

CENTRAL ADMINISTRATIVE TRIBUNAL,  
ALLAHABAD BENCH, ALLAHABAD  
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CCP No. 330/00042/2017 in O.A. No. 330/00600/2014

Reserved on 6.2.2018

Pronounced on 8.3.2018

Hon'ble Mr. Justice Dinesh Gupta, Member (J)  
Hon'ble Mr. Gokul Chandra Pati, Member (A)

Virendra Kunwar s/o Late Shyam Bihari Lal, retired Technician I, CTS Shop Mechanical Workshop, N.E. Railways, Gorakhpur.

..... Applicant  
By Advocate : Shri S.K. Rai  
Versus

1. Sri Rajeev Mishra presently posted as General Manager, NER, Gorakhpur.  
2. Sri A.K. Doharey, presently posted as Chief Workshop Manager, Yantric Karkhana, NER, Gorakhpur.

..... Respondents

By Advocate : Shri L.M. Singh

## ORDER

Hon'ble Mr. Dinesh Gupta, Member (J):

This contempt petition is preferred by the applicant for non-compliance of order dated 11.11.2016 passed by this Tribunal in O.A. No. 600/2014 by which the Tribunal passed the following orders:-

"Hence, as per ratio held by the Hon'ble Apex Court, High Court and in the facts and circumstances of the case herein, as the applicant has already been punished for the misconduct committed by him, by imposition of penalty of 10% cut in the monthly pension of the applicant for two years, hence the applicant is entitled for release of his other retiral benefits whatever is due to him and has not been paid to him already. Accordingly, the impugned order dated 26.3.2014 is quashed and set aside. The respondents are directed to release the applicant the post retiral benefits whichever is due to him within a period of two months from the date of receipt of a certified copy of this order.

6. Accordingly, the Original Application is allowed. No costs."

2. Notices were issued to the respondents who in turn filed the affidavit stating that being aggrieved by the order dated 11.11.2016 passed by the Tribunal, the department has preferred a Writ Petition No. 15003 of 2017 (Union of India and another Vs. Virendra Kunwar) before High Court, Allahabad and Hon'ble High Court stayed the effect and operation of the order dated 11.11.2016 passed by the Tribunal till further order vide order dated 11.4.2017 (Annexure No. 1 to this Affidavit). Due to interim order passed by the High Court order passed by this Tribunal dated 11.11.2016 is not in operation. Thus, the opposite parties have not committed any contempt of court.

3. Learned counsel for respondents have further filed Supplementary Affidavit stating that this Tribunal vide order dated 27.7.2017 directed the respondents to settle the remaining dues and file compliance affidavit. In this regard, it is stated in the Supplementary affidavit filed by the respondents that applicant is claiming for payment of two months salary and commutation of pension in the light of order dated 11.11.2016 passed by this Tribunal. It is submitted that applicant is being paid provisional pension therefore, he is not entitled for commutation of pension as per Railways Service (Pension) Rules, 1993. With regard to payment of salary for the period of 25.5.2007 to 23.7.2007 is concerned, the applicant was treated as deemed to under suspension. Unless and until a case under RP (UP) Act will

not be finally decided in favour of the applicant, he is not entitled to get alleged dues. As per 1343 and 1344 of Indian Railway Establishment Code Volume II Sixth Edition -1987, applicant unless the applicant has not been acquitted, he is not entitled to get such benefit. The same has already been informed to the applicant through letter dated 5.9.2017 ( Annexure SA-1).

4. Heard the learned counsel for applicant Sri S. K. Rai and learned counsel for respondents Sri L. M. Singh.

5. From perusal of record, it is evident that against the order dated 11.11.2016 passed by the Tribunal, the department has preferred a Writ Petition No. 15003 of 2017 (Union of India and another Vs. Narendra Kunwar) before High Court, Allahabad and Hon'ble High Court stayed the effect and operation of the order dated 11.11.2016 passed by the Tribunal till further order vide order dated 11.4.2017..

6. Respondents through Supplementary Affidavit stated that this Tribunal vide order dated 27.7.2017 directed the respondents to settle the remaining dues and file compliance affidavit and in compliance of the same respondents have stated that applicant is claiming for payment of two month's salary and commutation of pension in the light of order dated 11.11.2016 passed by this Tribunal. It is submitted that applicant is being paid provisional pension therefore, he is not entitled for commutation of pension as per Railway Service (Pension) Rules, 1993. With regard to payment of salary for the period of 25.5.2007 to 23.7.2007 is concerned, since the applicant was treated as deemed to under suspension, as such unless and until case under RP (UP) Act will not be finally decided in favour of the applicant, he will not be entitled to get alleged dues. As per 1343 and 1344 of Indian Railway Establishment Code Volume II Sixth Edition -1987, applicant unless the applicant has not been acquitted, he is not entitled to get such benefit. The same has already been informed to the applicant through letter dated 5.9.2017 ( Annexure SA-1).

7. From the above, it is clear that the order passed by this Tribunal has already been stayed by the High Court vide order dated 11.4.2017 passed in Writ Petition No. 15003 of 2017 and regarding payment of commutation of pension and two month's salary as directed by this Tribunal vide order dated 27.7.2017 is concerned, the respondents have already passed the order dated 5.9.2017. As such, respondents have not willfully disobeyed the order passed by this Tribunal and substantially complied with the order. Accordingly, CCP is dismissed. Notices are discharged.

(Gokul Chandra Pati)  
Member (A)

HLS/-

(Justice Dinesh Gupta)  
Member (J)

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