

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/12/2017

Date of Reserve:19.07.2019

Date of Order:09.09.2019

CORAM:

HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Kailash Chandra Barik, aged about 67 years, S/o. Late Binod Barik, At-Atharbhag, PO/PS-Pipili, Dist-Puri – retired Senior Clerk, Office of Senior Personnel Officer/Construction, East Coast Railways, Bhubaneswar.

...Applicant

By the Advocate(s)-M/s.B.P.Satpathy

B.K.Nayak

S.Roy

D.Debadarshini

-VERSUS-

Union of India represented through:

1. The General Manager, East Coast Railways, Rail Bhawan, Chanrasekharpur, Bhubaneswar, Dist-Khurda.
2. Chief Personnel Officer, East Coast Railways, Rail Bhawan, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
3. Chief Administrative Officer, East Coast Railways, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
4. Senior Personnel Officer/Construction, East Coast Railways, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda.

...Respondents

By the Advocate(s)-Mr.D.K.Behera

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is a retired Railway employee. He has approached this Tribunal in this O.A. seeking for the following reliefs:

- i) Let the impugned order dated 23/26.09.2016 passed by the respondent no.4 under Annexure-A/9 in the facts and circumstances of the case be declared as illegal and as such liable to be set aside.
- ii) Let the respondents be directed to pay interest at the prevailing Bank interest rate on the amount as due to the applicant towards his retirement benefits for the period from 01.05.2008 to till the date of payment and release the same within a stipulated time.

- iii) Let any other appropriate order/orders, direction/directions may kindly be passed which would be deemed fit and proper in the facts and circumstances of the case.

2. It reveals from the record that challenging order dated 24.7.2002 revising promotion to the post of Junior Clerk against 60% PCR post with effect from 01.02.1994 and Senior Clerk on ad hoc basis with effect 01.02.1994 having been revised and consequently, recovery of promotional benefit ordered, the applicant had approached this Tribunal respectively had been reversed, the applicant had approached this Tribunal in O.A.No.697 of 2002. This Tribunal vide order dated 8.2.2008 allowed the said O.A. In the meantime, the applicant retired from service on attaining the age of superannuation with effect from 30.04.2008. However, the Railway Administration approached the Hon'ble High Court in W.P.C. No.12708/2008. The Hon'ble High Court vide judgment and order dated 09.01.2014 confirmed the order of this Tribunal. On 03.06.2014, Respondent No.4 passed order for re-fixation of the pay and for release of the retirement benefits in favour of the applicant. The applicant submitted a representation claiming interest on the delayed payment of retiral dues on 01.11.2015. Since the same was not considered, he approached this Tribunal in O.A.No.285 of 2016 and this Tribunal disposed of the said O.A. on 17.05.2016 with direction to Respondent No.4 to consider and dispose of the claim of the applicant as made on 01.11.2015. Applicant's representation having been rejected vide communication dated 31.5.2016 on the ground that no such representation has been received, the

applicant has approached this Tribunal praying for the relief as referred to above.

3. It is the case of the applicant that since he retired from service with effect from 30.04.2008, he is entitled to interest on delayed payment of retiral benefits.

4. On the other hand, the respondents in their counter-reply have opposed the prayer of the applicant. According to them, due to pendency of the Writ Petition, retirement dues could not be released, which they released only after disposal of the Writ Petition and, therefore, the delay is not attributable to the Railway Administration.

5. Heard the learned counsels for both the sides and perused the records including the rejoinder filed by the applicant and the written notes of submissions submitted by both the sides. In pursuance of the direction of this Tribunal, the respondents have submitted the particulars of payment made to the applicant on account of retirement benefits on different dates, which are as follows:

1.	Leave Salary	Rs.1,21,275/-	30.04.2008
2.(i)	Difference of leave salary	Rs. 28,131/-	21.08.2009
(ii)		Rs. 5,493/-	10.09.2014
3.	Revised DCRG	Rs.2,55,579/-	03.02.2015
4.	CGEGIS	Rs.13,825/-	30.04.2008
5.	Pension/enhanced family pension	Rs.6,915/-	17.12.2014
6.	Normal Family Pension	Rs.4,149/-	17.12.2014
7.	Commutation of Pension	Rs.2,46,650/-	07.10.2015
8.	Provident Fund	Rs.22,994/-	07.10.2015

6. Rule-10 of Railway Services (Pension) Rules, 1993 reads as follows:

"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 basis 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, 1965, for imposing any of the penalties specified in clauses (i), (ii) 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".

7. Rule-87 of Railway Services (Pension) Rules, 1993 lays down as follows:

"87. Interest on delayed payment of gratuity: (i) In all cases where the payment of gratuity has been authorised later than the date when its payment becomes due, including the cases of retirement otherwise than on superannuation, and it is clearly established that the delay in payment was attributable to administrative reasons or lapses, interest shall be paid at the rate applicable to State Railway Provident Fund amount in accordance with the instructions issued from time to time:

Provided that the delay in payment was not caused on account of failure on the part of the railway servant to comply with the procedure laid down by the Government for processing his pension papers.

(Authority: File No.2015/F(E)III/1(1)/4 dt. 17.06.16 ...RB No.70)

8. Perusal of above rules makes it very clear that the delay in settlement of pension is not attributable to the Railway Administration. It is because, order dated 24.7.2002 revising the retrospective promotions of the applicant having been quashed by this Tribunal vide order dated 8.2.2008 in O.A.No.697 of 2002, was the subject matter of challenge before the Hon'ble High Court in W.P.C. No.12708/2008. The Hon'ble High Court vide judgment dated 09.01.2014 upheld the orders of this Tribunal whereafter, the respondents took action for releasing the pensionary benefits. It is because, due to pendency of the Writ Petition before the Hon'ble High Court, the applicant's status and qualifying service required to be reckoned for the purpose of pensionary benefits on the date of retirement, i.e., 30.04.2008 remained indeterminate and as soon as the matter was set at rest by the Hon'ble High Court, the respondents released all the dues in favour of the applicant, apart from releasing some other benefits during 2008 – 2009.

9. It is to be noted that recently a similar matter came up for adjudication by this Tribunal in O.A.No.260/08/2017 disposed of on 30.08.2019. Having regard to the facts and circumstances of the case and the decision relied upon by the applicant, this Tribunal held as under:

"9. This Tribunal has also gone through the decisions cited by the applicant (i) 2017 (I) CLR(SC) – 1206 (Achyutananda Parida vs. State of Orissa & Ors.) and (ii) AIR 2001 SC 2433 (Gorakhpur University vs. Shitla Prasad Nagrendra). The facts and circumstances involved therein being different and distinct from the instant case, the decisions so relied are of no help to the applicant.

10. In the conspectus of facts as narrated and analysed above, this Tribunal is of the opinion that the delay being not attributable to the Railway Administration, the applicant is not entitled to interest on delayed payment of pensionary benefits. In view of this, the O.A. being devoid of merit is dismissed, with no order as to costs".

10. In view of the decision taken in similar facts and circumstances, this Tribunal is of the opinion that the claim laid by the applicant for interest on delayed payment of retiral dues being not attributable to Respondents, the O.A. deserves to be dismissed and accordingly, the same is dismissed, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

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