

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH: PATNA

(Date of decision: 31.7.1997)

Registration No.0A-153 of 1996

Dr. Shree Ram Ojha
S/o Late Vishwanath Ojha,
Retd. Chief Medical Superintendent (Railway)
at present : Dharwati Kothi, Someshwar Asthan,
Central Jail Road, Buxar (Bihar).

..... Rapplicant

By Advocate: Shri K.Priyadarshi.

Versus

1. Union of India through Chairman Railways Board & Principal Secretary, Govt. of India, Ministry of Railways, Rail Bhawan, New Delhi-110001.
2. General Manager, Chittaranjan Locomotive Works (Under Ministry of Railway, P.O.Chittaranjan (West Bengal).
3. General Manager, Eastern Railways,
Fairlie Place, Strand Road, Calcutta.
4. Secretary, Railways Board, Min.of Railways,
Rail Bhawan, New Delhi Respondents

By Advocate: Shri Gautam Bose.

Coram: Hon'ble Mr. Justice V.N.Mehrotra, Vice-Chairman

O R D E R

Hon'ble Mr. Justice V.N.Mehrotra, Vice-Chairman:

This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 praying that the respondents be directed to pay provisional pension to the applicant with effect from 1.5.1995 and also to pay full amount of DCRG as well as amount of commutation of pension along with interest.

2. The applicant was at the time of his retirement on 30.4.1995 serving as Chief Medical Superintendent in the Chittaranjan Locomotive Works. It is alleged that he has not been paid his pensionary benefits even though a period of 8 months has elapsed. He made representations for payment of pensionary benefits but he was verbally informed that the amounts cannot be paid to him till the finalisation of departmental inquiry pending against him. The applicant has further asserted that on 25.9.1992 an Officer of CBI alleged that at the instance of Shri Bikram, Gangman, the office of the applicant was raided and currency notes of Rs.2000/- were recovered from the drawer of a table. The sanction for prosecuting the applicant was, however, not granted by the Chief Vigilance Commissioner. The CBI authorities thereafter managed to get a charge-sheet issued in departmental proceedings just two months prior to the superannuation of the applicant. It is asserted that the departmental inquiry has not been concluded so far. It is claimed that merely because of the pendency of the departmental inquiry, the payment of retiral benefits cannot be stopped. It is also claimed that no pecuniary loss to the Railway has allegedly been caused on part of the applicant so the question of recovery from gratuity etc. cannot arise. It is in these circumstances, that the above mentioned reliefs have been claimed.

2. During the hearing of this OA the learned counsel for the applicant stated that the applicant is now being paid provisional/final pension and other retiral benefits but even now he has not been paid the amount of DCRG as well as the commutation value of the pension and so he has confined his claim to these items.

3. On behalf of the respondents it has been contended that before the superannuation of the applicant a departmental inquiry has been initiated against him and charge memo in respect of major charges was served on him. It is further asserted that the allegation against the applicant was that of grave misconduct and as the departmental inquiry was still pending, the payment of DCRG as well as the commutation of pension has been deferred in accordance with the provisions of Railway Services (Pension) Rules 1993 (Pension Rules; in short) and Railway Services (Commuation of Pension) Rules 1993 (Commuation Rules; in short). It is thus asserted that the applicant was not entitled to get the reliefs claimed by him in view of the pendency of the departmental proceedings.

3. I have heard the learned counsel for the parties and perused the material on record. It is, in this case, not disputed that a disciplinary inquiry was initiated against the applicant prior to his superannuation by serving a charge memo. The disciplinary inquiry relates to the alleged ~~demand~~ and acceptance of bribe from a Gangman. It is also not disputed that the said disciplinary inquiry is still pending and has not been finally disposed of. It has been contended on behalf of the respondents that in view of the pendency of the disciplinary inquiry relating to alleged grave misconduct on the part of the applicant, the payment of DCRG and commuted value of pension could be deferred. The learned counsel has referred to Rules 9 & 10 of the Pension Rules and also Rule 5 of the commutation Rule

4. The learned counsel for the applicant has argued that under the rules relied upon by the learned counsel for the respondents, the payment of DCRG and commuted value of pension could not be deferred as no pecuniary loss has been caused to the Railways. It is also contended that the ~~accusation~~ against the applicant in the departmental proceedings was not of grave misconduct. It is thus argued that neither Rules 9 and 10 of the Pension Rules nor Rule 5 of the Commutation Rule will apply to the present case.

5. Under sub-rule (1) of Rule 9 of the Pension Rules, the payment of pension or gratuity ~~for~~ both either in full or in part can be withheld or withdrawn whether permanently or for a specified period and also order can be passed for recovery from pension or gratuity of the whole or part of any pecuniary loss caused to the Railways, if in any departmental or judicial proceedings, the petitioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement. Further, under sub-rule(2) of Rule 9 ~~in~~ departmental proceedings, if instituted while the Railway servant was in service, shall, after the final retirement of the Railway servant be deemed to be proceeding under these rules and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Railway servant had continued in service. In view of these provisions the departmental proceedings which were initiated against the applicant prior to his retirement, shall be deemed to be the proceedings under Rule 9 of the Pension Rules.

6. Under Rule 10(1)(a) of the Pension Rules, only provisional pension is to be sanctioned to the Railway servant against whom the departmental proceedings were pending. Further, under Rule 10(1)(c) it is specifically provided that no gratuity shall be paid to the Railway

servant until the conclusion of the departmental proceedings. Similarly, Rule 5 of the Commutation Rules provides that no Railway servant against whom any departmental proceedings as referred to in Rule 9 of the Railway Pension Rules have been instituted before the date of retirement, shall be eligible to commute a fraction of the provisional pension authorised under Rule 10 of the Railway Pension Rules.

7. As mentioned earlier, the learned counsel for the applicant has argued that as no pecuniary loss was caused to the Railways, these rules will not be applicable to his case. I am, however, unable to accept this argument in view of the clear provision of sub-rule (1) of Rule 9 referred to above. The learned counsel has also argued that the applicant has not been accused of committing gross misconduct. This argument also does not have any force because any accusation of accepting bribe obviously means commission of grave misconduct for which disciplinary proceedings for imposition of major penalty is pending against the applicant.

8. A similar question arose for consideration before the Hon'ble Supreme Court in the case, State of Orissa and Others Vs. Kalicharan Mahopatra and Another reported in 1996(4) All India Services Law Journal 142. The Hon'ble Supreme Court, considering similar provisions of law in the case which related to the payment of pensionary benefits to an employee against whom disciplinary proceedings had been initiated prior to his retirement. It was held that the payment of gratuity can be withheld and only a provisional pension could be granted even though the charge did not relate to causing pecuniary loss to Government. In that case the charge was about the possession of assets disproportionate to the income of the employee. This decision is fully applicable to the present case also.

9. In view of the above discussion, it cannot be said that any illegality has been committed by the respondents by withholding the payment of gratuity or by not commuting the provisional pension allowed to the applicant. This OA is accordingly dismissed. No order as to costs.

V.N. Mehrotra
(V.N. MEHROTRA)
VICE-CHAIRMAN

31.7.97

MAA