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OA 1412 of 2013

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH, KOLKATA

O.A.NO.: 1412 OF 2013

[Kolkata, this , the 7th Day of March, 2016]

C O R A M

HON'BLE MRS. URMITA DATTA (SEN), MEMBER [JUDL.]

Prabir Kumar Chakraborty, son of Late Sushil Chandra Chakraborty, residing at 71, Dwarik Jungle Road, PO-Bhadrakali, District-Hooghly, PIN-712 232.APPLICANT.

By Advocate :- Mr. D.Saha.

Vs.

1. Union of India, service through General Manager, Eastern Railways, 17 No. N.S.Road, Kolkata-700 001;
2. Chief Work Manager, C&W, Workshop, Eastern Railway, Liluah, Howrah-711 204.
3. Chief Mechanical Engineer, Eastern Railways, Liluah, Howrah-711 204.
4. Workshop Personnel Officer, Eastern Railways, Liluah, Howrah-711 204.RESPONDENTS.

By Advocate :- Shri B.K.Roy.

O R D E R

Urmita Datta (Sen), Member [Judl.] :- This OA has been filed by the applicant praying for following relief :-

"8[a] An order do issue directing the concerned respondent authorities to forthwith pay the applicant his regular full pension commensurating to his salary at the time of his retirement, leave encashment, gratuity, leave salary and other service and or retirement benefits and or emoluments, including the arrear in this connection.

[b] To call for the records of the instant case so that conscionable justice may be rendered by passing an appropriate order.

[c] Any other appropriate order or orders, direction or directions as this Hon'ble Tribunal may deem fit and proper to protect the right of the applicant."

2. The case of the applicant is as follows :-

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2.1 As per the applicant, he joined the Eastern Railway at Liluah as a Labour in the Workshop on 15.01.1979 and after getting different promotions, he superannuated from service on 31.01.2012.

2.2 It is stated that unfortunately he was falsely implicated in one criminal case, being GR Case No. 274 of 2006, corresponding to North Bidhan Nagar Police Station Case No. 55, dated 05.06.2006, wherein it was alleged that the applicant in connivance with one developer failed to repay the outstanding loan of the Bank which he secured for purchasing a residential flat. The applicant was taken into custody for such allegation and was discharged on bail after lapse of 90 days i.e. on 25.01.2007[Annexure-A/2]. However, it has no connection with the official duty of the applicant.

2.3 After retirement the applicant started receiving the provisional pension of a meager amount of Rs.3500/- on and from February, 2012, but he did not receive any gratuity, leave encashment, not even medical and travelling benefits, etc. [Annexure-A/3].

2.4 Thereafter, the applicant filed one representation dated 16.09.2013 [A/4] before the concerned authority for release of the said retirement benefits, but without any effect.

Being aggrieved with, the applicant has filed the instant OA.

3. As per the applicant there was no disciplinary proceeding or judicial proceeding with regard to his official duty pending at the time of his retirement and, therefore, the respondents cannot

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withheld his retiral benefits on the ground of pendency of one criminal case relating to private dispute.

4. The respondents have filed the written statement, wherein it is stated that the applicant retired from Railway service on 31.01.2012 on superannuation. It is stated that IPC case, bearing No. 55 dated 05.06.2006 is pending and in this regard the applicant was suspended w.e.f. 26.10.2006 vide order dated 08.11.2006 and subsequently the said suspension was revoked vide order dated 08.03.2007. Further, another IPC Case No. 80 dated 29.04.2006 is pending, with regard to which he was placed under deemed suspension w.e.f. 16.06.2006 vide order dated 05.01.2008, which was subsequently revoked w.e.f. 23.06.2006 vide order dated 05.01.2008. In view of the above circumstances, a punishment of stoppage of increment for one year with cumulative effect was imposed vide order dated 18.12.2008. However, the applicant was paid subsistence allowance of the above mentioned period but his suspension period was not regularized due to above mentioned punishment. Under Rule 10 of the Railway Service Pension Rules, the authority can grant provisional pension which has been done in the case of the applicant.

In view of above, the respondents have, therefore, prayed for dismissal of the OA.

5. Applicant has filed rejoinder, wherein it is specifically stated that the respondent authorities have no right to withhold his pension and retiral benefits under Rule 10 of the Railway Service Pension

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Rules, 1993. Moreover, the applicant has also denied imposition of any punishment of stoppage of increment for one year vide order dated 18.12.2008 as claimed by the respondents.

