

Reserved  
(On 23.04.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**ALLAHABAD BENCH**  
**ALLAHABAD**

Dated: This the **08<sup>th</sup>** day of **May** 2018

**Original Application No 330/01490 of 2014**

**Hon'ble Dr. Murtaza Ali, Member – J**  
**Hon'ble Mr. Gokul Chandra Pati, Member – A**

Madan Lal Pathak, S/o Late Sachchidanand Pathak, R/o House No. 55,  
Krishnapuri, Mathura.

... Applicant

By Adv: Sri S.S. Sharma and Shri R. Sharma

V E R S U S

1. Union of India through the General Manager, North Eastern Railway, Headquarter Office, Gorakhpur.
2. Chairman, Railway Board, Rail Bhawan, New Delhi.
3. The General Manager, North Eastern Railway, Headquarter Office, Gorakhpur.
4. The Divisional Railway Manager, North Eastern Railway, DRM Office, Izzatnagar.
5. Senior Divisional Engineer – II, North Eastern Railway, DRM Office, Izzatnagar.
6. Assistant Engineer, North Eastern Railway, Mathura Cantt.

... Respondents

By Adv: Sri K.P. Singh and Shri A. Tripathi

**O R D E R**

**By Hon'ble Mr. Gokul Chandra Pati, Member – A**

The OA has been filed with the prayer for the following reliefs:-

- i. That the Hon'ble Tribunal may graciously be pleased to direct the Divisional Railway Manager, North Eastern Railway, Izzatnagar, Respondent No. 4 to issue necessary direction for payment of retiral dues and pensionary benefits to the applicant i.e. Gratuity, Lave Encashment, Pension, Communication of Pension and Group Insurance etc. to the applicant without and further delay as he has already retired from Railway Service on 31.12.2013.*
- ii. That the Hon'ble Tribunal may graciously be please to direct the Divisional Railway Manager, North Eastern Railway, Izzatnagar, to make payment of interest on the aforesaid amount of settlement dues and pensionary benefits to the applicant from the date of the same is due i.e. 31.12.2013 to the date it is actually paid to him being not paid without any valid reason.*

iii. *That the Hon'ble Tribunal may graciously be pleased to allow heavy cost in favour of the applicant.*

iv. *That the Hon'ble Tribunal may graciously be pleased to pass any other order or direction as may deem fit and proper in the facts and circumstances of the case."*

2. The facts of the case as per the OA in brief are that the applicant having retired from railway service is aggrieved for not being sanctioned pension and other retirement dues. Following details about the facts of the case have been mentioned in the OA:-

- Respondents initiated action against the applicant to compel him to vacate the railway quarter allotted to him and he was reverted from the post of Sr. Gangman to the post of Gatekeeper so as to disentitle him for Type-II quarter allotted to him and he was allotted a Type-I quarter and his Type-II quarter was allotted to another employee. Then the applicant was also transferred, for which he moved the Tribunal by filing the OA No. 1539/2004.
- The applicant got an interim stay order for the transfer in OA No. 1593/2004. Then a major penalty charge-sheet dated 26.03.2007 was issued to him for non-vacation of quarter, which was quashed by the Tribunal vide order dated 29.02.2012 in another OA No. 606/2007. But the OA No. 1539/2004 against his transfer was dismissed by the Tribunal, against which, the applicant moved Hon'ble Allahabad High Court in Writ Petitions, challenging the orders for transfer, vacation of quarter and his reversion to lower rank. Hon'ble High Court stayed the orders for transfer, reversion and quarter allotment cancellation vide order dated 22.10.2010 (Annexure A-7 to the OA).
- In the meantime, the applicant retired from service on 31.12.2013 and he was not allowed to retain the quarter for eight months to which he was entitled as per rules. Vide order dated 19.05.2014 (Annexure A-8), Hon'ble High Court disposed of the Writ Petitions filed by the applicant

permitting him to retain quarter upto 31.08.2014 on payment of rent as per rules.

- In compliance of the order of Hon'ble High Court, the applicant has vacated the quarter on 31.08.2014. But the respondents are not releasing his retiral dues in spite of his representations. It is also stated in the OA that there is no controversy about payment of salary to him till the date of retirement i.e. till 31.12.2013.

