

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
O.A. No.060/00130/14

(Reserved on 10.02.2015)

Chandigarh, this the 13th day of February, 2015

Swami Singh son of Sh. Sarvjit Singh age 60 years c/o Ram Murti Singh, Gali No. 5, Hans Nagar, Bathinda, Punjab.

.....Applicant

BY ADVOCATE: **SH. D.R. SHARMA**

VERSUS

1. Union of India , Ministry of Railways through its General Manager, Northern Railway, Baroda House, New Delhi.
2. The Senior Divisional Personnel Officer, D.R.M. Office, Northern Railway, Ambala Cantt., Haryana.
3. The Senior Divisional Finance Manager, Northern Railway, Ambala Cantt., Haryana.

...RESPONDENTS

BY ADVOCATE: **SH. LAKHINDER BIR SINGH**

ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER(A):-

1. This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-

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- "(i) That respondents be directed to release commutation of pension and gratuity of applicant without any further delay.
- (ii) That it be declared that the Government has no right to withhold or postpone pension or the payment on account of commutation of pension and the Gratuity can be withheld only in case the recovery of dues of Government and/or losses caused to Government, is to be made from the employee.
- (iii) That applicant be also held entitled to all consequential benefits and reliefs including the interest @ 18% on the delayed release of commutation of pension and gratuity i.e. w.e.f. 01.08.2013 till the date of actual payment."

2. It is stated in the OA that the applicant joined service in the Railways on 29.1.1978 as Gangman and was ultimately promoted to the level of Office Superintendent. A chargesheet in SF-5 dated 30.08.2012 was issued to the applicant and on completion of inquiry proceedings vide order dated 3.7.2013, the Disciplinary Authority imposed punishment of reduction to two lower stages in time scale of pay upto the date of retirement i.e. from the date of issue to the date of retirement upto 31st July, 2013 (Annexure A-6). As such the effect of penalty of reduction of pay was only upto 31.07.2013, the date of retirement of applicant. The applicant was due for retirement on 31.07.2013

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on attaining the age of 60 years but an FIR No. 8 dated 13.7.2013 under Section 7, 13(2) of the Prevention of Corruption Act, 1988 was registered against him at Police Station Vigilance Bureau, Bathinda, on the complaint of one Sh. Parkash Chand who was working as Gatekeeper in the Railways, who alleged that applicant demanded Rs. 25,000/- for clearing his file under LARSGESS. Applicant was placed under suspension w.e.f. 13.07.2013 vide order dated 15.07.2013 (Annexure A-5). Applicant retired from service on 31.7.2013 while he was in custody. Vide order dated 13.8.2013 passed by the Special Court, Bathinda, applicant was released on bail (Annexure A-4). Applicant represented on 15.8.2013, 1.9.2013 for release of leave encashment, gratuity, provisional pension, commuted pension, composite transfer allowance, salary for the month of July, 2013 etc. (Annexures A-3 & A-2). The challan was presented in the Special Court in the FIR case only on 17.10.2013 and trial is still pending, therefore, no cognizance of the same can be said to have taken by the Magistrate on the date of retirement of applicant on 31.07.2013. As such it cannot be said that

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Judicial(Criminal) proceedings under Rule 9 of the Railway Services (Pension) Rules, 1993 are pending against the applicant. The applicant again represented on 26.10.2013 (Annexure A-1) for release of pensionary and retiral benefits. The respondents thereafter released the retiral benefits except the dues of commutation of pension and gratuity. Hence this OA.

3. In the grounds for relief, it has interalia been stated as follows:-

(i) On the date of retirement on 31.07.2013, no departmental or judicial (criminal) proceedings were instituted against applicant within Rule 9 of the Railway Services (Pension) Rules, 1993. The Challan was presented in the Special Court in the aforesaid FIR case only on 17.10.2013 and trial is still pending, therefore, no cognizance of the same can be said to have taken by the Magistrate on the date of retirement of applicant on 31.07.2013. The provision of the Railway Services (Pension) Rules, 1993 and the Punjab Civil Service Rules (Annexure A-7) are pari martia in nature. The DB of Punjab and Haryana High Court in CWP No. 3567 of 2006 titled Atam Bodh Sharma Vs. State of Haryana and Ors. decided on 09.10.2006, has held that ".....it is well settled that departmental proceedings or criminal proceedings would be deemed to be instituted when the charges have been framed or Challan is submitted to a Criminal Court.....(Annexure A-8)"

(ii) The Full Bench of the Jurisdictional Punjab and Haryana High Court in case titled Dr. Ishar Singh, Ex-Principal...Vs. State of Punjab and Ors. decided on 12.01.1993, (1993)

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105 PLR 499(Annexure A-10) has held in para No. 57(i) that Government has no right to withhold or postpone pension or the payment on account of commutation of pension. The State is bound to release 100 % pension at the time of superannuation, may be provisionally. The Bench further held in para 57(vii) that the recovery of the Government dues can be made from gratuity or other retiral benefits. In reaching such conclusion, the Jurisdictional High Court clearly observed in para No. 48 that the pension or commutation of it cannot be withheld, or postponed before a finding is returned that retiree is guilty of causing loss to the state during tenure of his service or during his re-employment. Mere pendency of enquiry or probability of the State exercising its power of withholding or withdrawing of pension by itself is not sufficient to withhold pension, though other retiral benefits like gratuity can be withheld in anticipation of some amount found to be due to the State or in anticipation of likelihood of imposing of a cut in pension or withholding or withdrawal of pension.

