

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

Date of order : 25th October, 2011

O.A. No. 679 of 2005

C O R A M

Hon'ble Mr. Justice Syed Md. Mahfooz Alam, Member [Judicial]
Hon'ble Mr. Naresh Gupta, Member [Administrative]

Bijai Nath Pathak, S/o Late Kedar Nath Pathak, retired Goods Driver, E.C. Railway, Garhara, r/o village Bhains Diara, P.O. Guru Bazar, District – Katihar.

.....Applicant.

By Advocate : Shri S. Pandey

Vs.

1. The Union of India through the General Manager, E.C Railway, Hajipur.
2. The Divisional Railway Manager, E.C Railway, Sonepur.
3. The Divisional Railway Manager [Mechanical/Power] E.C Railway, Sonepur [Saran]

.....Respondents

By Advocate : Shri P.K. Tiwary.

O R D E R

Naresh Gupta, M [A] :- This OA has been filed by one Vijay Nath Pathak who superannuated on 31.12.2003 as Goods Driver seeking payment of retiral dues [except for PF amount] which according to him have not been paid to him despite repeated representations to the railway authorities. The facts of the case are as follows :

2. The applicant was removed from service with effect from 26.07.1989 due to his unauthorized absence from duty with effect from 19.09.1986 to 25.07.1989. Subsequently, on appeal, the applicant was taken back on duty on 12.01.1994 by the order of the DRM who directed in the same order to initiate departmental action against him.
3. It is stated in the written statement that due to negligence, the DAR could not be finalized at that point of time. However, subsequently, the case was finalized imposing a penalty of withholding 10 % amount from the gratuity, and the period of absence due to removal from service from 26.07.1989 to 11.01.1994 was regularized as 'dies non'. It is further stated in the written statement that the applicant had been paid the following amounts towards retiral dues :

[i] P.F contribution Rs. 48,550/- vide cheque No. 035776 dated 21.1.04

[ii] Group Insurance Rs. 19020/- vide cheque No. 115380 dated 01.04.2006.

[iii] Transfer grant Rs. 5150/- vide cheque No. 115388 dated 27.04.06.

[iv] Encashment of leave NIL as there is no leave at the time of superannuation."

In regard to withholding of 10 % gratuity amount, it is stated in the written statement that the approval of the President had been sought in as much as the President is the competent authority to decide regarding the deduction of gratuity to be made. Also, commutation could not be done but the provisional pension had been sanctioned.

4. It is stated in the OA that on 06.10.2004, the DRM [Mechanical], E.C. Railway, Sonepur sent a letter dated 06.10.2004 along with copy of the charge memo dated 29.03.1989 according to which the applicant was charged with remaining unauthorizedly absent without intimation from 19.09.1986. This charge sheet had not been served to the applicant till 06.10.2004 by which time he superannuated [31.12.2003] [a copy of charge memo dated 29.03.1989 said to have been sent by post on 06.10.2004 has been marked as Annexure A/2 in OA]. Following the issue of the charge memo, the applicant was intimated in regard to appointment of inquiry officer by letters dated 14.12.2004 / 21.10.2004 [Annexure A/3 and A/4 series of OA].

5. It is further stated that the applicant submitted representations dated 11.1.04, 30.09.04, 12.10.04, 14.12.04, 15.12.04 and 10.02.2005 [Annexure A/5 series of OA] seeking payment of retiral benefits. The applicant appeared before the inquiry officer on 14.12.04 , 12.01.2005 and 17.01.2005, and although the inquiry was concluded, no finding of the I.O was furnished to the applicant along with inquiry report / findings. The disciplinary authority vide his NIP dated 11.04.2005 [Annexure A/6 of OA] imposed the penalty of withholding of 10 % of DCRG even though a copy of the inquiry report and 15 days' notice to submit his defence had not been furnished to the applicant. Therefore, the NIP was directed to be quashed. The DRM, in his letter dated

05.08.2005 [Annexure A/7 of OA] had indicated that the period of absence from 19.09.1986 to 11.01.1994 was treated as break in service. The applicant had preferred an appeal dated 17.08.2005 [Annexure A/8 of OA].

6. The issues which arise for determination are whether the authorities could initiate action on the basis of an earlier charge sheet after retirement of the individual and whether a part of the gratuity could be withheld without an order of the President.

7. According to rule 9 [2] [b] of the Railway Services [Pension] rules, 1993, the departmental proceedings if not instituted while the railway servant was in service before his retirement shall not be in respect of any event which took place more than four years before such institution. It appears from the letter dated 12.01.1994 of Divisional Mechanical Engineer [Power], Sonepur [Annexure RL in written statement] addressed to the applicant that on appeal of the applicant, the DRM, Sonepur, had ordered that accepting the plea of the applicant that he had not received the charge memo etc., he might be taken back to work and charge memo etc., furnished to him and the case put up with his reply. There was an interval of 10 years thereafter with further action being taken in regard to disciplinary proceedings vide the letter of DRM [Mechanical], E.C. Railway, Sonepur dated 06.10.2004 addressed to the applicant with the charge memo of 29.03.1989. The evidence for opportunity being given to the applicant to participate in the inquiry is the disciplinary proceedings is provided by the documents marked as Annexure R-2 and R-3 in the written statement. Such long delay is inexplicable and the issue of charge sheet with which the disciplinary proceedings can be taken to have commenced afresh [after retirement] would be violative of the provision of the Rule referred to above. In this regard, it is worthwhile to refer to the case reported in 2006 [1] ATC SC 193, P.V. Mahadevan vs. M.D. , Tamil Nadu, Housing Board wherein the Supreme Court held ;

“ Under the circumstances, we are of the opinion that allowing the respondents to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher Government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary

enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests in inspiring confidence in the minds of the Government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and suffering of the appellant due to the protracted disciplinary proceedings would be much more than punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

We, are, have no hesitation to quash the charge memo issued against the appellant. The appeal is allowed. The appellant will be entitled to all the retiral benefits inn accordance with law. The retiral benefits shall be disbursed within the months from this date."

8. In the light of the above legal position, the disciplinary proceedings instituted against the applicant with the service of the charge memo of 29.03.1989 after his retirement are held to be not in order, and the order withholding a part of the gratuity is quashed. The period of unauthorized absence from duty may be regularized by treating it as on leave to which the applicant is eligible [with or without pay and allowances] and the retiral benefits due to the applicant be finalized and balance due paid within a period of four months of the receipt / production of copy of this order. The OA stands disposed of accordingly. No order as to costs.

Naresh Gupta
[Naresh Gupta] M [A]

Syed Md. Mahfooz Alam
[Syed Md. Mahfooz Alam] M [J]

/cbs/