

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/020/1125/2015

Date of CAV : 29.08.2018
Date of Order : 20-09-2018

Between :

K. Muralikrishna S/o K. V. Krishnaiah,
Aged about 60 years,
Occ : Retd. Chief Catering Inspector,
O/o Sr.DCM/BZA, Vijayawada Division.

...Applicant

AND

1. Union of India rep by the
General Manager, Rail Nilayam,
III Floor, S.C. Railway, Secunderabad-500 071.
2. The Senior Divisional Personnel Officer,
Vijayawada Division, S.C. Railway, Vijayawada.
3. The Senior Divisional Commercial Manager,
Vijayawada Division, S.C. Railway, Vijayawada.

...Respondents

Counsel for the Applicant: Mrs. S. Anuradha

Counsel for the Respondents : Mr. M. Venkateswarlu, SC for Rlys

CORAM :

THE HON'BLE MR.SWARUP KUMAR MISHRA, JUDICIAL MEMBER

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

This application is filed under section 19 of the Administrative Tribunal's Act, 1985, to quash and set aside the impugned order of R-2 No. B/P.500/VII/NR/470/2015, dated 02.07.2015 by which the R-2 conveyed that the settlement dues of the applicant are withheld at the time of his

retirement on superannuation on 30.06.2015 in terms of Rule No. 9(3) of Railway Service (Pension) Rules, 1993 since a Judicial proceeding is pending against the applicant in the Hon'ble High Court of A.P and only provisional pension along with the contribution of PF and GIS is payable to the applicant by declaring the same as illegal, arbitrary, against the pension rules and against the order of this Hon'ble Tribunal in OA No.953 of 2014 dated 07.08.2015, and consequently direct the respondents herein to release the payment of settlement dues forthwith along with penal interest of 24% per annum from 01.07.2015 till the date of payment and pass such other and further order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2. The brief facts of the case are that, the applicant worked as Senior Catering Inspector at Cuddapah Railway Station during the years 1991 to 1993. Subsequently, he was served with a charge memorandum dated 28.07.1995 by the ADRM/GTL for imposing a major penalty and three articles of charges were framed against him on the basis of stock verification sheet issued by the Accounts stock verifier, stating that he had misused his official position and misappropriated an amount of Rs.10,598.85 ps by making short remittances, that he made late by irregularly showing the amount as due from commission bearers and servers, resulting in temporary misappropriation and that being the custodian of the PAD items, he had failed to maintain proper accounts of the Railway material, which resulted in a shortage of material valued at Rs.24,750.90 ps. As the applicant denied the charges, an inquiry was conducted by the inquiry officer, who

was appointed by the ADRM/GTL. The inquiry officer submitted his report holding the article of charge as proved against the applicant only to the extent of lack of supervision on the part of applicant. Accepting the said report of the inquiring authority, the disciplinary authority, who is the ADRM/GTL, imposed the penalty of withholding the annual increment for a period of three years (non-recurring).

3. The applicant also states that the Respondent No.1 herein issued a show cause notice under the provisions of Rule No.25 of the Railway Servants (D&A) Rules, 1968, to the applicant calling upon him to show cause as to why the penalty imposed by the ADRM/GTL cannot be enhanced to that of removal from service. The applicant submitted his representation on 15.03.1999 against the proposed enhancement of penalty to the General Manager (R-1) which was not considered and the R-1 imposed the penalty of compulsory retirement on the applicant vide order dated 19.07.1999. The appeal against the penalty order imposed by the R-1 was rejected by the Railway Board vide order dated 08.08.2001 which was communicated to the applicant on 10.09.2001.

4. The applicant also states that earlier he had filed OASR No.2079/2001 seeking for direction to the Railway Board to dispose the appeal but the said OA was dismissed since the delay in filing the application has not been condoned. Subsequently, the applicant challenged the said order by filing WP No.12762 of 2001 before the Hon'ble High Court and the same was dismissed by the Hon'ble High Court giving direction to the Railway Board to

dispose of the appeal within a period of two months. The appeal was disposed of by order dated 08.08.2001.