3. The respondents have filed their counter reply stating the following:-

- Information has been received by the respondents that the applicant has been punished with life imprisonment for murder crime as per a letter dated 24.04.2000 received from one of the officer of the respondents. The applicant has also moved an application dated 30.06.2000 (Annexure No. 2 to the Counter), informing the respondents about his conviction in the murder case. He was suspended and then the suspension order was revoked. He was also issued charge-sheet dated 6.07.2000 (Annexure No. 5 to the Counter) for minor penalty for unauthorized absence from duty.
- Under the Rules, the applicant is liable for action like dismissal, removal or reversion without issue of a charge-sheet and he is not liable to be retained in service.
- The applicant was transferred vide order dated 9/12.08.2004 (Annexure No. 6 to the Counter) from Mathura to Fatehgarh and he was relieved from Mathura vide order dated 14.08.2004 and his last pay drawn certificate was issued on 26.08.2004.
- The applicant filed OA No. 1539/2004 and he got an interim order to stay the transfer order, provided the same has not been given effect to already. The OA was finally dismissed by the Tribunal.
- The applicant moved Hon'ble High Court in two Writ Petitions and vide the interim order dated 22.10.2010, Hon'ble High Court stayed the

orders relating to reversion, cancellation of allotment of quarter and transfer of the applicant. But after the said interim order of Hon'ble High Court, the applicant joined his place of transfer i.e. at Fatehgarh on 27.11.2010 i.e. after a lapse of about more than 5 years from the date of his relief from Mathura. He continued there till his retirement on 31.12.2013.

- After his retirement, the applicant withdrew the Writ Petitions from Hon'ble High Court vide order dated 19.05.2014. As per the Railway Board letter dated 09.01.2014 (Annexure No. 10 to the Counter), proposal for regularization of unauthorized absence for a period beyond five years would be sent to the Board with proper justification. Unless this period is regularized, the applicant will not be entitled to any pensionary benefit.
- The Tribunal had passed an interim order dated 29.05.2015 to grant provisional pension to the applicant. But the applicant is not entitled for provisional pension unless the period of absence is regularized by the Railway Board. Hence, the order dated 29.05.2015 should be recalled.
- The applicant was promoted erroneously to pay scale of 2750-4400/- . But after it was detected, the error was corrected by posting to a lower post of Gatekeeper in pay scale of 2650-4000/- and as Gatekeeper, he would be entitled for Type-I quarter.
- Regarding the claim for the retiral dues of the applicant, para 26 of the Counter reply states as under:-

***“26. ....In reply, it is submitted that after superannuation of an employee, his dues are cleared only on receipt of service records duly vetted by associate accounts. In the instant case, since the service record of applicant has not been received by the concerned department duly vetted by associate accounts hence his retiral dues could not be finalized.”***

4. The applicant has filed the Rejoinder and Supplementary Rejoinder, wherein the following main points are mentioned:-

- The respondents have not complied the order to sanction provisional pension to the applicant.

- Denying the contention in the Counter, it is stated that after interim order dated 22.10.2010 of Hon'ble High Court, the applicant joined in Mathura and prior to that he was not being allowed to join duty by the respondents either at Mathura or at Fatehgarh.
- Denying the contention that the applicant remained on unauthorized absence for more than 5 years, it is stated that he was allowed to join duty after interim order dated 22.10.2010 of Hon'ble High Court and due to stay order of transfer order which continued till final disposal of the Writ Petitions on 19.05.2014, it cannot be said that the absence was unauthorized, Moreover, no action was taken by the respondents to regularize the period of absence immediately after his joining duty on 27.10.2010 in terms of Railway Board circular dated 09.01.2014.
- The period of absence from 12.08.2004 to 27.11.2010 cannot be stated to be unauthorized in view of the order of this Tribunal dated 29.02.2012 in OA No. 606/2007 (Annexure SRA-1 to the Suppl. Rejoinder) wherein the charge-sheet issued to the applicant for disobedience of the transfer order and non-vacation of the quarter was quashed in view of the interim orders of the Tribunal and Hon'ble High Court.
- As per the Railway Board order dated 03.07.1985 (RBE No.196/85) regarding observance of the principles of natural justice for imposition of Break in Service. Railway Board has instructed that suitable opportunity should be provided to the employee before imposing Break in Service in the light of the direction of Hon'ble Apex Court (Annexure SRA-2).

