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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH
J A I P U R.

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OA No.535/1994

Date of order:8.2.1995

B.K.Nigam

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Applicant

Versus

Union of India & Anr. :

Respondents

Mr. Dharmendra Agarwal, counsel for the applicant
Mr. Manish Bhandari, counsel for the respondents

CORAM:

HON'BLE SHRI RATTAN PRAKASH, MEMBER (JUDICIAL)

O R D E R

(PER HON'BLE SHRI RATTAN PRAKASH, MEMBER (JUDICIAL))

The applicant herein Shri B.K.NIGAM has approached this Tribunal under Section 19 of the Administrative Tribunal's Act, 1935 to seek a declaration that the action of the respondents in declaring withholding of the gratuity and pension is null and void and be quashed. He has further sought a direction to the respondents to release the entire gratuity as well as commutation of the pension to the applicant alongwith all retiral benefits with interest @ 24% p.a.

2. The undisputed facts of the case are that the applicant was initially appointed as Assistant Inspector of Works in the Western Railway w.e.f. 5.7.1956 and after completion of 38 years of service he retired as Assistant Engineer (North) Western Railway, Kota on attaining the age of superannuation on 30.9.1994 from the office of Divisional Railway Manager, Western Railway, Kota. A disciplinary enquiry was initiated against the applicant in the year 1992 and a notice dated 5.9.1992 (Annexure A-1) was served on the applicant. He made

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a reply to it on 15.3.1993 vide Annexure A-3 and gave a detailed reply on 6.3.1993 (Annexure A-4). The applicant approached the disciplinary authority as well as the appellate authority/reviewing authority to complete the disciplinary enquiry soon. Requests to this effect were made by him vide his letter dated 25.2.1994 (Annexure A-5) and 20.6.1994 (Annexure A-6). It is the grievance of the applicant that vide communication dated 1.7.1994 (Annexure A-7) he was informed that his representation dated 20.6.1994 has been received and that it is pending for the consideration of disciplinary authority. However, no concrete answer was received from the respondents and hence he has been constrained to file this OA to claim the aforesaid reliefs.

3. The respondents have contested this application by filing a written reply to which the applicant has not filed any rejoinder. The stand of the respondents has been that the record of the applicant has ^{not} been unblemished as averred by him in his application. He has been punished twice firstly vide order dated 5.4.1994 and thereafter vide order dated 15.9.1994. Even now a disciplinary proceeding is in progress against the applicant for major mis-conduct. It has been averred that the respondents administration is making all efforts to finalise the DAR proceedings at the earliest. It has also been averred on behalf of the respondents that the applicant is not entitled to claim any of the reliefs prayed for in his OA in view of the provisions

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of Rule 1202 and 2308 of the IREM Part-I which provides that during the pendency of a departmental proceeding neither the gratuity is payable to the delinquent employee, nor he can insist for commutation of any part of his pension.

4. I have heard the learned counsel for the applicant as also for the respondents and have carefully examined the record in great detail.

5. The argument of the learned counsel for the applicant has been that during the pendency of the departmental enquiry neither gratuity, nor commutation of the pension can be with-held by the respondents. In support of his argument, the learned counsel for the applicant has relied upon the case of D.V. Kapoor Vs. Union of India and others, 1990(4) S.C.C. 314.

As against this, the learned counsel for the respondents merely relied upon the provisions of IREM referred to in their reply.

6. The only question to be determined in this CA is whether in view of Rule 1202 and 2308 of IREM referred to in the reply and now consolidated and Railway Services (Commutation of Pension) Rules, 1993 under Railway Services (Pension) Rules, 1993 which have been made effective w.e.f. 3.12.1993, the applicant is entitled to get the gratuity as well as commutation of pension even though a disciplinary proceeding for major mis-conduct is pending?

7. Since the aforesaid 1993 Rules have now made been effective w.e.f. 3.12.1993, it would be useful



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to reproduce Rule 10 of the aforesaid Pension Rules and Rule 5 of the aforesaid Commutation of Pension Rules which are to the following effect:

"10. PROVISIONAL PENSION WHERE DEPARTMENTAL OR JUDICIAL PROCEEDINGS MAY BE PENDING

- (1) (a) In respect of a railway servant referred to in sub-rule(3) of Rule 9, the Accounts Officer shall authorise the provisional pension not exceeding the maximum pension which would have been admissible on the basis of qualifying service upto the date of retirement of the railway servant or if he was under suspension on the date of retirement, upto the date immediately preceedings the date on which he was placed under suspension.
- (b) The provisional pension shall 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.
- (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), (iii) and (iv) of rule 6 of the said rules, the payment of gratuity shall be authorised to be paid to the railway servant.

(2) Payment of provisional pension made under sub-rule(1) shall be adjusted against final retirement benefits sanctioned to such railway servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or with-held either permanently or for a specified period."

"5. RESTRICTION ON COMMUTATION OF PENSION

No railway servant against whom any departmental or any judicial proceedings as referred to in rule 9 of the Railway Pension Rules, have been instituted before the date of his retirement, or the pensioner against whom such proceedings are instituted after the date of his retirement, shall be eligible to commute a fraction of his provisional pension authorised under rule 10 of the Railway Pension Rules or the Pension, as the case may be, during the pendency of such proceedings."

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A perusal of the aforesaid provisions makes it abundantly clear that during the pendency of a disciplinary proceeding which may entail specified penalties in Clause (i), (ii), (iii) and (iv) of rule 6 of the Railway Servants Discipline and Appeal Rules, 1968, a railway employee cannot claim as of right the payment of gratuity. Similarly, in view of specific provision under Rule 5 of the Railway Service (Commutation of Pension) Rules, 1993 a railway employee against whom a disciplinary proceeding is pending cannot claim as of right the payment of commutation of any part of his pension which is ordinarily available to a regular railway servant retiring on superannuation. There being thus clear provisions in the statutory rules i.e. Railway Service (Pension Rules, 1993 and Railway Service (Commutation of Pension) Rules, 1993, the authority relied upon by the learned counsel for the applicant is of no assistance to him. It is also undisputed that during the pendency of the departmental proceedings such an employee is entitled to receive a provisional pension which is admittedly being paid to the applicant as has been averred to by the respondents in para (i) of the reply. This fact has not been denied by the applicant by filing any rejoinder. It is, therefore, presumed that the applicant is receiving the provisional pension during the pendency of the aforesaid departmental proceedings as per rules.

8. Accordingly, it is held that the applicant is not entitled to claim any of the reliefs prayed for in the OA and the issue raised in this OA is answered in the positive.

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9. However, it is necessary to point out that the disciplinary proceedings against the applicant are pending since the year 1992, therefore, it is in the fitness of things that a suitable direction be given to the respondents to complete and finalise the disciplinary proceedings against the applicant within a time bound period.

10. This OA, therefore, being without any merit is hereby dismissed with the direction to the respondents that the disciplinary proceedings pending against the applicant is completed and finalised within a period of four months from the date of receipt of a copy of this order. It is made clear that the applicant would cooperate and would not seek unnecessary adjournment during the conduct of the disciplinary proceedings.

11. No costs.



(RATTAN PRAKASH)
MEMBER (J)