

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

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Original Application No. 1145/94
Transfer Application No.

Date of Decision : 29/06/1995

D.B. Jitkar

Petitioner

Shri.R.D.Deharia

Advocate for the
Petitioners

Versus

Union of India & Ors.

Respondents

Shri.S.C.Dhawan

Advocate for the
respondents

C O R A M :

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to
other Benches of the Tribunal? *M*

M.S. DESHPANDE
V.C

J*

(5)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. 1145/94

D. B. Jitkar .. Applicant

Vs.

Union of India & Ors. .. Respondents

CORAM : Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

Appearances

1. Shri.R.D.Deharia,
Advocate
for the applicant.
2. Shri.S.C.Dhawan,
Advocate
for the respondents

ORAL JUDGMENT

DATED : 29/06/1995

(Per. Justice M.S.Deshpande, V.C)

By this application, the applicant seeks direction to the respondents to release Rs.50,292/- as Death-Cum-Retirement Gratuity together with interest @ 10% and to pay to him Rs.52,908/- as commuted value of pension together with interest @ 10% and Rs.2,000/- as cost of the present petition.

2. The applicant was working with the respondents as Accounts Stock Verifier and retired on 28-2-1994. As sequent to an incident which occurred on October 15, 1993 the applicant came to be arrested on October 20, 1993 and was remanded to judicial custody. He was neither suspended nor ~~any~~ ^{was} disciplinary proceedings initiated against him and only a charge-sheet came to be filed on July 01, 1994 under section 3 of Railway Properties (Unlawful Possession) Act. The submission

of the applicant is that since there was no proceedings initiated or pending against him on the date on which he retired, the respondents could not have either withheld or withdrawn the amount of gratuity payable to him. There is no dispute about the fact that provisional pension which would have ordinarily been payable to him is being paid to the applicant and other retiral benefits such as leave encashment have already been paid to him. The relief is restricted only to the release of amount of D.C.R.G.

3. The respondents' contention is that in view of the provisions of Sub-rule 1 of Rule 9 of Railway Services (Pension) Rules, 1993, the President was empowered to withhold pension or gratuity either in full or in part and therefore the applicant is not entitled to the relief that has been sought by this application.

4. The first point urged on behalf of the applicant was that there was no judicial proceeding against the applicant on the date of his retirement when the amount of pension or gratuity became payable to him because under clause (b) of Sub-rule 5 of Rule 9 judicial proceedings shall be deemed to be instituted in the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognisance, is made. This however cannot be a consideration for construing the provisions of Sub-rule 1 of Rule 9 because that sub-rule reads as follows :

"The President reserves to himself the right of withholding or withdrawing a pension or gratuity, or both, either in full or in part, whether permanently or for a specified period

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and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Railway, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement."

5. This sub-rule does not speak of the President's authority ~~being~~ ^{being} conditioned by the date on which the judicial proceedings are filed nor ~~will~~ ^{does} it provide that judicial proceedings shall be initiated prior to the retirement of the railway employee concerned. Rule 10 speaks about provisional pension being paid to the employee while departmental or judicial proceedings are pending and clause (b) to that rule requires provisional pension to 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. Under clause (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), (iiia) and (iv) or rule 6 of the said rules, the payment of gratuity shall be authorised to be paid to the railway servant. Sub-rule (2) of Rule 10 provides for adjustment against final retirement benefits of provisional pension made under sub-rule (1). It is therefore clear that ^{whether} ~~where~~ judicial proceedings are instituted before or after retirement, that would not

control the President's right reserved under sub-rule (1) of Rule 9 of Railway Services (Pension) Rules 1993.

6. The learned counsel for the applicant urged that the respondents' own interpretation of the relevant rules was different because the Railway Board's letter of 7.8.1989 (Annexure 'A-4') refers in para 5 that the authority competent to grant leave can withhold whole or part of cash equivalent of LAP only if the employee is under suspension on the date of retirement or the disciplinary and criminal proceedings are pending against him if in the view of the said authority there is a possibility of some money becoming recoverable from the employee on conclusion of the proceedings against him. These instructions have not been issued with regard to with holding or withdrawing of pension under Rule 9 of Pension Rules and would not be relevant for considering what interpretation the respondents put on the Pension Rules.

7. Para 5 of Railway Board's letter dated 14-9-89 (Annexure A-5) ^{is} says on the subject of initiation of disciplinary proceedings against a railway employee ~~involved in railway C39 and other Service cases, included in criminal case~~ and who are due to retire ^{and} shortly, ^{which} is in the following terms :

"It may be reiterated here that as explained in Board's letter No. F(E)III/88/LEI/1. dt. 7.8.89, DCRG and commuted value of pension of a retired employee cannot be withheld, unless disciplinary proceedings are commenced or suspension given effect to before his retirement. Also, in cases where DCRG and commuted value of pension are withheld, leave encashment should be allowed, except where pecuniary loss has been caused to the Government and conditions laid down in Board's letter No. F(E)III/82/LEI/2 dt. 29.12.83 are fulfilled."

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8. This has reference only to disciplinary proceedings which are commenced and not to the initiation or pendency of judicial or criminal proceedings. Instructions on which reliance was placed by the applicant has no bearing on Rule 9 the interpretation of sub-rule (1) of Pension Rules. A proper reading of rule 9 and 10 of Pension Rules clearly ~~says~~ shows that the President would have the power if judicial proceedings are initiated even after retirement of the employee, to withhold the pension or gratuity and the only concession which can be granted to the employee would be payment of provisional pension under rule 10 of the Pension Rules. It is therefore not possible to agree with the submission of the applicant that because criminal proceedings came to be instituted after his retirement, the President could not have withheld the amount of gratuity.

9. Reference was also made to the decision of this Tribunal in P.R.Das v. Union of India & Ors. (CAT MAT Reporter 1995 (I) 42) where direction was made for payment of half of the amount of Gratuity to the applicant therein. The decision there proceeded on the basis that criminal proceedings ~~may~~ take ^{long} time to terminate and great hardship would be caused to the applicant on account of the delay in deciding criminal proceedings. This is not the ground made here and that does not fall for consideration. The question raised here is only about power of the President to withhold the amount of gratuity in view of the pendency of the criminal proceedings after the date of applicant's retirement. The applicant is not entitled to succeed ~~this appeal~~ here. In the result, the application is dismissed. No order as to costs.

(M.S.DESHPANDE)
VICE CHAIRMAN.