5. The respondents filed a Supplementary Affidavit dated 23.03.2018, stating therein the following additional points:-

- At the time of filing the Counter Reply, the respondents did not have a copy of the Criminal Appeal No. 832/2000 filed by the applicant against his conviction in the trial court as per the judgment of the Sessions Judge, Kannauj. Copies of the Criminal Appeal and order of Sessions Judge

have been enclosed at Annexure No. 1 of the Suppl. Affidavit. But the copy of the order passed by Hon'ble High Court in Criminal Appeal No. 832/2000 was not available with the respondents.

6. The respondents have filed an Affidavit dated 23.03.2018, stating that during the pendency of their Recall application to recall the interim order dated 29.05.2015 of this Tribunal, the applicant has filed a Contempt petition for non-compliance of the said interim order. The respondents challenged the order dated 29.05.2015 and order dated 30.08.2017 and dated 13.10.2017 this Tribunal in the Contempt case, in Hon'ble High Court through a Writ and as per the Affidavit dated 23.03.2018 filed by the respondents, this Writ was disposed of on 21.02.2018 by Hon'ble High Court with the direction to this Tribunal to dispose of the OA within six weeks from 15.03.2018. A copy of the order dated 21.2.2018 of Hon'ble Allahabad High Court is annexed to the Affidavit.

7. In view of the above, the OA as well as the Contempt Petition were heard on 23.04.2018. Learned counsel for the applicant mainly reiterated the contentions in the pleadings in support of the claim of the applicant for the retiral dues. He submitted that in spite of the directions of this Tribunal on different dates, the respondents have not complied with the orders. Learned counsel for the respondents submitted that the applicant has been convicted for murder, for which he is liable to be dismissed under the Railway Servants (Discipline & Appeal) Rules, 1968 (in short DAR, 1968). On being asked whether any penalty order against the applicant was issued under DAR, 1968 for his conviction of the charges of murder, the counsel for the respondents and applicant replied in negative. It was further submitted by the respondents counsel that the details of the criminal case are not being furnished by the applicant and that the matter is pending in appeal stage before Hon'ble High Court. It was further submitted that since the applicant was convicted for murder, he was not

entitled to any pensionary benefits under the rules. Learned counsel for the applicant clarified that the applicant filed appeal against the order of conviction and the applicant is presently on bail.

8. We have considered the pleadings and submissions of the parties and gone through the materials on record. The question in this case is; given the facts of the case, whether the applicant is entitled for pension and other retirement benefits as claimed by him.

9. The respondents have brought on record the order dated 11.04.2000 of the Sessions Judge convicting the applicant for the charge of murder with punishment of life imprisonment. But there is nothing on record to show that any action has been taken against the applicant under DAR, 1968 by the respondents for being convicted for the crime of murder although he was in service by the time he was convicted vide order dated 11.04.2000 of the Sessions Judge. The applicant retired from service on 31.12.2013. In the Counter Reply, the respondents have mentioned the ground that the applicant was under unauthorized absence after his relief from Mathura on 14.08.2004 till his joining duty on 27.11.2010 after the interim order dated 22.10.2010 staying the applicant's transfer order and since the period of absence is more than five years, it requires approval of the Railway Board to regularize this period of absence. Apart from mentioning about the fact that the applicant was liable to be terminated from service because of his conviction, the Counter Reply also stated in para 26 that since the service record of the applicant has not been received from the concerned department after vetting by finance, his pensionary benefits could not be sanctioned. It is not the case of the respondents that action against the applicant has been taken under DAR, 1968 or under the Railway Service (Pension) Rules, 1993 for his conviction by the Sessions Court. Under these circumstances, we are not able to agree with the learned counsel for

the respondents that the applicant is not entitled to any pensionary benefit on the ground of his conviction for the crime of murder by the sessions court.

