

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.1644 OF 2015

New Delhi, this the 8th day of March, 2016

CORAM:

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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Ashok Kumar Dhiman,
Aged 60 years,
s/o Sh.Rikhi Ram,
Retired from the post of XEN/Welding,
Northern Railway,
Baroda House,
New Delhi,
R/o H.No.1602-Z/4, Prehladpuri Colony Workshop Road,
Near ITI, Yamuna Nagar (Haryana) 135001 i i Applicant

(By Advocate: Mr.Yogesh Sharma)

Vs.

1. Union of India through the General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The General Manager,
Northern Railway, Baroda House,
New Delhi i i i Respondents

(By Advocate: Mr.Sat Pal Singh)

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ORDER

Brief facts of the applicant's case are that he was initially appointed in the Railway on 2.4.1980 as P.W.I-III (JE-II). While he was working as Executive Engineer (XEN)/Welding in the Northern Railway, the General Manager, Northern Railway, vide memo dated 14.2.2014, proposing to hold an inquiry against him under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968, called upon him to submit written statement of his defence within ten days of receipt of the same, and to state whether he wished to be heard in person, and also to furnish the names and addresses of the witnesses, if any, whom he wished to call in support of his defence. Along with the memo dated 14.2.2014, *ibid*, the statement of article of charge on the basis of which the action was proposed to be taken against him, the statement of imputations of misconduct in respect of which the inquiry was proposed to be held, the list of documents on the basis of which the article of charge framed against him was proposed to be sustained, and the list of witnesses by whom the articles of charge were proposed to be sustained, were also furnished to him. The statement of article of charge (Annexure I to the charge memo dated 14.2.2014) is reproduced below:

Shri Ashok Kumar Dhiman, XEN/Welding/HQ while working as ADEN/Jind, during the year 2007-2008 and executing the contractual work of Through sleeper renewal with deep screening from Km UP 154.26-159.0, DN 101.6-102.46, 175.85-177.95, 139.46-144.79, SL 146.20, 148.82,

199.67-203.66, 230.13-235.26 (24.77 Km) on DLI-BTI section under ADEN/JHIö awarded vide acceptance letter No.128-W/260/558/2006-2007/W-IV dated 17.04.2007 by DEN/IV/NDLS, has committed serious irregularities as much as: Article of Charge-I.

He is responsible for conducting test check on measurements recorded by Shri C.S.Sharma,, the then SSE/P.Way/JHL for leading of sleepers under item No.NS-2 for CC-I and CC-II on account bills on pages 1 & 5 of MB No.79310(PS for quantity 3154 Nos. and 2804 Nos. respectively making 5958 Nos. of sleepers which finally led to excess payment of (19 X 5958) = 1,13,202/- to the contractor as accepted rate of item No.NS-2 was öcomplete item rate for leading of New/SH sleepers from store to site of work spreading along the track and released sleepers from site of work to the SE/P. Wayö store or nearest station as directed by the site engineerö, whereas payment for leading of 6525 Nos. new sleepers for the same location had also been made separately by recording measurements on page 10 of MB No. 79310.

Thus, Shri Ashok Kumar Dhiman is responsible for making excess payment of Rs.1,13,202/- to the contractor.

Thus, by the above acts of omissions & commissions, the said Shri Ashok Kumar Dhiman failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of Railway Servant thereby contravened Rules 3(1)(i),(ii) and (iii) of the Railway Services (Conduct) Rules, 1966.ö

The applicant submitted his representation dated 24.2.2014 (Annexure A/2) denying the charge, and requested the Disciplinary Authority to appoint Inquiry Officer, and to complete the enquiry prior to the date of his retirement, i.e., 28th February 2015. Thereafter, he made representations on 16.4.2014, 23.6.2014, 24.6.2014, 8.10.2014 and 9.10.2014 requesting the Disciplinary Authority to complete the enquiry. After more than eight

months of issuance of the charge memo dated 14.2.2014, the Disciplinary Authority, vide orders dated 17.10.2014 (Annexure A/5 and Annexure A/6), appointed Inquiry Officer as well as Presenting Officer to conduct the enquiry. The Inquiry Officer, vide letter dated 14.11.2014 (Annexure A/7), intimated to him the date of preliminary hearing as 5.12.2014. The applicant, vide his representation dated 24.11.2014 (Annexure A/8), requested for appointment of his Defence Helper/Assistant. The date for regular enquiry was fixed to 17.12.2014. Thereafter, no intimation was received by him from the Inquiry Officer. Since the date of his retirement was fast approaching, the applicant submitted representations dated 12.1.2015 and 13.1.2015 and 28.1.2015 (Annexure A/10 collectively) requesting the Disciplinary Authority to ensure completion of the enquiry, but to no effect. While the matter stood thus, he retired from service on attaining the age of superannuation on 28.2.2015. After his retirement from service, the applicant made representation dated 23.3.2015 (Annexure A/10 collectively) requesting the General Manager, Northern Railway, to release all his retirement dues, but to no effect. Hence, the applicant filed the present O.A. on 29.4.2015, seeking the following reliefs:

୭(i) That the Hon'ble Tribunal may graciously be pleased to pass an order declaring to the effect that the whole action of the respondents not releasing the retirement benefits of the applicants is totally illegal, arbitrary, against the rules and against the law and consequently, pass an order directing the respondents to release the retirement benefits of applicant after withholding the small amount

which is involved in the charge sheet dt.14.2.2014 immediately with interest from the date of retirement till the date of payment.

