

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 355/97

Date of Decision: 24/12/97

Baijnath Yadav

Applicant.

Shri M.S.Ramamurthy

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri V.S.Masurkar

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. D.S.Bawej, Member (A)

Hon'ble Shri.

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

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

D.S.Bawej
(D.S.BAWEJ)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA. NO. 355/97

this the 24th day of December 1998

CORAM: Hon'ble Shri D.S.Bawej, Member (A)

Baijnath Yadav,

By Advocate Shri M.S.Ramamurthy
along with Shri Ramesh Ramamurthy

... Applicant

V/S.

1. Union of India
through the General Manager,
Central Railway, C.S.T.M.,
Mumbai.
2. The Chief Engineer (Const.),
Central Railway, C.S.T.Mumbai.
3. The Chief Administrative Officer
(Const.), Central Railway,
C.S.T., Mumbai.

By Advocate Shri V.S.Masurkar

... Respondents

O R D E R

(Per: Shri D.S.Bawej, Member (A))

The applicant while working as Senior Depot Storekeeper (C) under Deputy Chief Engineer (C), Kurla Passenger Terminus, Central Railway, Dadra has retired from service on 31.7.1996. The applicant submits that on his retirement, he did not get any of his retiral benefits, viz. pension, provident Fund, gratuity and Group Insurance, leave encashment and commutation value of pension. The applicant made a representation dated 2.12.1996 but did not get any response. Feeling aggrieved, the present OA. has been filed on 7.4.1997 seeking the following reliefs :-

(a) to direct the respondents to pay the applicant monthly pension from the month of August, 1996.

(b) to direct the respondents to pay the applicant his retiral benefits, viz. Commutation Value of Pension, Gratuity, Provident Fund, Leave Encashment and Group Insurance. (c) to direct the respondents to pay interest at the rate of 18% p.a. on unpaid amount of monthly pension and for delay in payment of retiral benefits.

2. The main contention of the applicant is that refusal of respondents to settle the retiral dues and not making payment is illegal and violative of his legal rights.

3. The respondents have filed written statement contesting the application. The respondents have submitted that payment of provisional pension has been ordered as per the Pension Payment Order dated 27.8.1997. It is further stated that payment of provident fund has been made to the applicant through a cheque of Rs.1,05,145/- handed over to the counsel of the applicant in the Tribunal on 14.8.1997. The respondents have further stated that the applicant was in possession of Railway quarter at the time of retirement and on account of non-vacation of the same beyond the permissible period, the applicant was unauthorised occupant of the quarter and therefore as per the extant rules, the gratuity has been withheld. The disciplinary proceedings are also pending against the applicant which were started before the retirement.

As regards the leave salary and Group Insurance, the respondents have clarified that since the applicant was absent for more than six months prior to his retirement, his leave salary had to be calculated and papers have been sent to Accounts Branch.

4. The applicant has filed a rejoinder reply controverting the submissions of the respondents. The applicant admits that a Pension Payment Order has been issued in his name but after getting Rs.51,155/- purported to be arrears of provisional pension, no further credit has been given from 26.11.1997 onwards. The applicant submits that he was permitted to retain quarter upto 15.12.1997 by the administration and he had vacated the quarter on 15.12.1997. The applicant contends that the respondents have not cited any rule under which withholding of gratuity for non-vacation of quarter is called for. The applicant has also averred that pending of disciplinary proceedings does not give any right to the respondents to withhold the retiral benefits or refuse even to sanction provisional pension. It is his submission that the action taken by the respondents in withholding the retiral benefits is illegal.

5. I have heard the arguments of Shri M.S. Ramamurthy along with Shri Ramesh Ramamurthy, learned counsel for the applicant and Shri V.S. Masurkar, learned counsel for the respondents.

(V)

6. From the facts brought out by the respondents, it is admitted fact that the applicant had been issued a charge-sheet before retirement and therefore the disciplinary proceedings were pending against the applicant when he retired. It is also admitted fact that the applicant did not vacate the Railway quarter at the time of retirement and was in occupation of the same till vacation on 15.12.1997. The respondents have brought out that for the payment of provisional pension, pension payment order has been already issued and the payment of provident fund has been also made to the applicant. The only payments which have been not yet paid to the applicant are gratuity, commutation value of pension, leave encashment and Group Insurance. The short question which is involved for the determination is whether the respondents are legally right in withholding the payment of the retiral benefits as per the extant rules. The respondents in the written statement have indicated that withholding of gratuity and other retiral benefits has been done as per the extant rules. However, the extant rules have not been elaborated in the written reply. The counsel for the respondents was asked to indicate the relevant rules which permit the withholding of the retiral benefits. The learned counsel for the respondents brought to my notice the Rule 9 & 10 of Railway Services (Pension) Rules, 1993. On referring to Rule 10, it is noted that in case the departmental proceedings are pending against a Railway employee at the time of retirement, then as per Rule 10 (a) provisional pension shall be allowed not exceeding the maximum ^{pension} which should be admissible based on the qualifying service upto the date of retirement.

