

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.1033/91

Date of order: 27th Dec 1991.

BETWEEN:

T.Satyanarayana Rao

.. Applicant.

AND

1. Union of India Rep. by its
General Manager, South
Central Railway,
Secunderabad.
 2. Chief Personnel Officer,
South Central Railway,
Secunderabad.
 3. Divisional Signal & Telecom
Engineer, Metro wan
Maintenance,
Secunderabad.
- .. Respondents.

Counsel for the Applicant .. Mr.N.Rama Mohan Rao.

Counsel for the Respondents .. Mr.V.Bhimanna.S.C for Rlys.

CORAM:

HONOURABLE Mr.R.BALASUBRAMANIAN : MEMBER (ADMN).

HONOURABLE Mr.C.J.ROY : MEMBER (JUDL).

(This Judgement is delivered by Hon'ble Mr.C.J.Roy,
Member (Judl) on 21.12.91)

This is an application for the relief to declare that the action of the Respondents to withhold payment of retirement benefits as illegal, arbitrary or an act of harassment and to direct the respondents to sanction and pay to the applicant, the retirement benefits such as Pension, Death-cum-Retirement Gratuity, Commutation of Pension, Leave Encashment and unpaid salary and allowances with interest from 1.8.91 and pass such other order or orders as are deemed fit and proper in the circumstances of the case.

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2. Stating briefly the facts of the case that the applicant was recruited as a Junior Clerk on 6.2.1956 in the South Central Railway, later joined to work under South Central Railway.

3. The applicant was superannuated on 31.7.1991. While he was working as a Chief Clerk in the office of 3rd respondent. A petty case No.8/91 was filed by a Railway Protection Force under section 144 of the Indian Railway Act, 1989 on 13.3.1991 Afternoon. The said section reads as under:-

4. "Prohibition on hawking, etc., and begging:-

(i) If any person canvasses for any custom or hawks or exposes for sale any article whatsoever in any railway carriage or upon any part of the railway, except under and in accordance with the terms and conditions of a Licence granted by the Railway administration in this behalf, he shall be punishable with imprisonment for a term which may extended to one year, or with fine which may extended to two thousand rupees, or with both;

Provided that, in the absence of special and adequate reasons to the contrary to be mentioned in the judgement of the court, such punishment shall not be less than a fine of one thousand rupees.

(ii) If any person begs in any railway carriage or upon a railway station, he shall be liable for punishment as provided under sub-section (1).

(iii) Any person referred to in sub-section (i) or sub-section (ii) may be removed from the railway carriage or any part of the railway or railway station, as the case may be, by any railway servant authorised in this behalf or by any other person whom such railway servant may call to his aid." So in that petty case the applicants

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Then ~~he~~ ^{my} was convicted and preferred an appeal in the learned 2nd Additional Metropolitan Sessions Judge Court resulting in setting aside the Judgement of the Lower Court with a direction to refund the fine and ordered for retrial on 7.5.1991. For the retrial on the ground that the retraction of the plea of guilty, ~~has~~ ^{the 'he'} not been given time ^{by the learned Magistrate.} for reflection. On 16.5.91 the 3rd respondent had issued a Charge Sheet which is in serial number 2 of the material papers, i.e. after 2 months of the said Judgement, for imposing a major penalty based on the order of conviction dated 13.3.1991. The applicant was placed under suspension on 12.7.1991 by the 3rd respondent eventhough a copy of the Appellate Court's Judgement dated 14.6.1991 was furnished by him. The suspension was revoked, ~~cancelled~~ ^{cancelled} the Charge Sheet, and the application ^{nt} was taken back on duty on 30th July, 1991 Afternoon as per Annexure (A.1) i.e. one day before his date of retirement. The period of suspension was also treated as on duty. This fact was informed by R.3 to R.2 by the orders dated 30.7.1991 Annexure (A.1), (A.2), (A.3) and (A.4) of 30th July, 1991, 28th August, 1991 and 30th August, 1991 respectively.

