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CALCUTTA BENCH  
KOLKATA

OA. 350/00216/2014

Date of Order: 13.5.16.

Present

:Hon'ble Ms. Bidisha Banerjee, Judicial Member

Swapan Ghorai, S/o. late Jatindranath Ghorai,  
Ex-Trackman under SSE/P.Way/BT PPO No.  
40425, presently residing at Saptagram School  
Road, P.O. Bishanpara, P.S. Nimta, Kolkata-  
700 158, Dist- 24- Pgs(N), W.B.

.....Applicant.

-versus-

1. Union of India, service through the General Manager, Eastern Railway, Fairlie Place, Kolkata- 700001.
2. The D.R.M., Eastern Railway, Sealdah, Pin- 700014.
3. The S.R. D.E.N/Eastern Railway, Sealdah, Pin- 700014.
4. The Sr. D.P.O.E/R/Sealdah, Pin- 700014.
5. The Sr. Division, Finance Manager, Eastern Railway, Sealdah, Pin- 700014.
6. Sr. Section Engineer, Eastern Railway, Barasat, 24 Parganas (N), Pin- 700124.

.....Respondents.

For the Applicant

: Mr. S. Chakraborty, Counsel  
Mr. N. Roy, Counsel

For the Respondents

: Mr. AK Guha, Counsel

ORDERPer Ms. Bidisha Banerjee, JM:-

This matter is taken up in Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.

2. Heard both.

3. The issue that has cropped up is whether the pendency of criminal case would result in temporary withholding of DCRG , Leave Salary when such criminal case have no bearing with the discharge of the official duties of the employee or his service rather it related to an allegation under Section 498A of the I.P.C with 306 of I.P.C.

4. The applicant retired on superannuation on 30.06.2013.

5. The learned counsel for respondents submitted that the applicant was on suspension from 05.08.2005 till 25.09.2005 because of his detention in police custody under 306 of I.P.C. in connection case No. 147/2005, G.R. No. 379/2005 for a period exceeding 48 hours.

6. Learned counsel for applicant submitted that he was not paid even a single farthing towards subsistence allowance during the suspension period. The respondents contended that in terms of Discipline and Appeal rule 1968, no subsistence allowance would be payable unless the Govt. servant furnished a certificate and the competent authority specified that he was not engaged in any other employment, business, provocation or vocation.

7. In my considered opinion such contention was ridiculous in as much as, even going by the wildest of thoughts it could not be comprehended how the applicant while in judicial custody would be employed in any organization. Therefore, he would legally be entitled to his dues for the suspension period.

8. Reference was made to a decision rendered by Hon'ble Apex Court in Civil Appeal No. 6770 of 2013 in **State of Jharkhand & Ors. vs. Jitendra Kumar Srivastava, & Anr.** where the Hon'ble Court formulated as follows :

*"Crisp and short question which arises for consideration in these cases is as to whether, in the absence of any provision in the Pension Rules, the State Government can withhold a part of pension and/or gratuity during the pendency of department/criminal proceedings? The High Court has – answered this question, vide the impugned judgment, in the negative and hence directed the appellant to release the withheld dues to the respondent. Not happy with this outcome, the State of Jharkhand has preferred this appeal."*

The Hon'ble Court found that *"there is no provision in the rules for withholding of the pension/gratuity when such departmental proceedings or judicial proceedings are still pending"*.

Referring to the judgment in **Deokinandan Prasad vs. State of Bihar; (1971) 2 SCC 330** and **State of West Bengal vs. Haresh C. Banerjee and Ors. (2006) 7 SCC 651** as also Article 300A of the Constitution of India the Hon'ble Court held :

*"Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300 A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced."*

9. In the present case it could be noted that the Rule 10 of Pension Rules unambiguously and explicitly spell out provisions for withholding gratuity. It reads

*"(c) No gratuity shall be paid to the railway servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon; provided that where departmental proceedings have been instituted under the provisions of the Railway Servants Discipline and Appeal Rules, 1968, for imposing any of the penalties specified in clauses (i), (ii), (iii) and (iv) of rule 6 of the said rules, the payment of gratuity shall be authorized to be paid to the railway servant."*

Therefore the aforesaid judgment would have no manner of application to the factual matrix of the present case. However, the applicant has not yet been convicted of the offence and moreover, the offence is not connected with the discharge of his official duties. Going by the true import of the decision of the supra it would be highly improper to withhold the terminal benefits without any conviction in criminal case.