As indicated earlier, the provisional pension has been already paid to the applicant. It is noted that there is a delay in arranging the payment and this aspect will be deliberated subsequently. Rule 10 (c) provides 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 in case of issue of major penalty of chargesheet. In the present case, the disciplinary proceedings were pending against the applicant at the time of retirement and the same ~~are~~ still pending and therefore in terms of Rule 10(c), the payment of gratuity can be withheld by the department. At this stage, the learned counsel for the applicant argued that ~~conceding~~ that though as per Rule 10(c) the gratuity could be held on account of pendency of the disciplinary proceedings, but in the present case the holding of the gratuity is illegal as no order has been passed for the same by the competent authority. The counsel for the applicant stated that the provisions of Rule 10 are to be read harmoniously with that of Rule 9. He contended that as per Rule 9, President only has the power to withhold gratuity either in whole or in part and therefore if the gratuity is to be withheld as per provisions of rule 10(c), the order must be passed by the President. He ^{also} contended that this is quite obvious from ~~the~~ provisions in Rule 10 where for sanction of provisional pension, specifically the Accounts Officer has been shown as an authority while in Rule 10(c) ^{but} no authority has been indicated for withholding the ~~gratuity~~ and therefore keeping in

view the provisions in Rule 9, the President is the only authority to order withholding of the pension under Rule 10(c). With these submissions, the learned counsel for the applicant stated that the action taken by the respondents in the absence of any order from the President for withholding of pension is illegal and therefore the applicant is entitled for payment of gratuity. The learned counsel for the respondents, on the other hand, strongly contested the arguments of the learned counsel for the applicant stating that the pension rules issued under power conferred under Article 309 of the Constitution of India if provide for withholding of the gratuity due to pendency of the disciplinary proceedings at the time of retirement no specific order is required to be passed. I have carefully considered the rival contentions and inclined to endorse the view point of the respondents. Rule 9 provides for Presidential power with regard to holding of pension in respect of any departmental or judicial proceedings. Rule 10 provides for the action to be taken with regard to payment of retiral benefits to the employee undergoing disciplinary proceedings at the time of retirement pending the final decision on the disciplinary proceedings and the penalty imposed in terms of provisions of Rule 9. After careful reading of Rule 9 & 10, I am of the opinion that no specific order is required to be passed by the President for withholding of the payment of gratuity till the final decision of disciplinary proceedings. As is clear from the Rule 9, if the disciplinary proceedings had been initiated by the disciplinary authority before

the retirement, the same authority will continue to deal with the disciplinary proceedings and after finalisation ~~he will~~ submit the report to the President who is the competent authority for imposing the punishment after the retirement.

Railway Service (Pension) Rules, 1993 have been issued exercising power under Article 309 of Constitution of India and therefore are statutory in nature. If the rules provide for withholding of gratuity, the same can be withheld without passing any specific order as long as the conditions with regard to disciplinary proceedings are met with.

In my opinion, the contention of the applicant is farfetched and is not supported by the provisions of the rules. I, therefore, find no merit in the submissions of the applicant and come to the conclusion that withholding of the gratuity due to pendency of the disciplinary proceedings against the applicant is covered by Rule 10(c) and action of the respondents is not arbitrary and illegal.

7. As indicated earlier, the applicant had not been ~~to~~ paid the leave encashment and group insurance. The respondents have not indicated any rules under which ~~these~~ payments could be withheld in case the disciplinary proceedings are pending. Only a vague explanation has been given that since the applicant was absent for six months before retirement, the calculation for leave salary had to be done and the proposal is sent to Financial Adviser and Chief Accounts Officer. In the absence of any rules permitting the respondents to withhold these payments, the applicant was entitled for payment of these dues at the time of

Q

retirement. The applicant is, therefore, entitled for payment of these dues immediately and since the delay has been caused by the respondents with no satisfactory explanation, the applicant is entitled to be compensated by way of payment of interest.