6. I have heard both the parties and perused the records. During the course of hearing, the learned counsel for the applicant has relied upon following judgments :- [i] Order dated 05.07.2013 passed by the Hon'ble High Court Calcutta in WPCT No. 165 of 2013; [ii] 2013(2) Supreme 464; Allahabad Bank vs. A.C. Aggarwal; [iii] Order dated 09.12.2015 passed by CAT, Calcutta Bench in OA 902 of 2015. [iv] WP No. 121 of 2014 [Joydeb Ghatak vs. The Railway Protection Force, ER & Ors.]. [v] WPCT No. 188 of 2013 order dated 13.10.2015]. [vi] OA 966 of 2013 order dated 29.04.2015 [Sujan Roy vs. UOI & Ors.]

With regard to order dated 05.07.2013 passed in WPCT No. 165 of 2013, the Hon'ble High Court, Calcutta, while dealing with the case of one similarly situated has, inter-alia, observed as under :-

"This writ petition has been filed challenging the order dated 22nd March 2013 passed by Central Administrative Tribunal, Calcutta Bench in OA No. 230 of 2012 whereby the said learned Tribunal approved the decision of the respondent authorities regarding withholding of the pensionary and other benefits on the ground of pendency of the criminal proceedings.

The Rule 9 of the Railway service [Pension] Rules, 1993 has been relied upon by the Railway authorities for the purpose of withholding a substantial part of the pensionary benefits of the petitioner herein. The said Rule 9[1] of the Railway Service [Pension] Rules 1993 is set out hereunder;

"9[1] The President reserved to himself the right of withholding or withdrawing a pension or gratuity, or both, either in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Railway, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement;

Provided that the Union Public Service Commission shall be consulted before any final orders are passed.

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees three hundred seventy five per mensem."

The petitioner herein has admittedly retired from service on attaining the age of superannuation during pendency of the criminal proceedings. The respondent authorities, however, refused to release the full pensionary benefits of the petitioner on the ground of pendency of the criminal case upon placing reliance on sub-rule 3 of Rule 9 which is quoted hereunder-

"[3] In the case of a railway servant who retired on attaining the age of superannuation or otherwise and against when any departmental or juridical proceedings are instituted or where departmental proceedings are continued under sub-rule [2], a provisional pension as provided in rule 96 shall be sanctioned."

Since the petitioner has already retired from service, the relationship between master and servant ceased to exist. No disciplinary proceeding is pending against the petitioner and there is no scope to initiate any disciplinary proceedings against the said petitioner in future as the petitioner has already retired from service.

In the present case, there is no allegation of any pecuniary loss suffered by the Railway authorities.

No disciplinary proceeding was also initiated earlier by the Railway authorities against the petitioner by issuing any charge-sheet and therefore, the question of continuing the departmental proceedings after retirement and taking any step against the petitioner under sub-rule 3 of Rule 9 does not arise in the facts of the present case. Furthermore, the Railway authorities never expressed any desire to recover any amount from the petitioner on the ground of pecuniary loss.

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As a matter of fact, in the present case, undisputedly the employer had no occasion to suffer any pecuniary loss by the conduct of the petitioner herein.

The respondent authorities cannot withhold any amount or portion of the pensionary benefits including gratuity or any other service benefits of the petitioner on the ground of pendency of criminal proceedings specially when the respondent authorities did not suffer any pecuniary loss.

Sub-rule 3 of Rule 9 would apply in the event any departmental proceedings were instituted while the employee concerned was in service before retirement.

In the present case, no disciplinary proceeding was ever initiated and, therefore, the employer had no scope to withhold any part or portion of the pensionary benefits of the said petitioner.

The learned Tribunal completely misguided itself in deciding the issues raised before it and erroneously affirmed the illegal decision of the Railway authorities. The Railway authorities, in our opinion, had no occasion to withhold any part and/or portion of the pensionary benefits and other service benefits of the petitioner in absence of initiation of any departmental proceedings while the said petitioner was in service and specially when the employer had no occasion to suffer any pecuniary loss by or at the instance of the petitioner herein.

In the aforesaid circumstances, we are of the opinion that the respondent authorities had no valid reason and/or legal ground to withhold any part and/or portion of the pensionary benefits, gratuity or any other service benefits of the petitioner after retirement from service since the said petitioner is entitled to enjoy the pensionary benefits under the rules, after retirement on attaining the age of superannuation.

We, therefore, set aside the impugned judgment and order passed by the learned Tribunal on 22nd March, 2013 and direct the respondent authorities to disburse the entire admissible retiral benefits, viz. pension, gratuity etc. including arrears without any further delay but positively within a period of four weeks from the date of communication of this order."

