

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No. 159 of 1998

DATE OF DECISION. 16.6.2000

Shri Gadadhar Mukherjee

PETITIONER(S)

Mr R. Dutta and Ms G. Dutta

ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

The Union of India and others

RESPONDENT(S)

Mr J.L. Sarkar, Railway Counsel

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE MR D.C. VERMA, JUDICIAL MEMBER

THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Judicial Member

9

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No.159 of 1998

Date of decision: This the 16th day of June 2000

The Hon'ble Mr D.C. Verma, Judicial Member

Shri Gadadhar Mukherjee,
C/o Md. A. Khan, Pragjyotish Nagar,
P.O. Guwahati University,
District- Kamrup.

.....Applicant

By Advocates Mr R Dutta and Ms G. Dutta.

- versus -

1. The Union of India, represented by the General Manager, N.F. Railway, Maligaon, Guwahati.
2. The General Manager (Construction), N.F. Railway, Maligaon.
3. The Chief Vigilance Officer, N.F. Railway, Maligaon.
4. The Financial Adviser & Chief Accounts Officer, N.F. Railway, Maligaon.

.....Respondents

By Advocate Mr J.L. Sarkar, Railway Counsel.

.....

O R D E R

D.C. VERMA (JUDICIAL MEMBER)

Vide this O.A. the applicant has prayed for quashing of the order dated 17.7.1998 (Annexure A/4 to the O.A.) by which payment of DCRG, commutation value of pension and regular pension has been refused.

2. The brief facts of the case are that the applicant retired from the post of Executive Engineer on 31.1.1996. After his retirement, the applicant claims to have been appointed as Consultant in Broad Gauge Construction from 1.3.1996 to 31.6.1996. The applicant was granted provisional pension, but the gratuity amount and the commutation value of pension has not been paid to the applicant till date. Hence this O.A.



3. The respondents' case is that two CBI cases were pending enquiry against the applicant. The first case was treated as closed. In the second case the CBI forwarded the chargesheet No.17 dated 5.3.1998 to the Special Judge, Assam, Guwahati for prosecution against the applicant. The respondents' case is that pension as well as gratuity cannot be released if an employee/officer is not free from SPE/Vigilance case and as such only provisional pension has been sanctioned in favour of the applicant.

4. Heard the learned counsel for the parties at great length. Learned counsel for the applicant has submitted that as no departmental proceeding or judicial proceeding had been instituted against the applicant on or prior to the date of superannuation of the applicant, the payment of regular pension, commuted value of pension and gratuity cannot be withheld by the respondents.

5. The learned counsel for the respondents has, on the other hand, submitted that as per Rule 10(1)(c) of Railway Service (Pension) Rules, 1993 (hereinafter referred as Rules of 1993) no gratuity can be paid to a Railway servant until the conclusion of the departmental or judicial proceeding and issue of final order thereon.

6. Admittedly, no departmental proceeding was pending against the applicant. Only an enquiry by CBI was pending against the applicant on the date of superannuation. The applicant himself has admitted that in 1994, the applicant was interrogated by CBI regarding two transactions relating to issue of some material and acceptance of some material from another Chief Permanent Way Inspector during the period the applicant worked as Chief Permanent Way Inspector. When the applicant superannuated on 31.1.1996 even on that date the enquiry was pending with the CBI. The question which arises is whether pendency of an enquiry with the CBI amounts to judicial proceeding as is referred under Rule 10(1)(c) of the Rules of 1993.

7. For answer to the above question, consideration of relevant provisions of the Rules of 1993 is necessary. The relevant portion of

Rule 10(1)(c) of the Rules of 1993 is as below:

"No gratuity shall be paid to the railway servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon....." (emphasis laid)

Under Rule 9 of the Rules of 1993 the President has power to withhold or withdraw pension. The relevant portion of Rule 9 is quoted below:

"9(1). The President reserves to himself the right of withholding or withdrawing a pension or gratuity, or both, either in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Railway, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement." (emphasis laid)

8. Rule 9(5)(a) provides the point from which a departmental proceeding or a judicial proceeding shall be deemed to be instituted. Rule 9(5)(a) is in respect of departmental proceeding and Rule 9(5)(b) is in respect of judicial proceeding. We are, here, concerned with judicial proceeding. Hence Rule 9(5)(b) of the Rules of 1993 is being reproduced below:

"9(5)(b). judicial proceedings shall be deemed to be instituted,-
(i) in the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognisance, is made; and
(i) (not relevant)."

9. From reading of Rule 9(5)(b) it is clear that a criminal judicial proceeding shall be deemed to have been instituted on the date on which a complaint or report of a Police Officer, of which the Magistrate takes cognisance, is made.

10. The learned counsel for the applicant submitted that cognisance is taken on chargesheet. Consequently, the report of the Police Officer referred to in Rule 9(5)(b)(i) as 'report of a Police Officer' indicates the chargesheet. On the other hand, the learned counsel for the respondents submitted that this refers to the F.I.R. which is made to the Police Station.

