

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 1212/2014

New Delhi this the 26th day of August, 2016.

HON'BLE MR. P.K. BASU, MEMBER (A)

Chetanya Kumar,
S/o Late Shri P.L. Sharma,
R/o 363, Behind Kotwali,
G.T. Road, Bazaria,
Ghaziabad (UP).

.. Applicant

(By Advocate : Shri S.P. Sethi)

Versus

Union of India through

1. General Manager (President, IRCA)
Northern Railway,
Baroda House, New Delhi.
2. General Secretary,
Indian Railway Conference Association,
D.R.M's. Office Complex,
State Entry Road, New Delhi.

.. Respondents

(By Advocate : Shri Shailendra Tiwary)

ORDER (ORAL)

Heard the learned counsel for both sides.

2. The dispute is regarding payment of gratuity and leave encashment to the applicant. The departmental proceedings had been started against the applicant which has since been closed and the applicant exonerated. However, a case under Sections 498(A) and 304(B) was also filed against the applicant. The matter was

going on in the court of Additional District Judge, and the applicant has filed copy of the order sheet dated 08.07.2002. Learned Judge has closed evidence of prosecution on 08.07.2002 as PWs could not be produced by prosecution. On 30.07.2002, the prosecution's request for another opportunity to produce PWs was rejected. According to the learned counsel for the applicant, therefore, even in the criminal case, there is no conviction so far.

3. Learned counsel for the respondents, however, draws my attention to the Hon'ble High Court's order dated 09.09.2002, in which the Hon'ble High Court of Allahabad had stayed the order dated 19.08.2002 passed by the Additional District Judge. The order dated 19.08.2002 is, however, not on record. According to the learned counsel for the respondents, in view of this order of the Hon'ble High Court, the judicial proceedings would be considered as still pending against the applicant and, in accordance with Rule 69 of the Railway Service (Pension) Rules, gratuity cannot be sanctioned unless the criminal case has been finally decided.

4. Learned counsel for the applicant has drawn my attention to RBE No.196/89 dated 07.08.1989, which primarily states that "Leave encashment can be withheld only if the pending criminal case is likely to result in possibility of some money becoming recoverable from him".

5. The provisions of Rule 69 of Railway Pension Rules is clear and, therefore, gratuity cannot be sanctioned unless the criminal case is finally settled. Clearly, the criminal case has not come to a final conclusion, the matter being pending before the Hon'ble High Court.

6. Learned counsel for the applicant draws my attention to RBE 25/2004 dated 05.02.2004 regarding policy in cases of release of pensionary dues in cases where judicial proceedings are pending against the retiring Govt. servants. According to the learned counsel, this RBE requires that the authority shall review all cases where judicial proceedings are pending at the time of retirement whether they should be treated as deemed proceedings under Rule 9 of Railway Services (Pension) Rules and decide about the desirability of continuing the proceedings. However, the specific order in that is as follows:

“On the other hand, if the judicial proceedings pertain to mere civil cases of property disputes between a Railway servant and any other private party, or partition suit **without any criminal angle** involved and with which Railways/Government have no concern, or divorce suits having no bearings on the conduct of the Railway servant, as laid down in Railway Servants (Conduct) Rules, 1966, such judicial proceedings need not be continued a deemed proceedings under Rule 9 of Railway Services (Pension) Rules, 1993.”

7. It will be clear from the above that this will not apply in the present case where the applicant has been accused in a criminal

case under Sections 498(A) and 304(B). In view of specific provisions of Rule 69 and the provisions of RBE 25/2004, the position is clear that in case of pending criminal judicial proceedings, the authority may withhold gratuity. This claim of the applicant is thus rejected. Since the matter is pending before the Hon'ble High Court since 2002, I, therefore, expect the respondents to make efforts to expedite the matter. As regards leave encashment, the respondents should take a view in terms of para 5 of RBE No.196/89 dated 07.08.1989 and pass a speaking and reasoned order within a period of 60 days from the date of receipt of certified copy of this order. No order as to costs.

(P.K. Basu)
Member (A)

/Jyoti/