

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 380 of 2017

Reserved on 9.1.2019

Pronounced on 30th January, 2019

Hon'ble Ms. Jasmine Ahmed, Member-J

Prem Pal Singh Bisht (retired Senior Engineer Drawing Civil) aged about 61 years, S/o late Gaje Singh Bisht, R/o L-1/35, Vinay Khand, Gomti Nagar, Lucknow.

.....Applicant

By Advocate : Sri G.K. Kanojia.

Versus.

1. Union of India through its G.M., NER, Railways, Gorakhpur.
2. Divisional Railway Manager/Engineer, NER, Izzatnagar.
3. D.R.M. Personnel of Divisional Railway, NER, Izzatnagar.

.....Respondents.

By Advocate : Sri Mithilesh Kumar

ORDER

By means of this O.A., the applicant has prayed that directions be issued to the respondents to pay the full Pension, Gratuity, Leave encashment and salary for the month of March, 2017 as well as other retiral benefits to which he is entitled to.

2. In nutshell, the case of the applicant is that he was initially appointed as Draftsman 'A' Civil vide order dated 21.7.1983 and was subsequently promoted to the post of Senior Section Engineer (Engineer Drawing Civil) and retired from service on 31.3.2017 on attaining the age of superannuation. After retirement, the applicant was given provisional pension by withholding other retiral dues. It is averred in the O.A. on 15.2.2008 on the written report of Junior Engineer, DRM Office, NER, Izzatnagar, a FIR was lodged at P.S. Izzatnagar under Section 420 IPC against the applicant wherein it has been alleged that while serving on duty he had sworn an affidavit at Allahabad and as a consequence thereof, a charge-sheet has been filed under Section 420 IPC and concerned Court has taken cognizance and the same has been

challenged by filing an application under Section 482 Cr.P.C. bearing case no. 10009 of 2013 and vide order dated 18.8.2017, the Hon'ble High Court has set-aside the cognizance order dated 3.4.2012 and remanded for fresh order. On account of pendency of alleged criminal case, the retiral benefits viz. Gratuity, Full Pension and leave encashment has been withheld. Being aggrieved, the applicant has approached the Hon'ble High Court by filing Writ petition No. 24717 of 2017, which was dismissed vide judgment and order dated 12.10.2017 on the ground of alternative remedy. Hence; this O.A.

3. The respondents have resisted the claim of the applicant by filing a detailed Counter Reply. The facts narrated by the applicant are not in dispute. They have only stated that in terms of Rule (9) 3 and 10 (c) of Railway Services (Pension) Rules, 1993 a railway servant who is retiring on attaining the age of superannuation as otherwise against whom any departmental or criminal proceedings including criminal and civil proceedings are instituted or continued under Rule 9(2) of the Rules, the employee/applicant shall be sanctioned provisional pension and his gratuity shall be withheld. The respondents in para 11 of their Counter Reply have further pleaded that the criminal proceedings pending against the railway servant attracts the provision contained in Railway Servants (Conduct) Rules, 1966 or are in any way prejudicial to the interest of the railway/Government and on conclusion of the judicial proceedings, the retired railway servant shall not have been fully exonerated and on the penalty of cut in pension, Gratuity or both in part or in full have been imposed. They have lastly stated that the withheld retiral dues shall be released in favour of the applicant only after conclusion of criminal proceedings pending against him if he is exonerated from the charges leveled against him.

4. The applicant has filed Rejoinder Reply refuting the contentions made in the Counter Reply while reiterating the pleas/grounds already advanced in the O.A.

5. Heard the learned counsel for the parties and also perused the material available on record.

6. The learned counsel for the applicant has not pressed the relief to the effect for payment of salary for the month of March, 2017 and

accordingly the same was dismissed vide order dated 22.11.2017 with liberty to file fresh proceedings in accordance with law.