11. To resolve the issue reference is to be made to the relevant provisions of the Code of Criminal Procedure, 1973 (hereinafter referred as Cr.P.C.). Chapter XII of the Cr.P.C. is on the subject of "Information to the police and their powers to investigate". Section 154 of Cr.P.C.


provides.....

provides for information in respect of cognizable cases. After information in respect of cognizable offence is made to police, the police has to follow the procedure laid down in the subsequent sections, for investigation of the case and thereafter the report of investigation is to be submitted by the investigating officer. In case there is insufficient evidence a report under Section 169 Cr.P.C. is required to be submitted to the Magistrate. But in case evidence is sufficient the report is to be submitted under Section 170 of the Cr.P.C. to a Magistrate empowered to take cognisance of the offence upon a police report. Report under Section 170 is required to be submitted in the form prescribed by the Government stating therein the details as per Section 173(2) of the Cr.P.C. After such a police report is submitted the Magistrate may take cognisance of the offence under Section 190 of the Cr.P.C. Section 190 provides that cognisance can be taken by the Magistrate-

- a) upon receipt of a complaint of facts which constitute such offences;
- b) upon a police report of such facts.
- c) (not relevant)

Thus cognisance is taken by the Magistrate under Section 190 of the Cr.P.C. upon a police report submitted under Section 170 in the form prescribed under Section 173(2) of Cr.P.C. Thus investigation is concluded prior to submission of report under Section 170. So, if the provisions contained in Rule 9(5)(b) of the Rules of 1993 and Section 190(1)(b) of the Cr. P.C. are read together it becomes clear that the words "complaint or report of a Police Officer, of which the Magistrate takes cognisance", used in Rule 9(5)(b)(i) of the Rules of 1993 refers to the police report under Section 170/173 of the Cr.P.C., which is commonly called as chargesheet. Thus the submission of the learned counsel for the respondents, that the report of a Police Officer referred to in Rule 9(5)(b)(i) of the Rules of 1993 is F.I.R. as contained in Section 154 of the Cr.P.C., has no merit. In Section 154 of the Cr.P.C. no police report is submitted. It provides only recording of an F.I.R. police report on which the Magistrate takes cognisance is as referred to in Section 190(1)

of the Cr.P.C.

12. In view of the discussions made above, it is held that the words "complaint or report of a Police Officer, of which the Magistrate takes cognisance" referred to in Rule 9(5)(b)(i) of the Rules of 1993 is as required under Section 190(1) of the Cr.P.C. After coming to this conclusion, it becomes clear that the judicial proceedings shall be deemed to be instituted as per Rule 9(5)(b) of the Rules of 1993 only after a complaint or report of a Police Officer is made to the Magistrate and not prior to that.

13. In view of the above, under Rule 10(1)(c) of the Rules of 1993, gratuity would not be paid to a Railway servant until the conclusion of the judicial proceedings and issue of final orders thereon. This provision would, however, be applicable only if a judicial proceeding is pending against an employee on the date of superannuation. Under Rule 87(5) of the Rules of 1993 gratuity becomes due immediately after retirement in case no judicial or departmental proceeding is pending against an employee. In the present case the chargesheet was submitted in Court by the CBI on 5.3.1998. Thus no judicial proceeding or departmental proceeding was pending against the applicant on the date of retirement, i.e. 31.1.1996. The applicant thus became entitled to receive payment of pension and gratuity immediately after retirement. In the present case, therefore, non-payment of regular pension and gratuity immediately on superannuation of the applicant is not valid. The respondents could not have stopped payment of DCRG, regular pension and also commuted value of pension because of pendency of CBI enquiry. CBI enquiry is not a judicial proceeding and only on pendency of judicial proceeding payment of gratuity could have been stopped by the respondents. In view of this the impugned order dated 17.7.1998 (Annexure A/4 to the O.A.) is not in accordance with law and the same is quashed.

[Signature]

14. The learned counsel for the respondents submitted that a chargesheet has been submitted by the CBI in the Court of the Special Judge and a criminal case is pending against the applicant and in case the criminal case ends in conviction, the President would not be able to withhold the pension and gratuity for which power is given under Rule 9 of the Rules of 1993. To my mind, this argument of the learned counsel for the respondents has no merit as Rule 8 of the Rules of 1993 takes care of such a situation.

15. The learned counsel for the applicant submitted that the applicant is entitled to interest on gratuity and also interest on the commutation value of pension as the applicant was not allowed to commute his pension immediately on retirement.

16. The learned counsel for the respondents, on the other hand, submitted that the applicant is not entitled to any interest on commutation value of pension as the applicant was being paid provisional pension, which is the full amount of pension admissible to the applicant.

17. Under Rule 87 of the Rules of 1993, interest is payable on gratuity in case the same is authorised after three months from the date when its payment became due on superannuation. The applicant retired on 31.1.1996. Consequently, the gratuity amount should have been paid within three months. As the same was not paid within the said period of three months due to no fault of the applicant, the applicant is entitled to interest on the gratuity amount on expiry of the three months period, i.e. with effect from 1.5.1996.

18. As the applicant was being paid the full amount of pension as provisional pension though he was entitled to receive the same amount as regular pension, the applicant is not entitled to any interest thereon. However, the applicant is entitled to receive the said amount as regular pension.

19. As regards commutation value of pension the applicant is entitled to the same, but the applicant is not entitled to any interest

 thereon.....

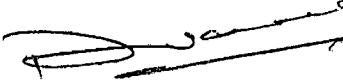
thereon. Had the applicant commuted the one-third of pension on retirement he would not have received full amount of pension, whereas the applicant was getting the full amount of pension as provisional pension throughout the period. Consequently, on the commuted value of pension he will not be entitled to any interest.

20. In view of the discussions made above, the impugned order dated 17.7.1998, Annexure A/4 to the O.A., is quashed. The respondents are directed to pay to the applicant the gratuity amount with interest at the rate of 12% per annum with effect from 1.5.1996 till the date of payment. The respondents are further directed to pay to the applicant the amount of pension not as provisional pension, but as regular pension. The respondents are also directed to allow the applicant the commuted value of pension.

21. The compliance of the aforesaid directions shall be made by the respondents within a period of three months from the date of communication of this order.

22. The O.A. stands allowed accordingly. No order as to costs.

16.6.2000


(D. C. VERMA)
JUDICIAL MEMBER