

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

O.A. 050/00095/2016

**Reserved on- 09.02.2018.
Date of pronouncement 23.02.2018**

**CORAM
Hon'ble Shri J.V. Bhairavia, Member [J]**

1. Krishna Yadav, son of Late Rameshwar Yadav, resident of village-Basta Tola, Bhola Bigha, P.O.- Panday Pastama, P.S.-Magadh Medical College, District-Gaya.

.....Applicant

By Advocate : Shri S.K. Bariar

Versus

1. The Union of India through the General Manager, East Central Railway, Hazipur.
2. The Divisional Railway Manager, East Central Railway, Mugalsarai Division, Mugalsarai.
3. The Additional Divisional Railway Manager, East Central Railway, Mugalsarai Division, Mugalsarai.
4. The Senior Divisional Personnel Officer, East Central Railway, Mugalsarai Division, Mugalsarai.
5. The PWI, Sandip Induwar, East Central Railway, Mugalsarai Division, Gaya.

.....Respondents

By Advocate: Shri Priyank Samdarshi

ORDER

Jayesh V. Bhairavia, M [J]: The applicant in this O.A is aggrieved by the delayed payment of his pension and other retiral dues as such, he prays for the following reliefs. :-

[8.A] The applicant prays that 12% interest annually between period of 01.03.2013 to 15.09.2015 i.e two years six months against Gratuity/DCRG, Insurance money, Leave Encashment Money and Commuted value of Rs.287549, Rs.18292 and Rs.258674 respectively.

[8.B] The applicant further prays grant 12% interest annually against the arrears of Pension i.e Rs. 3,28205/-.

[8.C] Any relief/reliefs may be granted to the applicants for ends of the justice."

2. The brief facts of the case as submitted by the applicant, are as below :-

- (i) The applicant submitted that the applicant was appointed as a "Gangman" in the office of Railway at Gaya on 16.06.1981 and retired from service as "Trackman" under Mughalsarai Division, East Central Railway, Gaya on 15.03.2013, obtaining voluntary retirement.
- (ii) It is submitted that one Mr. Ram Briksh Yadav had lodged a complaint before the Railway Vigilance Organisation that the applicant was not the son of late Rameshwar Yadav and he had fraudulently obtained the appointment on compassionate ground. The said complainant had filed O.A bearing No. 274/2010 before this Tribunal which was disposed of vide order dated 14.07.2011 (Annexure A/2 refers) as withdrawn with liberty to file afresh O.A by making the concerned authority as respondent.
- (iii) It is further contended that another O.A bearing no. OA 698/2011 was filed before this Tribunal by Mr. Ram Briksh Yadav seeking relief for a direction to the respondent authorities to remove the applicant herein from service and to provide job to him on ground of being the real son of the deceased employee late Rameshwar Yadav. Considering the response of respondents that some vigilance inquiry with regard to the allegation is pending against the applicant, the said O.A was rejected vide order dated 25.02.2013 (Annexure A/3 refers) with a direction to the respondents to decide the matter as expeditiously as possible within a period of six month.
- (iv) It is further contended by the applicant that the applicant was allowed to be superannuated on voluntary basis on 15.03.2013 under the LARGEES scheme. However, the respondents had not released his retiral benefits, including pension, therefore the applicant submitted a representation to the department.
- (v) The respondents, vide letter dated 15.12.2014, informed the applicant that the final settlement of retirement dues are

withheld due to pendency of a case in C.A.T., Patna Bench, Patna. The applicant again submitted a representation and informed the respondents that there is no case pending in CAT and therefore requested to release the retiral dues. The same was not considered; therefore, the applicant herein had filed O.A 135/2015 before this Tribunal and sought relief for a direction to the respondent authority to grant pension and to release the retirement benefits.

In the said O.A. no. 135/2015, the respondents took stand that the pension and retirement benefits were withheld due to pendency of vigilance inquiry against the applicant.

This Tribunal, vide order dated 11.09.2015 (Annexure A/4 refers), allowed the said O.A with observations that the payment of pension and retiral dues cannot be stopped merely because there is a vigilance inquiry and directed the respondents to release the admissible pension and retirement dues of the applicant forthwith preferably within a period of three months failing which the concerned authority will be liable to pay interest @ 8% per annum from the date of this order.

- (vi) The respondent authorities had made payment to the applicant on commuted value vide order dated 15.09.2015, w.e.f. 16.03.2013 vide PPO No. 10060915004 dated 22.09.2015.

which are as under :-

Sl.N o.	Item	Amount Rs	C07No.	Date
I	DCRG After necessary deduction	328499	17000541	08.09.2015
II	Leave Encashment	189653	17000541	08.09.2015
III	G.I.S	18292	17000541	08.09.2015
IV	Commuted of Pension (Basic pension after commutation has been fixed on 3726/- +	258674	17000541	08.09.2015
V	Applicable w.e.f. 16.3.2013			

The applicant had submitted a representation to the respondent authorities and stated therein that without any

cogent reason the payment of pension as well as other retiral benefits were withheld and therefore he is entitled for 12% interest on delayed payment and requested to pay the said amount. However the said representation was not considered and therefore the applicant has preferred this instant O.A with a prayer as stated in para 8 of this OA.

- (vii) The learned counsel for applicant submitted that it is settled law that the pension and other retiral benefits cannot be withheld without any cogent reason and the inquiry was held prior to two years of retirement of applicant i.e in the year 2011 and in the said inquiry it was found that the complaint against the applicant was frivolous. Therefore, withholding the pension and other retiral benefits are arbitrary, hence the applicant is entitle for the interest for the delay payment of his pension and retiral dues.

3. The respondents have filed their written statement and stated as below :-

- (i) The l/c for respondents submitted that the applicant was appointed on 16.06.1981 on compassionate ground and his request to take voluntary retirement under LARSGESS Scheme with effect from 15.03.2013 was allowed and accordingly the applicant retired on 15.03.2013 but the pension/ pensionery benefits of the applicant was withheld due to pendency of a vigilance case against him. It is further contended that in compliance of order dated 25.02.2013 passed by this Tribunal in O.A 698/2011, a letter was issued to the Dy Chief Vigilance Officer (A), East Central Railway, Hazipur including a phot copy of order passed by this Tribunal and requested to conclude the pending inquiry within stipulated period, the said communication letter dated 04.07.2013 and reminder dated 30.07.2015 are elided upon by the respondents. (Annexure R/1 refers). It is further contended that the respondents had also informed to the

vigilance office that the present applicant was voluntarily retired on 15.03.2015 and has filed an O.A 135/2015 for payment of retiral dues which was withheld due to pendency of a vigilance case therefore it was requested to expedite the inquiry pending against Mr. Krishna Yadav and outcome of inquiry may kindly be intimated so that proper reply may be filed in the O.A 135/2015 (Annexure R/1 & R/2 refer).

It is contended that in response to the letter of respondent, the office of the General Manager (Vigilance), East Central Railway, Hazipur vide their communication letter no. ECR/Vig/V2/Misc/2013, dated 11.08.2015 (Annexure R/3) informed the office of respondents that on 04.05.2010 complaint against applicant had been ordered to "closed" with observation "no action". After receipt of letter dated 11.8.2015 of vigilance department the respondents had released the pension and other retiral benefits and paid to the applicant on 22.09.2015 before the copy of order dated 11.09.2015 passed in OA 135/2015.

- (ii) It is further contended by the respondents that the respondents have already paid all the retiral dues before receipt of order of this Tribunal passed in O.A 135/2015 dated 11.09.2015 and since this Tribunal had not directed to pay interest in the said order, therefore, payment of interest on retiral dues and arrear of pension does not arise.

4. The learned counsel for applicant, on receipt of written statement and the documents annexed to it further responded that the respondents had suppressed material facts through-out in the case of applicant and misleading the this Tribunal in spite of the fact that the complaint vide letter dated 06.11.2006 was investigated by the vigilance department and thereafter said complaint had been ordered to be closed with observation "no action" on 04.05.2010, the said fact is admitted by the respondents themselves as it is evident by annexure-R/3 of written statement, the respondents had withheld the legitimate retiral dues of the

applicant without any cogent reason and under the false pretext that the inquiry is pending against the applicant. Therefore, applicant is required to be paid interest on delayed payment.

5. Heard the parties, perused the records and considered the submissions made by the learned counsel of the parties.

6. In the present case, it reveals from the records that one complaint was lodged against the present applicant which was investigated by the office of vigilance, East Central Railway, Hazipur and after the investigation it was ordered to be closed with observation "no action" on 04.05.2010.

7. It is important to notice that the respondents had never brought to the knowledge of this Tribunal in O.A 698/211 decided on 25.02.2013 and O.A 135/2015 which was decided on 11.09. 2015 that the vigilance inquiry was closed on 4.5.2010; contrary to the same fact, in both the earlier O.A proceedings, the respondents have categorically stated that there is a vigilance inquiry pending against the applicant and due to that, the applicant's pension and retiral benefit have been withheld. Had the respondents stated the said fact before the Tribunal in O.A 135/2015 that inquiry against the applicant was dropped long back, the direction or order might have been different, and this Tribunal would not have observed to the effect that pendency of vigilance inquiry cannot be a ground to withhold the retiral dues, and thus there has been suppression of material facts on the part of the respondents.

The above conduct of respondent is of a serious nature and it amounts to suppression of material facts and it also amounts to misleading the Tribunal. This Tribunal intends to impose a heavy cost on the respondents for their deliberate suppression of material facts. However, the learned counsel for respondents assured that henceforth, they will take appropriate steps to improve their pleadings. This Tribunal is constrained to hold that this is really a very sorry state of affair on the part of respondents. So, the respondents are directed to issue suitable instructions to its different wing to be more careful in court's matter while submitting their reply or affidavit, so that this Tribunal, while dealing with such matters, can arrive at a just and appropriate conclusion. It needs to be emphasized that the entire journey of a judge is to discern the truth from the

pleadings, documents and arguments of the parties, as the truth is based on a justice delivery system.

8. In the present case, admittedly, the respondents have misled this Tribunal. The payment of pension and retiral dues of the applicant were withheld without any pendency of vigilance inquiry and deprived the applicant of his legitimate retiral dues from due date i.e 15.3.2013.

9. In view of the above facts and circumstances, I am of the considered opinion that the respondents had withheld the retiral dues of the applicant without any legal basis, and therefore, the action and conduct of the respondents is illegal, arbitrary; not only that the respondents had suppressed the material facts which caused miscarriage of justice. The applicant's legitimate right to receive his retiral dues has been denied without any cogent reason and delayed the admissible payment in the guise of pendency of a vigilance inquiry which is far from the truth. Therefore, it will be in the fitness of things to direct the respondents to pay to the applicant the interest @ 8% per annum on delayed payment of retiral dues, including pension amounts etc from the date of his retirement till the date of actual payment. The whole exercise be completed within four weeks from the date of receipt / communication of this order.

10. In the result, the O.A is partly allowed No order as to cost.

(J.V. Bhairavia) M [J]

/mks/