8. As ~~noted~~ earlier, the provisional pension has been sanctioned to the applicant as per the Pension Payment Order dated 27.8.1997. The payment of provident fund has been ^{also} made to the applicant on 14.8.1997. The applicant had retired on 31.7.1996. It is also therefore obvious that payment of these dues has been delayed. As per the Rule 10 (a) of Railway Services(Pension) Rules,1993 as referred to earlier, a provisional pension is admissible to the employee under disciplinary proceedings on the date of retirement and therefore the payment of provisional pension has been delayed to the applicant. Payment of provident fund has been also delayed and the respondents have not made any averment to indicate the reasons for delay. In view of this, I hold that the applicant is entitled for payment of interest for delay in payment of these dues.

9. The applicant has also submitted that he has ~~not been~~ paid the commutation value of pension. Since Rule 10(a) provides^{payment of} full pension on a provisional basis, it is obvious that commutation value of pension would not be admissible till such time the disciplinary proceedings are finalised. In view of this, there is no illegality in withholding the^{payment of} commutation value of pension by the respondents.

10. As brought out earlier, the applicant had been issued a major penalty chargesheet before retirement and the disciplinary proceedings were pending at the time of retirement. The respondents have brought on record the copy of the chargesheet dated 10.6.1996. The applicant during the arguments dwelt considerably on the validity of the chargesheet. He argued that the chargesheet has been issued in 1996 for the alleged irregularities committed during 1988. He further submitted that the charges are vague as no details of the irregularities have been brought out. In view of these facts, the counsel for the applicant pleaded that the charges ~~levelled against~~ ~~him do~~ not constitute misconduct. He further argued that penalty under Rule 9 can be imposed only for grave misconduct and since the charges in the chargesheet do ~~not~~ not constitute a grave misconduct, the respondents are not entitled to continue the disciplinary proceedings. He, therefore, prayed that the chargesheet deserves to be set aside. The counsel for the respondents strongly reacted to the submissions of the counsel for the applicant stating that the validity of the chargesheet is not the subject present of the OA. and no such prayer can be made ~~for~~ for quashing the chargesheet. The learned counsel for the applicant, however, controverted this contention of the respondents stating that the applicant has raised this issue in view of the fact that the respondents have first time disclosed in the written statement the reasons for withholding the gratuity and other settlement dues. He ~~also~~ further stated that for the sake of defence, the additional pleadings need not be included in the OA. through ~~an~~ amendment. I ~~am~~ not impressed

by the arguments of the applicant. The pleadings put forward and the prayer for relief present made are beyond the scope of the OA. The issue raised during oral submissions constitute a separate cause of action and therefore cannot be gone into the merits in the present OA. In view of this, the submission made by the counsel for the applicant deserves to be dismissed.

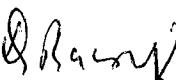
11. The counsel for the applicant made one more prayer which is neither included in the OA, nor covered in the rejoinder affidavit. The counsel for the applicant contended that the chargesheet was issued in 1996 and even after a period of two years, at present the disciplinary proceedings have been not completed and therefore the gratuity of the applicant cannot be withheld indefinitely. In view of this, he made a prayer that the Tribunal should direct the respondents that in case the enquiry is not completed within a reasonable time to be fixed by the Tribunal, the disciplinary proceedings were come to an end. The counsel for the respondents strongly opposed any such direction being given through the present OA. on the ground that there are no such pleadings in the OA. and this is altogether with a distinct issue a separate cause of action. I have carefully considered this prayer and not inclined to accept the same. The issue of chargesheet and the proceedings thereafter constitute a separate cause of action. The respondents have no occasion to meet with the contention of the applicant with regard to the progress of the enquiry. It is not known as to completed why the proceedings have not been so far. If the

(d)

applicant is aggrieved by the delay, he can challenge the matter through a separate OA, seeking the relief as prayed for. In the present OA, based on the pleadings made no such direction can be issued and therefore this prayer also deserves to be rejected.

12. In the result of the above deliberations, the OA. is partly allowed as under :-

- (a) The applicant shall be entitled for payment of the interest at the rate of 12% p.a. for the delay in payment of provisional pension. The interest shall be calculated on the basis of monthly accrual of the pension as due to the applicant.
- (b) The payment of leave encashment and Group Insurance as due shall be made to the applicant and the applicant shall be entitled for payment of interest at the rate of 12% p.a. from the date of retirement till the date of payment.
- (c) The compliance of this order shall be done within a period of three months from the date of receipt of the order.
- (d) No order as to costs on the facts and circumstances of this case.


(D.S. BAWEJA)
MEMBER (A)

mrj.