CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No. 350/00897/2016 Date of Order: 27.6.2018

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member

Bikashananda Sinha, Son of Late Nishi Kanta Sinha
C/o Ramesh Chandra Baidya, Rabindra Pally
Naba Pally, Barasat, District North 24-Parganas
Kolkata – 700126.

.....Applicant.

-vs-

1. Union of India through the General Manager
Eastern Railway, Fairlie Place
Kolkata – 700001.

2. The General Manager, Eastern Railway
6, Fairlie Place, Kolkata – 700001.

3. The Senior Divisional Personnel Officer
Eastern Railway, Sealdah Division
Divisional Manager's Office, Post Office Entally
Kaiser Street, Kolkata – 700014.

4. The Divisional Railway Manager
Eastern Railway, Sealdah
Divisional Manager's Office, Post Office Entally
Kaiser Street, Kolkata – 700014.

5. The Senior Divisional Electrical Engineer
Traction Rolling Stock, Sealdah Division
Eastern Railway,
Divisional Manager's Office, Post Office Entally
Kaiser Street, Kolkata – 700014.

.....Respondents.

For the Applicant : Mr. B. Samanta

For the Respondents : Mr. M.K. Bandyapadhyay

ORDER

Per Ms. Bidisha Banerjee, Judicial Member:

The applicant, a retired railway servant, aggrieved due to withholding of his retiral dues, has prayed for the following reliefs in this O.A.:

"8.(a) To pass orders upon the respondents to cancel and/or set aside the order for granting Provisional Pension dated 01.07.2015 issued by the respondent No. 3 and withholding all other retrial dues and to direct them to release the retrial dues and the dues of MACP Scheme forthwith;

(b) An order be passed directing the respondents to consider the representations of the applicant dated 31.07.2015, 4.03.2016 and 16.05.2016;

(c) An order be passed directing the respondents to pay 12% interest in respect of the retrial dues together with the amount of unpaid MACP Scheme while making the payment of the said retrial dues till the disposal of the application;

(d) Costs;

(e) Any other or further other order or orders be passed as this Hon'ble Tribunal may deem fit and proper.

2. The learned counsels were heard and materials on record were perused.

3. The Railways in their reply have averred as under:

"3(a) That "Sri Bikasa Nanda Sinha, Ex. Sr. Section Engineer/TRS/Ranaghat worked under Sr. Divisional Electrical Engineer/TRS/Sealdah/E.Rly/Superannuated on 31.07.2015. During his service life he was accused under Section 409/417/418/420/467/468/471/477A/120B/34 of IPC by Sankrail P.S. vide case no. 159/11 dated 26.03.2011 (GR No. 1458/11) and forwarded before Ld. CJM/Howrah Sadar, was taken under police custody which was intimated by office of

the CID, Bhabani Bhawan, Kolkata – 700027 vide letter No. NIL dated 06.12.2012.

Accordingly as per railway D&A Rule, 1968, he was placed under deemed suspension from 06-12-2012 to 06-01-2013. It was needless to mention that he was paid subsistence allowance during the suspended period and after getting Bell-Bond, his suspension was revoked and allowed to join his duties duly following the extant fule.

3(b) At the time of his retirement, Railway authority did not release the retrial benefits towards Gratuity, Commutation of family pension due to pending of Criminal proceeding No. 159/11 dated 26.03.2011 before Ld. CJM/Howrah Sadar duly follow the rule 9 & 10(1)(a) & 10(1)(c) of Railway Service (Pension) Rule 1993."

4. The criminal case, as was noticed, had no bearing with discharge of his official duties. It was a case where conviction would not entitle the railways to initiate any proceeding under Rule 9 of Pension Rules. The applicant is not yet convicted in the criminal case. In the event he is convicted or put behind the bars, Rule 8 of Pension Rules would automatically come into play. However, the Railways have no outstanding claim against the applicant and no departmental or any other judicial proceeding has been initiated by the Railways. Upon conclusion of the sole criminal proceeding nothing would become recoverable by the employer from the applicant.

5. Therefore the issue that fell for consideration was whether under such circumstances the railways acted legally in withholding the retiral dues & MACP due to suspension of the applicant.

