

**Open Court**  
CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD  
BENCH, ALLAHABAD

**This the day of 7th August, 2019**

**Original Application No.330/00083/2014**  
(U/S 19, Administrative Tribunal Act, 1985)

**Hon'ble Mr. Justice Bharat Bhushan, Member (J)**

Ram Mohan Srivastava son of late Raj Bahadur Srivastava aged about 62 years resident of MIG-172/1, Tikait Rai Talab, LDA Colony, Rajaji Puram, Lucknow.

..... **Applicant**

**By Advocate:                      Sri O.P. Gupta**

**Versus**

1. Union of India through General Manager, N.E.Railway, Gorakhpur.
2. Divisional Railway Manager, NE Railway, Izzat Nagar Division, Izzat Nagar.

..... **Respondents**

**By Advocate:                      Sri Chanchal Kumar Rai**

**ORDER**

**Hon'ble Mr. Justice Bharat Bhushan, Member (J)**

Applicant, Ram Mohan Srivastava, seeks direction of this Tribunal for release of his retiral benefits withheld by the employer/respondents.

2. The applicant superannuated w.e.f. 31.10.2011 as Senior Section Engineer (PWI) Hathras under North Eastern Railway, Izzat Nagar Division, Izzat Nagar. At the time of his retirement, one criminal case initiated by Railway Protection Force (RPF) was pending against the applicant. Copy of FIR is available on record as Annexure A-2 which says that some items of Railway use were found from mud ditch at the instance of some informer.
3. This FIR/complaint was filed on 2.9.2001. Criminal case continued till the retirement of applicant i.e. till 31.10.2011. Interestingly, the question-answer obtained from Magistrate's court indicates that even a formal charge was not framed till

22.11.2013. Copy of this questionnaire is available on record as Annexure A-3.

4. Counter Reply filed by respondents merely says that applicant could not be paid his terminal benefits barring provisional pension on account of this case pending for last 18-19 years.

5. Heard Sri O.P.Gupta counsel for applicant and Sri Chanchal Kumar Rail counsel for respondents.

6. Rule 8 of Railway Services (Pension) Rules, 1993 (in short referred as Pension Rules), provides that the appointing authority may, by order in writing, withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct. This provision is applicable with certain proviso.

7. Rule 9 of Pension Rule gives similar rights to the President of India but again it is required that pensioner must be found guilty of grave misconduct or negligence during the period of service in departmental or judicial proceedings.

8. It is evident that applicant has not been convicted of any crime in judicial proceedings at all. A criminal case of comparatively minor nature is pending against the applicant for last 19 years. It is also established that till November, 2013, formal charge was not framed against the applicant. There is nothing on record to demonstrate that even a formal charge has been framed against the applicant. The applicant, therefore, has not been held guilty of any criminal case in judicial proceedings.

9. As far as departmental proceedings are concerned, the same have not even initiated against the applicant. In 2001,

the applicant was still in service. He retired after 10 years in 2011. During this entire period or even after retirement, no departmental proceedings of any kind were initiated against him. Meaning thereby, that department has merely withheld retiral benefits of applicant on account of pending criminal case mentioned in the counter reply.

10. In the case of **Sate of Jharkhand and others Vs. Jitendra Kumar Srivastava and another reported in 2013 (3) UPLBEC, 2369**, the Hon'ble Apex Court has held that terminal benefits such as pension and gratuity are not bounty and they cannot be taken away as per Article 300 A of the Constitution of India without following the due process of law. The Apex Court has further held that merely because a criminal case or departmental proceedings are pending against employee, his terminal benefits cannot be withheld, unless he is found guilty of the same.

11. Admittedly, in the present case, no departmental proceedings is pending against the applicant. It is also evident that no judgment in criminal case has been passed against the applicant. Pension Rule also do not permit department to withheld retiral benefits of applicant.

12. In the light of the judgment of Hon'ble Apex Court in the case of **Sate of Jharkhand and others Vs. Jitendra Kumar Srivastava (supra)**, and in the case of **Gudari Prasad Vs. State of U.P. and others (Writ -A No. 14073 of 2012)** of Hon'ble High Court of Allahabad, the act of respondents in withholding the retiral benefits of applicant is not legally sustainable. Accordingly, O.A. deserves to be allowed and is allowed. The respondents are directed to make payment of all retiral dues including gratuity, commutation amount,

remaining pension amount etc. to the applicant within a period of two months from today. Thereafter, the applicant shall be entitled of simple interest of 6% per annum. No order as to costs.

**(Justice Bharat Bhushan)**  
**Member (J)**

**HLS/-**