

CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/00245/2014

ORDER RESERVED ON: 03.02.2015

DATE OF ORDER: 5.2.2015

**CORAM**

**HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**

S.C. Johar S/o Shri H.L. Johar, aged about 71 years, R/o 9, Harsh Vihar, Jaipur Road, Ajmer. Retired on 31.10.2002 from the post of Senior Section Engineer (P.Way), Rani (Pali) under Divisional Railway Manager, Ajmer.

...Applicant

Mr. C.B. Sharma, counsel for applicant.

**VERSUS**

1. Union of India through General Manager, North Western Zone, North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur.
2. Divisional Railway Manager, North Western Railway, Ajmer Division, Ajmer.
3. Dy. Divisional Finance Manager C/o Chief Works Manager Loco Shop, North Western Railway, Ajmer.
4. Senior Divisional Engineer (South), North Western Railway, Ajmer.

...Respondents

Mr. Anupam Agarwal, counsel for respondents.

**ORDER**

The applicant has filed the present Original Application praying for the following reliefs:

- "i) That entire record relating to the case be called for and after perusing the same, respondents may be directed to release retiral dues already sanctioned in the year 2002 with interest @ 12% p.a. from the date of due till payment by quashing letter

*Anil Kumar*

dated 24.12.2013 (Annexure A/1) with all consequential benefits.

- ii). Any other order/directions of relief may be granted in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case.
- iii) That the costs of this application may be awarded."

2. Heard learned counsel for the parties and perused the documents available on record and the case law as referred to by the learned counsel for the applicant.

3. Learned counsel for the applicant submitted that the applicant retired on 31.10.2002 on superannuation. He has been sanctioned only provisional pension but his commutation of pension, gratuity, leave encashment, etc. have not been released by the respondents on the ground that a criminal proceeding is pending against the applicant.

4. Learned counsel for the applicant also submitted that the departmental proceedings against the applicant have been finalised and as on date no departmental proceeding is pending against him. In the criminal proceeding, the applicant has been acquitted by the appellate court vide order dated 30.08.2013 (Annexure A/15). After his acquittal, the applicant made a request to the respondents vide his application dated 09.12.2013 (Annexure A/16) for

*Anil Kumar*

releasing his final pension along with interest. He again submitted a representation on 28.01.2014 (Annexure A/17) for releasing gratuity and other retiral benefits except leave encashment, which could be paid after the decision in the D.B. Civil Writ Petition No. 6714/2008 filed by the respondents before the Hon'ble Rajasthan High Court, Jaipur Bench against the order dated 01.05.2008 (Annexure A/14) passed by this Bench of the Tribunal in OA 327/2006. The respondents have informed the applicant vide letter dated 24.12.2013 (Annexure A/1) in response to his representation dated 09.12.2013 that the Writ Petition No. 6714/2008 is still pending before the Hon'ble High Court, Jaipur Bench and the Hon'ble High Court has stayed the operation of the order of the Tribunal vide order dated 21.07.2008, therefore, the applicant cannot be paid any amount till the decision in the said Writ Petition.

5. Learned counsel for the applicant further argued that the applicant's pension and gratuity is not being released on the ground that the respondents have filed a criminal revision petition before the Hon'ble Rajasthan High Court, Jaipur Bench against the acquittal order in the criminal proceedings. The respondents are unnecessarily keeping the matter as pending. The applicant is now about 71 years old, therefore, the respondents be directed to release

*Anil Kumar*

his commutation of pension, gratuity and other retirement benefits except the leave encashment, which is pending before the Hon'ble Rajasthan High Court, Jaipur Bench.

6. Learned counsel for the applicant relied upon the order of the Central Administrative Tribunal, Madras Bench, Madras dated 03<sup>rd</sup> October, 1986 in TA No. 908/1986 (WP No. 8963/1984) in the case of P. Joseph Loganathan vs. Personnel Officer, S. Rly., Golden Rock Workshop, Trichy and Others, reported in 1987 (3) (CAT) SLJ 344.

7. On the other hand, learned counsel for the respondents submitted that the applicant has no reason to be aggrieved of as the criminal case is still pending against him inasmuch as the leave to appeal filed against the order dated 30.08.2013 after acquittal order had been granted and stay is operating in D.B. Civil Writ Petition No. 6714/2008. As per Rule 10 (c) of the Railway Pension Rules, 1993, the applicant is not entitled for any relief. Rule 10 (c) of the Railway Pension Rules, 1993 is quoted below: -

"(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), (iia) and (iv) of rule 6 of the said rules, the payment of gratuity shall be authorized to be paid to the railway servant."