- 10. Rule 9 of Pension Rules is very clearly enjoins the following :

*"The President reserves to himself the right of withholding 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."*

Therefore even the right of President to withhold pension or gratuity as penalty either "temporary" or "permanently" is hedged by a condition that the pensioner should be found guilty of a "grave misconduct" or "negligence during the period of service" and not otherwise. Therefore, where a criminal case not even remotely connected with discharge of his official duties is pending whether withholding of pension or gratuity would be permissible, is to be seen.

Let us examine whether pendency of Criminal Case amounts to a misconduct.

- (i) Black's Law Dictionary defines the word "misconduct" as under:

*"Misconduct: A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character improper or wrong behavior; its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness. Term "misconduct" when applied to act of attorney, implies dishonest act or attempt to persuade court or jury by use of deceptive or reprehensible methods. People v. Sigal, 249 C.A. ed 299, 57 Cal. Rptr. 541, 549. Misconduct, which renders discharged employee ineligible for unemployment compensation, occurs when conduct of employee evinces willful or wanton disregard of employer's interest, as in deliberate violations, or disregard of standards of behavior which employer has right to expect of his employees, or in carelessness or negligence of such degree or recurrence as to manifest wrongful intent or evil design. Wilson v. Brown, La. App., 147 So. 2d 27, 29. See also Wanton misconduct."*

- (ii) Hon'ble Apex Court in **State of Punjab vs. Ram Singh, Ex-Constable** [(1992) 4 SCC 54]

*".....traced the definition of the term "misconduct" in various dictionaries and came to the following conclusion:*

*"Thus it could be seen that the word "misconduct" though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, willful in character, forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve."*

- (iii) In terms of CCS (Conduct) Rules the following acts and omission amount to misconduct:

- (1) Wilful insubordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior.
- (2) Infidelity, unfaithfulness, dishonesty, untrustworthiness, theft and fraud, or dishonesty in connection with the employer's business or property;
- (3) Strike, picking, gherao- Striking work or inciting others to strike work in contravention of the provisions of any law, or rule having the force of law.
- (4) Gross moral misconduct- Acts subversive of discipline- Riotous or disorderly behaviour during working hours at the establishment or any at subversive of discipline.

- (5) *Riotous and disorderly behaviour during and after the factory hours or in business premises.*
- (6) *Habitual late attendance.*
- (7) *Negligence or neglect of work or duty amounting to misconduct- Habitual negligence or neglect of work.*
- (8) *Habitual absence without permission and over-staying leave.*
- (9) *Conviction by a Criminal Court.*

The aforesaid enumeration exemplify that :

Simply figuring in a criminal case, without there being a "conviction by a criminal Court" cannot be termed even as a "misconduct" not to speak of a "grave misconduct".

The right of the President in terms of Rule 9 of Pension Rules evidently is available only on a finding of a "grave misconduct" or "negligence" and the terms essentially belong to the domain of service rendered by the employee while discharge of his official duties, as conduct Rules supra would enumerate and not otherwise.

Further, upon his "conviction" the employee would be expressly and without any iota of doubt governed by Rule 8 of CCS (Pension), Rules which reads as under:

*"(2) where a pensioner is convicted of a serious crime by a Court of Law, action under sub-rule (1) shall be taken in the light of the judgment of the Court relating to such conviction."*

Therefore, in absence of "conviction" under no circumstances, pendency of Criminal case not connected with discharge official duties could entail temporary withholding of gratuity under Pension Rules.

