

**THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET**

APPLICATION NO.: _____

Applicant (S)

Respondent (S)

Advocate for Applicant (S)

Advocate for Respondent (S)

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

OA 99/2012

21/05/2013

sh. sunil samdaria, Counsel for applicant.
sh. Anupam Agarwal, Counsel for respondent

Bench not formed today. List the case
on 17/07/2013

17/07/2013
COURT OFFICER

17/07/2013 (OA No. 99/2012)

Mr. Sunil Samdaria, Counsel for applicant
Mr. Anupam Agarwal, Counsel for respondents.

Heard.

O.A. is disposed of by a separate
order on the separate-sheets for
the reasons recorded therein.

Anil Kumar
[Anil Kumar]
Member (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION NO. 99/2012

Jaipur, the 17th day of July, 2013

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Suwa Lal son of Shri Ganeshi Lal, aged about 73 years, resident of Dhola Bhata, Upparla Kuwa, After Railway Crossing, Ajmer (Rajasthan).

... Applicant

(By Advocate: Mr. Sunil Samdaria)

Versus

1. Union of India through its General Manager, North Western Railway, Zonal Office, Ganpati Nagar, Jaipur (Rajasthan).
2. Chief Works Manager (Establishment), Ajmer.

... Respondents

(By Advocate: Mr. Anupam Agarwal)

ORDER (ORAL)

This OA has been filed by the applicant being aggrieved by the order of the respondents dated 17.02.2011 (Annexure A/1) whereby the payment of DCRG has been denied by an utterly cryptic and an unreasoned order.

2. The facts of the case, in brief, are that the applicant retired on 30.04.1997 on attaining the age of superannuation.

3. Prior to the retirement, a First Information Report was lodged against the applicant and several others on 16.01.1994 under Section 467, 468, 471 & 420 and other provisions of Indian Penal Code. A bare perusal of the FIR shows that allegations contained in the FIR has got nothing to do with the

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discharge of official duties by the applicant as a Railway Servant. The criminal proceedings lodged against the applicant vide FIR No. 11/1994 dated 16.01.1994 are still pending.

4. That the applicant filed an OA No. 55/2005 before this Tribunal praying for the release of retirement dues with interest @ 18% per annum.

5. This Tribunal vide its order dated 25.07.2007 dismissed the OA on the ground that judicial proceedings were pending against the applicant and that the applicant has not submitted any judgment showing that he was not found guilty by the Court (Annexure A/4).

6. That on 30.07.2007 that is after the decision of this Tribunal in OA No. 55/2005, the General Manager (Personnel), North Western Railway, vide its letter dated 30.07.2007 (Annexure A/5) directed the Chief Factory Manager, Ajmer that the competent authority has directed that DCRG be released to the applicant in accordance with the circular of the Railway Board No. F(E)III/2003/PNI/33 dated 05.02.2004. It was further directed that DCRG be released to the applicant.

7. That without any valid and cogent justification, the respondents cancelled the order dated 30.07.2007 (Annexure A/5) vide order dated 08.08.2007 (Annexure A/6) on the ground that this Tribunal vide order dated 25.07.2007 (Annexure A/4) dismissed the OA, filed by the applicant.

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8. That in view of the aforesaid subsequent development, the applicant filed a Review Application No. 20/2008 (Suwa Lal vs. Union of India) under Rule 15(2) of Central Administrative Tribunal Procedure Rules, 1987. This Review Application was decided by this Tribunal vide order dated 11.12.2008 (Annexure A/8). While disposing of the Review Application, the Tribunal granted liberty to the applicant to file substantive OA where the matter can be examined on merits.

9 In view of the liberty granted by the Tribunal, the applicant filed OA No. 73/2009 challenging the legality and validity of the order dated 08.08.2007 (Annexure A/6) whereby order dated 30.07.2007 was annulled and DCRG was refused to be paid. This Tribunal vide order dated 03.08.2010 (Annexure A/9) decided the OA, quashing and setting aside the order dated 08.08.2007. While disposing the OA, the Tribunal directed the respondents to consider the case of the applicant in the light of Railway Board instructions dated 05.02.2004 (Annexure A/8 of that OA) notwithstanding the fact that this Tribunal in earlier OA had justified the action of the respondents in not releasing commutation of pension and gratuity amount to the applicant during the pendency of the judicial proceedings. The respondents were directed to do needful within a period of three months from the date of receipt of a copy of the order. It was also made clear that the Tribunal has not gone into merit of the case and the case was disposed of in the light of RBE No. 25/2004 (Annexure A/8 of that OA). In compliance of the orders passed by the Tribunal, the respondents have issued the order dated 07.02.2011 (Annexure A/1) stating that under the

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present circumstances, it is not proper to make payment of DCRG to the applicant. Aggrieved by this decision, the applicant filed this OA stating that the applicant is entitled for release of gratuity.

10. On the other hand, the learned counsel for the respondents in their written reply has stated that as per Rule 10 (1) (c) of Railway Services (Pension) Rules, 1993, the applicant is not entitled for gratuity. Rule 10 1 (c) is quoted below:-

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

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

11. Learned counsel for the respondents submitted that it is not disputed that the judicial proceedings against the applicant are still pending and no final order has been passed till date. Therefore, the applicant is not entitled for release of DCRG as per rules.