10. We notice that a similar case has been adjudicated by the coordinate Bench of this Tribunal in the case of Ram Chandra Jatav vs. Union of India through General Manager, North-Western Railway in OA No. 368/2014 vide order dated 27.04.2017 of Jodhpur Bench of this Tribunal, where it was held as under:-

*“6. Before going into the merit of the case, it is expedient to briefly touch and discuss the facts available on record. On 13.05.1991, the applicant was suspended on the ground that a criminal case was instituted against him for disproportionate assets to his regular income. He was charged for the offences under Section 13(1) e) read with Section 13(2) of the Anti Corruption Act. During the pendency of the criminal case, his suspension was revoked on 01.03.2014 and he was taken back on duty. On 12.02.1996, the applicant was convicted by the Learned Special CBI Court for the offences under Section 13(1) (E) read with Section 13 (2) of Anti Corruption Act and was imposed punishment of rigorous imprisonment for two years with fine of Rs 4,25,0000/- On filing of appeal by the applicant in the Honble High Court, his sentence was suspended and he was granted bail vide order dated 01.03.1996 (Annex. A/2). Between the period of conviction and sentencing the applicant to rigorous imprisonment for two years, suspension of the sentence by the Honble High Court, as well as, the superannuation of the applicant on 31.12.1996, the respondents did not take any action against him under rule 14(1) of the RSDA Rules, 1968. The plea for this inaction (on part of the Respondents) is that they were not aware of the conviction sentence etc. As per the respondents, the applicant did not submit a copy of the same to the respondents nor was it received by them through the relevant courts (CBI Court and the Honble High Court) at different points of time. They aver, that under these circumstances, keeping in view the provisions of rule 8 of the Railway servant Pension Rules, 1993, the pension and other retiral benefits have been rightly withheld by the respondents.....”*

*8.....Rule 8(2) of the Pension Rules envisages that in the case of conviction of a pensioner by criminal court, the action shall be taken in light of the judgment of the court relating to such conviction. In this case, the applicant was convicted by the Special CBI Court, Jodhpur vide judgment dated 12.02.1996, in appeal, his sentence was suspended by the Hon'ble High Court vide order dated 01.03.1996. In the meantime, the respondents did not initiate any action as per law and thereafter the applicant retired on 31.12.1996 on superannuation. All these events, which are the basis of not granting pensionary benefits to the applicant, took place before the superannuation of the applicant.*

*9. In my view, provisions under Rule 8 would not be attracted in the instant case. However, the right to withhold or withdraw pension is given under Rule 9 of the Railway Servant Pension Rules, 1993, which is as under:*

*9. Right of the President to withhold or withdraw pension.*

*(1) The President reserves to himself the right of holding 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; Provided that the Union Public Service Commission shall be consulted before any final orders are passed.

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees three hundred seventy five per mensem.[rupees one thousand two hundred and seventy five from 01.01.1996] (2) The departmental proceedings referred to in sub-rule (1)

(a) if instituted while the railway servant was in service whether before his retirement or during his reemployment, shall after the final retirement of the railway servant, be deemed to be proceeding under this rule and shall be continued and concluded by the authority by which they commenced in the same manner as if the railway servant had continued in service.

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President;

(b) if not instituted while the railway servant was in service, whether before his retirement or during his reemployment-

(i) shall not be instituted save with the sanction of the President;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order in relation to the railway servant during his service.

(3) In the case of a railway servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in rule 10 shall be sanctioned.

(Authority: Railway Boards letter No. F(E)III/99/PN 1/(Modification) dated 23.5.2000)

Rule 9 makes it clear that right to withhold or withdraw pension is with the President after superannuation. In the facts and circumstances of the present case, where no departmental proceedings were initiated after conviction of the applicant by the competent court, and, the sentence pronounced by the lower court has been suspended by the Appellate Court, it has to be construed as continued judicial proceedings and not conclusive at the trial stage. The appeal was filed in the year 1996, which is still pending with the Honble High Court. The respondents have neither denied nor have they allowed any benefits, which might have accrued to the applicant and put his case in a state of limbo. Had the respondents initiated departmental proceedings before the superannuation of the applicant following due procedure of law, the matter would have been different. But once the applicant has superannuated, the right to withdraw or withhold the pension of the applicant rests with the president. ....

10. The orders annexed at Annex. A/5 dated 16.07.1997, as well as, Annex. A/6 to A/7 are the basis of passing of impugned order dated 25.04.2014 (Annex. A/1). Keeping in view rule 9 of the Railway Servant Pension Rules, 1993, as well as discussions hereinabove made, it appears that the impugned order withholding the pension of the applicant has not been passed by the competent authority adopting due process of law. Accordingly, order Annex. A/5 and other consequential orders on the issue of pension are quashed. Looking to the entire facts and circumstances of the case, the respondents are directed to consider sanctioning provisional pension to the applicant, as envisaged under the Railway Servants Pension Rules, 1993 from the date it become due to him, within three months from the date of receipt of a copy of this order. Simultaneously, the respondents shall also make reference to the competent authority to withdraw or withhold