- (iii) The Hon'ble High Court of Judicature at Allahabad in Writ Petition No. 16364 of 2013 titled Ram Shankar Umrao Vs. state of U.P. and Ors. decided on 20.03.2013 also held that in case in the criminal trial that is ongoing, no issue of any loss having been caused to the State Government is involved, then withholding of gratuity is illegal (Annexure A-11).
- (iv) The Jurisdictional Punjab and Haryana High Court in the case titled Ajit Singh Aulakh Vs. Punjab State Electricity Board & Anr. On 7.10.2013, directed to release the gratuity to the applicant which has wrongly been withheld on the pretext that there were some disciplinary proceedings contemplated against the applicant on account of certain shortages which were detected and which caused loss to the Board. The Court observed that the respondents had no authority to withhold the amount of gratuity, even if some

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recovery was to be effected on account of misconduct or negligence attributed to the applicant during his service, the amount, if any, could have been recovered from the pension (Annexure A-12). The case of applicant is even on better footing because no recovery or pecuniary loss is to be got make good from the applicant.

4. In the written statement filed on behalf of the respondents, it has been stated that while working as Office Superintendent under Assistant Divisional Engineer/Bathinda, the applicant was caught red handed on 13.07.2013 while demanding and accepting a bribe of Rs. 25,000/- by team of DSP Vigilance Bureau, Bathinda, for preparing and recommending the file regarding LARSGESS of Smt. Saroj, daughter of Sh. Parkash Chand, Gateman, complainant. FIR No. 8 dated 13.07.2013 under Sections 7, 13(2) of the Prevention of Corruption Act, 1988 was registered against him at Police Station, Vigilance Bureau, Bathinda. The applicant was placed under deemed suspension w.e.f. 13.07.2013 vide order dated 15.07.2013. Charge sheet for imposition of major penalty was issued by the Senior Divisional Engineer, Ambala Cantt on 22.7.2013 which is still pending. The applicant superannuated from service on 31.7.2013 while under

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suspension and he remained in custody till he was released on bail vide order dated 13.08.2013 by the Special Court, Bathinda. The applicant represented for the release of his retiral benefits and the applicant had been paid the dues viz. Provident Fund - Rs. 2,20,738/-, Leave Encashment - Rs. 3,41,229/-, Group Insurance Scheme - Rs. 33,340/- and Provisional Pension - Rs. 9415 + RIP. On 17.10.2013, Challan in FIR No. 8 of 13.7.2013 was presented in the Court.

5. As per para 9(3) & 10 of the Railway Service (Pension) Rules, 1993, only provisional pension is to be sanctioned and no gratuity shall be paid, if any Departmental/Judicial proceeding is instituted against the applicant. A criminal proceeding is pending in the court against the applicant since 13.7.2013. A major penalty charge sheet was issued to him by Senior Divisional Engineer/Ambala Cantt on 22.07.2013 which is still pending. Further Rule No. 9(5) of the Railway Services (Pension) Rules 1993 lays down as under:

For the purpose of this rule :

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(a) Departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the railway servant or pensioner; or if the railway servant has been placed under suspension from an earlier date, on such date; and

(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 cognizance, is made; and

(ii) In the case of civil proceedings, on the date plaint is presented in the Court.

In the present case, FIR No. 8 dated 13.07.2013 under Section 7, 13(2) of the Prevention of Corruption Act, 1988 was registered against the applicant at Police Station Vigilance Bureau, Bathinda and major penalty charge sheet was issued to him by Senior Divisional Engineer/Ambala Cantt on 22.07.2013, which is still pending. As such, gratuity and commutation of pension cannot be released to him as per rules till the pendency of the departmental & judicial proceedings.

6. Rejoinder has been filed on behalf of the applicant reiterating the content of the OA. 18

7. Arguments advanced by the learned counsel for the parties were heard when learned counsel reiterated the content of the OA, rejoinder and the written statement respectively.

8. I have carefully considered the matter. From the material on record, it is quite clear that the disciplinary proceedings were initiated against the applicant on 22.7.2013, well before his date of retirement on 31.7.2013. Besides, on the basis of the FIR lodged against the applicant on 13.7.2013, Challan has been presented in the Court on 17.10.2013. Hence, the applicant is facing disciplinary proceedings as well as proceedings in a criminal case relating to his actions when he was serving with the Railways and was on duty. The provisional pension has been sanctioned to the applicant and as per the Railway Service Pension Rules, 1993, the gratuity and commutation of pension cannot be paid to the applicant till the disciplinary proceedings and the trial in the criminal case reaches a conclusion. The charges against the applicant are of a very serious nature and could well result in cut in pension and withholding of gratuity. The case law cited in the OA is of little

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help to the applicant as all these cases are distinguishable on facts. Hence, there being no merit in this OA, the same is rejected. No costs.

(RAJWANT SANDHU)
MEMBER(A)

Dated: February 13, 2015.

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