

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.21/842/2016

**Reserved on: 14.12.2018
Order pronounced on: 18.12.2018**

Between:

B. Venkataiah, S/o. Mallaiah, aged 62 years,
Retd. Sr. Gate Keeper, O/o. SSE/P.Way/North/KZJ,
Res: H. No. 1-34, Saipet (Village),
Dharmasagar (Mandal), Warangal Dist.,
Telangana – 506 147.

...Applicant

And

UOI, Rep. by its

1. The General Manager,
3rd Floor, Rail Nilayam,
South Central Railway, Secunderabad.
2. The Financial Advisor & Chief Administrative Officer,
S.C. Railway, Secunderabad.
3. The Chief Personnel Officer,
4th Floor, Rail Nilayam, S.C. Railway,
Secunderabad.
4. The Divisional Railway Manager (P),
South Central Railway, Sanchalan Bhavan,
Secunderabad Division, Secunderabad.

...Respondents

Counsel for the Applicant ... Mr. G. Pavana Murthy, Advocate for
Mr. G.S. Rao, Advocate

Counsel for the Respondents ... Mrs. KMJD Shyama Sundari,
SC for Railways

CORAM:

Hon'ble Mr. B.V. Sudhakar ... Member (Admn.)

ORDER
{Per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

2. The OA is filed against non release to the applicant herein of the terminal benefits on his superannuation.

3. The brief facts are that the applicant retired as gateman from the respondents' organisation on 30.8.2014 after rendering 36 years of service. Earlier, on 4.8.2011, the applicant was suspended for alleged theft of railway property. A case bearing C.C No.43 of 2013 was filed before the Judicial Magistrate of First Class for Railways, Kazipet. Besides, the disciplinary authority, on 18.10.2011, initiated disciplinary action under Rule 9 of RS (D&A) Rules 1968, on grounds of assisting private persons to rob the railway property, though the applicant, on 13.9.2011, represented that he was innocent. The applicant was also summoned for a departmental inquiry vide letter dated 15.6.2012 of the respondents. While the disciplinary action was pending, the First Class Judicial Magistrate has ordered on 27.8.2014, that the applicant be released under Section 4 of the Probation of Offenders Act and that he shall be under the surveillance of the District Probation Officer, for a period of one year. The applicant retired on 31.8.2014 and represented for release of terminal benefits on 2.9.2014 & 16.9.2014 based on the judgment rendered. The District Probation Officer has also reported that the probation of the applicant has expired on 26.8.2015 successfully to the Judicial Magistrate of First Class who endorsed the same on 12.9.2015. Based on the representation made Provisional Pension was granted vide PPO dt 31.8.2014 but not the other benefits and hence the OA.

4. The contentions of the applicant are that after having been discharged from probation on 26.8.2015 it is arbitrary on part of the respondents in not releasing the other terminal benefits. Besides, there is no need to continue the charge sheet as he has been cleared in the court case and that the employee and employer relationship got terminated on his superannuation. Hence the terminal benefits have to be released.

5. Respondents have submitted the written arguments where in it was stated that the PF, CGEGIS, and Provisional Pension were released. Respondents contend that since disciplinary action was initiated under rule 6 (v) to (ix) for major penalty, the payment of settlement dues will be decided after finalising the said proceedings. Under Rule 10(1)(c) of RS (Pension) Rules, 1993, pending disciplinary action no gratuity shall be paid until the conclusion of the departmental or judicial proceedings. The disciplinary proceedings were initiated before retirement and deemed to continue after retirement till the case is finalised. The applicant has not submitted any grievance in regard to disciplinary case nor made the disciplinary authority the necessary party. The applicant has not represented against the disciplinary action and claimed plural reliefs and therefore the OA is liable to be dismissed.

