

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.53 of 2017

Cuttack this the 10th day of August, 2018

CORAM:

HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Sri D.Ganapati Rao, aged 70 years, S/o. Late D.V.Sub Rao, Retired Chief Loco Inspector, East Coast railway, Khurda Road Division, r/o. Swarajya Nagar, Door No.90-3-15, Rajahmundry, Dist-East Godavari, Andhra Pradesh-533 101.

...Applicant

By the Advocate(s)-M/s.R.C.Sethi
G.Sethi

-VERSUS-

Union of India represented through:

1. The General Manager, East Coast Railway, Rail Bhawan, Chandrasekharapur, Bhubaneswar.
2. The Divisional Railway Manager, East Coast Railway, Khurda Road Division, Khurda, At/PO-Jatni, Dist-Khurda, Odisha, PIN-752 050.
3. The Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, Khurda, At/PO-Jatni, Dist-Khurda, Odisha-752 050.

...Respondents

By the Advocate(s)-Mr.R.N.Pal

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A)

The applicant retired as a Loco Inspector, East Coast Railways, Khurda Road Division on 31.7.2006 on reaching the age of superannuation. After retirement he had received the GPF, leave encashment, provisional pension and group insurance. But final pension, gratuity and commutation of pension were withheld due to a pending case in the CBI Court. The case related to availing of personal loan from the United Bank of India, Saheednagar Branch, Bhubaneswar to the tune of Rs.2,000,00/- by using forged and fabricated pay slip and confirmation letter. The CBI had filed a charge sheet under Section 120 B, 420, 468, 471 IPC under Section 13(1)(D) read with 13(2) of Prevention of Corruption Act, 1988. The applicant is aggrieved that although one of the co-accused viz., Nabina Chandra Nayak who retired on 31.1.2015

has received all his retiral dues on 8.7.2015, he has been denied his pensionary benefits without following the due process of law. The Office of the Sr.Divisional Personnel Officer, East Coast Railways, Khurda Road has sent a letter to the applicant on 9.11.2016 in response to his repeated representations that due to non-receipt of clearance from CVO(T) and CBI/BBSR his settlement dues have not been prepared by the office of SDPO. The applicant has challenged this letter and prayed for the following reliefs:

“Your Lordship graciously be pleased to quash the letter dated 09.11.2016/Annexure-4 issued by R-4 which is contrary to the law laid down by Hon’ble Supreme Court & High Court in the matter of delay payment of retiral dues the respondents are liable to pay 12% interest since the day of retirement till actual date of payment, if this amount is not paid within time frame by this Hon’ble Tribunal the Respondent further liable to pay @18% from the date of amount falls due to the applicant; and

For payment of final and full pension, full gratuity and commutation of pension etc; and

Be further pleased to issue any other/further order(s) or direction(s) as deemed fit and proper in the circumstances of the case”.

2. The applicant has based his prayer mainly on the ground that after his acquittal by the CBI Court, the respondents should have settled all his retirement claims. Another co-accused in the same case has been granted all his retirement dues whereas the applicant has been denied the same in an arbitrary and discriminatory manner. The applicant had retired 11 years before the filing of the O.A. and is still waiting for his final settlement which is illegal and arbitrary.

3. The respondents in their reply filed on 23.3.2018 have contested the claim of the applicant. They have cited Rule-9(3) of Railway Services (Pension) Rules, 1993 which stipulates that 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-96 shall be sanctioned. Similarly, Rule-10© of Pension Rules, 1993 also states that no gratuity shall be paid to the railway servant until conclusion of departmental or judicial proceedings and issue of final orders thereon; provided that where departmental proceedings have been instituted under the provision of Railway Servants Discipline & Appeal Rules, 1968, for imposition any of the penalties specified in Clauses-(i), (ii)(iia) & (iv) of rule 6 of the said Rules, the payment of gratuity shall be authorized to be paid to the railway servant. The respondents have submit that the applicant has been given provisional pension as per rules and could not be given final settlement dues due to pending clearance from the CVO(T) and the CBI/BBSR. At the time of his retirement a minor penalty charge sheet was pending against the applicant apart from the case filed by the CBI, Bhubaneswar. The departmental proceedings were finalized with imposition of penalty of stoppage of one set of privilege pass from the current year vide order dated 14.7.2006(R/8). It is submitted that the CBI has filed CRLLP/3/2017 before the Hon'ble High Court of Orissa Cuttack on 3.1.2017 against the order of the CBI Court. The final settlement of retirement dues of the applicant has not been sanctioned due to pending clearance from the Chief Vigilance Officer(T) and CBI, Bhubaneswar as per rules.

