

**Central Administrative Tribunal
Jaipur Bench, Jaipur
O.A. No. 218/2017**

Reserved on: 29.08.2018
Date of decision: 11.09.2018

Hon'ble Mr. A. Mukhopadhaya, Member (A)

Yogesh Kumar Panchal S/o Shri Lohre Ram, aged about 63 years, r/o C/o Narendra Sharma, near Nahar Kana, Sari Center, Tullapura, Kota Junction, Kota, presently retired as Passenger Guard w.e.f. 30/04/2015.

...Applicant.

(By Advocate: Shri P.N.Jatti with Shri B.K.Jatti)

Versus

1. Union of India through the General Manager, West Central Railway, Jabalpur (M.P).
2. Divisional Railway Manager, West Central Railway, Kota.

...Respondents.

(By Advocate: Shri Y.K.Sharma)

ORDER

Briefly, the facts of the case are that the applicant retired from service with the Railways on 30.04.2015 and thereafter applied for gratuity and commutation as retiral benefits. The Senior Divisional Personnel Officer, (DPO), West Central Railway vide letter No.E/T/789/2015/4/16 dated 26.10.2015, (Annexure A-6), refused payment of gratuity and commutation stating that a judicial proceeding No.289/02 was pending against the applicant in court and therefore payments related to gratuity and commutation were being withheld as per rules. It was further stated that it would be possible to consider making these payments only after this pending judicial proceeding was decided. Accordingly after representation to the respondents, the

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applicant, on getting no response to his representation, was left with no recourse except to approach this Tribunal for grant of the following reliefs:

“8.1 That by a suitable writ/order or the directions the respondents be directed to release the amount of gratuity and commutation which has been withheld with effect from 30.04.2015 with effect from 30.04.2015 without any reason.

8.2 That by a suitable writ/order or the directions the respondents be directed to pay a justify interest with the rate of 12% per annum on the amount of gratuity and commutation.

8.3 That by a suitable writ/order or the directions the order dated 26.10.2015 be quashed and set aside.

8.4 Any other relief which the Hon’ble bench deems fit.”

2. The applicant further avers that the judicial proceedings in question do not relate to his service in any manner. He states that disciplinary proceedings under Rule 5 of the Railway Servants (Discipline and Appeal) Rules, 1968 had been initiated against him on 16.05.2001 with the charges levelled against him being based on criminal case No. 489/02 which, as averred earlier, were not related to the work and conduct of the applicant in service. After due enquiry, the charges levelled against him were also found to be baseless and unrelated to railway work, (Annexure A/2), and accordingly these charges were dropped vide letter No.E/T/308/19/122 dated 16.09.2002 by the Divisional Operating Manager; (DOM, Kota WCR). Thus, the applicant states that there was no disciplinary enquiry or proceedings of any sort pending against him at the time of his retirement and the

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Criminal Case No.289/02 pending against him, (Annexure A/6) from when he was in service, had been adjudged by the respondents themselves to be unrelated with railway work. In any case, the DOM had also recorded a note to the effect that after a detailed study of the case, he agreed with the views of the Enquiry Officer, (EO), that the applicant could not be held responsible in any way in this matter; (Annexure A/2, Item No.5).

3. In their reply, the respondents aver that the disciplinary proceedings under the Railway Servants (Disciplinary and Appeal) Rules, 1968 which were started against the applicant on 16.05.2001 related to grave misconduct, as the allegation was that he had issued forged training certificates of B.Ed. in Kota Open University in the year 1996 in the name of those candidates who did not have the requisite experience of training. A First Information Report, (FIR), No.247/1996 had also been registered against the applicant and others for the offence under Sections 420, 467, 468, 471, 120-B and subsequently a criminal case No.289/02, namely **State vs. Satyanarayan & Others** was filed in court. The court had taken cognizance in this matter against the applicant on 21.04.1999 and the matter is still under trial. Given this position, the payments of gratuity and commutation cannot be released to the applicant as per rules due to the pendency of this criminal case against him. The respondents

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further aver that the applicant had represented in this regard on 14.09.2015 and had been duly replied to vide letter No.E/T/789/2015/4/16 dated 26.10.2017; (Annexure R-1).

4. Counsel for both the applicant and the respondents were heard. During arguments, both counsels reiterated the positions pleaded by them as detailed above. Counsel for the applicant emphasised that withholding of gratuity until the conclusion of criminal judicial proceedings and issue of final order in this case would be at variance with a clarification provided by Government of India's Department of Pension and Pensioners Welfare vide their I.D.No17729/03-P&PW (F) dated 10.03.2003 as communicated through the Ministry of Communications letter No.36-9/2002 dated 24.03.2003; (Annexure C/1). This is to the effect that the judicial proceedings initiated against a Government servant by a private, (i.e. other than the Department) person/agency does not qualify as "judicial proceedings" within the meaning of Rule 69 (c) of the CCS (Pension) Rules, 1972 which are (in the view of the applicant's counsel), analogous to Rule 10 (1) (c) of the Railway Services (Pension) Rules, 1993.