6. Heard learned counsel for both sides and perused the documents on record.

7(A) The relief sought by the applicant is release of CGEIS, Gratuity, leave encashment, salary for suspension period and full pension. On going through the records, it is evident that the memo under Rule 9 of RS (D&A) Rules was issued before the retirement of the applicant and hence it shall continue as per Railway Board instructions vide RBE No.199/2000. To this extent the stand of the respondents is correct. Applicant submitted that the charge memo loses its relevance since the judicial proceedings were in his favour but he did not make the disciplinary authority a party to the case. Further, it needs to be stated that there is no bar for the respondents to proceed despite there being acquittal from a court, as was pointed out by the respondents. Railway Board's

letter No. E50 RG6-6 dt:7.7.52 & File No. E(D&A)85 RG6-58 stated below, supports the view of the respondents.

“If an employee is convicted but is released under section 4 of the Probation of Offenders Act, it is not to be treated as acquittal. Release under the said Act is ordered by Courts on consideration of factors like age, nature of offence, assurance of good conduct etc. but the conviction is not set aside. Hence, action under Rule 14(i) is justified even if the employee is released under the said Act.”

(B) The disciplinary proceedings were initiated on 18.10.2011 and the applicant retired on 31.8.2014. Till date it has not been finalised. Nearly 8 years have lapsed since issue of the disciplinary proceedings. The Railway Board, CVC and the UPSC have come down heavily in regard to delay in disposal of the disciplinary cases by the Railway Ministry. Railway Board order extracted below emphasises the need to expedite disciplinary cases.

“R.B. Estt. No.140/2009, G.O.I, Ministry of Railways, No.E(D&A) 2008 RG 6-29 dated 4.8.2009

“Sub: Need for speedy finalisation of disciplinary cases.

Of late, it has come to the notice of the Railway Board that on some of the Zonal Railways the disciplinary cases are not being finalized within a reasonable time resulting in severe hardship to the railway servants especially the retired ones whose pensionary benefits are withheld due to the pending disciplinary case. Recently, a disciplinary case, which was received from one of the Railways more than 12 years after issue of the charge sheet, was referred to the CVC and the UPSC for their advice. The inordinate delay in the case invited embarrassing and avoidable adverse comments from both the Commissions. The UPSC have also desired that in future the delay in finalization of the disciplinary cases be justified while forwarding the cases to them for advice. 2. In this connection, attention is invited to Board’s instructions quoted in the margin whereby the need for speedy finalization of disciplinary cases has been emphasized from time to time. This has also been reiterated recently vide Board’s letter of even number dated 23.9.2008. The Railways were also asked to develop a mechanism to monitor the disciplinary cases so as to avoid unnecessary delay. This monitoring may be done both at Headquarter and Division/Workshop levels with special attention to the cases of the retired railway servants and those who are due to superannuate within one year. Also, the cases

which have not been finalized even after two years of issue of charge sheet should be reviewed immediately at sufficiently higher level at the Railway Headquarter and necessary guidelines be given to the concerned officers to finalise such cases immediately.”

(C) Respondents need also refer to the Railway Board Orders cited below which endows upon them the responsibility to dispose of the disciplinary cases without procrastination.

E(D&A)85RG6-21 dated 30.5.1985, E(D&A)86RG6-41 dated 3.4.1986, E(D&A)906RG6-18 dated 9.2.1990, E(D&A)97RG6-Monitoring(I) dated 20.7.1998 & 28.1.2000 E(D&A)2000RG6- 63 dated 18.12.2000, E(D&A)2004RG6- 14 dated 2.7.2004.