5. On 11.9.1991 the R.2 consulted R.3 with reference to his opinion in regard to the payments of encashment of leave salary and other benefits consequential to his retirement on 31st July, 1991, by adding that the applicant was under suspension and disciplinary proceedings were pending on the date of retirement. Under Annexure (A.2) dated 30th July, 1991 the applicant was taken on duty revoked the order of suspension. On this the applicant submitted a representation to R.1 on 26.8.91 and 10.9.91 and R.2 on 26.9.91 to pay his dues on all counts and also furnished advance receipts as desired. But no action was taken by R.2 though R.3 advised the applicant vide his order No.MWSY/DAR/TSR of 30th July, 1991 Annexure (A.1) that the 2nd respondent was advised

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to make payments as per rules. Hence the applicant avers that the action of the respondents in not arranging settlement of his dues is illegal, arbitrary and not sustainable on the grounds that this amounts to misuse of disciplinary powers, abuse of authority and harassment to the employees. That the petty case under section 144 cannot be construed^{ed}, as instituted by the 2nd respondent under rule 315 of Railway Pension Rules.

6. Rule 315 contemplates that "The president reserves to himself the right of withholding or withdrawing pension or part thereof either permanently or for a specific period of any pecuniary loss caused to the Government, if ~~an~~ any departmental or judicial proceedings, ^{or withheld} the pensioner is found guilty or misconduct or negligence during the period of HIS SERVICE including service rendered upon re-employment after retirement."

7. No such reference was made to the Railway Board for obtaining Presidential Sanction for withholding payment or such an order issued by the President as he was not found guilty in any departmental ^{enquiry} on the date of his retirement, or earlier thereto. That the alleged withholding of payment is harassment after retirement which is arbitrary and unsustainable. He further avers that "as per rule 315 of M.R.P.R. and as per the subsequent Railway Board Letter No.F(E)III/88/LGI/1, dated 7.8.1989 which was referred to by the 2nd respondent to 3rd respondent in his letter dated 9.9.1991 Annexure(A.5) the applicant was neither under suspension on the day of his superannuation i.e. 31.7.91 nor disciplinary proceedings or judicial proceedings are instituted by the 3rd respondent or any authority to whom the 3rd respondent is subordinate to withhold his retirement benefits such as D.C.R.G., Commutation, Encashment of leave salary and unpaid wages for 20 days of suspension period, on superannuation".

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Hence the OA for that relief mentioned, ^{Supra} He filed 8 Annexures including the representation dated 26.9.1991 drawing the attention ^{on all} of the aspects.

8. The respondents counter stating that the case was allowed by the Sessions Court, the matter is subjudice before the Competent Court. They also admitted the facts of suspension; information of the Appellate Court result and revocation of suspension and withdrawal of the Charge Sheet. But they say R.3 ^{wrote} advised R.2 that the case is still pending against the applicant on the date of superannuation and advised further to arrange settlement dues as per extent Rules.

9. In terms of para 316(1) of Manual Railway Pension Rules whereby departmental or judicial proceedings are initiated against a Railway servant who has retired on attaining the age of superannuation or compulsorily retired or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which upon conclusion of such proceedings final orders passed, the provisional pension not exceeding the maximum pension which have been admissible on the basis of which qualifying services upto the date of retirement, or if he was under suspension on the date of retirement, upto the date of immediately proceedings, the date on which he was placed under suspension, but no gratuity or Death-cum-Retirement Gratuity shall be paid to him until the conclusion of such proceedings and the issue of final orders thereon.

10. ^{They further allege that} Para 315 of Manual of Pension Rules quoted by the applicant is not relevant since this rule ⁱⁿ applies only to the pensioners, who is drawing pension after retirement and found guilty of grave negligence during the period of his service including service rendered upon re-employment after retirement. Since the applicant is not yet a pensioner,

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the above said para does not apply in his case.

10. They agree to the release the unpaid salary of July, 1991 but the commutation of pension and, other benefits are rejected pending final outcome of the case and denying other allegations. They also cited Annexure(A.1) an extract of para 367 of Railway Manual Rules, 1950. They also filed Annexure(A.2) Letter No.P(R)500/XIII dated 22.8.1989 citing the rules for withdrawing the Gratuity etc.

12. The case is filed on 6th November, 1991. The respondents also produce ^{the} personnel file, charge sheet and the ^{of the applicants} applicants have filed the copy of the Judgement of the Metropolitan Sessions Judge.

