

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/020/ 1025/2016

Date of CAV : 10.08.2018
Date of Order : 18-09-2018

Between :

S. Sankaraiah S/o Srinivasulu,
Aged about 64 years,
Occ : Retd. Depot Store Keeper/GC/TPTY,
O/o Dy. CE/Gauge Conversion,
South Central Railway, Tirupathi.Applicant

AND

1. Union of India rep by the
General Manager, South Central Railway,
Rail Nilayam, III Floor,
Secunderabad-500 071.
2. The Chief Administrative Officer/Construction,
South Central Railway, Division Office Compounds,
Secunderabad-500 071.
3. The Financial Advisor & Chief Accounts Officer/Construction,
South Central Railway,
Lekha Bhavan, II Floor,
Secunderabad-500 071.
4. The Chief Engineer/Construction,
South Central Railway,
Division Office Compounds,
Secunderabad-500 071.
5. The Dy. Chief Engineer,
Gauge Conversion,
South Central Railway,
Tirupathi. ...Respondents

Counsel for the Applicant: Mr. N. Subba Rayudu

Counsel for the Respondents : Mr. T. Hanumantha Reddy, CGSC

CORAM :

THE HON'BLE MR.B.V.SUDHAKAR, ADMINISTRATIVE MEMBER

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, seeking the following relief :

“ Hence, in the interests of justice, the applicant herein prays that this Hon'ble Tribunal may be pleased to direct the respondents herein to pay the retiral benefits such as leave encashment, Gratuity, Commutation of pension and revised pension which is unlawfully withheld by the respondents forthwith along with interests of 24% per annum, 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's settlement dues were withheld on the ground that a criminal case is pending against him. However, the criminal case against the applicant ended in his acquittal and the applicant submitted representation seeking for releasing his settlement dues on his being acquitted in the criminal case by judgment dated 23.01.2016 of the Hon'ble Special Judicial First Class Magistrate for Railways, Guntakal, in CC No.20/2013 dated 23.01.2016. The applicant submitted the copy of the judgment in the criminal case and sought for releasing his settlement dues. But the 3rd Respondent withheld the settlement dues on the ground that the stock sheet is pending against the applicant. The 5th Respondent who is the controlling official of the applicant had clearly stated in his letter dated 30.06.2016 that the applicant is in no way responsible for the discrepancies as the discrepancies found during stock verification

belongs to one Sri K. Durga Rao and making the applicant responsible when the material does not belong to him is not correct. In spite of this clearance given by the 5th Respondent, the 3rd Respondent is withholding the applicant's settlement dues illegally.

3. The applicant herein while was working as Depot Store Keeper in the office of Dy. CE/GC/TPTY, was implicated in Crime No.09/2011 under section 3(a) of RP(UP) Act, 1966 by the Railway Protection Force, Anantapur and was arrested on 25.8.2011 and remanded to Judicial custody on 26.08.2011. Basing on the intimation made by the IPF/RPF/Anantpur, the applicant was placed under suspension by order dated 29.08.2011 with effect from 25.08.2011. The applicant was later released on bail and appealed against the order of suspension and accordingly his suspension was revoked by order dated 09.03.2012.

3. The applicant thereafter, on attaining the age of superannuation on 31.08.2012 retired from service and he had handed over all the railway material to the administration through letter dated 31.08.2012 and had also filed his pension papers well before the date of his retirement.

4. The applicant retired on 31.08.2012 and was not paid his settlement dues. Seeking for settlement dues, he has filed OA No.209/2013 and the same was disposed of with a direction to the Respondents to consider the case of the applicant and make payment of the provisional pension and GPF immediately. The applicant was paid provisional pension based on the

directions of this Tribunal in OA No.209/2013. The Criminal Case against the applicant ended with clear acquittal vide order dated 23.01.2016 in CC No.20/2013. The applicant submitted representation dated 03.03.2016 seeking for release of his settlement dues and as there was no response, he got issued a legal notice to the respondents through his counsel on 10.08.2016. The 5th Respondent, vide letter dated 11.08.2016 replied to the legal notice stating that the DCRG, Leave encashment and commutation of pension and revised pension will be arranged only after closure of the stock sheet. The 3rd Respondent in his letter dated 27.07.2016 addressed to the 5th Respondent specifically stated that the applicant had signed the stock sheet without any dispute.

5. Accordingly this OA is filed seeking the above referred relief.

6. Respondents have filed reply statement stating that a case Cr.No.09/2011 U/s 3(a) of RP (UP) Act 1966 has been registered against the applicant as he was involved in a theft of 350 Nos of railway CST-9 Plates and advised to place him under suspension. As advised by DSC/RPF/GTL he was placed under suspension with effect from 25.08.2011 and subsequently the suspension was revoked from 09.03.2012.

7. It is further averred in the reply statement that as the applicant was due for retirement, a new incumbent was posted to take over the materials along with stock verifier of FA & CAO / C / SC office was held during July 2012 to August, 2012 and the applicant submitted the settlement papers to

the Administration. It is further stated that there were two stock sheets dated 09.07.2010 and dated 06.07.2010 for Rs.1,25,17,635/- and Rs.11.43.361.00 pending against him at the time of his retirement. In view of the applicant's retirement, his suspension was revoked to facilitate him to hand over the materials available under his custody. On revoking his suspension order, DAR action has been initiated against him and the administration issued SF No.5 by Executive Engineer/Construction/Tirupathi vide memo dated 14.03.2012 for the applicant's involvement in a fraudulent case. Vide order dated 23.01.2016 in CC No.20 of 2013, the Hon'ble Court of Railways found the applicant not guilty. Accordingly the SF No.5 issued for imposition of major penalty charge sheet was dropped.