This has been followed by the Calcutta Bench of the Tribunal in its order dated 09.12.2015, passed in OA No. 902 of 2015.

7. In the instant case also no disciplinary proceeding is pending against the applicant at the time of superannuation, neither

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undisputedly the employer had any occasion to suffer any pecuniary loss by the conduct of the applicant as it has no relation with the official duty of the applicant. Further, Rule 9[1] stipulates that President can withhold or withdraw the pension or gratuity, or both, either in full or part, whether permanently or for specified period, and of ordering of recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Railway, if in any departmental or judicial proceeding, the pensioner is found guilty of misconduct or negligence during the period of his service. But in the instant case neither any disciplinary proceedings is pending nor he has been found guilty in the criminal proceeding as it is still pending. Moreover, there is a specific Act on the issue i.e. 'The Payment of Gratuity Act, 1972', which is also applicable in the case of a railway employee. Section 14 of the Act is having overriding effect over any rule or law inconsistent with the provisions of the said Act as held by the Hon'ble Apex Court in the case of Allahabad Bank vs. A.C. Aggarwal [supra]. The Hon'ble High Court of Calcutta in the case of Joydeb Ghatak has dealt with the Rule 10[1][c] of the Railway Service Pension Rules, 1993, vis-à-vis Section 4 of The Payment of Gratuity Act, 1972, has observed as under :-

"The respondents refer to Rule 10 of the Rules governing the petitioner's service which is quoted in the petition. Rule 10[1][c] of the Railway Service Pension Rules, 1993 provides as follows :-

Rule 10[1][c] of the Railway Service Pension Rules, 1993 -

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

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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] and [iv] of rule 6 of the said rules, the payment of gratuity shall be authorized to be paid to the railway servant.

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.....However, the respondents say that in view of Rule 10[1][c] of the said Rules of 1993, the petitioner does not have an immediate claim on account of gratuity.

The 1972 Act is a special statute covering the payment of gratuity. It provides a scheme for the payment of gratuity to several classes of employees and has to be accepted as the ultimate law relating to gratuity in this country. Section 4[1] of the Act entitles an employee to receive gratuity upon the fulfillment of certain conditions. Sub-section [6] of Section 4 of the Act is the only recognized statutory exception to the entitlement conferred by section 4[1] of the Act. Section 4[6][b][ii] is relevant for the present purpose :

"4. Payment of Gratuity – [1] Gratuity shall be payable to an employee.....

[2]

[3]

[4]

[5]

[6] notwithstanding anything contained in sub-section[1]

[a]

[b] the gratuity payable to an employee may be wholly or partially forfeited.

[i]

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

The pre-condition to the operation of sub-clause [ii] would be if the services of the concerned employee are terminated. If the services of an employee are not terminated, his gratuity cannot be forfeited. If there is no provision for forfeiture of the gratuity, there is no rationale in withholding the gratuity for, if the employer is not entitled to forfeit it even if the petitioner's order of acquittal is reversed in the appeal, the employer cannot delay the release thereof. It must also be

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appreciated that the said Act of 1972 not only provides for payment of gratuity but also provides for interest at the rate of ten per cent per annum to be paid for the period of delay.

Though the respondents submit that Rule 10 of the said Rules of 1993 has not been struck down and such rule has not been challenged by the petitioner, it is only an argument as to form. It is elementary that once a special statute covers a field, rules made in respect of matters covered by the special statute have to conform to the provisions of the statute or be disregarded. Since the statute does not confer any authority on the employer or any other to withhold or forfeit gratuity upon any act of moral turpitude being committed by a person unless his services are terminated on such ground, even if the petitioner were to suffer a reversal in the appeal and be held guilty of the act of graft or moral turpitude that he had been accused of, the gratuity due to the petitioner cannot be forfeited since his services had not been terminated on such score.

WP No. 121 of 2014 is allowed by directing the Railways to release the amount due to the petitioner on account of his gratuity together with interest thereon at the statutory rate of ten per cent per annum from the date of the petitioner's superannuation."

8. In view of the legal position, as the applicant has admittedly superannuated from the Railway service and there was no disciplinary proceedings pending against him except a judicial proceeding private in nature, having no relation with the official duty of the applicant, the respondents cannot withhold the retiral benefits, including gratuity, of the applicant. Accordingly, the respondents are directed to release the entire retiral benefits i.e. regular full Pension, gratuity, leave encashment, etc. including arrears, within a period of four weeks from the date of receipt/production of a copy of this order.

9. In the result, the OA is allowed with above direction. There shall be no order as to costs.

[Urmita Datta (Sen)]
Member [Judl.]

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