6. The following decisions and circulars were cited by the applicant in support of his contention.

1. **D.V. Kapoor Vs. Union of India and Ors.** Reported in **AIR 1990 SC 1923** where the Hon'ble Supreme Court held that –

"R.9 of the rules empowers the President only to withhold or withdraw pension permanently or for a specified period in whole or in part or to order recovery of pecuniary loss caused to the State in whole or in part subject to minimum. The employee's right to pension is a statutory right. The measure of deprivation therefore, must be correlative to or commensurate with the gravity of the grave misconduct or irregularity as it offends the right to assistance at the evening of his life as assured under Art. 41 of the Constitution. The exercise of the power by the President is hedged with a condition precedent that a finding should be recorded either in departmental enquiry or judicial proceedings that the pensioner committed grave misconduct or negligence in the discharge of his duty while in office, subject of the charge. In the absence of such a finding the President is without authority of law to impose penalty of withholding pension as a measure of punishment either in whole or in part permanently or for a specified period or to order recovery of the pecuniary loss in whole or in part from the pension of the employee, subject to minimum of Rs. 60/-.

2. The Hon'ble Apex Court in **D.S. Nakara & Others Vs. Union of India (1983) 2 SCR 165: (AIR 1983 SC 130)** made the following observations on right to pension.

"The antiquated notion of pension being a bounty or a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deoki Nandan Prasad v. State of Bihar & Ors. (1) wherein this Court authoritatively rules that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by rules and a Government servant coming within those rules is entitled to claim pension."

3. A decision rendered by Hon'ble High Court at Delhi in **WP(C) No. 6633/2011** in **O.P. Nasa & Anr. –Vs.- Delhi Urban Shelter Improvement Board** in regard to withholding of terminal benefits wherein it was held as follows:

"3. So far as the second relief is concerned, the same is fully covered by the recent judgment of the Supreme Court in the case of State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr. in Civil Appeal No. 6770/2013 decided on 14.8.2013. In the aforesaid judgment of Jitendra Kumar Srivastava (supra) Supreme Court has held as under:-

(i) *Terminal benefits whether they be pension or gratuity or leave encashment are in the nature of 'property'.*

(ii) *Such terminal benefits etc can only be withheld and appropriated by the government after the decision of the departmental authorities or a judgment of a court of law i.e. during the pendency of departmental proceedings and court proceedings, the government cannot withhold and appropriate the terminal benefits etc which are payable to employees.*

(iii) *The only reason because of which government can withhold and appropriate terminal benefits etc if there is a rule of the organization or a statutory rule which entitles the government during the pendency of proceedings not to pay the terminal benefits etc to the employee.*

4. *It is the common case of the parties that the respondent no.1/employer is governed by CCS (Pension) Rules. As per Rule 9 of the said CCS (Pension) Rules, and which is similar to Rule 43 (b) of the Bihar Pension Rules which the Supreme Court has dealt with in the case of Jitendra Kumar Srivastava (supra), the employer cannot withhold or appropriate terminal benefits etc. unless a final order is passed in the departmental proceedings or by the court before whom the complaint is pending.*

5. *Since in the present case the departmental proceedings are not concluded and no final Court order has been passed, the ratio of Jitendra Kumar Srivastava (supra) will be squarely applicable.*

6. *In view of the above, the writ petition is allowed and the respondent is directed to pay terminal benefits, leave encashment*

amount and other amounts which would have become payable to the petitioner on his retirement."

4. A decision rendered by the Principal Bench in O.A. 264/09, on 24.11.09, in a case where the respondents had argued that keeping in view of the provision of Section 69 of the CCS (Pension) Rules the retirement benefits such as Gratuity, Commutation of Pension/ regular pension shall be released on conclusion of judicial proceedings pending before the Hon'ble Metropolitan Magistrate and receipt of vigilance clearance from the Competent Authority and the learned counsel for the Applicant raised the contention that under Rule 69 of the CCS (Pension) Rules, 1972, read with Rule 9 ibid, the pension related dues of the Applicant could be withheld only if the judicial proceedings related to matters in the discharge of his official duties.

The Bench held as under:-

(i) Action cannot be taken against the Applicant under Rule 9 of the CCS (Pension) Rules in view of the ratio laid down by the Honourable Supreme Court that the misconduct has to be in the discharge of public duty in office. In this matter, the criminal case against the Applicant has not been filed in the discharge of his duty in the office.

