

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

O.A. No. 402 of 2005

Patna, dated the 30th March, 2007

CORAM: The Hon'ble Mr.S.N.P.N.Sinha, M[A]

Chandradeep @ Chandra deep Rai, son of Late Parmeshwar Singh, retired Chowkidar, Section Engineer Signal, EC Railway, Samastipur.

Applicant

By Advocate: Mr.A. Upadhyay

versus

1. Union of India through General Manager, EC Railway, Hajipur.
2. Divisional Railway Manager, EC Railway, Samastipur.
3. Senior Divisional Personnel Officer, EC Railway, Samastipur.
4. Section Engineer Signal, EC Railway, Samastipur.

Respondents

By Advocate: Mr. N.L.K.Singh

O R D E R

S.N.P.N.Sinha, M[A]:-

The present application has been filed for quashing an order dated 13.10.2004 passed by respondent no.2, for direction for payment of gratuity, 1/4 pension, leave encashment, DCRC and transfer grant, for direction to revise the applicant's pay according to the 5th Pay Commission report and for payment of interest & costs. It was submitted that the applicant retired from the post of Chowkidar, Section Engineer [Signal], EC Railway, Samastipur on 1.7.2001. A criminal case was instituted against the applicant [RPF Case No.17/89-TR No.98/96] convicting him under Section 3 RP[UP] Act, and sentencing him to file bonds of Rs.1000/- with two sureties for a period of one year. On appeal [Criminal Appeal No.126/96], the Appellate Court observed by order dated 10.1.2002 that the order of the Court below had already been complied with, the appeal was allowed and the appellant was discharged from the liability of bonds. He has not been paid his gratuity, 1/4 pension

which he sold, leave encashment, DCRG, transfer grant and other dues. His pay has also not been fixed according to the Fifth Pay Commission recommendation. The applicant came before this Tribunal in OA 908/03, which was disposed of with direction to the respondents for disposing of the matter in accordance with law. Subsequent to this, respondent no.2 by order dated 13.10.04, rejected the applicant's claim for retiral benefits on the ground that the sentence against the applicant had not been quashed by the learned Court, so the case warranted departmental proceeding. It was pointed out that in accordance with Chapter 9[b] of RS[D&A] Rules, departmental proceeding shall not be in respect of an event which took place more than four years ago, the applicant's matter being of 1989. An order of a Court under Section 107 and 117 of Cr.PC requiring execution of a bond for keeping peace or in default to undergo simple imprisonment cannot be taken to be a conviction for the purpose of Rule 14 of Railway Discipline[D&A] Rules.

2. The order of the Apex Court in P.V. Mahadevan vs.M.D., T.N.Housing Board [2006[2] PLJR SC 121] was cited on the applicant's behalf. Relevant portion is reproduced below:-

“...allowing the respondent 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 of 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

sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

“16. We, therefore, 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 in accordance with law. The retiral benefits shall be disbursed within three months from this date. No costs.”

3. It was submitted on behalf of the respondents that a criminal case was registered against the applicant and he was found guilty and convicted. The conviction and sentence was not quashed by the Appellate Court. He was only exempted from requirement of bond as considerable time had lapsed. So he was not entitled for any type of pensionary benefits. There was no irregularity in the fixation of his salary. He was in the scale of Rs.2550-3200 and his salary was fixed at Rs.3200 at the highest of the scale. He suppressed material facts about his conviction. Under Rule 14[i] of DAR, it was submitted, inquiry is not necessary where any penalty is imposed on a railway servant on the ground of conduct which has led to his conviction on a criminal charge.

4. In the present case, the order of respondent no.2 in pursuance of the direction of this Tribunal in OA No.908/03 concludes as follows:

“...the offence was proved, by the court below for which he was convicted and sentenced has not yet been quashed by the learned Appellate Court which warrants departmental proceeding. Accordingly department action under the provisions of rule 14[i] of the R.S.[D&A] Rule 68 is required.

“5. In view of the above, the payment of retirement dues is



not admissible and feasible. Thus prayer made in OA is rejected."

5. The photo copy of Digest of Discipline, Appeal & Conduct Rules annexed with the written statement of the respondents indicates the cases in which enquiry is not necessary, as follows:

"CASES IN WHICH ENQUIRY IS NOT NECESSARY"

RULE-14] Special procedure in certain cases:

Notwithstanding anything contained in Rules 9 to 13:-

[i] where any penalty is imposed on a railway servant on the ground of conduct which has led to his conviction on a criminal charge; or

[ii] where the disciplinary authority is satisfied, for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or

[iii] where the President is satisfied that in the interest of the security of the State, it is not expedient to hold an inquiry in the matter provided in these rules;

the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit;

Provided that the Railway servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case falling under clause [i].

Provided further that the Commission shall be consulted where such consultation is necessary, before any orders are made in any case under this rule"

6. It is evident from the aforesaid that in such circumstances, the disciplinary authority may consider the case and make such orders

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thereon as it thinks fit provided that the Railway servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made under clause[i]. The rule as mentioned above is relevant only to that extent. The order of the respondent no.2 makes a reference to it. But the decision to deny retirement dues which as has been held in a catena of judgments to be the right of an employee unless he is not entitled to these for reasons prescribed in law is obviously not a speaking order in this case. No provision of law or rules has been cited for the same in the order.

7. The case is, therefore, remanded to the respondents for reconsideration and for giving an opportunity to the applicant to make representation on the penalty which will be decided in accordance with law. The matter will be, thus, considered and decided upon within a period of three months from the date of this order, a copy of which will be served upon the respondents by the applicant within 15 days of getting a certified copy of the same. No order as to costs.



[S.N.P.N. Sinha]
Member[A]

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