7. The sole question involved in this case is whether on account of pendency of criminal case, the applicant is entitled for payment of Gratuity, Full Pension, Leave encashment etc. or not ?. From the perusal of FIR, it would reveal that the sole charge against the applicant was that while serving at Izzatnagar he had sworn an affidavit at Allahabad as a consequence thereof charge-sheet has been filed under Section 420 IPC and the concerned Court has taken cognizance, which was assailed by the applicant before the Hon'ble High Court through Criminal Misc. Case No. 10009 of 2013 and Hon'ble High Court has stayed the cognizance order dated 3.4.2012 vide order dated 18.8.2017 by remanding the matter to the concerned Magistrate to pass a fresh order after going through the entire evidence in accordance with law and the same is still pending before the concerned Magistrate. It is also noteworthy that signatures made on the affidavit were also checked by the hand writing expert on the direction of the Investigating Officer, but signature of the applicant were not tallied with the signature found on the affidavit which he had sworn to have been filed before Hon'ble High Court at Allahabad. It is also noticed that the applicant has neither embezzled any amount nor any loss has been caused to the railways on account of acts committed to have been made by the applicant.

8. It is well settled proposition of law that pension and gratuity are no longer any bounty to be distributed by the Government to its employees on the retirement but are valuable right in their hands, and any culpable delay in disbursement thereof must be visited with the penalty of payment of interest as held by Hon'ble Supreme Court in **State of U.P. & Ors Vs. Dhirendra Pal Singh, 2017 (1) SCC 49**. The relevant para-9 is extracted herein below for ready reference:

“9. In State of Kerala v. M. Padmanabhan Nair [State of Kerala v. M. Padmanabhan Nair, (1985) 1 SCC 429 : 1985 SCC (L&S) 278] , this Court has held that pension and gratuity are no longer any bounty to be distributed by the Government to its employees on the retirement but are valuable rights in their hands, and any culpable delay in disbursement thereof must be visited with the penalty of payment of interest. In the said case the Court approved 6% p.a. interest on the amount of pension decreed by the trial court and affirmed [State of Kerala v. Padmanabhan Nair, 1983 SCC OnLine Ker 205 : 1984 KLT 542] by the High Court. As to the rate of interest on amount of gratuity, in Section 7(3-A) of the Payment of Gratuity

*Act, 1972, it is provided that if the amount of gratuity payable is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may by notification specify. It further provides that no such interest shall be payable if the delay in payment is due to the fault of the employee, and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground. In the present case, there is no plea before us that the appellants had sought any permission in writing from the controlling authority. As to the delay on the part of the employee, it has come on the record that he made representations, whereafter he filed a suit in respect of withheld amount of gratuity and pension. In *Y.K. Singla v. Punjab National Bank* [*Y.K. Singla v. Punjab National Bank*, (2013) 3 SCC 472 : (2013) 1 SCC (L&S) 640], this Court, after discussing the issue relating to interest payable on the amount of gratuity not paid within time, directed that interest @ 8% p.a. shall be paid on the amount of gratuity.”*

9. In the case of **Radhey Shyam Shukla Vs. State of U.P & others reported in 2010 (1) LLJ 480** the Hon’ble Allahabad High Court has ruled that judicial proceedings includes criminal proceeding. The same should relate to the conduct of the government servant as contained in service rules. The main object of withholding gratuity is to compassionate the Government the loss caused by the Government servant in his functioning as such, therefore, mere pendency of criminal proceeding may not authorize withholding of post retiral dues including gratuity. The relevant paragraphs of the aforesaid judgment as contains in Paragraphs 4, 5, 6, 7, 8 & 9 are extracted herein below for ready reference:-

“4. It is urged on behalf of the petitioner that the respondent No. 2 went beyond the parameters fixed by this Court in its order dated 4.11.2008 and it is further urged that pendency of the criminal trial in a private dispute of two individuals cannot be a ground for withholding gratuity.

5. Learned Single Judge while disposing of Writ Petition No. 5877 of 2005 vide order dated 4.11.2008 had fixed the parameters for the authority to consider payment of gratuity in the following words:

“As far as question of withholding of gratuity due to pendency of criminal case is concerned, the petitioner crossed the age of superannuation on 30.6.2004. F.I.R. under section 307 and other provision was registered against the petitioner in 2003. The petitioner was suspended on 26.8.2003. Till the date on which he crossed the age of superannuation, suspension of petitioner was not revoked nor the inquiry was concluded.