- (ii) That the Hon'ble Tribunal may graciously be pleased to pass an order directing the respondents to release the leave encashment of the applicant immediately with interest from due date.
- (iii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant along with the costs of litigation.ö

1.1 It is contended by the applicant that he has not committed any misconduct. The impugned charge sheet has been issued against him without any justification and, that too, after a delay of more than seven years from the date of the alleged incident. No charge has been levelled against him for loss of Government revenue except small amount of misappropriation of Government fund, and, hence there is no justification for withholding the retirement benefits except the gratuity amount. In the absence of any specific order being passed by the competent authority under the Leave Rules to withhold the amount of leave encashment, the non-release of leave encashment in his favour is illegal.

2. The respondents, in their counter reply filed on 2.11.2015, have stated, *inter alia*, that in respect of the same incident, charge memos were issued against the applicant and three other officers on the advice of the Central Vigilance Commission. Departmental enquiry against the applicant and three others was conducted by the Inquiry Officer. Pending final

outcome of the disciplinary proceedings, the payment of the following settlement dues was made to the applicant:

- (1) GIS - Rs.57,670/-
- (2) P.F. - Rs.11,97,454/-
- (3) Provisional Pension ó Rs.16,290/- per month.

The rest of the retirement dues would be released in favour of the applicant after conclusion of the departmental proceedings initiated against him. After completion of the enquiry, the Inquiry Officer submitted the enquiry report on 7.10.2015. The Disciplinary Authority has not yet passed final order in the departmental proceedings against the applicant. As the applicant was issued major penalty charge sheet on 14.2.2014 for committing serious financial irregularity, while discharging official duties, some of his retirement benefits have been withheld by the respondents, and the same would be released to him by them after conclusion of the departmental proceedings.

3. In his rejoinder reply, the applicant has asserted that the charge levelled against him is baseless and far from truth. The purported incident having taken place in 2006-07, the charge sheet issued by the Disciplinary Authority on 14.2.2014 after a delay of more than seven years, and that too, at the time of his retirement from service, is unsustainable in the eyes of law. Therefore, the withholding of his retirement dues on account of pendency of the said departmental proceedings against him is illegal.

4. I have heard Shri Yogesh Sharma, the learned counsel appearing for the applicant, and Shri Sat Pal Singh, the learned counsel appearing for the respondents.

5. Admittedly, the major penalty departmental proceedings were pending against the applicant on the date of his retirement from service, i.e., 28.2.2015. The departmental enquiry was completed, and inquiry report was submitted by the Inquiry Officer to the Disciplinary Authority only on 7.10.2015. Pending final outcome of the departmental proceedings, the respondents released the GIS, PF and provisional pension to the applicant, and withheld the payment of his final pension, gratuity, and leave encashment until the conclusion of the departmental proceedings. Rule 9(3) of the Railway Services (Pension) Rules, 1993, stipulates, *inter alia*, that in the case of a railway servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental proceedings are instituted or where departmental proceedings are continued, a provisional pension shall be sanctioned. Rule 10(1)(c) of the Railway Services (Pension) Rules, 1993, stipulates, *inter alia*, that no gratuity shall be paid to the Railway servant until the conclusion of the departmental or judicial proceedings, and issue of final orders thereon. Rule 550-C of the Indian Railway Establishment Code, Vol.I (1985 Edition) stipulates, *inter alia*, that in case of a Railway employee retiring from service on attaining the age of retirement while disciplinary proceedings are pending against him

at the time of retirement, the authority competent to grant leave may withhold whole or part of cash equivalent of LAP, if in the view of such authority there is a possibility of some money recoverable from him on conclusion of proceedings against him, and that on conclusion of the proceedings, he will become eligible to the amount withheld after adjustment of the Railway dues, if any. Therefore, no illegality can be said to have been committed by the respondents in withholding the payment of final pension, gratuity, and leave encashment until the conclusion of the departmental proceedings initiated against him. Considering the gravity of the charge, I do not find any infirmity or illegality to have been committed by the respondents in withholding the payment of leave encashment, even in the absence of any order being passed by the competent authority, until the conclusion of the departmental proceedings initiated against the applicant. The applicant has not brought to the notice of the Tribunal any rule, or instructions issued by the Railway that in a case where the departmental proceeding was initiated against a Railway employee after an inordinate delay and the same remained pending against him on the date of his retirement from service on attaining the age of superannuation, all the retirement dues should be released by the Railway in his favour, pending conclusion of the such departmental proceeding, and passing of final orders by the competent authority thereon. In the instant case, as noted earlier, the departmental proceedings were initiated against the applicant and three

others on the basis of the report of the Central Vigilance Commission. In the above view of the matter, I do not find any scope for granting him the reliefs sought in the present O.A. because of delay in initiation of the departmental proceedings.

6. In the light of what has been discussed above, I do not find any merit in the O.A. The O.A., being devoid of merit, is dismissed. No costs.

**(RAJ VIR SHARMA)
JUDICIAL MEMBER**

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