal. This dismissal order of Hon'ble High Court was not challenged in the Supreme Court. Hence the same has become final. The applicant ultimately resumed his duties on 14.12.99. Then on 31.7.2000, he received another charge memo dated 16.6.2000 for the same charges which were in the first charge sheet.. This charge memo is supported by the earlier documents as also an order dated 31.5.2000 passed by the District Magistrate, Hardoi by means of which, he has cancelled the caste certificate dated 9.10.67. Against this order of District Magistrate dated 31.5.2000, the applicant filed Writ Petition No.6074/2000 (MB) and the Hon'ble High Court vide its order dated 15.12.2000 stayed the operation of the order of the District Magistrate dated 31.5.2000. That order was in operation at the time of filing of this OA. In view of this order, the opposite parties did not proceed further with the enquiry. However, they treated the period from the date of his removal i.e. 28.6.1991 to the date of judgment of this

Tribunal dated 12.3.1997 passed in O.A. No. 54/1992 as the period of suspension. Accordingly, the matter of pay and allowances was decided vide order dated 16.4.2001. The applicant filed another O.A. No. 572/2001 impugning the said order. This Tribunal vide its judgment dated 4.11.2004 set aside the order dated 16.4.2001 and directed the opposite parties to pay full pay and allowances to the applicant for the intervening period treating the same to have spent on duty. Ultimately, after attaining the age of superannuation, the applicant retired on 30.7.2004 as Section Junior (P. Way) U.F.D., Lucknow. Against the aforesaid order dated 4.11.2004, the opposite parties preferred a writ petition No. 826/2005 (SB) but no interim order was passed. After retirement, the applicant has not received his regular pension. He has been paid only provisional pension. Even death-cum-retirement gratuity and other post retirement benefits including retiral transfer allowance, packing allowance etc. have not been paid. The applicant submitted a representation dated 31.3.2005 (Annexure 8) to the Senior Divisional Personnel Officer, NER, Lucknow but no action was taken by him.

3. The claim of the applicant has been contested by the opposite parties. The above previous litigations however, have been admitted on the factual matrix. But it has been added that the Hon'ble High Court has directed to list writ petition No. 826/2005 and W.P. No. 6074(M/B) 2000, for proper adjudication. According to the opposite parties, the departmental enquiry is still pending against the applicant after service of the charge sheet and therefore, he cannot be allowed post retirement benefits. In regard to transfer and packing allowance, it has been said that after examination of transportation receipt, a sum of Rs. 7640/- has already been arranged on 19.1.2006. The pay scale of the applicant has been revised as Rs. 6500-10.500 as admissible under Rules.

4. In the Rejoinder Reply, the averments made in the C.A. has been refuted and the pleadings contained in the O.A. have been reiterated.

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5. A supple.C.A. has also been filed on behalf of opposite parties. It has been sworn by Divisional Personnel Officer. It has been further pleaded that in pursuance of fresh charge sheet dated 16.6.2000, the disciplinary enquiry could not proceed on account of interim order dated 15.12.2000 passed by the Hon'ble High Court in Misc. Writ Petition No. 6074(M/B) 2000. As said earlier, both the writ petitions have been clubbed vide order dated 23.5.2005. After his retirement, on 31.7.2004, the following payments have been however made to the applicant:-

Provident Fund	-	Rs. 37,473/-
G.I.S.	-	Rs. 20,070/-
Leave Encashment	-	Rs. 1,34,848/-
Composite Allowance/ Transportation/Packing Allowance	-	Rs. 7,740/-
Provisional Pension	-	Rs. 5,260/-

In respect of DCRG, it has been averred that the same has been withheld under Rule 9 and 10 of the Railway Service (Pension) Rules, 1993 due to pending departmental enquiry.

6. Written arguments have also been filed from both the sides.

7. We have also heard the oral arguments on behalf of both the sides and perused the material on record.

8. There does not appear to be any quarrel on the factual matrix of the case. Admittedly, the background facts are that initially a chargesheet dated 28.3.1989 was issued by the Senior Divisional Engineer, NER, Samastipur, against the applicant in respect of obtaining appointment and promotion by allegedly furnishing an incorrect caste certificate. After conducting an enquiry, the applicant was dismissed from service on 25.6.1991. His departmental appeal was also rejected on 8.11.1991. Both these orders were challenged before this Tribunal in O.A. no. 54 of 1992, which was allowed on 12.5.1997 mainly on the ground that the caste certificate issued by the District Magistrate, which was submitted by the applicant at the time of entering into service has not been cancelled. Moreover, it could not be proved during enquiry that it was forged and fictitious certificate or it has not been issued. It was further found that in the enquiry, reliance has been placed on the correctness of a caste certificate issued earlier by the District Magistrate on 18.7.1963 showing the applicant belonging to the caste of