5. Thereafter the applicant filed OA No.1701/2001 challenging the order dated 08.08.2001 of the Appellate Authority and the same was allowed vide order dated 11.03.2003 holding that the applicant is entitled for all consequential benefits such as back wages, promotions, restoration of seniority etc.,. The Respondents have preferred WP No.17564/2003 in the Hon'ble High Court and a conditional interim order was passed stating that the petitioners (respondents herein) shall pay the entire back wages in pursuance of the orders of the Tribunal within a period of four weeks and also refused to grant stay with regard to the reinstatement. The order was subsequently modified by order in WPMP No.33865 of 2003 in WP No.17564/2003 dated 21.01.2004 directing the petitioners (respondents herein) to pay a sum of Rs.1,00,000/- (Rupees one lakh only) to the respondent employee (applicant herein) and allowed the petitioner (respondent herein) to retain the balance which shall be subject to final order in main WP.

6. Consequent to the orders of the Hon'ble High Court, the applicant was reinstated back in service by order dated 11.09.2003 and retired from service on 30.06.2015 on attaining the age of superannuation. However, the respondents issued the impugned order dated 02.07.2015 holding that the settlement dues of the applicant are withheld at the time of his retirement on superannuation on 30.06.2015 in terms of Rule-9 (3) of Railway Service

(Pension) Rules, 1993 since a Judicial proceeding is pending against the applicant in the Hon'ble High Court and only provisional pension along with the contribution of PF and GIS are payable to the applicant.

7. The applicant further submits that, in OA No.953/2014 dated 07-08-2015 it was held by this Tribunal that in the light of explicit provisions of the rules indicated above, no judicial proceedings are pending against him as stipulated under Rule-9 (6) of the CCS (Pension) Rules, 1972. The applicant also contends that, in similar circumstances, this Tribunal allowed OA No.953/2014 on 07.08.2015 on similar set of facts and held that pending WP in High Court cannot be equated with judicial proceedings as stipulated in Pension rules and held that the respondents therein were not justified in withholding the pensionary benefits of the applicant herein on the ground that WP No.535/2008 is pending and directed the respondents therein to pay all the eligible retiral benefits due to the applicant therein along with 8% interest. Hence the applicant had filed this petition seeking the above stated relief.

8. The Respondents have filed reply statement stating that the OA is not maintainable as it is filed for payment of settlement dues along with penal interest of 24% per annum from 01.07.2015 questioning the impugned letter dated 02.07.2015 of R-2 despite the fact that the penalty of compulsory retirement with effect from 19.07.1999 imposed by the General Manager, S.C. Railway, Secunderabad vide order bearing No.P.86/D&A/KM/GTL/2431/98, dated 19.07.1999 is still under litigation in

WP No.17564/2003 on the file of Hon'ble High Court. Hence any entertainment of the relief sought in the present OA tantamount to disposal of WP. The applicant is not entitled to get pensionary benefits as normal employee since any payment of pension is on implied condition of anticipating further good conduct (Rule-8 of Pension Rule) and also in view of the provisions of Rule 9(3) read with Rule-10 of Railway Servants (Pension) Rules, 1993 and Rule-25 of Railway Servants (D&A) Rules, 1968.

9. The Respondents also states that the General Manager, S.C. Railway, Secunderabad, the Revising Authority considered the matter and found that the penalty imposed does not commensurate with the gravity of offence and accordingly, issued show-cause notice proposing the penalty of removal from service under Rule 25 of Railway Servants (D&A) Rules, 1968. The applicant has submitted his representation to the show-cause notice and the General Manager considered the same and imposed penalty of "Compulsory Retirement from service with effect from 19.07.1999" vide order No.P.86/D&A/KM/GTL/2431/98, DATED 19.07.1999 UNDER Rule 25 of Railway Servants (D&A) Rules, 1968. The appeal against the said penalty was confirmed by Railway Board (Member Traffic) (Appellate Authority vide order dated 08-08-2001 served on the applicant by CPO on 10-09-2001. Meanwhile, the applicant has filed application before the Tribunal and Hon'ble High Court vide OA SR No.2079/2001 and WP No.12762/2001 seeking direction to Railway Board (MT) to dispose of the representation of the applicant against the penalty imposed by the GM and the same were dismissed.