12. He further submitted that the competent authority decided to release the DCRG vide order dated 30.07.2007 (Annexure A/5) in the absence of any knowledge with regard to the order of the learned Tribunal dated 25.07.2007 (Annexure A/4). The

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order of the learned Tribunal was received in the office of the respondents with letter dated 06.08.2007. In compliance of the order of the learned Tribunal by order dated 08.08.2007, it was decided not to make payment till further order by canceling the order dated 30.07.2007. The order dated 30.07.2007 and 08.08.2007 were never issued/communicated to the applicant. Accordingly, no right accrued to the applicant on this basis. The Railway Board's order dated 05.02.2004 is not applicable in the facts & circumstances of the case of the applicant for the payment of DCRG. The circular dated 05.02.2004 pertains to the release of pensionary dues wherein judicial proceedings are pending for consideration as deemed proceedings under Rule 9 of the Railway Service (Pension) Rules 1993. The applicant retired on 30.04.1997 while the Railway Board circular was issued on 05.02.2004 clearly shows that it cannot be applied in the case of the applicant. No rule or law unless made retrospective can be applied retrospectively. The respondents in compliance of the order of the Tribunal dated 03.08.2010 in OA No. 73/2009 (Annexure A/9) for examining the issue, communicated the decision to the applicant vide letter dated 17.02.2011 (Annexure A/1) which is in accordance with the provisions of law. Therefore, the OA has no merit and it should be dismissed with costs.

13. Heard the learned counsel for the parties and perused the documents on record. The learned counsel for the applicant stated at Bar that he is limiting his relief to the payment of DCRG only and he is not pressing for other reliefs like payment of full pension, commutation of pension and all other

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admissible retiral dues. He argued that the contention of the learned counsel for the respondents that the Railway Board Circular No. F(E)III/2003/PNI/33 dated 05.02.2004 (Annexure A/10) is not applicable in the case of release of DCRG cases is not correct. He submitted that the order dated 30.07.2007 (Annexure A/5) clearly mentions that the competent authority has approved the release of DCRG to the applicant in accordance with the provision of this circular. He further submitted that the cancellation of the order dated 08.08.2007 (Annexure A/6) also does not mention that the provisions of the circular dated 05.02.2004 are not applicable in the case of release of DCRG and hence the order issued on 30.07.2007 are being withdrawn. The letter dated 08.08.2007 (Annexure A/6) clearly states that the order dated 30.07.2007 for the release of DCRG is being cancelled because of the order passed by this Tribunal dated 25.07.2007 passed in OA No. 55/2005.

14. The learned counsel for the applicant further submitted that a bare perusal of letter dated 17.02.2011 (Annexure A/1) would show that it is a cryptic order and without assigning any reason whatsoever. Therefore, it should be quashed and the respondents be directed to pay the DCRG to the applicant alongwith interest.

15. On the other hand, the learned counsel for the respondents reiterated the stand taken by them in their written statement. He argued that as per Rule 10 (1) (c) of the Railway Services (Pension) Rules, 1993, the applicant is not entitled for DCRG because the judicial proceedings are still pending against

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him and that the circular dated 05.02.2004 is not applicable in the case of payment of DCRG.

16. Having heard the rival submissions of the parties, I am not inclined to agree with the averments made by the learned counsel for the respondents that the circular dated 05.02.2004 is not applicable in the case of release of DCRG. The respondents themselves while sanctioning the DCRG vide letter dated 30.07.2007 have categorically mentioned that the competent authority has approved the release of DCRG to the applicant on the basis of Circular No. F(E)III/2003/PNI/33 dated 05.02.2004. The ground taken for cancellation is the order passed by this Tribunal dated 25.07.2007 (Annexure A/4) and not applicability of circular dated 05.02.2004 in DCRG case. Even in the letter dated 17.02.2011 (Annexure A/1), it has not been stated that the RBE No. 25/2004 dated 05.02.2004 is not applicable in the case of payment of DCRG. In fact the letter dated 17.02.2011 is a very cryptic order and no reasons has been assigned while passing this order.

17. For the reasons stated above, I quash and set aside letter No. EW 308/MJ/S/94 dated 17.02.2011 (Annexure A/1). I direct the respondent no. 1 to examine the issue of the release of DCRG to the applicant in accordance with the provisions of law. While examining this issue, he will also clearly state whether the provisions of RBE No. 25/2004 dated 05.02.2004 (Annexure A/10) are applicable to the release of pension only or they are also applicable in the case of release of DCRG (Gratuity) of the employees. In case he comes to the

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conclusion that the provisions of RBE No. 25/2004 dated 05.02.2004 are not applicable in the case of release of DCRG then under what circumstances, the order dated 30.07.2007 (Annexure A/5) were issued quoting the said circular and why the same fact has not been mentioned in the letter dated 17.02.2011 (Annexure A/1). In case respondent no. 1 comes to the conclusion that the provisions of the RBE No. 25/2004 dated 05.02.2004 are applicable in the release of DCRG to the employees then he would examine whether the applicant is entitled for the release of DCRG under these provisions or not. After examining the whole issue, as directed above, the respondent no. 1 is expected to pass a speaking & reasoned order in accordance with the provisions of law expeditiously but not later than a period of three months from the date of receipt of a copy of this order.

18. With these directions, the OA is disposed of with no order as to costs.

Anil Kumar
(ANIL KUMAR) ✓
MEMBER (A)

AHQ