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In the Central Administrative Tribunal, Jaipur Bench,  
J A I P U R

Date of order : 18.5.1994.

O.A.No.320/1993

GORDHAN KUMAWAT : Applicant

Vs.

UNION OF INDIA AND ANOTHER : Respondents

CORAM :

THE HON'BLE MR.GOPAL KRISHNA, JUDICIAL MEMBER

THE HON'BLE MR.O.P.SHARMA, ADMINISTRATIVE MEMBER

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For the applicant : Mr.M.L.Guru

For the respondents : Mr.M.Rafiq

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PER HON'BLE MR.GOPAL KRISHNA :

Applicant Shri Gordhan in this application under section 19 of the Administrative Tribunals Act, 1985, sought a direction to the respondents to pay the amount of Death-cum-Retirement Gratuity(DCRG) and commuted value of pension forthwith.

2- We have heard the learned counsel for the parties and have gone through the records of the case carefully.

3- The applicant was working as a Fitter in the Carriage and Wagon Department of the Western Railway under the Carriage and Wagon Superintendent on 17.7.1979 in Phulera when he was rounded up by the police alongwith others in a case under sections 147,

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148, 336, 307 and 427 of the Indian Penal Code. The Trial Court convicted some persons under sections 323 and 324 Indian Penal Code. The applicant was , however sentenced to undergo rigorous imprisonment for six months under section 323 Indian Penal Code, Rajasthan whereupon, he preferred an appeal in the Hon'ble High Court at Jaipur against the order of conviction. The Hon'ble High Court while admitting the appeal suspended the sentence awarded to the applicant by the Trial Court. The appeal is still pending but subsequently, the applicant was removed from service in accordance with rule 14(1) of the Railway Servants (Discipline and Appeal) Rules, 1968. But he was reinstated in service by an order dated 22.11.93 (Annex.A/3) passed in Appeal by the Divisional Railway Manager. Thereafter, the applicant retired from service on 31.7.1990. The applicant received provisional pension on his retirement but no gratuity and commutation of pension were granted to him. The learned counsel for the applicant urged that the action of the respondents in withholding the commuted value of pension and DCRG is illegal and is violative of Articles 14 and 16 of the Constitution.

4- The respondents resisted the claim of the applicant on the ground that the appeal against the sentence and conviction under section 323 Indian Penal Code is still pending before the Hon'ble High Court and in such a situation the applicant is not entitled to be paid the commuted value of pension and gratuity.

5- It is true that the applicant was reinstated in service by an order of the appellate authority at

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Annex.A/3. The conviction of the applicant under section 323 Indian Penal Code has not so far been set aside and it still stands since the appeal against the same is pending in the Hon'ble High Court. Therefore, departmental proceedings against the applicant with a view to taking action under rule 14(1) of the Railway Servants (Discipline and Appeal) Rules ~~is~~ *are* still pending against him. Rule 316(1) of the Manual of Railway Pension Rules, 1950 ('Manual' for short) reads as follows :-

"316(1) Where any departmental or judicial proceeding is instituted under Para 315 or where a departmental proceedings is continued under clause (a) of the proviso thereto against 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 proceeding, 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 proceeding and the issue of final orders thereon."


In terms of the provisions contained in this rule the applicant is not entitled to claim any gratuity until the conclusion of the departmental proceedings and the issue of final orders thereon.

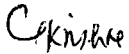
6- Adverting to the question of grant of commuted value of pension it would be pertinent to

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mention that the first proviso to rule 1202 of the Manual forbids permission to commute any part of pension during the pendency of a judicial or a departmental proceeding. Therefore, the applicant is not entitled to claim any commuted value of pension at this stage.

7- In view of the position of rules stated above, the applicant is not entitled to the relief claimed by him. Application is, therefore, dismissed with no order as to costs.

  
( O.P. Sharma )  
Administrative Member

  
( Gopal Krishna )  
Judicial Member

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