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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.134/97

Date of order: 26.8.1997

Jagdish Prasad Gupta : Applicant

Vs.

1. The Union of India through the General Manager, Western Railway, Church Gate, Mumbai.
2. The Financial Adviser & Chief Accounts Officer (Administration), Western Railway, Church Gate, Mumbai.
3. The Deputy Financial Adviser & Chief Accounts Officer (S&C), Western Railway, Jaipur.
4. The Senior Accounts Officer (S&C), Western Railway, Jaipur.

...Respondents.

Mr. Vijayant Singh - Counsel for applicant.

Mr. Manish Bhandari - Counsel for respondents

CORAM:

Hon'ble Mr. O.P. Sharma, Administrative Member.

Hon'ble Mr. Ratan Prakash, Judicial Member.

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

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Jagdish Prasad Gupta has prayed that the respondents may be directed to make payment to the applicant / the following amounts, on account of his retirement from service:

- i) Balance amount of leave encashment;
- ii) Commuted value of pension according to rules/law;
- iii) Gratuity for the full 33 years of service rendered by the applicant calculated according to rules/law;
- iv) Full salary for the period of suspension of the applicant i.e. from 16.10.95 to 14.11.95 with all such increases as may have been made by the government according to his entitlement and admissibility, with interest.
- v) Interest on all the sums due and payable to the applicant @ 24% per annum from the date of his entitlement till the date of its payment.

2. The applicant while serving as Stock Verifier(C), Western Railway,

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Jaipur, was placed under suspension from 16.10.95 to 14.11.95. A Criminal case was registered against him on 12.10.95. Just before the applicant's retirement on superannuation . . . on 31.1.96, disciplinary proceedings were also initiated against him by way of memorandum dated 30.1.96 (Annx.A5) by respondent No.3, the Deputy Financial Adviser & Chief Accounts Officer (SAC), Western Railway, Jaipur. While the applicant was entitled to all pensionary benefits on retirement from service he did not receive these benefits except the benefit of Provident Fund due to him and the amount of CEGIS. He made a detailed representation to respondent No.3 with a copy endorsed to respondent No.2, the Financial Adviser and Chief Accounts Officer (Administration), Western Railway, Bombay but it was of no avail. Regular monthly pension is of course being paid to the applicant. But other pensionary benefits have been denied to him. The payment of pensionary benefits due to the applicant cannot be withheld on retirement, nor can these be subjected to any adjustment or recovery on any count even on a court decree. The applicant has, therefore, prayed that all the retirement benefits due to him apart from those already paid to him should be released forthwith.

3. The respondents in their reply have stated that the applicant is being paid provisional pension in accordance with the rules. Since both Criminal and departmental proceedings are pending against him he is not entitled to other benefits at this stage such as commuted value of pension and gratuity. According to them other pensionary benefits claimed by the applicant are also not payable to him at this stage. As regards leave encashment, ~~is concerned~~ the applicant has already paid a part of the amount and only an amount of Rs.10500/- has been withheld for the purpose of making good any recovery to be made on conclusion of the departmental and criminal proceedings pending against him.

4. We have heard the learned counsel for the parties and have perused the material on record.

5. The learned counsel for the applicant does not dispute that the disciplinary proceedings were initiated against the applicant before the date on which the applicant retired from service on superannuation. Also

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it is not disputed that Criminal proceedings against him were also pending on the date on which he retired from service. The learned counsel for the applicant stated during his arguments that not much progress has been made in the matter of finalisation of the disciplinary proceedings because the documents asked for by the applicant for his defence have yet not been supplied to him. As regards the criminal case he states that the charges have not yet been framed against the applicant after filing of the charge sheet against him. According to him, the applicant is not responsible for any delay being caused in the finalisation of these proceedings and therefore the payment of pensionary benefits due to the applicant should be directed to be released forthwith.

6. We have considered the matter carefully. When Criminal and departmental proceedings both are pending against the applicant and these were initiated during his service period, the applicant is not entitled to the payment of the pensionary benefits asked for by him such as commuted value of pension, gratuity, etc. These can be paid to him only when the criminal and departmental proceedings come to an end by passing of final orders in these proceedings. As regards payment of pay and allowances for the period of suspension, these would also be depend on the outcome of the proceedings against the applicant which are still pending. As regards withholding of a part of the leave encashment due to the applicant, the respondents have stated that they have retained only that portion of the amount which would be necessary to meet any recovery on account of the possible loss caused by the applicant due to of his acts of omission and commission. In the departmental proceedings the charges against the applicant relate to failure to maintain absolute integrity, devotion to duty and of committing acts unbecoming of a railway servant while in service by causing loss of certain goods and materials to the Railways. In these circumstances we cannot direct release of the ramining pensionary benefits to the applicant till the proceedings against him are finalised and concluded by passing appropriate orders.

7. The disciplinary proceedings against the applicant were initiated vide

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office memorandum dated 30.1.96. More than 1½ years have since passed. The respondents are directed to ensure that the enquiry in this matter is completed within a period of 6 months from the date of the receipt of a copy of this order and thereafter appropriate competent authority should pass final order in these proceedings within a reasonable period. As regards the criminal proceedings, it is for the applicant to take all steps to ensure by offering full cooperation to the Court that these are finalised expeditiously.

8. The O.A is disposed of accordingly. No order as to costs. If the applicant is aggrieved by any final order passed by the departmental authorities with regard to his pensionary benefits and other claims he is entitled to move a fresh application before the Tribunal.

(Ratan Prakash)

Judicial Member.

(O.P.Sharma)

Administrative Member.