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'Gadaria' (Backward community), whereas in the above caste certificate dated 9.10.1967 which was in question, the applicant was shown to be 'Dhanger' (SC). More-over, the caste certificate showing him to be OBC issued in the year 1963 was received behind the back of the applicant and was not subject matter of the disciplinary proceedings. Finally, therefore, the O.A. was allowed and both the orders namely dismissal order as well as appellate order were quashed. It is also not in dispute that the Writ petition no. 896 (S/B) of 1997 filed against this judgment was also dismissed and the same has attained the finality because it was not challenged before the Hon'ble Supreme Court. Consequently, the applicant resumed duties on 14.2.1999. After about 6-7 months on 31.7.2000 another charge memo dated 16.6.2000 was served upon him. This time in support of the charge sheet, besides the earlier documents, an order dated 31.5.2000 passed by the District Magistrate, Hardoi by means of which he has cancelled the caste certificate dated 9.10.1967, was also filed. Against this order of District Magistrate of 31.5.2000, the applicant did not file any O.A.. He rather straightway filed a Misc. Writ petition no. 6074 (M/B) of 2000 before the Hon'ble High Court and obtained an order dated 15.12.2000 staying operation of the order of District Magistrate dated 31.5.2000. It is said that this Writ petition is still pending and stay order continues. In view of the said order, the Opposite parties did not proceed further with the enquiry. In the meantime, the applicant has retired from service on attaining the age of superannuation w.e.f. 31.7.2004. The Opposite parties also filed Writ petition no. 826 (S/B) of 2005 against the aforesaid judgment dated 4.11.2001 of this Tribunal passed in O.A. no. 572 of 2001 in favour of the applicant. It is true that no stay order has been passed in this Writ petition, but vide order dated 23.5.2005 the Hon'ble High Court has been pleased to club both the Writ petitions namely Writ petition no. 826 (S/B) of 2005 and 6074 (M/B) of 2000. It also appears from the pleadings that after retirement of the applicant w.e.f. 31.7.2004 certain retiral benefits has been paid to the applicant as already mentioned in para 5 of the judgment, in spite of pendency of both the Writ petitions.

9. From the above details, it is seen that Provident Fund, GIS, Leave encashment and composite allowance/transportation/ Packing allowance has now been paid. Besides provisional pension is also being paid to the applicant.

10. The grievance of the applicant is that the salary of the applicant has not been fixed after counting his entire service period and after granting annual increments and promotional pay scale etc. Similarly, gratuity and regular pension are not being paid. The question is whether in spite of pendency of the enquiry against the applicant, payment of gratuity and regular pension can be made

11. From the side of the Opposite parties, it has been said and rightly so that in view of the provisions contained in Railway Servants (Pension) Rules, 1993 where a departmental enquiry is still continuing after superannuation under sub-rule (2) of Rule 9 only provisional pension shall be sanctioned. In this regard, the relevant rule 9(3) of the above Pension Rules 1993 are as under:

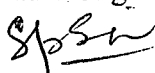
*"In the case of a railway servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in rule 96 shall be sanctioned."*

Similarly, in respect of payment of Gratuity also, Rule 10 (c) is required to be extracted herein below:

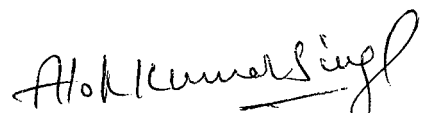
*"No gratuity shall be paid to the railway servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon; provided that where departmental proceedings have been instituted under the provisions of the Railway Servants Discipline & Appeal Rules, 1968, for imposing any of the penalties specified in clauses (i), (ii), (iii) and (iv) of rule 6 of the said rules, the payment of gratuity shall be authorized to be paid to the railway servant."*

12. Thus, in view of the aforesaid provisions, we come to the conclusion that during pendency of enquiry, gratuity and regular pension cannot be made. Moreover as mentioned above, the entire matter is pending for final adjudication before the Hon'ble High Court and both the Writ petitions filed from both the sides have been clubbed together. The subsequent chargesheet dated 16.6.2000 still stands good on the basis of which disciplinary proceedings is pending against the applicant. Though there is no specific order of any Court for staying the enquiry but as a necessary corollary of the order passed by the Hon'ble High Court in above Misc. Writ Petition staying the operation of the above order of District Magistrate, Hardoi dated 31.5.2000, is that the enquiry can not effectively proceed further. Knowing it well, the applicant has filed this O.A. seeking the aforesaid relief(s) some of which cannot be granted at this stage in view of the aforesaid provisions of the Railway Servants (Pension) Rules, 1993. Nevertheless, some of retiral benefits i.e. Provident Fund, GIS, Leave encashment, transportation/ composite allowance as detailed in para 5 of this judgment have already been paid. Therefore, upto the extent, this O.A. has become in-fructuous.

13. Finally, therefore, in respect of remaining reliefs, this (seven years old) O.A. deserves to be dismissed at this stage and accordingly it is so ordered. However, it is provided that after decision of the aforesaid Writ petitions, it will be open for the applicant to file fresh O.A. before this Tribunal for redressal of further grievance if any. No order as to costs.



(S.P. Singh)  
Member-A



(Justice Alok K Singh) 9.2.12  
Member-J