



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.O.A.1132 of 2013

Date of order : 18th August, 2016

Present : Hon'ble Mrs. Urmita Datta Sen, Judicial Member

Samiran Ghosh, S/o Late
D.N. Ghosh, aged about 63 years,
retired Sr. Section Engineer, Eastern
Railway, Asansol under Sr. DEN(Cord)/
E. Rly/Asansol, now residing at Nibedita
Sarani By Lane, Fatak Gorah, Kaibari,
P.O./P.S. Chandan nagar,
Dist. Hoogly, PIN - 712136.

.....Applicant

- VERSUS -

1. Union of India, through General Manager,
Eastern Railway, Fairlie Place, Kolkata-1;
2. Divl. Railway Manager,
Eastern Railway, Asansol-713301;
3. Sr. Divl. Personnel Officer
Eastern Railway, Asansol - 713301;
4. Sr. Divisional Finance Manager,
Eastern Railway, Asansol-713301
5. Sr. DEN(Cord),
Eastern Railway, Asansol -713301
6. Assistant Personnel Officer(III)
Eastern Railway, Asansol-713301

.....Respondents

For the applicant : Mr. C. Sinha, counsel
For the respondents : Mr. A.K. Banerjee, counsel

ORDER

The instant application has been filed praying for the following
reliefs:-

b) To set aside and quash the Impugned Order No.E/Pen/604/SG/Engg dated 01.08.2013 issued by Assistant Personnel Officer(III), Eastern Railway, Asansol;

c) Any other orders as the Hon'ble Tribunal deems fit and proper."

2(a) According to the applicant, he retired from service on 30.11.2009 on superannuation as Senior Section Engineer and Sr. DEN(Cord.), Eastern Railway, Asansol. However, on retirement, though he was paid other ^{but} benefits, DCRG and Leave Encashment were withheld by the respondents. As the same were not paid, the applicant submitted a representation to the authority concerned on 19.05.2010. Thereafter he received a letter dated 01.03.2011 from the Sr. Divisional Personnel Officer, Eastern Railway, wherein it has been mentioned that a claim of an amount of Rs.60,79,400/- is pending against him and since the total settlement dues to which the applicant was entitled was Rs.8,89,442, an outstanding amount of Rs.51,89,558/- is still pending against him therefore the applicant was directed to deposit the said amount within ten days of receipt of the letter otherwise the same would be recovered from the graded relief of pension. Further, vide letter dated 31.03.2011 the Sr. DFM, Eastern Railway instructed the Manager, Bank of Baroda to recover Rs.51,89,558/- from the graded relief of the applicant.

(b) Being aggrieved the applicant had filed one O.A.No.426 of 2011, which was disposed of on 18.06.2012 with a direction to release the left over retirement dues within a period of three months with certain other observations(Annexure A-2). Against the said order, the respondents preferred a Writ Petition bearing No.W.P.C.T. 352/2012 before the Hon'ble High Court at Calcutta, which was dismissed vide order dated 12.12.2012(Annexure A-3). Thereafter the applicant received a cheque

dated 07.05.2013(Annexure A-4) for an amount of Rs.8,82,463/- . In pursuance to that the CPC No.7 of 2003 arising out of O.A.426/2011 was disposed of vide order dated 21.05.2013(Annexure A-5).

(c) As per the applicant, he retired from service with effect from 30.11.2009 and no disciplinary proceeding or criminal case was pending against him at that time. He further stated that he was not on unauthorized occupation of any railway quarter, therefore, the respondents could not withheld his DCRG and Leave Encashment as observed by this Tribunal in O.A.426/2011 and since he was paid his retiral dues much after the date of his due entitlement, he is entitled to interest on the amount of DCRG and Leave Encashment for the period from 01.12.2009 to 06.05.2013 as per Rule 87 of Railway Service(Pension) Rules, 1993.

(d) As no interest was paid to the applicant, he submitted representation to the authority concerned on 20.05.2013/17.06.2013(Annexure A-6). Unfortunately, his representation was rejected vide order dated 01.08.2013 in a cryptic manner only stating that all his dues had already been paid as per directives of Hon'ble court. Being aggrieved with such rejection, the applicant has filed the present O.A.

3(a) The respondents have filed a written statement, wherein they have stated that the applicant retired on 30.11.2009 and came on transfer from Danapur Division to Asansol Division on 19.01.2005. However, Sr. Divisional Engineer(Coordination), East Central Railway, Danapur Division vide his letter dated 28.07.2009(Annexure R-1) and 21.10.2009 (Annexure R-2) had requested the Sr. Divisional Engineer(Coordination), Eastern Railway, Asansol to hold up the settlement dues of the applicant till finalization of the case. Further, vide letter dated 16.12.2010(Annexure R-

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3) the Sr. Divisional Engineer(Coordination) , East Central Railway Danapur had intimated that the applicant was held responsible for shortage of stock sheet amounting to Rs.60,72,021(approximately). Again vide order dated 11.01.2011(Annexure R-4) the Sr. Divisional Personnel Officer, Eastern Railway, Asansol was directed to realise Rs.5,600/- being the cost of the deficient store, from the applicant.