*pension under the rules explaining the facts and circumstances of the present case and seek guidelines for future."*

11. We also take note of the following provisions of the Railway Board's Master Circular No. 67:-

"1. *All proposals sent for obtaining President's sanction for imposition of a cut in the pensionary benefits should be accompanied by complete papers and information specified in this connection. (Board's D.O. letter No. E(D&A)97 RG 6-Monitoring (I) dt. 28.1.2000).*

1. *If an employee, after his retirement, is found guilty in judicial proceedings for an offence committed during his service, a cut in pensionary benefits can be imposed by the President, after consulting UPSC and there is no requirement of giving notice in this regard to the retired railway servant.*

2. *If Government's displeasure is to be communicated to retired Railway employees, then the authorities who would be competent to do so would be as under:*

*[Board's letter No. E(D&A)95 RG 6-32 dt.2.2.98 (RBE 20/1998)]*

In this case, in spite of the applicant's conviction as per the order dated 11.04.2000 by the Sessions court and his intimation vide his letter dated 30.06.2000 (Annexure No. 2 to the Counter) informing the respondents about his conviction in the murder case, the applicant was placed under suspension which was revoked shortly thereafter and no action was taken under DAR, 1968. The applicant was allowed to continue in service till he was transferred from Mathura to Fatehgarh and was relieved vide order dated 14.08.2004. After his retirement on 31.12.2013, the respondents have remained silent in spite of the Board's instructions extracted above without initiating any action against the applicant. The circumstances and facts in this case as far as conviction of the applicant in criminal case is concerned, are similar to the facts in OA No. 368/2014 before Jodhpur Bench of this Tribunal. Hence, following the order dated 27.04.2017 of Jodhpur Bench of this Tribunal in OA No. 368/2014 as extracted in para 10, we also hold in this case that the criminal proceedings against the applicant are pending and hence, he is entitled to the pensionary benefits as per the Rules.

12. Next point to be considered relates to the period of absence from duty for more than five years, which the respondents claim to be unauthorized absence for which the Railway Board is the competent authority to regularize the period as per the Railway Board letter dated 9.01.2014 (Annexure No. 10 to the Counter). Regarding the issue of unauthorized absence, the letter dated 9.01.2014 of the Railway Board states as under:-

*"It has often been noticed that D&AR action is not taken timely against such delinquent employees. Sometimes such employees take the help of courts, where due to cases not being defended properly, judgment is given in favour of the employees. It has been noticed that appeal in the High Court is not considered and the employee is taken back on duty. Even after the employee is taken back on duty, proposals for regularization of the period of unauthorized absence is not processed timely resulting in such cases being sent to the Board at the time of retirement of the employees or after their retirement. This leads to the retirement benefits of such employees being held up.*

*Board have taken a very serious view of the lackadaisical manner in which such cases are handled by your Railway and desire that urgent remedial steps are taken to tone up the administrative machinery, so as to bring down the incidence of such cases on your Railway.*

*It may please be ensured that proposals for regularization of unauthorized absence beyond five years should be sent for Board's consideration with proper justification and all details as mentioned in Board's letter No. E(G)91/LE 226 dated 1/7/92 and the approval of the General Manager....."*

Above letter of the Railway Board squarely covers the case of the applicant which should have been dealt appropriately. Since no action was taken by the respondents against him after his intimation on 30.06.2000 about his conviction in murder case, the applicant was entitled to be considered for regularization of the period in question and proposal for such regularization should have been initiated immediately after his joining on duty on 27.11.2010 as per the clear instructions in Board's letter dated 9.01.2014. It is also noted that the respondents did not initiate any action to refer the matter to the Railway Board for regularization vide order dated 13.10.2017 in the Contempt Petition No. 5/2016 in OA No. 1490/2014 filed by the applicant with following direction:-

*"8. In view of the above, the interim order dated 29.05.2015 is modified to the extent that the respondents/competent authority shall consider the case of the applicant for regularization of the period of service of the applicant when he did not join duty after being relieved in pursuance to the transfer order dated 09/12/08/2004, till he joined duty as per the order of Hon'ble High Court staying the said transfer order....."*

The direction of this Tribunal as above was in accordance with the Railway Board letter dated 9.01.2014. There is no satisfactory explanation in the pleadings of the respondents as to why the direction of this Tribunal and the instructions contained in the letter dated 09.01.2014 were not implemented. Hence, inaction of the respondents relating to the regularization of the period in question in accordance with the clear instructions vide Railway Board's letter dated 9.01.2014 has to be viewed adversely.

