

CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH

OA No. 3 of 2017

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Chitta Ranjan Mishra, aged about 64 years, S/o Late Sashadhar Mishra, retired Head Master, Mixed Primary School, South Eastern Railway, Old Settlement, Kharagpur, West Bengal, at present residing at Kharasuni, Erein, PO – Charampa, PS – Bhadrak (R), Dist. – Bhadrak – 756101.

.....Applicant

VERSUS

1. Union of India, represented through the Secretary to the Railway Board, Ministry of Railways, Govt. of India, Rail Bhawan, New Delhi, Pin – 110001.
2. The General Manager, South Eastern Railways, G.M.Building, Garden Reach, Kolkata, West Bengal, Pin – 700043.
3. Chief Personnel Officer, South Eastern Railways, G.M. Building, Garden Reach, Kolkata, West Bengal, Pin – 700043.
4. The Divisional Railway Manager, Kharagpur Railway Division, South Eastern Railways, DRM Building, Kharagpur, West Bengal, Pin – 721301.
5. The Senior Divisional Personnel Officer, Kharagpur Railway Division, South Eastern Railways, DRM Building, Kharagpur, West Bengal, Pin – 721301.

.....Respondents.

For the applicant : Mr.A.C.Behera, counsel

For the respondents: Mr. T. Rath, counsel

Heard & reserved on : 16.5.2019 Order on : 10.7.2019

ORDER

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

"Therefore the applicant prays that this Hon'ble Tribunal may graciously be pleased to admit this original application, issue notices to the respondents for show cause, as to why the direction will not be issued for providing retirement benefits to the applicant by quashing the enquiry as well as departmental proceedings. This Hon'ble Tribunal be pleased to pass the following orders/directions to the respondents if the said respondents fail to show sufficient cause by hearing from both the parties.

(a) To direct the respondents for providing the retirement benefits (dues of DCRG) to the applicant within a stipulated time by quashing the second time enquiry/further enquiry under annexure A/4 conducted by the authorities as it is barred by limitation.

- (b) To direct the respondents No. 4 & 5 to provide the post retirement facilities like issuance of complementary pass to the step daughter of the applicant as the applicant approached to the said authorities since long.
- (c) To direct the respondents by any other directions as this Hon'ble Tribunal may deem fit just and proper as this case in question."

2. The applicant is aggrieved by the fact that although he retired from the railway service in 2012, but his DCRG and other retirement benefits have not been disbursed to him due to a pending disciplinary proceeding (in short DP) against him on the charge of bigamy. The applicant was appointed as a teacher under the Railways on 12.8.1974 and retired from service on 30.9.2012. On 5.9.2012, the applicant informed the respondents for inclusion of his daughter out of his relationship with another woman who was not his wife. On 19.9.2012 the authorities issued a show cause notice to the applicant for violation of the Railway Service Conduct Rules, 1966. He informed that he did not marry second time, but the daughter was out of his live in relationship who was entitled for the benefits after his retirement.

3. The charge-memo dated 27.9.2012 (Annexure-A/2) was issued to the applicant, who submitted his reply. The inquiry was conducted by the disciplinary authority. It is stated in the OA that the wife of the applicant deserted the applicant for which a litigation for separation is pending. The applicant had a live in relationship with the caretaker and a daughter was born out of this relationship. The applicant retired from service on 30.9.2012. No retirement benefit was released due to pending disciplinary proceedings (in short DP). The respondents did not take any action for sanction of the retirement benefits, for which the applicant submitted a detailed representation to the respondent no. 1 who issued a letter to the respondent no. 2 (Annexure-A/3).

4. When no action was taken by the respondents, the applicant approached the Tribunal by filing OA No. 771/2014, which was disposed of directing the respondents to address the grievances of the applicant. It is stated in the OA that the respondents rejected the grievances of the applicant vide order dated 2.2.2015, rejected the grievance of the applicant. Then the respondents ordered fresh inquiry which was to be held on 30.10.2014, since the earlier inquiry was found to be with procedural irregularities. It is stated that the applicant filed the OA No. 150/2015 and 172/2015 challenging the rejection order dated 2.2.2005 and for release of the retirement benefits and the OAs were dismissed vide order dated 17.6.2015. Fresh inquiry was conducted and the report dated 31.3.2015 was communicated to the applicant vide letter dated 21.4.2015 (Annexure-A/4).

5. Thereafter, the case was referred to the Railway Board which advised conduct of fresh inquiry from the stage of the appointing an Inquiry Officer (in short IO) due to procedural lacunae and the respondent no. 3 was nominated as the disciplinary authority (in short DA) vide letter dated 28.5.2015 (Annexure-A/6). The applicant submitted a fresh representation dated 16.11.2016 (Annexure-A/7) for release of his retirement benefits. The respondents replied vide letter dated 21.11.2016 (Annexure-A/8) that the dues will be released after completion of the DP.