(b) Therefore, the outstanding claim against the applicant was as under:-

1. Elec. Charge	- Rs.1779.00
2. Deficient store (Sr. DEN(Co-Ord)/ ASN's Letter No.O/AC/SV/9/Misc. Dated 11.01.2011	- Rs.5600.00
3. Shortage in Stock Sheet(Sr. DEN/ ECR/DNR vide Letter W/4/SS/PWI- KEU, dated 16.12.2010.	- Rs.60,72,021.00
Total	: Rs.60,79,400.00"

(c) As such, after adjusting the DCRG and Leave Salary the outstanding amount was Rs. 51,89,558 /-. Ultimately the DCRG and Leave Salary of Rs.8,82,463/- were paid to the applicant as per the order of the Tribunal dated 18.06.2012 in O.A.426/2011, which was subsequently affirmed by the Hon'ble High Court. However, as per the respondents, the payment of interest as per Rule 87(1) of the Railway Services(Pension) Rules, 1993 does not arise as the delay in payment of DCRG and Leave Salary is not attributable to the Railway. Therefore, they have prayed for dismissal of the O.A.

4. I have heard the Id. counsel for the parties and perused the records.

5. As per the applicant, since this Tribunal on earlier occasion had made it clear that he was entitled to retiral benefits from his due date of superannuation and the recovery order was quashed by this Tribunal, therefore, he is entitled to interest for delayed payment.

6. As per the respondents, they were not responsible for the delay in payment, therefore, no interest should be paid to the applicant.

7. It is observed that the issue of withholding of DCRG and Leave Salary on the ground of shortage in stock and subsequent recovery order were under consideration before this Tribunal and this Tribunal on earlier occasion in O.A.426/2011 dealt with the matter and the said O.A. was disposed of on 18.06.2012. The relevant portion of the order dated 18.06.2012 in O.A.No.426 of 2011 is extracted herein below:-

"12. We have gone through the contents of the documents which have been sent by one Shri R.K. Sinha, Sr. Divisional Engineer (Coordination), East Central Railway, Danapur. Nowhere does the document indicate that the applicant is guilty for the shortage. All the documents convey is that reply/recovery should be obtained from persons concerned regarding shortage of items. There is no explicit finding that the applicant is guilty of the shortage.

13. Such remarks occur in respect of item No.213, 214,215,217,228,146 etc. The report is signed by the DFM at Danapur. We find that the least that could have been done by the respondent authorities, namely, enquiry by a special audit team so as to locate the person or persons concerned for the deficit in stock amounting to more than 60 lakhs has not been carried out. No correspondence appears to have been made with the Principal Auditor of the Railways concerned by the Danapur Division/Eastern Railway in this regard.

14. We are concerned that a large stock amounting to more than Rs.60 lakhs has still not been accounted for. No inquiry has been conducted to fix responsibility on a person or persons. The applicant came from Danapur Division in 2005 and retired in 2009. During this gap period of four years no charge sheet has been filed against him or no FIR has been lodged. In the absence of a charge sheet it is not permissible as per Railway Service(Pension) Rules to hold back the retiral dues of the applicant. Disciplinary proceeding should have been done as per rules and this should have been done as per Disciplinary Rules before the applicant retired. In the absence of

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such proceeding recovery of amount is not tenable. We, therefore, direct that the retiral dues of the applicant should be released by the Railway respondents within a period of three month from the date of issue of this order.

15. In parting we are constrained to observe that despite several directions given to the Railway Board by this Tribunal regarding setting up of an appropriate machinery in respect of shortage of materials, nothing has been done. As a result, the public exchequer continues to suffer loss. This is deplorable. It is time that the authorities responsible for audit of the Railways should look into this matter seriously. Registry is directed to send a copy of our orders in this case to both the Member (Finance), Railway Board as well as the Principal Director of Audit for taking action. OA is allowed. No costs."

8. The respondents approached the Hon'ble High Court at Calcutta against the above order of this Tribunal and the Hon'ble High Court, Calcutta in W.P.C.T.No.352 of 2012 passed an order on 12.12.2012, relevant portion of which runs as follows:-

"Mr. Banerjee, appearing for the petitioners, has submitted that the Danapur Division was not made a party to the proceeding when certain irregularities had occurred when the respondent was working in that Division. This submission is untenable. The Danapur Division fell under the Eastern Railway, which was a party to the Original Application, at the time when the alleged irregularities had occurred. We are, therefore, not impressed with this submission of the learned Counsel appearing for the petitioner. In any event, the respondent retired from the Asansol Division which fell within the Eastern Railway. His claim was for release of his retiral benefits after working in Asansol. Therefore, it was incumbent on the Eastern Railway to collect whatever material they wished to for substantiating their stand of withholding the retiral dues of the respondent."

9. From the perusal of the above two orders, it is clear that the issue of entitlement of DCRG was considered by the Tribunal and the Hon'ble High Court, Calcutta and orders were passed in favour of the applicant. In pursuance to that the respondents made payment of his DCRG and Leave Encashment by cheque dated 07.05.2013 without preferring any further appeal to the Apex Court. Therefore, at present, this Tribunal cannot reconsider the same issue of entitlement of DCRG and Leave Encashment.

10. It is further observed that even after strong observation and direction made by this Tribunal on earlier occasion, the respondents seem to have not taken any step to identify the wrong doer, rather they have paid the withheld DCRG and Leave Encashment vide Cheque dated 07.05.2013 to the applicant. Therefore, the applicant was entitled to receive retiral benefit from his due date. As he was paid long time after his retirement, he is entitled to get interest for delayed payment. Accordingly the respondents are directed to pay interest @ 8% per annum for delayed payment of DCRG and Leave Encashment for the period of 01.12.2009 to 06.05.2013 ^{should} and such payment ~~may~~ be made within six weeks from the date of communication of this order.

11. The O.A. is accordingly disposed of. No order as to cost.

(URMITA DATTA SEN)
Judicial Member

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