11. The legal proposition in regard to legality of withholding of retiral dues due to pendency of proceedings could be noticed in the following decisions and orders:

- (i) The Hon'ble Apex Court in ***D.S. Nakara & Others vs. Union of India*** (supra) made the following observations on the 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*

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*Government servant coming within those rules is entitled to claim pension".*

In the said decision, the scope of Rules 8(5)9 of CCS (Pension) Rules was inquired into by the Hon'ble Apex Court. The petitioner D.V. Kapoor was Assistant grade IV of the Indian Foreign Service in Indian High Commission in London. On the expiry of his tenure in London, he could not return to India immediately due to the illness of his wife. Disciplinary proceedings were initiated against D.V. Kapoor for unauthorized absence. The inquiry officer held that D.V. Kapoor's absence was not willful. During the course of the inquiry, the Charged officer had retired from service. The President, in consultation with the Union Public Service Commission, decided to withhold the entire pension and gratuity permanently. The Hon'ble Apex Supreme Court observed as under:-

Rule 8(5), explanation (b) defines 'grave misconduct' thus:-

*"The expression 'grave misconduct' includes the communication or disclosure of any secret official code or password or any sketch, plan, model, article, note, document or information, such as is mentioned in Section 5 of the Official Secrets Act, 1923 (19 of 1923) (which was obtained while holding office under the Government) so as to prejudicially affect the interests of the general public or the security of the State."*

In one of the decisions of the Government as compiled by Swamy's Pension Compilation, 1987 Edition, it is stated that:-

*"Pensions are not in the nature of reward but there is a binding obligation on Government which can be claimed as a right. Their forfeiture is only on resignation, removal or dismissal from service. After a pension is sanctioned its continuance depends on future good conduct, but it cannot be stopped or reduced for other reasons."*

5. It is seen that the President has reserved to himself the right to withhold pension in whole or in part thereof whether "permanently or for a specified period or he can recover from pension of the whole" or part of any pecuniary loss caused by the Government employee to the Government subject to the minimum. The condition precedent is that in any departmental enquiry or the judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service of the original or on re-employment. The condition precedent thereto is that there should be a finding that the delinquent is guilty of grave misconduct or negligence in the discharge of public duty in office, as defined in Rule 8(5), explanation (b) which is an inclusive definition, i.e. the scope is wide of mark dependent on the facts or circumstances in a given case. Myriad situation may arise depending on the ingenuity with which misconduct or irregularity was committed.

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6. As seen the exercise of 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.

7. Rule 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 impugned order discloses that the President withheld on permanent basis the payment of gratuity in addition to pension. The right to gratuity is also a statutory right. The appellant was not charged with nor was given an opportunity that his gratuity would be withheld as a measure of punishment. No provision of law has been brought to our notice under which, the President is empowered to withhold gratuity as well, after his retirement as a measure of punishment. Therefore, the order to withhold the gratuity as a measure of penalty is obviously illegal and is devoid of jurisdiction.

8. In view of the above facts and law that there is no finding that appellant did commit grave misconduct as charged for, the exercise of the power is clearly illegal and in excess of jurisdiction as the condition precedent, grave misconduct was not proved. Accordingly the appeal is allowed and the impugned order dated November 24, 1981 is quashed but in the circumstances parties are directed to bear their own costs. The ratio in the judgement is that grave misconduct should be in the discharge of public duty in office. The criminal case against the Applicant herein would not come within the ambit of grave misconduct in the discharge of public duty in office. (emphasis supplied)

(ii) In 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**, it could be noticed that in regard to withholding of terminal benefits, 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."

(iii) Sub-section 1 of Section 4 of the Payment of Gratuity Act, 1972 would explicitly provide as under:

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:

(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 caused;

The gratuity payable to an employee [may be wholly or partially forfeited].

Rule 69 CCS (Pension) Rules read as under:

1(a) In respect of a Government servant referred to in sub-rule (4) of Rule 9, the Accounts Officer shall authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant, or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorized by the Accounts Officer during the period commencing from the date of retirement up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the Competent Authority.