10. The Respondents also state that as per the orders of Hon'ble High Court the Chief Personnel Officer/SC reinstated the applicant into service conditionally i.e., subject to outcome of WP No.17563/2003 vide order No.P.86/D&A/KM/GTL/2431/98, dated 11.09.2003. The applicant cannot be paid any retirement benefits without disposal of WP No.17563/2003 since his reinstatement is conditional one and secondly, benefits are regulated vide order dated 21-01-2004 in WP MP No.33865/2003 in WP No.17564/2003. The order of Hon'ble High Court in WP No.17564/2003 directed that instead of depositing the amount before the Tribunal, the sum of Rs.1,00,000/- shall be paid directly to the respondent employee within a period of 3 weeks and the balance shall be retained by the petitioner Railway Administration, which shall be subject to the final order in the main writ petition. With these submissions, the Respondents submit that the OA is not maintainable and is devoid of merits.

11. We have heard Smt. Anuradha, learned counsel for the applicant and Mr.M.Venkateswarlu, learned Standing Counsel for Railways.

12. On perusing the records, we find that the Hon'ble High Court in WPMP No.21859/2003 in WP No. 17564/2003, decided on 25.08.2003 had held as follows :-

“ There shall be interim suspension on condition that petitioners shall pay entire back wages in pursuance of the orders of the Tribunal within a period of four weeks from the date of the receipt of a copy of this order. However, there shall be no stay with regard to the reinstatement.”

Again in WPMP No.33865/2003 in WP No.17564/2003, dated 21.01.2004, it was held as under :

“ After hearing the learned counsel for the petitioners and the learned standing counsel for the Railways, the order passed by this court on 25-8-2003 in WPMP.No.21859 of 2003 is modified to the following effect :

It is stated that the petitioner has been reinstated into service. With regard to the payment of wages, we direct that instead of depositing the amount before the Tribunal, a sum of Rs.1,00,000-00 (Rs. one lakh only) shall be paid directly to the respondent-employee, within a period of three weeks from today and the balance shall be retained by the petitioner, which shall be subject to the final order in the main writ petition.

Post the writ petition for final hearing on 12-4-2004.”

The learned counsel for the applicant relied upon the judgment dated 7.8.15 passed by this Tribunal in OA No.953/2014 in support of the claim made by the applicant in this case. It is seen that in the said OA no departmental proceedings were initiated against the applicant as seen from para-20 of the judgment. Provisional pension was also not paid to the applicant in that case. It was alleged that the applicant in that case had submitted false caste certificate for the purpose of obtaining benefits in connection with her service. In the present case, on the basis of allegation that there was shortage of materials of the amounts of Rs.24,750.90 ps of the Railways Departmental proceedings was started against the applicant. In this case, the Disciplinary Authority had imposed the penalty of withholding the annual increment for a period of three years (non recurring). Subsequently the said penalty was enhanced and Respondent No.1 imposed the penalty of Compulsory Retirement on the applicant. Annexure A-1, dated 02.07.2015 shows that provisional pension,

contribution to the provident fund and CGIS have already been sanctioned in favour of the applicant but the other pensionary benefits have been withheld till the outcome of the Writ Petition in question. Therefore, in the circumstances and in view of the order dated 21.1.2004 passed by the Hon'ble High Court in WP No.17564/03 no order can be passed by this Tribunal at this stage and for release of other retiral benefits of the applicant.

13. Accordingly OA is dismissed as devoid of merits. No order as to costs.

(SWARUP KUMAR MISHRA)
JUDICIAL MEMBER

Dated : 20th September, 2018.

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