13. Recollecting the facts, the applicant had obtained a stay order from this Tribunal in OA No. 1539/2004 challenging his transfer from Mathura to Fatehgarh. But as claimed by the respondents, the said stay order was of no help to the applicant, as the applicant was relieved by the time the interim order was passed/received. The applicant, on the other hand, states that he was not allowed to join by the respondents either at Mathura or at Fatehgarh. After dismissal of the OA challenging the transfer order, the applicant filed a Writ petition in Hon'ble High Court on which an interim order dated 22.10.2010 was passed staying the operation of the transfer order, the order to revert the applicant and cancellation of allotment of his quarter and thereafter, the applicant joined or was allowed to join on 27.11.2010. Respondents are treating the period of absence from duty from 15.08.2004 till 27.11.2010 as period of unauthorized absence which has to be regularized by Railway Board. The applicant contests this contention, in view of the order of this Tribunal dated 29.02.2012 in another OA No. 606/2007 (Annexure SRA-1 to the Suppl. Rejoinder) filed by him, wherein the charge-sheet issued to the applicant for disobedience of the transfer order and non-vacation of the quarter was quashed by this Tribunal. The operative part of the order dated 29.02.2012 of this Tribunal states as under:-

***"14. For the reasons mentioned above, we are of the opinion that the applicant continued to remain at Mathura on the strength of the***

*interim order passed by the Tribunal, and moreover after dismissal of the O.A. interim order was also granted by the Hon'ble High Court on 22.10.2010 staying the order of transfer as well as order of cancellation of allotment of accommodation. In these circumstances, it was not justified on the part of the respondents to serve a charge sheet upon the application for the misconduct committed by the applicant for not obeying the order of transfer as well as the order of vacation of accommodation. O.A. deserves to be allowed. This finding is only relevant for deciding the present O.A.*

15. *O.A. is allowed. The charge sheet for major penalty dated 21/26-03-2007, issued by the Senior Divisional Engineer-I, N.E. Railway, Izzatnagar is quashed. Applicant shall be entitled for consequential benefits subject to the direction of Hon'ble High Court. No order as to cost."*

There is nothing on record to prove that this order quashing the charge-sheet has been challenged by the respondents. Hence, it cannot be said that the applicant has violated the transfer order. Taking into account the observations of this Tribunal in the order dated 29.02.2012 regarding the implications of the interim orders of the Tribunal and Hon'ble High Court in favour of the applicant and taking note of the fact that no action was taken to refer the matter to the Railway Board as per the Board's letter dated 9.01.2014 as discussed in para 12 of this order, we are of the view that the period of absence from duty by the applicant after his relief from Mathura on 14.08.2004 till joining on duty on 27.11.2010 cannot be treated as a period of unauthorized absence and the contentions of the respondents in this regard to the contrary have no force and hence, cannot be accepted. It is clear that the respondents, having failed to act against the applicant as per law, are now trying to deprive him from his pensionary benefits as per the rules. The period, therefore, cannot be treated as interruption in service under the Rule 42 of the Railway Service (Pension) Rules, 1993 in view of special circumstances of this case.

14. In view of above discussions and taking into account the fact that pending the criminal appeal filed by the applicant against the sessions court order dated 11.04.2000 convicting him, the judicial proceedings are treated to be pending, we allow the OA to the extent that the applicant is entitled to the provisional pension under the Rule 10 of the Railway

Service (Pension) Rules, 1993 with effect from the date of the retirement of the applicant on 31.12.2013. The respondents are directed to sanction the said provisional pension with arrears of provisional pension and disburse the same to the applicant within three months from the date of receipt of a copy of this order. In case of failure to disburse the provisional pension within the time as stipulated above, the respondents shall also be liable to pay the interest on the outstanding amount payable to the applicant on account of provisional pension at the rate of 9% per annum till the date of actual payment to the applicant.

15. The OA is allowed with direction in para 14 above. There is no order as to costs.

**(Gokul Chandra Pati)**  
Member (A) **(Dr. Murtaza Ali)**  
Member (J)  
/pc/