6. The main ground taken by the applicant in the OA is that although as per the guidelines, a final decision on a DP will have to be taken within 205 days from the date of initiation of the DP and in the applicant's case, although more than four years have elapsed, the DP is still pending. Hence, it is claimed to be time barred. It is further averred that any change of DA can be done by Hon'ble President of India, which has been adhered to as revealed from the letter of the Railway Board. The datelines given by the Railway Board for different stages of the DP have been indicated in the OA stating that these have been violated in this case. If a new DA is appointed, then a fresh charge-sheet is to be issued, which was not done in this case. The delay caused violation of the rights of the applicant who is suffering due to delay in release of the retirement benefits.

7. Counter has been filed by the respondents on 15.1.2018 without disputing the facts. It is stated that since the matter is pending for sanction of President, no claim can be released at this stage. It has been contended that there was no violation of rules by the respondents while processing the matter.

8. In the Rejoinder, the applicant stated that his wife got an order of maintenance and separation from the Court and he was paying Rs. 5000/- per month to his wife for maintenance although the Court order was for Rs. 2000/- per month. It is stated that as per the OM dated 27.11.2012 (Annexure-A/9), the child from an illegal marriage is entitled for the family pension. This OM has been adopted by the Railway Board vide letter dated 14.1.2013 (Annexure-A/11 to the Rejoinder). It is further stated that due to delay by the authorities to dispose of the case, the applicant is being harassed and his retirement benefits are not being released.

9. We heard learned counsel for both the parties. The respondents' counsel filed a Memo at the time of hearing enclosing a copy of the letter dated 17.11.2018 (Annexure-R/14) by which the case has been returned again by the Railway Board with advice that the next higher authority of the applicant as specified under the rules was required to function as the DA instead of the respondent no. 3. Hence, it has been decided to proceed with the case from the

stage of appointment of IO as ordered by the Board vide letter dated 27.11.2013 (Annexure-A/10 to the Rejoinder).

10. It is unfortunate that the respondents are not able to conclude the disciplinary proceedings in a manner provided under the rules and due to pending disciplinary proceedings, the retirement benefits of the applicants are not released although he had retired seven years back on 30.9.2012. Although the Railway Board remanded the matter to the disciplinary authority (respondent no. 5) for fresh inquiry from the stage of appointment on the IO, the authorities changed the DA to the respondent no. 3 as stated in the letter dated 28.5.2015 (A/6 of the OA) after more than one year of receipt of the letter dated 27.11.2013 (A/10) of the Railway Board, which have held that such change of the DA is not permissible under the rules, as informed in the letter dated 17.11.2018 (Annexure-R/14). Even though the Railway Board remitted the matter to the DA vide order dated 17.11.2018, the DP has not yet been disposed of although about six months have elapsed. Learned counsel for the respondents did not have any information as to when the DP can be disposed of.

11. At this stage we take note of the principles laid down by Hon'ble Supreme Court in the case of Prem Nath Bali vs. Registrar of High Court, Delhi & Anr. in Civil Appeal No. 958 of 2010 regarding delay in disposal of the disciplinary proceedings.

"30) We are constrained to observe as to why the departmental proceeding, which involved only one charge and that too uncomplicated, have taken more than 9 years to conclude the departmental inquiry. No justification was forthcoming from the respondents' side to explain the undue delay in completion of the departmental inquiry except to throw blame on the appellant's conduct which we feel, was not fully justified.

31) Time and again, this Court has emphasized that it is the duty of the employer to ensure that the departmental inquiry initiated against the delinquent employee is concluded within the shortest possible time by taking priority measures. In cases where the delinquent is placed under suspension during the pendency of such inquiry then it becomes all the more imperative for the employer to ensure that the inquiry is concluded in the shortest possible time to avoid any inconvenience, loss and prejudice to the rights of the delinquent employee.

32) As a matter of experience, we often notice that after completion of the inquiry, the issue involved therein does not come to an end because if the findings of the inquiry proceedings have gone against the delinquent employee, he invariably pursues the issue in Court to ventilate his grievance, which again consumes time for its final conclusion.

33) Keeping these factors in mind, we are of the considered opinion that every employer (whether State or private) must make sincere endeavor to conclude the departmental inquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then efforts should be made to conclude within reasonably extended period depending upon the cause and the nature of inquiry but not more than a year."

12. We also take note of the fact that continuation of the disciplinary proceedings has not been challenged and no prayer for any relief in respect of the DP has been made in the OA although the applicant has raised the issue of delay on the part of the authorities. We have taken note of the fact that the authorities have in fact delayed the disposal of the DP started in 2012 and it has continued for more than 6 years after retirement of the applicant. As mentioned in the OA, earlier OA filed by the applicant in 2015 for release of the retirement benefit was dismissed. Therefore, pending final disposal of the disciplinary proceedings, the balance retirement benefits cannot be released. At the same time, unexplained delay on the part of the authorities for disposal of the disciplinary proceedings would be questionable in view of the ratio of the judgment of Hon'ble Supreme Court in the case of Prem Nath Bali (supra).

13. In the facts and circumstances as discussed above and taking into account the time limit laid down in the judgment cited above, the respondents are directed to finally dispose of the disciplinary proceedings against the applicant by issuing the order under the rule 9 of the CCS (Pension) Rules, 1972 within three months from the date of receipt of a copy of this order.

14. The OA is disposed of with the above directions. No order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath