

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

OA No. 050/00302 of 2017

Date of order reserved: 04.07.2018

Date of Order : 21.08.2018

CORAM

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

Suresh Thakur son of late Regubir Prasad resident of Mohalla- Laliyai,
P.O.- Jute Mill, Katihar P.s.- katihar, District- Katihar.

.....Applicant

By Advocate : Shri S.K. Bariar

Versus

1. The Union of India through the General Manager, N.F. Railway, Maligaon, Assam.
2. The Chief Personnel Officer/IR, N.F. Railway, Maligaon, Assam.
3. The Divisional Railway Manager, N.F. Railway, Katihar.
4. The additiona Divisional Railway Manager, N.F. Railway, Katihar.
5. The Sr. Divisional Personnel Officer, N.F. Railway, Katihar.
6. The Divisional Finance Manager, N.F. Railway, Katihar.

.....Respondents

By Advocate: Shri Bindhyachal Rai.

ORDER

Jayesh V. Bhairavia, M [J]:- The applicant in this O.A. prays for a direction to the respondent authorities to make payment of amount of DCRG/Gratuity and Commutation Value amount with 12% interest and quash and set aside the Rule 9(1), 9(3) and Rule 10(1) (c) of Railway Services (Pension) Rules 1993 if it is applicable in the case of proceeding against the employee filed by private person and not connected with department.

2. The brief facts of the case, as stated by the applicant, are as under:-

(i) The applicant initially appointed in the year 1979 as Cable Jointer and he was retired on 31.12.2014 as Technician Grade-I from Engineering Department under Sr. Divisional Signal and Telecommunication Engineer, New jalpaiguri, N.F. Railway, Katihar. The applicant was paid full pension, provident fund, insurance, leave encashment etc but the amount of DCRG/Gratuity and Commutation Value was not paid.

(ii) The applicant submitted several representations with regard to payment of his DCRG/Gratuity and Commuted Leave Encashment before the respondent authorities, but elicited no response. Thereafter, the applicant approached the department personally whereby he was orally told that the payment was not made due to pendency of a complaint case against him bearing no. 514/2008.

(iii) After several representations, the DRM (P) NF, Railway, Katihar had sent a letter dated 27.10.2016 to the General manager (P) N.F. Railway, Maligaon to the applicant for payment of DCRG/Gratuity and Commutation Value. The APO/Bill and Grievances of office of the General Manager (P), N.F Railway maligaon had intimated the DRM (P), NF Railway, Katihar vide letter dated 23.01.2017 that the release of DCRG and Commutation will depend on the decision of the Departmental and/or judicial proceeding.

(iv) The I/c for applicant further submitted that there is no rule under Railway Services (Pension) Rule 1993 to withhold the commutation value, thus the impugned action

is illegal and arbitrary. He further submitted that mere pendency of a criminal case filed by a private person the gratuity and commutation value cannot be withheld under the Rule 9(1), 9 (3) and Rule 10 (1) (c) of Railway Services (Pension) Rules 1993. This rule clearly speak that the criminal case should be connected with commercial debit and also on another ground connected with department and thereafter giving a show cause notice to the delinquent employee the department can stop amount of Gratuity. The department has never given any show cause notice prior to withhold the Gratuity and Commutation value, hence this O.A.

(v) The I/c for applicant relied upon a judgement dated 24.04.2017 passed by the Hon'ble High Court Patna in CWJC No. 8005/2016 (Annexure-A/2) and submits that the Gratuity is Sacrosanct and it cannot be touched without due process of law.

3. In contra, the respondents have filed their written statement and denied the contention and averment made by the applicant. The learned counsel for respondents submitted that the applicant while working to the post of Sr. Technician under the administrative control of Sr. Div. Sig. & Telecommunication Engineer/ Katihar of N.F. Railway was sanctioned three days leave i.e w.e.f 28.07.2008 to 30.07.2008 thereafter he remained unauthorised absent without giving any information to immediate senior sub-ordinate.

4. On 22.12.2008, the applicant reported to SSE/Tele/ NJP with application dated 22.12.2008 making prayer to allow him to join

further duty on the basis of Bail granted to him by the Chief Judicial magistrate/katihar in Thana kand case, criminal case No. 69/2008 and he had also submitted a medical certificate dated 30.11.2008 of Smt. Asha Devi wife of the applicant.

5. Considering the relevant facts, Shri Thakur was put under deemed suspension for a period of 27.07.2008 to 28.11.2008 as he was found to be detained in custody. However, he was allowed to join duty vide letter dated 29.01.2009 treating his period of suspension as suspension till final outcome of said criminal case.

6. Thereafter the applicant superannuated with effect from 31.12.2014. Since the period of suspension of about four months could not regularize in due time of his retirement due to pendency of criminal case against the applicant in the Court of CJM, Katihar, the applicant was granted provisional pension releasing the amount of Pf, GIS and leave salary except DCRG and Commutation value in pursuance of Railway Employee's Pension Manual 1993.

7. Learned counsel for the respondents further submitted that reasons for withholding DCRG and Commutation value was within the knowledge of applicant as it is evident from the communication dated 18.06.2015 of DRM (P), Katihar, under RTI Act. by the said letter it was informed to the applicant that due to pendency of Court case against him, the said amount was withheld. (Annexure – R/3 refers)

8. It is further submitted that admittedly the judicial proceeding was pending against the applicant and therefore, the case of the applicant required to be considered as per the provision of Rule9(3) of Railway Service Pension Rules, 1993, according to it if any railway

servant retired on superannuation or otherwise and against whom any departmental or judicial proceedings initiated under sub-rule 2, a provisional pension as provided in rule 96 shall be sanctioned and as per the provision of Rule 10(c) of the said rule, the respondents had granted with provisional pension and withheld his gratuity and commutation value. It is further submitted that the respondents will release withheld DCRG and commutation value on disposal of said criminal case pending against the applicant. Therefore, the grievance raised by the applicant in the present O.A. is not tenable and prayer sought in the present O.A. is also contrary to provision of rule. Therefore, the applicant is not entitled to it.

9. Having heard the parties and perused the material on records. It is noticed that the applicant was working as Senior Technician under the Administrative Control of Sr. Div. Sig. & Telecommunication Engineer/Hatihar on N.F. Railway, he was sanctioned three days leave w.e.f.28.07.2008 to 30.07.2008 and thereafter he remained unauthorized absence without giving any information to immediate senior sub-ordinate. On 22.12.2008, the applicant had reported to join his duty with an application dated 22.12.2008 wherein he has stated that a private criminal complaint was registered against him as Thana Kand No.69/2008 and the applicant was arrested on 27.07.2008. He was detained in judicial custody till 29.11.2008. Subsequently, he was released on bail and, his wife was sick, therefore, could not attend the duty and requested to allow him to join the duty. In response to it the respondents have allowed him to join duty vide order dated 29.01.2009 treating his absence period as suspension. It is further noticed that the applicant retired from Railway Service on superannuation w.e.f. 31.12.2014, the

period of suspension i.e. 27.07.2008 to 28.11.2008 could not regularize by the respondents in due time of retirement due to pendency of criminal case against the applicant.

10. It is further noticed that on superannuation of the applicant, due to pendency of judicial proceeding against the applicant, as per the provision of Rule 9(3) Railway Pension Service Rule, 1993 the respondents had withheld his DCRG and Commutation value and as per the provision of Rule 10 of the said rule, granted provisional pension and only the amount of GIS and leave salary was released by the respondents.

11. Learned counsel for the applicant mainly contended that the private complaint filed against the applicant and it was registered as criminal case before the Criminal Court at Katihar. The allegation levelled against the applicant is absolutely of a private nature and not related with the service of the applicant and even not related to his employer. Therefore the respondents cannot withhold the withheld the DCRG and Commutation value and erroneously provision of rule 9 of the Service Pension Rule was made applicable in the case of the applicant as also erroneously provided provisional pension instead of 100% pension. Therefore, the applicant had stated that the said action of the respondent is bad in law and also contrary to the judgment passed by the Hon'ble High Court, Patna in the case of Shyama Prasad Yadav vs. Union of India and others (CWJC 8005/2016) decided on 20.04.2017.

12. It is settled principle of law that the amount of gratuity is the property of employee and the same cannot be withheld without any due procedure of law. It is not in dispute that judicial proceeding is

pending against the applicant. It is not in dispute that the said criminal case is private in nature and not related to any service condition or misconduct or any fraud committed by the applicant with the department, as the said fact is not rebutted by the respondents. It is also not in dispute that the departmental proceeding initiated by the respondents against the applicant was withdrawn by the disciplinary authority.

13. Under the circumstances, since it is noticed that the pendency of criminal case is not related to his service and did not relate to any pecuniary loss caused to the Government. The criminal case remained undecided, it would be quite unfair to make to applicant sufferer for want of his retirement dues. The objective of withholding his gratuity/normal pension because of the said private criminal case pending against him, thus did not appear to be quite clear. It was also not known how much time the criminal proceeding would take time to conclude, therefore, it did not appear to be quite logical and rational to continue to deprive the applicant of his DCRG and commuted value as well as normal pension. The respondents failed to establish the fact that the said pending criminal case is related to any misconduct of the applicant performing service as an employee of the employer and the respondent railway department suffer with any pecuniary loss. Keeping in mind the law laid down by the Hon'ble Apex Court that the gratuity is the property of retired employee and since there is no material on record which can indicate that any pecuniary loss caused to the respondent Railway Department. Therefore, I am of the considered opinion that the applicant is entitled to receive his legitimate amount of DCRG and commutation value on his superannuation. The provision of Rule 9 is admittedly provide withheld the DCRG if any judicial

proceeding is pending against the retired railway employee but as discussed herein above, the said judicial proceeding is not related to any of service condition of the applicant, the employer / respondents is not concerned with the said private judicial proceeding. Therefore, the impugned action of the respondents for withholding the retiral dues of the applicant cannot be allowed to sustain. Therefore, it is appropriate to direct the respondents to consider the claim of the applicant for release of his DCRG and commutation value which was withheld and also grant full pension as the applicant retired on attaining the age of superannuation on 31.12.2014 by regularizing the due suspension period.

14. In view of above discussion and in light of settled principle of law, the applicant is entitled for his retiral benefits i.e. DCRG and commutation value as well as the full pension on his retirement. Accordingly the OA is partly allowed with a direction to the respondents to consider the claim of the applicant for release of his DCRG and commutation value which was withheld and also grant full pension from the date of his retirement within a period of two months from the receipt of this order. No order as to costs.

(Jayesh V. Bhairavia) M [J]

/mks/