5. Counsel for the applicant also drew attention to the fact that the aforementioned clarification, (refer Annexure C-1), has been concurred with by the Department of Legal Affairs; (vide U.O.No.10412/03 dated 18.03.2003). Relying on this, applicant's counsel argued that criminal case No.289/02, which admittedly

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refers to the alleged forgery of Kota Open University related documents, does not qualify as “judicial proceedings” in the present case and therefore should not be an impediment to the release of the applicant’s gratuity.

6. Per contra, counsel for the respondents states since the clarification relied upon by the applicant’s counsel, (Annexure C/1), is a letter/circular of the Ministry of Communications & Information Technology, it has no relevance in this case, as here, judicial proceedings are to be defined under the Railway’s own rules. Rule 9(5)(b) of the Railway Services (Pension) Rules 1993 clearly stipulates that judicial proceedings shall be deemed to be instituted, (in the case of criminal proceedings), on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognizance, is made. Rule 10 (c) of the same rules ibid clearly states 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. Thus, in this case which relates to the Railways, it is amply evident that since it is an admitted fact that the judicial proceedings are underway in criminal court against the applicant, the payment of gratuity and commutation amounts to him at this stage is prohibited under rules.

7. I have carefully gone through the material on record as well as the arguments made by opposing counsel. The entire dispute

in this matter hinges around the question of whether the criminal judicial proceeding, (Case No.289/02), presently pending against the applicant, debars him from claiming and receiving the gratuity and commutation amounts that would, according to both parties, be payable to him as per rules, had such a case not been pending in court. A plain reading of the letter/circular dated 24.03.2003, (Annexure C/1), which has been central to the arguments made both by the applicant as well as the respondents' counsels indicates that if judicial proceedings stand initiated against a government servant by a private person/agency, (i.e. other than Department as clarified in the subject heading), this will not stand in the way of releasing DCRG, (gratuity) and final pension to such government servant. Further, this opinion/clarification does appear to be supported by the Government's own Department of Legal Affairs. The question that arises in this connection is that since this clarification is related to Rule 69 (c) of the CCS (Pension) Rules 1972, whether the same will hold good for the Railway Services (Pension) Rules 1993 and specifically Rule 10 of these Rules. A perusal of both these Rules indicates that the substantive portion of the rules read as under:

Rule 69(c) of the CCS Pension Rules 1972

"No gratuity shall be paid to the government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon."

Rule 10 (1) (c) of the Railway Services Rules, 1993

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"No gratuity shall be paid to the railway servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon."

8. It will be seen from the above that the substantive provision is identical in both these Rules relating to government servants and railway servants respectively. This supports the argument that the clarification on what constitutes judicial proceedings for the purpose of the portion of Rule 69 (c) of the CCS (Pension) rules will be equally applicable to Rule 10 (1) (c) of the Railway Services (Pension) Rules, 1993. Even otherwise, the argument that the rules applicable on payment of gratuity in one Department can differ substantively from rules on the same subject in another Department remains questionable. However, under the given circumstances of the case, different interpretations of the same term "judicial proceedings" in the rules related to gratuity and pension in the CCS (Pension) Rules, 1972 vis-a-vis the Railway Services (Pension) Rules, 1993 is definitely not tenable. This in turn leads to the conclusion that the clarification provided by the Department of Pension and Pensioners Welfare vide their I.D.No17729/03-P&PW (F) dated 10.03.2003 and concurred in by the Department of Legal Affairs (vide U.O.No.10412/03 dated 18.03.2003) (Annexure C/1 refers), becomes equally binding, not only on the Ministry of Communications and Information Technology but also on the Railways. If so, then if criminal judicial proceedings initiated against a railway servant by a private person/agency other than

the Department is pending in the competent court, then this should not be an impediment to the release of DCRG, (gratuity) and final pension. In the present case, it is also undisputed that the criminal case pending against the applicant is not one which is related to his official activity. Therefore, with the clarification given by the Department of Pension and Pensioners Welfare, (read with the concurrence with the same by the Department of Legal Affairs), being taken into account, no impediment remains to the grant of DCRG, (gratuity), and final pension to the applicant especially since the departmental proceedings also initiated against the applicant on this count stand dropped/cancelled; (Annexure A/3 refers).

9. In the result, the OA is allowed with a direction to the respondents to release the DCRG, (gratuity), payable to the applicant and also process and finalise the case for pension and commutation payable to him, as per rules, preferably within a period of three months from the date of receipt of a certified copy of this order.

10. There will be no order on costs.

(A.Mukhopadhaya)
Member (A)

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