13. We heard the arguments of both the counsels perused the records carefully.

14. This case does not call for any interpretation of the Rules 315, 316 and 317 as they are self explanatory. Rule 315, 316 and 317 require Presidential sanction for withholding the pension with any pecuniary loss to the Government in a departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service. Rule 315 says that they shall not be instituted save with the sanction of the President whether before his retirement or during his re-employment and Union Public Service Commission shall also be consulted before final orders were passed. Grave misconduct include corrupt practices as per the expression given in the section. Judicial proceedings includes criminal proceedings also. On that the authority who initiated proceedings without delay to intimate the facts to the Accounts Officer concerned. Even if a recovery is made it should not be made at a rate exceeding one-third of the gross pension originally sanctioned. The learned counsel for the respondent says that the proceedings are initiated under section 316. But the applicant counsel says that 316 cannot exist dehors the section 315. But 316(1) reads as "where any departmental or judicial proceedings is instituted under para 315 or where a departmental proceedings

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is continued under clause (a) of the provision
a Railway servant who has retired on attaining the age of
compulsory retirement or otherwise, he shall be paid during
the period commencing from the date of his retirement to
the date on which, upon conclusion of such proceedings, final
orders are passed, a provisional pension not exceeding the
maximum pension which would have been admissible on the
basis of his qualifying service upto the date of retirement,
or if he was under suspension on the date of retirement, upto
the date immediately preceding the date on which he was placed
under suspension; but no gratuity or death-cum-retirement
gratuity shall be paid to him until the conclusion of such
proceedings and the issue of final orders thereon."

"(2) Payment of provisional pension made under clause
(1) shall be adjusted against the final retirement benefits
sanctioned to such Railway servant upon conclusion of the
aforesaid proceeding and no recovery shall be made where the
pension finally sanctioned is less than the provisional pension
or the pension is reduced or withheld either permanently or
for a specific period."

15. On reading above ~~two~~ sections it is clear that the
Rule 317 should have been followed to inform the Accounts
Officer. We are not placed before ^{us} with any Presidential
sanction or satisfactorily placed before us that there was any
grave misconduct involving corrupt practices. Grave is a
relatively comparative word depending upon the facts and the
circumstances of each case. On going to the charge sheet which
is filed on 13.3.1991 at 3.30 hours along with others the
applicant was found in the premises of Rail Nilayam canvassing
for Chitfunds and creating disturbance to the Railway
Administration. Being a Railway servant while on duty engaged
himself in activities ^{violating} while Section 144 of the Railway Act

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1989. Immediately he was placed before the Learning Magistrate who convicted and sentenced him. Against this the applicant preferred an appeal in the Learned Second Metropolitan Sessions Court and the said Court on 7th May, 1991 pronounced a Judgement with an observation that the plea of guilt is not voluntary since no time was given for reflection, Since at 3.45 hours he was ^{produced} pronounced before the Learned Magistrate and he was questioned under section 251 CRPC, he pleaded guilty and there is no whisper that the time was given for reflection. Hence the case was remanded back to the Lower Court setting aside the conviction and sentence.

16. It cannot be said as to how much time the retrial takes and what could be the final outcome of the criminal proceedings, whether he will be acquitted or released, that cannot be embarked upon now as a guess work. It is not the province of this Tribunal to interpret the charge sheet or interfere with the proceedings before the criminal courts. Even assuming if it results in conviction if a fine is imposed it will go only to the State Government, but not to the Railways. This prosecution is launched by Railway Protection Force but not by the Railways. The retracted plea of guilt and ordering the retrial ~~has resulted~~ as stated supra, further ^{that} the hardship would cause if the retirement benefits denied to him thereby upsetting his life and family causing him anguish and the balance of convenience is certainly not in favour of the respondents, ^{whether he is in service or in retirement}

17. In 1984(2) SLR on page 165 the Supreme Court held in the case of Brahma Chandra Gupta decided on 29.11.1983 in para 6 "Keeping in view the facts of the case that the applicant was never hauled up for departmental enquiry, that he was prosecuted and has been ultimately acquitted, and on being acquitted he was reinstated and was paid full salary for the period commencing from his acquittal, and further that even for the period in question, the concerned authority has not held that the suspension was wholly justified because 3/4th of the

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salary is ordered to be paid, we are of the opinion that the approach of the trial court was correct and unassailable. The learned trial Judge on appreciation of facts found that this is a case in which full amount of salary should have been paid to the applicant on his reinstatement for the entire period. We accept that as the correct approach. We accordingly allow this appeal, set aside the Judgement of first appellate court with this modification that the amount decreed shall be paid with 9% interest p.a. from the date of suit till realisation with costs throughout".