(ii) In view of decision 23 under Rule 3 of the CCS (Conduct) Rules, 1964, conviction by a criminal Court would amount to misconduct. If the Applicant is convicted in the criminal case, which is pending against him, it would amount to misconduct.

(iii) The Applicant would be covered under Rule 8 of CCS (Pension) Rules, which has been quoted in full in the preceding paragraph. Under this rule, the appointing authority has been given the authority to withhold or withdraw pension or a part thereof, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct. Sub-rule (2) of Rule 8 further elucidates that action will be taken against the pensioner in the light of the judgment of the Court relating to such conviction.

(iv) Gratuity cannot be withheld under Rule 8 of CCS (Pension) Rules, 1972 unlike the provision in Rule 9 ibid. Otherwise also as per the provision in Section 4 of the Payment of Gratuity Act, 1972, gratuity cannot be withheld.

It is clear, therefore, that pension can be withheld or withdrawn only after conviction in a serious crime and that too on the basis of the judgment of the Court relating to such conviction.

9. In the case of the Applicant, there is a criminal case pending against him in the Court of Law. However, so far there has been no decision in the case pending against the Applicant. In the light of the above, it would be amply clear that only on the basis of the case pending against the Applicant, pension cannot be withheld under Rule 8 of CCS (Pension) Rules, 1972. It has to abide by the final decision in the criminal case against the Applicant. Gratuity cannot, in any case, be withheld or withdrawn under the provisions of Rule 8 ibid.

10. In the light of the analysis as above, the OA succeeds. The Respondents are directed to release the regular pension, commuted amount of pension and gratuity to the Applicant with 8 per cent simple interest per annum from the date the payment was due, within eight weeks from the receipt of a copy of this order. The Respondents, however, would be free to take action against the Applicant subject to the provisions of Rule 8 of CCS (Pension) Rules, 1972, as discussed above. No costs.

5. GO(Ms) No. 124 of Personnel and Administrative Reforms (Per.N) Department in regard to "Involvement of Public Servants in criminal misconduct-Initiation of departmental and criminal action simultaneously" – Clarification specifying and clarifying the position as under:

> *"2. The Government have examined the above matter and have decided that the following procedure shall be adopted in such cases:*
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> *(i) <u>When a criminal case is solely on a criminal offence committed by the Government servant which is in no way connected with the discharge of his official duties there is no need to pursue departmental action except placing the Government servant under suspensions</u> as contemplated under Tamil Nadu Civil Services (Classification, Control and Appeal) Rules. The ultimate departmental action can be initiated against the delinquent officer after the result of the criminal case pending against him is disposed of by the Court of Law.*
>
> *(ii) <u>When both departmental as well as criminal action is initiated for the</u> offences of the kind referred to in para 1 above in regard to departmental action, charges may be framed against him for the lapses committed by him and final orders may be passed after obtaining the required registers/records/documents from the court irrespective of the fact whether he is acquitted or not. <u>Thus the departmental action will be confined to the irregularities or lapses committed by the accused officer with reference to the administrative aspect."</u>*

6. Sub-section 1 of Section 4 of the Payment of Gratuity Act, 1972 would read thus:

> *"4. Payment of gratuity (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years on his superannuation, or on his retirement or resignation, or on his death or disablement due to accident or disease. The Sub-Section 6 is the non obstante section:*
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> *(6) Notwithstanding anything contained in sub-section (1), - the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so cause;*
>
> *The gratuity payable to an employee [may be wholly or partially forfeited].*

7. What transpired from the enumerations hereinabove is that inarguably and indubitably the retiral dues of pensioner could not be forfeited without a conviction in a criminal case or a final order in a departmental proceeding and no such benefits could be withheld unless the proceedings come "within the ambit of grave misconduct in discharge of public duty in office".

8. As already indicated earlier, it could be noted that in the present case the applicant is not yet convicted by any Criminal Court. His loans were purely personal in nature which would not bind the employer. Nothing would be recoverable from him by the Employer upon conclusion of the Criminal proceedings.

9. Therefore applying the ratio of the decisions supra which could squarely apply to the case in hand, the O.A. is allowed and the respondents are

directed to release the withheld dues with interest @6% per annum within 1 month.

10. No costs.

(Bidisha Banerjee)
Member (J)

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