The question of payment of gratuity in this background is to be decided in accordance with section 4(6) of Payment of Gratuity Act, 1972 which is quoted below:—

(6) Notwithstanding anything contained in sub-section (1),

(a) the gratuity of an employee, whose services have been terminated for any act, wilful 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;

(b) the gratuity payable to an employee may be wholly or partially forfeited.

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

Accordingly, the authority concerned is directed to decide the question of forfeiting the gratuity partially or wholly in accordance with the aforesaid provision within three months from the date of production of certified copy of this order.”

6. *A perusal of the impugned order shows that the authority has not at all reverted to the Provisions of Payment of Gratuity Act, 1972 but has relied upon the Government Order and the Rules. It is admitted to the respondents that the provision of the Government Order was incorporated in the Rules which have been quoted in the impugned order as below:*

1. “The provisional pension shall be authorised for the period commencing from the date of retirement up to including the date on which judicial proceedings of the departmental or Administrative Tribunal, as the case may be, final orders are passed by the competent authority.”

2. “No death-cum-retirement gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings or the enquiry by the Administrative Tribunal and issue of final orders thereon.”

7. *Normally, as urged by the learned Standing Counsel, “judicial proceedings” would also include a criminal trial. However, the meaning ascribed to a word has to be given keeping in mind the intention of the legislature and the object which it sought to achieve while using it. A reading of the aforesaid provision shows that “judicial proceeding” has been used for the purpose of any proceeding relating to the conduct of the Government servant. One of the main object of withholding gratuity is to compensate the Government the loss caused by the Government servant in his functioning as such. In the present case the criminal case relates to two individuals and the trial cannot in any manner fix responsibility of any loss to the Government. In fact, there is no case set up in the counter-affidavit that the decision in the pending criminal trial between two individuals would in any way enable the Government to realize any alleged loss. In fact no loss has even been attributed to the petitioner. A Division Bench of this Court in the case of **Bangali Babu Misra v. State of U.P. [2003 (3) AWC 1760.** , has considered the effect of the Government Order which has been incorporated in the Rules and has held that mere pendency of criminal proceedings would not authorise withholding of post retiral benefits including gratuity. The aforesaid decision has been followed subsequently in the case of **Mahesh Bal Bhardwarj v. U.P. Cooperative Federation Ltd.. [2007 (10) ADJ 561.***

8. *Thus both the arguments of learned Counsel for the petitioner are bound to be accepted.*

9. *For the reasons above, this petition succeeds and is allowed and the impugned order dated 16.12.2008 is hereby quashed and the respondents are directed to forthwith release the gratuity of the petitioner in accordance to law within a period of six weeks from the date of submission of a certified copy of this order. In the circumstances of the case, no order as to costs."*

10. Admittedly in this case, Rule 10 (C) of Railway Services (Pension) Rules, 1993 provided that no gratuity shall be paid to the railway servant until the conclusion of the departmental or judicial proceedings and issue final orders there on. For discussing the impact of this rule, Rule 10 is extracted herein below:

"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 authorise the provisional pension not exceeding the maximum pension which would have been admissible on the bases 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 authorised 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 a) and (iv) of rule 6 of the said rules, the payment of gratuity shall be authorised to be paid to the railway servant.

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such railway 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."

11. Admittedly, the case is still pending before the concerned Magistrate for passing the fresh order in compliance of judgment and order passed by Hon'ble High Court in Criminal Misc. Case no. 10009 of 2013 wherein the proceedings of case no. 349 of 2010 (State Vs. Prem Pal Singh Bisht) under Section 420 IPC arising out of Crime No. 72 of 2008 pending before the Court of Additional Chief Magistrate, Court no.10, Allahabad.

12. Consequently in view of law cited herein above by jurisdictional court as well as law propounded in Dhirendra Pal Singh's case (Supra)

by the Hon'ble Apex Court, this Tribunal is of the view that there is no justification to withhold the amount of Gratuity, leave encashment and full pension of the applicant and the OA deserves to be allowed for the reason that in absence of any pendency of departmental proceeding at the time of retirement cut in pension cannot be ordered in view of Rule 9 of the aforesaid Rules of 1993.

13. In view of the above, O.A. succeeds. The respondents are directed to make payment of Gratuity and leave encashment to the applicant within a period of three months from the date of communication of this order. There shall be no order as to costs.

(Ms. Jasmine Ahmed)
Member-J

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