18. The above case resulted in allowing the appeal, reinstatement of service after he was acquitted by a Criminal Court appellant was entitled to full salary on reinstatement. When the ratio of the decision is taken while a public servant is entitled to full salary and reinstatement after acquittal of a pensioner who is ^{imposed to be} in service, the denial of the pensionary benefits in the present OA will result in hardship to the applicant, who is now retired. In 1983(2)SLR page 682 the Delhi High Court held on 28.4.1983 in the case of K.L.Varma that power to withhold pension can be exercised only in case of findings of grave misconduct but not on petty criminal offences. Such offences, do not ^{contribute} ~~cause~~ grave misconduct. Though this decision is given under Central Civil Pension Rule 72. They could be seen in paramateria to Rule 9 of the ratio of the decision extracted in para 8 of the Judgement is a plus point in favour of the applicant.

19. ^{as a result of the} "Rule 9 is activated when the petitioner is found guilty of (1) a misconduct (2) and of a grave character. This is what 'grave misconduct' means. Here the findings is that the petitioner was guilty of a minor offence because he misinterpreted or was ignorant of the relevant rule. There was no grave misconduct. It was a minor offence. The pensioner must be found guilty of grave misconduct the President can

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at the end of the day

Copy to:-

1. General Manager, South Central Railway, Union of India, Secunderabad.
2. Chief Personnel Officer, South Central Railway, Secunderabad.
3. Divisional Signal & Telecom Engineer, Metro Wan Maintenance, Secunderabad.
4. One copy to Shri. N. Rama Mohan Rao, 714-B-Block, Brindavan Apartments, Redhills, Hyderabad.
5. One copy to Shri. V. Bhimanna, SC for Rlys, CAT, Hyd-bad.
6. One spare copy.
7. One copy to D.R (J)

Rsm/-


Final copy
7.1.92


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withhold or withdraw pension. To fall within the expression "grave misconduct" it must be established that there was a transgression of a serious nature of some established and definit rule of action. Seriousness of misbehaviour or dereliction of duty is ~~of~~ the essence. Minor offence is not grave misconduct".

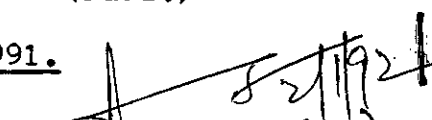
20. This case is only a petty case, summary trial case, unconnected with the official duties, or functions. We are not given the benefit of seeing the presidential sanction, information to Accounts Officer and U.P.S.C. in this case. Therefore we are fortified by the above rulings and applying the principles of the same ^{Ratio decidendi or The} ruling of their Lordships in coming to the following conclusion. When the provisional pension is sanctioned the commutation of it is not possible. The loss that causes to this applicant is much more than the alleged petty offence. The punishment should certainly be compatable to the gravity of the offence, which is not the case here. There was no grave misconduct in the said petty case, even if it results in conviction.

21. We direct the respondents to release to the applicant all retirement benefits such as Death-cum-retirement Gratuity commutation on pension, encashment of leave salary and unpaid wages and allowances. We choose not to order any interest in this case. However, the respondents are given liberty to take any action appropriate after the final results of the criminal proceedings are known. The respondents are directed to implement the order within 3 months from the communication of this order. Under these circumstances the petition is allowed with no order as to costs.


(R. BALASUBRAMANIAN)
Member (Admn.)


(C. J. ROY)
Member (Judl.)

Dated 27th December, 1991.


Dy. Registrar (J)

10th Dec 1991

PM
31/12
O.A. 1033/91
prop

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.

:V.C

AND

THE HON'BLE MR.

M(J)

AND

THE HON'BLE MR. R. BALASUBRAMANIAN: M(A) ✓

AND

THE HON'BLE MR. C. J. ROJ. M(J) ✓

DATED: 27/12/1991 ✓

ORDER/ JUDGMENT: ✓

~~M.A./R.A./C.A.~~ No.

O.A.No.

in

1033/91 ✓

~~T.A.No.~~

(~~W.P.No.~~)

Admitted and Interim directions
Issued.

Allowed. ✓

Disposed of with directions 6/11/92

Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

M.A. Ordered/Rejected

order as to costs.

Central Administrative Tribunal
DESPATCH

HYDERABAD BENCH.

pvm