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon;

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*Provided that where departmental proceedings have been instituted under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, for imposing any of the penalties specified in Clauses (i), (ii) and (iv) of Rule 11 of the said rules, the payment of gratuity shall be authorized to be paid to the Government servant.*

*(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period."*

(iv) In 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 would be released only on conclusion of judicial proceedings pending before the Hon'ble Metropolitan Magistrate and only upon receipt of vigilance clearance from the Competent Authority, while the learned counsel for the Applicant contended 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 Hon'ble 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.*

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- (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 judgement 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.

- (v) 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" - clarifies 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.

(i) When a criminal case is filed 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 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) When both departmental as well as criminal action is initiated for the 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. Thus the departmental action will be confined to the irregularities or lapses committed by the accused officer with reference to the administrative aspect."

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The provisions make it imperative for the respondents to release the benefits even during pendency of criminal proceedings when such proceedings are not connected with the service of the pensioner.

12. The provision of Railway Services (Pension) Rules invoking which the benefits have been withheld are extracted hereinbelow for clarity:

*"10. Provisional Pension where departmental or judicial proceedings may be pending. (1) (a) In respect of a railway servant referred to in sub-rule (3) of Rule 9, the Accounts Officer shall authorize the provisional pension not exceeding the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the railway servant or if he was under suspension on the date of retirement, upto the date immediately preceding the date on which he was placed under suspension.*

*(b) The provisional pension shall be authorized by the Accounts Officer during the period commencing from the date of retirement upto and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.*

*(c) No gratuity shall be paid to the railway servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon; provided that where departmental proceedings have been instituted under the provisions of the Railway Servants Discipline and Appeal Rules, 1968, for imposing any of the penalties specified in clauses (i), (ii), (iii) and (iv) of rule 6 of the said rules, the payment of gratuity shall be authorized to be paid to the railway servant."*

A bare perusal of the provisions under Rule 10(c) supra would exemplify and demonstrate that pensioner's gratuity is not required to be withheld (even temporarily) during pendency of minor penalty proceedings although such proceedings essentially relate to discharge of his official duties. Therefore, under no logic gratuity should be withheld due to pendency of some judicial proceedings not instituted by the employer and not even remotely connected with discharge of his official duties.

13. Provisions of Rule 10(c) should not be read in isolation, rather it should be read with Rule 9 of Pension Rules which allows withholding of retiral benefits only on the following events:

(i) Under Rule 9(1) "if in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence during the period of his service"

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- (ii) Proceedings are "instituted" or where departmental proceedings are being continued under Rule 9(2) or
- (iii) In terms of Rule 9(4) where proceedings are "instituted" or departmental proceedings are continued under Rule 9(2), which essentially relating to discharge of his duties and not otherwise.

Rule 9(3) referred to in Rule 10 (supra) reads as under:

*"(3) In the case of a railway servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in rule 96 shall be sanctioned." 2*

The para 9(3) supra, without any ambiguity refers or applies to two classes of retired railway servants: (i) who have retired during pendency of departmental proceedings and where such proceedings are continued under Rule 9(2) and (ii) who have retired and against whom departmental proceedings or judicial proceedings "are" instituted. In as much as Sub-rule (2) of Rule 9 refers only to continuation of pending "departmental proceedings" and not to any pending judicial proceedings, invoking Rule 10(2) *ibid* in a case where no departmental proceedings are pending but judicial proceedings have been instituted that too not by the employer and not even remotely connected with discharge of official duties, which would never lead to initiation of proceedings under D&A Rules could never be visualized, comprehended or countenanced.

14. In view of the foregoing discussions and enumerations, in absence of any conviction in Criminal Court but merely because of pendency of a criminal case against the applicant which is in no way connected with his service and on conclusion whereof nothing would be recoverable by the Govt. from the pensioner, there would seem to be no impediment in allowing gratuity and other held up dues of the applicant.

15. In the aforesaid backdrop the OA is allowed and the respondents are directed to release the withheld dues within 2 months with an interest @ 8% p.a. No costs.

(Bidisha Banerjee)  
Member (J)