8. It is also contended in the reply statement that stock verification of stores account has taken place on 09.07.2010 for the year 2009-10. Stock sheet for shortage of 190 items 44 items were cleared to a value of Rs.78,11,881/- and the balance 146 items for a value of Rs.1,25,17,635/- were found short and in another stock sheet dated 06.07.2010 one item for a value of Rs.3,18,400/- was short. Further it is submitted that CGIS, Provident Fund and Last salary amount and full pension on his substantive pay were already arranged for payment. Revised Leave Encashment, Commutation and revised pension has to be arranged only on closure of stock sheet pending against him by the Financial Adviser & Chief Account Office, Construction, S.C.Railway, Secunderabad. Financial Adviser & Chief Accounts Officer, Construction, S.C.Railwayl, Secunderabad has closed some items and leaving a balance of 146 items to a tune of Rs.1,25,17,635/-

and one item for a value of Rs.3,18,400/- in another sheet. It is submitted that the applicant has signed in the stock sheets issued by Stock verifier as “on behalf of late Durga Rao dated 09.07.2010” at the time of stock verification taken place after the demise of Sri K. Durga Rao. In view of the unsettled shortage items to the tune of Rs.1,25,17,635/- and Rs.3,18,400/- pending to be still settled, the retiral amounts of the applicant could not be authorized for payment by the 3rd and 5th Respondents. Accordingly Respondents pray for dismissal of the OA.

9. The order No. P/Con/GC/TPTY/Staff, dated 11.08.2016, and order No. P/CN/GC/TPTY/SS, dated 30.06.2016 (Annexure A-7 to OA) passed by Respondent No.5. and the charge memo issued against the applicant show that the same has been issued in respect of 350 Nos of Railway CST-9 plates. It has also been mentioned by the applicant in the Rejoinder that charge memo in SF-5 was issued against him for misappropriation of 350 Nos of Railway CST-9 places in respect of which case under section 3(a) of RP(UP) Act, 1966 was also started against him and two others. The applicant was acquitted in the said Criminal Case by the Railway Magistrate, Guntakal as per order dated 23.1.2016. Basing on the said acquittal, the SF-5 was dropped against the applicant. In that view of the matter, there is no justification in withholding the retiral benefits of the applicant. In this regard the learned counsel for the applicant relied upon the following orders :-

- (1) WP (MD) No.17838 of 2015 and MP (MD) No.1 of 2015, decided on 27.11.2015 by the Madurai Bench of Madras High Court ;
- (2) OA No.935/2011, decided on 17.09.2012 of CAT, Hyderabad Bench;

(3) OA No.264/2009, decided on 24-11-2009 of CAT,Principal Bench.

In the 2nd cited case, it has been held as follows : -

“7. Without pendency of any disciplinary proceedings, the action “of the respondent in deducting the said amounts from the terminal benefits of the applicant is not at all justified. If there are any shortages, it is up to the authorities to take action as per rules. Admittedly as on today, there is no disciplinary proceedings pending against the applicant. Therefore, the action of the respondents in deducting the said amounts from the terminal benefits of the applicant is not sustainable and the claim of the applicant in challenging the action of the respondents in withholding the terminal benefits on the alleged shortages of an amount of Rs.7,94,100/- and Rs.5,65,587/- pertaining to Vikarabad Section and Kazipet Section respectively without conducting inquiry is valid and justified.”

10. Learned counsel for the applicant further relied upon Rule-9 of Railway Services (Pension) Rules, which reads as under :

9. Right of the President to withhold or withdraw pension :

“(1) The President reserves to himself the right of with holding or withdrawing a pension or gratuity, or both, either in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Railway, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement ;”

11. As the applicant was found not guilty in the Criminal Case and the SF-5 chargememo was withdrawn, this Tribunal is of the view that the action of the Respondents in not releasing the retiral benefits such as leave

encashment, Gratuity, Commutation of pension is not sustainable. Accordingly the Respondents are directed to release all the above referred benefits to the applicant with 8% interest from the date they became due, within a period of three months from the date of receipt of a copy of this order.

12. Accordingly the OA is allowed with no order as to costs.

(SWARUP KUMAR MISHRA) (B.V.SUDHAKAR)
JUDICIAL MEMBER ADMINISTRATIVE MEMBER

Dated : 18th September, 2018.

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Keeping in view of the retirement on 31.08.2012, the suspension order was revoked with effect from 09.03.2012 to facilitate the applicant to hand over the materials available under his custody before his retirement on superannuation. On revoking his suspension order, DAR action has been initiated against him and the administration issued SF No.5 by Executive Engineer / Construction / Tirupathi vide Memorandum No. P/Con/TPTY/DAR/SS, dated 14.03.2012 for his involvement in a fraudulent case. The Hon'ble Court for Railways, Guntakal, pronounced order dated 23.01.2016 in CC No.20/2013 wherein the applicant was found not guilty. Basing on the above said order, the SF No.5 was dropped.