The disciplinary case is pending since 2011 and the respondents taking a stand even now that the release of terminal benefits will be decided after the disciplinary case is completed, is unfair to say the least. This stand is against the Railway Board order 140/2009 wherein it was stated that in case of retired servants disciplinary cases are to be reviewed by the higher authorities if it is delayed beyond 2 years. No such review has been done. Even inquiry has not even commenced. The guidelines stated in the Railway Board orders referred to above have not been adhered to. Rules and instructions of the Railway Board are there to be followed and not to be violated. Hon'ble Supreme Court has taken an adverse view of violating rules as under:

The Hon'ble Supreme Court observation in **T.Kannan and ors vs S.K. Nayyar (1991) 1 SCC 544** held that “Action in respect of matters covered by rules should be regulated by rules”. Again in **Seighal's case (1992) (1) supp 1 SCC 304** the Hon'ble Supreme Court has stated that “Wanton or deliberate deviation in implementation of rules should be curbed and snubbed.” In another judgment reported in (2007) 7 SCJ 353 the Hon'ble Apex court held “the court cannot de hors rules”

(D) Reverting to the disciplinary case in the OA, Hon'ble Supreme Court in **Prem Nath Bali vs Registrar, High Court of Delhi & Anr** in CA No.958 of 2010 has held at para 31 and 33 that a disciplinary case has to be decided within 6 months and if not possible within the outer limit of 1 year. The applicant has also cited the verdict dt 13.7.2000 of the Hon'ble Bangalore Bench of this Tribunal in R.S.Ramanath vs The Dy Chief Engineer wherein in a similar case on grounds of inordinate delay the disciplinary proceedings were quashed.

(E) Two conflicting interests one of the applicant and the other of the respondents are to be weighed here in two pans of the balance of justice, to ascertain, which side the fulcrum tilts. ‘Conviction’ of the applicant in the criminal case, confers right of taking any departmental action as held by the Apex Court in the case of **Addl. D.I.G. of Police, Hyderabad versus P.R.K. MOHAN (1997) 11 SCC 571** as under:-

“It is settled law that Section 12 of the Probation of Offenders Act, 1958 does not preclude the department from taking any action for misconduct leading to the offence or to his conviction thereon as per law. The section was not intended to exonerate person from departmental punishment. It was clarified; the section only directed that the offender shall not suffer disqualification, if any, attaching to a conviction of an offence under such law. Such law in the context is other law providing for disqualification on account of conviction. This court, therefore, held that merely because a sentence of imprisonment has been substituted by an order passed under Section 12 of the Probation of Offenders Act, 1958, the conviction is not obliterated altogether and it would be open to the authorities to take departmental proceedings on the basis thereof (See Union of India vs Bakshi Ram). “

Thus, on the date the criminal court passed its judgment invoking the provisions of the Probation of Offenders Act, 1958, the existence of the power to take departmental proceedings has been confirmed. The question then is

whether this power is etiolated by any of the provisions of any rules or decisions of the Apex Court which gives certain rights to the delinquent official. Admittedly, there has been an inordinate delay of over 7 years after issue of a charge sheet which is the incipient stage of the proceedings. It is settled law that delay defeats justice. As recently as on 4.12.2018 the PCPO of the respondents organisation has issued instructions vide his DO lr no PCPO/SCR/Note/2018 to close cases where the delay is attributable to the respondents.

(F) If the above two taken together are kept in view and the case analysed, it would be clear that notwithstanding the fact that the respondents had a right to proceed ahead with the inquiry, the inordinate delay without any acceptable justification in proceeding with the inquiry, which is lifelong attributable to the respondents stares at their face, affording an indefeasible right to the applicant to claim closure of the proceedings, impliedly, getting the respondents' right to exercise the powers available under the Rules/Court directives waived.

(G) In view of the action of the respondents in not releasing the terminal benefits to the applicant is to be held as unreasonable, arbitrary and illegal. Thus, **the OA stands allowed.** The respondents are directed to release the withheld terminal benefits to the applicant within a period of 90 days from the date of receipt of a certified copy of this order and in case of delay beyond the aforesaid 90 days, they shall increment the amount due to the applicant with an interest @ 9.5% from the date of this order. Needless to mention that the entire proceedings against the applicant be treated as closed as if there has been no case initiated against the applicant. The character of the pension being

paid to the applicant, which hitherto, has been one of provisional, shall henceforth be absolute and the same, at the will of the applicant shall also be commuted in accordance with the relevant rules. No order to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 18th day of December, 2018

evr