

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/00165/2015

Order Reserved on: 19.9.2016
Date of Order: 27/09/2016.

CORAM

Hon'ble Ms. Meenakshi Hooja, Administrative Member

Purushotamdas Sharma, aged about 62 years, S/o Shri G.D.Sharma,
R/o 379, Shiv Colony, Vidyut Nagar-A, Moti Nagar (West), Ajmer Road,
Jaipur (Raj.)

.....Applicant

(By Advocate Mr. Vinod Goyal)

VERSUS

1. Union of India, through General Manager, North Western Railway,
Jagatpura, Jaipur.

2. Divisional Railway Manager, Northern Western Railway, Jaipur.

3. Senior Divisional Personnel Officer, North Western Railway, Jaipur.

.....Respondents

(By Advocate Mr. Tanveer Ahmed)

ORDER

This OA has been filed by the applicant under Section 19 of the
Administrative Tribunals Act, 1985 being aggrieved with the action of
the respondents in not releasing the amount of Death Cum-Retirement
Gratuity (DCRG) and commutation of pension after retirement without
having any justified reasons and rejecting the claim vide Ann.A/1 dated
06-13 order No. E/789/5/5/13/13 and therefore, praying for the
following reliefs:-

8. By an appropriate order or direction, the learned Tribunal may kindly call for the entire record and after examining the same the respondents may kindly be directed to extend the arrears of DCRG and commutation of pension w.e.f. the date of retirement along with 18% interest which has been withheld by the respondents without having any authority. The impugned order (Annexure A/1) be quashed and set aside.

Any other order or direction which the Hon'ble Tribunal deems fit and proper, may kindly be passed in favour of the applicant.

Cost of the original application may kindly be awarded to the applicant.

2. Heard. When the matter came up for consideration and hearing, the Ld. Counsel for the applicant Mr. Vinod Goyal submitted that the applicant is now a retired employee having attained the age of superannuation on 31.01.2013, but has been denied the Death cum-Retirement Gratuity (DCRG) and commutation of pension vide communication of June, 2013 (Ann.A/1) only on the ground of a pending criminal case in the Railway Court. He contended that the applicant has served for a long period of more than 35 years in the Railways and being deprived of the DCRG and commutation of pension, which he has duly earned, is not at all just and proper. He further contended that it is not known how long the case will last, and as his DCRG and commutation of pension are very much his due, they can at least be given subject to finalization of the pending criminal case. In support of his contention counsel for the applicant referred to a judgment of the Apex Court in the case of State of Jharkhand & Ors Vs. Jitendra Kumar Srivastava & Anr. (AIR 2013 Supreme Court 3383) wherein it has been held that Pension is a hard earned benefit which accrues to an employee and is in the nature of 'property' and further that even a part of pension or gratuity cannot be withheld in the absence of statutory provisions. Thus counsel for the applicant prayed that the respondents be directed to pay the DCRG and amount of commutation of pension to the applicant and the OA be allowed.

3. Per contra, Counsel for the respondents submitted that the DCRG and commutation of pension of the applicant has been correctly withheld in accordance with provisions of Rule 10 of Railway Service (Pension) Rules, 1993. The said Rule provides that when a judicial proceeding is pending, payment of provisional pension may be made,

(and this has already been allowed to the applicant), but the rules also lay down that no Gratuity shall be paid to the Railway servant until the conclusion of the judicial proceedings and issue of final orders thereon. He submitted that it is an admitted fact that a criminal case No.11/2007 under RP/UP Act is pending against the applicant before the Hon'ble Railway Tribunal. He further submitted that the judgment cited by the counsel for the applicant of the Hon'ble Apex Court pertains to the State of Jharkhand where there were no statutory rules regarding withholding of the commutation of pension or gratuity and action was taken only on the basis of executive instructions. However, in the present matter the respondents Railways already have Rules in this regard i.e. Railways Service (Pension) Rules, 1993 on the basis of which the DCRG and commutation of pension have been withheld. In the aforesaid case the Apex Court has itself opined " As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different." Thus the Apex Court has held that had there been their statutory provisions the position would be different and in the case of Railways i.e. the respondents, the statutory rules are there and action has been taken accordingly as per the provisions of the Railway Service (Pension) Rules, 1993 of withholding the DCRG and commutation of pension in view of the pending judicial proceedings. Therefore, no case, whatsoever is made out for the applicant's claim and prayed for dismissal of the OA.

4. Considered the aforesaid contentions and perused the record. It is clear that the DCRG and commutation of pension of the applicant has been withheld in view of the criminal case No.11/2007 registered under RP/UP Act against the applicant and pending before the Railway Tribunal, Jaipur.

5. The provisions of Railway Service (Pension) Rules, 1993, especially Rule 10 (B) and (C) read as under:-

"10. Provisional Pension where departmental or judicial proceedings may be pending.

(b) The Provisional pension shall be authorized 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;"

6. In view of the above clear cut provisions in the Statutory Rules, the judgment of the Hon'ble Apex Court (supra), relied upon by the counsel for the applicant, does not come to the rescue of the applicant because in that case the matter pertained to the State of Jharkhand where there were no statutory provisions while in the present case the respondents Railways have framed the rules and are in force as Railway Service (Pension) Rules, 1993 which provide for withholding of DCRG when judicial proceedings are pending. It is also noticed that provisional pension is being duly paid to the applicant as per the said rules. Therefore, there seems nothing wrong in the action taken by the respondents in withholding the DCRG and commutation of pension in view of the pending judicial proceedings against the applicant and Ann.A/1 communication of June, 2013 appears to be valid as per rules. Moreover, the applicant has filed the OA in 2015 though the impugned order was passed in June, 2013.

7. On the basis of the above analysis, the OA lacks merit and is accordingly dismissed with no order as to costs.


(Ms. Meenakshi Hooja)
Administrative Member

Adm/