



**CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH, KOLKATA**

O.A. 350/1202/ 2016

Heard on : 19.07.2019

Order dated: 09.08.2019

**Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative Member**

Sri Suján Roy,  
Son of Late Sailendra Mohan Roy,  
By occupation retired employee,  
Residing at P-372, Sudha Apartment,  
Flat No. 9, Parnashree,  
Kolkata – 700 060.

..... Applicant.

Versus

1. Union of India,  
Service through the General Manager,  
Eastern Railway,  
17, N.S. Road,  
Kolkata – 700 001.
2. The Divisional Railway Manager,  
Eastern Railway,  
Office at Howrah,  
District – Howrah, Pin – 711 101.
3. The Divisional Personnel Manager,  
Eastern Railway, Howrah,  
District – Howrah, Pin – 711 101.
4. The Works Manager (C),  
Eastern Railway, Liluah,  
District – Howrah, Pin – 711 204.
5. The Deputy Chief Mechanical  
Engineer (P) & Disciplinary Authority,  
Eastern Railway, Liluah,  
District – Howrah, Pin – 711 204.

..... Respondents.

For the applicant : Mr. S.S. Bandyopadhyay, Counsel

For the respondents : Mr. A. Mondal, Counsel

### ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached the Tribunal, in second stage of litigation, praying for the following relief:

*"(a) An order directing the Respondents to release gratuity/D.C.R.G. with interest and medical and pass facilities in favour of the Applicant forthwith;*

*(b) A direction be given to the Respondents to calculate the gratuity with interest and other benefits of the Applicant on the date of superannuation and release the same forthwith;*

*(c) Any order or orders as Your Lordships may deem fit and proper."*

2. Heard both Ld. Counsel, examined pleadings and documents on record.
3. The submissions of the applicant, as articulated through his Ld. Counsel, is that the applicant was working as Junior Engineer with the Respondent authorities and superannuated on 31.07.2011.

That, while working in the said post, a criminal case was initiated against the applicant, which is still pending, and, on account of pendency of the said case, the applicant's Gratuity/DCRG, Leave Encashment, Insurance, PF and similar retirement benefits have all been withheld.

The applicant had earlier approached the Tribunal in O.A.No. 966/2013, and, the Tribunal, vide order dated 29.04.2015, had directed the authorities to pass an order after reviewing the entire matter as laid down in RBE/2004, if not already reviewed, and, that the authorities have to pass fresh orders granting maximum pension as envisaged under the Rules as well as on Leave Encashment and other admissible benefits.

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According to the applicant, no disciplinary proceeding is pending against him, and, that, there is no allegation of pecuniary loss caused to the employer on his account. The authorities, however, have disregarded the orders of the Tribunal and have unreasonably withheld his retirement dues and, hence, this O.A. for relief.

In support, the applicant has cited the Tribunal's orders in **O.A. 1412/2013** in the matter of **Chandra Sekhar Paul Vs. UOI** as well as **O.A.No. 920/2014** in the matter of **Jaharlal Rakshit Vs. UOI**.

4. Respondents, per contra, would argue that the criminal case pending against the applicant is on account of offence committed by the applicant in course of discharge of his official duties.

5. The relevant facts that were noted by the Tribunal while passing its orders in O.A. 966/2013 are as follows:

"6. The respondents have further contended that Railway Services (Pension) rule-10 (a) and 10(c) of 1993 was followed at the time of his retirement. Since the applicant and others were involved in a case of misappropriation of fund of Rs. 138 crores (approx.) from Oriental Bank of Commerce, Salt Lake City, Kolkata by way of cheating and impersonation on the plea of purchasing the flat as intimated by DDI/Salt Lake, D.D., C.I.D. (West Bengal) in connection with North Bidhannagar P.S. case No. 55 dated 05.06.2006 u/s 467/468/471/419/420 and 120-B IPC and till his date of superannuation the said case was not finalized by the Ld. Court of ACJM/Bidhannagar, 24 Prgs (North), no retiral benefit, i.e., Leave Encashment, gratuity, commutation of pension was granted in favour of the applicant. The respondents have contended that disciplinary authority, i.e., Deputy Chief Mech.Engineer (P)/E. Rly./Liluah granted provisional pension, i.e., 50% of last pay + Dearness Relief to Shri Chandra Sekhar Paul, Ex. L-4128. In the case of the applicant, the disciplinary authority and Dy. CME (P)/E. Rly./Liluah and granted minimum provisional pension amounting to Rs. 3500/- + Dearness Relief. In the case of Chandra Sekhar Pal, Ex. L-4128 the gratuity and communication are withheld till the disposal of the IPC case

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North Bidhannagar P.S. Bearing No. 55 dated 05.06.2006.  
Hence no question arises of mala fide intention.

