

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH

O.A.NO.96/2006

Date: 7th November, 2007.

CORAM:

HON'BLE MR.JUSTICE P.K.SINHA, VICE CHAIRMAN

HON'BLE MR.AMIT KUSHARI, MEMBER(A)

Nageshwar Prasad Sinha, son of Late Deo Lal
Prasad, Ex-Vice Principal, P.T.S., Eastern Railway,
Workshop Jamalpur, District -Munger. Applicant

By Advocate :Sri M.P.Dixit

vs.

1. The Union of India, through the General Manager,
Eastern Railway, 17, N.S.Road, Kolkata-1.
2. The Chief Personnel Officer, Eastern Railway,
Fairlie Place, Kolkata -1.
3. F.A. & C.A.O., Eastern Railway, Kolkata.
4. The Chief Works Manager, Eastern Railway Workshop, Jamalpur.

... Respondents

By Advocate : Sri R.N.Choudhary, ASC

ORDER

JUSTICE P.K.SINHA,V.C.:-

The applicant who was working in the Railway had superannuated with effect from afternoon of 31.1.2005. Admittedly, at the time he had superannuated, a departmental proceeding was pending against him. The respondents, on his

[Signature]

superannuation allowed him only provisional pension and withheld gratuity(DCRG). This is an application for release of the DCRG as well leave salary which also the applicant claims has not been paid.

2. However, it has been claimed in para 4 of the written statement that leave salary was paid to the applicant within three months of the retirement, hence not even interest upon that amount is admissible. But it has been admitted that since departmental proceeding was pending when the applicant retired, DCRG has been withheld. It is claimed that in the departmental proceeding the report of the Enquiry Officer dated 20.12.2005 had been communicated to the applicant and he also had filed representation against that, dated 18.9.2006. Thereafter the file of disciplinary proceeding were sent to the Railway Board for consideration of the case by the President of India as he is the competent authority to decide on the punishment after retirement of an employee. It has been stated that the file is yet to be received back from the Railway Board after obtaining orders of the President of India.

3. In para 6 of the written statement it has been stated that the charge-memo that was issued against the applicant was for major penalty.

4. Rule 10, in its relevant portion, of Railway Services(Pension)Rules,1993 may be reproduced :-

“10. Provisional Pension where departmental or judicial proceedings may be pending

(1)(a) In respect of a railway servant referred to in sub-rule (3) of Rule 9, the Accounts Officer shall authorise the provisional pension not exceeding the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the railway servant or if he was under suspension on the date of retirement, upto the date immediately preceeding the date on which he was placed under suspension.

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(b) The provisional pension shall be authorised by the Accounts Officer during the period commencing from the date of retirement upto and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

(c) 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 and 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 authorised to be paid to the railway servant."

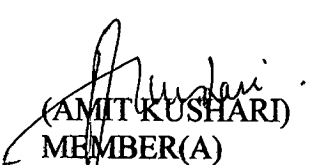
5. Under provisions of Rule 10(1)(c), law is that no gratuity shall be paid to the Railway servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon, if the proceeding^{is} not for minor punishment^{is}.

6. It may cause delay in grant of DCRG, but as the rules stand, DCRG cannot be paid to the applicant till final orders has been recorded in the departmental proceeding.

7. Since leave salary has been paid to the applicant as claimed in the written statement but not denied in any rejoinder, and the DCRG cannot be paid till final orders are passed in the departmental proceeding, it is not possible to direct the respondents to pay him either.

8. However, in so far as payment of DCRG is concerned, an effort should be made by the respondents to obtain final orders in the departmental proceeding at the earliest, preferably within four months of the receipt of a copy of this order.

9. With this observation, this application is dismissed. No costs.


(AMIT KUSHARI)
MEMBER(A)

/njj/


(P.K. SINHA)
VICE CHAIRMAN