*Anil Kumar*

8. The learned counsel for the respondents further submitted that the applicant has been rightly paid provisional pension as per rules. He also submitted that from the perusal of the acquittal order dated 30.08.2013 would show that the trial court had imposed the punishment of five years rigorous imprisonment and a fine of Rs. 20,000/-. However, being aggrieved by the order of conviction and sentence, the applicant filed an appeal before the competent court and the applicant was acquitted by the Additional Sessions Judge No. 1, Ajmer. Thereafter, the respondents have filed an appeal against this order before the Hon'ble High Court, which is still pending consideration and, therefore, his gratuity and commutation of pension cannot be released, thus, the action of the respondents is according to the law. Therefore, the Original Application has no merit and it should be dismissed with costs.

9. From the perusal of the pleadings, it is clear that the Writ Petition No. 6714/2008 filed by the respondents with regard to the payment of leave encashment is pending before the Hon'ble High Court and the Hon'ble High Court vide order dated 21.07.2008 has stayed the operation of the order passed by this Bench of the Tribunal in this regard. Therefore, there is no dispute between the parties

*Anil Kumar*

that the amount of leave encashment cannot be paid to the applicant till the disposal of the said Writ Petition by the Hon'ble Rajasthan High Court, Jaipur Bench.

10. With regard to the commutation of pension and release of gratuity, the respondents have stated that since criminal proceedings are pending against the applicant, therefore, according to the Rule 10 (c) of the Railway Services (Pension) Rules, 1993, the applicant is not entitled for commutation of pension and release of gratuity. He also argued that the case law as referred to by the learned counsel for the applicant in the case of P. Joseph Loganathan vs. Personnel Officer, S. Rly., Golden Rock Workshop, Trichy and Others (supra) is not applicable under the facts and circumstances of the present O.A. In this case, the Central Administrative Tribunal, Madras Bench directed the respondents to reinstate the applicant on being acquitted by the criminal court pending disposal of the criminal appeal against the acquittal. In the present O.A., the issue is with regard to sanction of commutation of pension and release of gratuity and not the issue of reinstatement of the applicant, who has already retired from service. I am inclined to agree with the contention of the learned counsel for the respondents that under the facts and circumstances of the present Original Application, the

*Anil Kumar*

ratio decided by the Central Administrative Tribunal in the case of P. Joseph Loganathan vs. Personnel Officer, S. Rly., Golden Rock Workshop, Trichy and Others (supra) would not be applicable.

11. It is not disputed that the applicant was prosecuted by the court of Additional Chief Judicial Magistrate (Railway), Ajmer and vide order dated 04.03.2003, the applicant has been convicted and sentenced for five years rigorous imprisonment and a fine of Rs. 20,000/-. Being aggrieved by this order, the applicant filed an appeal before the Additional Sessions Judge No. 1, Ajmer and in appeal, the applicant has been acquitted vide order dated 30.08.2013. The respondents, being aggrieved by this order, have filed an appeal before the Hon'ble Rajasthan High Court, Jaipur Bench, which is still pending consideration. Therefore, I am inclined to agree with the arguments of the learned counsel for the respondents that the criminal proceedings have not attained finality and the same are pending consideration before the Hon'ble Rajasthan High Court, Jaipur Bench, Jaipur.

12. I have perused the Rule 10 (c) of the Railway Services (Pension) Rules, 1993, which provides that no gratuity shall be paid to the Railway servant until the conclusion of the

*Anil Kumar*

departmental or judicial proceedings and issue of final orders thereon. In the present case, since a criminal appeal is pending before the Hon'ble Rajasthan High Court, Jaipur, therefore, the applicant is not entitled for the release of gratuity. The applicant has already been sanctioned provisional pension as provided under Rule 10 of Railway Services (Pension) Rules, 1993. Thus, I do not find any illegality or irregularity with regard to the decision of the respondents in not releasing the gratuity and the commutation of pension to the applicant at this stage.

13. Consequently, the present Original Application being devoid of merit is dismissed with no order as to costs.

*Anil Kumar*

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ADMINISTRATIVE MEMBER

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