4. The applicant had filed M.A.No.504/2017 on 21.09.2017 praying for a direction to the respondents to release 80% of his total outstanding dues within a fort-night and to impose penalty on the respondents for non-filing of reply to the O.A. The applicant has claimed that he was 71 years old and had

retired 11 years back and is under treatment for neurological operation. Therefore 80% of the final settlement dues should be released in his favour.

5. The respondents had filed a reply to M.A.No.504/2017 by reiterating that the CBI has filed an appeal against the order of the CBI Court before the Hon'ble High Court of Orissa challenging the order dated 25.4.2018. The applicant is not entitled for any benefit except which have already been given and therefore, the M.A. should be rejected. Records show that on 23.3.2018 this Tribunal had disposed of MA No.504/2017 as not pressed.

6. I have heard the learned counsels from both the sides on 31.7.2018. During the course of arguments, learned counsel for the respondents submitted the rules relating to the retirement benefits applicable to the railway employees. As per this document, the requirements for ensuring timely payment of settlement dues are as follows:

1. Personal File and Service Record duly completed in all respects
2. Verification of Leave Records for last three years
3. No Dues Certificate' duly vetted by finance
4. Service History (Qualifying Service) duly vetted by finance.
5. D&AR/Vigilance clearance for final settlement dues issued within one month prior to retirement.
6. Pension Booklet duly filled.
7. 10 months' average Pay or Last Pay Drawn (calculated by Bill Section).
8. National Electronic Fund Transfer (NEFT) Form with IFSC code of the Bank.
9. Bank Pass Book (photocopy).
10. Photographs 9 + 2 booklet (individual) and one joint Photograph with spouse, size 2" x 3"
11. 4 Photographs of spouse and each dependent (passport size) for issuance of Medical-cum-Pass Identity Card.
12. Death Certificate(in case of death).
13. Birth Certificate of spouse and children who are eligible for Family Pension.

7. The applicant on the other hand has filed a copy of the judgment of the Hon'ble High Court of Orissa in Parikhita Sahu & Others vs.Angada Krishnamurty & Ors. (1969) 35 Cut.LT 509) to support his argument that

since stay was not granted by the High Court, the decree by the lower court was to be executed.

8. The issue to be decided in the present O.A. is whether the applicant is entitled to full claims of his retirement dues pending appeal by the CBI before the Hon'ble High Court of Orissa against the judgment of the CBI Court dated 25.4.2016.

9. In the present case, the departmental proceedings for minor penalty against the applicant had already been finalized prior to his retirement and the punishment imposed vide order dated 15.07.2006 was stoppage of one set of privilege pass from the current year. This obviously has no bearing on the settlement of his final pension. The applicant has already been granted provisional pension, GPF, leave encashment and group insurance. Pending finalization of the appeal preferred by the CBI before the Hon'ble High Court, applicant's final pension, gratuity and commuted value of pension have been withheld. The applicant has relied on the judgment of the Hon'ble High Court of Orissa in Parikhita Sahu (supra) which states that if no stay was granted on the decree passed by the lower court, the judgment was to be executed. In the present case, it is the contention of the applicant that the Hon'ble High Court having not stayed the judgment of CBI Court, he is entitled to full and final settlement of pension. The applicant retired from railway service on 31.07.2006. The amount of personal loan which he is alleged to have taken fraudulently from the bank is to the tune of Rs.2,000,00/-. The CBI court had acquitted the applicant in its judgment dated 25.4.2016. The CBI filed its appeal in the Hon'ble High Court of Orissa on 3.1.2017 after a gap of about eight months. Although the rules state that CVO clearance is required before the finalization of pension "within one month prior to retirement" in the

present case such a situation could not have arisen inasmuch as CBI case against the applicant was then pending. However on the acquittal by the CBI court since CBI had filed an appeal against the order of the CBI Court dated 25.4.2016 and since the applicant has retired 11 years ago and is a senior citizen, considering all the facts and circumstances and the points of law involved in this case, I am of the view that the amount of alleged fraud for which the CBI has filed an appeal before the Hon'ble High Court of Orissa being Rs.2,000,00/-, it would be in the fitness of things, if an amount of Rs.2,000,00/- is withheld from the gratuity or commutation of pension of the applicant as a special case and all the rest of the pensionary benefits are released to him. The interest of justice will be better served if the respondents do not wait for the disposal of CBI appeal in the Hon'ble High Court and give relief to the applicant by clearing his pending pension dues after withholding the alleged fraud amount of Rs.2,00,000/-.

10. Considering the facts of the case and the points of law involved, the respondents are directed to release the said final pension amount to the applicant by withholding Rs.2,000,00/- from the his gratuity/commutation of pension amount. Orders to this effect may be passed by the Respondents within a period of eight weeks from the date of receipt of this order.

11. With the above direction, the O.A. is disposed of with no order as to costs.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

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