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10. From the records it is evident that two criminal cases where charge sheets have been filed by the Police, being PS Case No. 80 dated 29.04.2006 under Section 467/468/471/419/420/120-B of the IPC and P.S. Case No. 41/09 dated 09.03.2009 under section 420/468/471/120 B of IPC are pending trial against the applicant as one of the co-accused in the bank fraud case. The applicant was arrested and forwarded to the Court for misappropriation of public money from Oriental Bank of Commerce, Salt Lake Branch, Kolkata. The applicant was in jail custody for over three months. All the accused were released on bail since charge sheet could not be filed within three months.

11. It further appears from the reply that a disciplinary proceeding was also initiated against the applicant for the charge that the applicant did not give information regarding his arrest and he applied for sanction of leave to regularize the absence period from 15.06.2006 to 21.06.2006 stating that due to his daughter's examination he was absent. The applicant was held guilty and he was punished by the disciplinary authority. The penalty order was to the effect that his annual increment was stopped for one year with cumulative effect as and when due. The penalty order was implemented."

The Tribunal further observed as follows:

"14. We have carefully perused Rule 9 and 10 of Railway Services (Pension) rules and the aforesaid RBE. It is settled position of law that judicial proceeding means both Civil and Criminal proceeding. That is why in the relevant Pension Rules judicial proceeding has been separately mentioned from the disciplinary proceeding. According to the decision of the Railway Board, as contained in RBE 25/2004, as mentioned herein above, some exception has been carved out in respect of mainly civil proceeding where no criminal angle is involved. It is also clear from the said Railway Board letter that the departmental as well as judicial proceeding will be treated as deemed proceeding under Rule 9 of the Railway Services (Pension) Rules, 1993.

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31. Secondly, it emerges from the said RBE that the civil proceedings like divorce or partition suit without any criminal angle have been exempted from being continued. By mentioning civil proceeding it would also be clear that an offence or misconduct may be committed other than in

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*course of service or may not be committed in the place of work. Under Rule 9(5) 9B0 (ii) civil proceeding has been brought within the purview of Rule 9 of Railway Services (Pension) Rules, 1993. Having mentioned civil proceedings, both in the Rule 9(5) (b) and the R.B.E., it is clear that any civil proceeding having criminal angle could be continued after retirement."*

Finally, the Tribunal directed as follows:

*"36. Having regard to the facts and law, as discussed herein above, the Disciplinary Authority of the applicant is directed to pass an order after reviewing the entire matter as laid down in RBE/2004, if not already reviewed, within eight weeks from the date of receipt of this order. The said authority shall pass fresh order granting maximum pension as envisaged in Rule 10(1) (a) of the Railway Services (Pension) Rules within 12 weeks from the date of receipt of this order. The respondents shall also consider and pass orders with regard to release of leave encashment as well as other admissible benefits within eight weeks from the date of receipt of the order."*

6. The applicant, thereafter, approached the Hon'ble High Court at Kolkata in Writ Petition No. 188/2015, in which the Hon'ble High Court having observed that the petitioner was fully aware of the fact that criminal trial was pending against him for offence committed in his discharging official duties, dismissed his Writ Petition, wherein he had pressed for release of Gratuity.

The Review Petition No. 28/2016 arising out of the said W.P.C.T. No. 188/2015 was also dismissed by the Hon'ble High Court on grounds that there was no error apparent on the face of the judgment dated 13.10.2015.

7. Neither the applicant nor the Respondents, however, have brought on record the speaking order of the Disciplinary Authority, which was to be issued after reviewing the entire matter as laid down in RBE/2004 as mandated in Paragraph 36 of the Tribunal's order dated 29.04.2015 in O.A. No. 966/2013.

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The Respondents have only brought on record an order revising the Pension/Family Pension in favour of the applicant endorsed to the bank but there is no reference, whatsoever, as to whether it was issued in compliance with the direction of the Tribunal in O.A.No. 966/2013.

Accordingly, we would direct the appropriate Respondent authorities to issue, if not issued earlier, a detailed speaking and reasoned order upon review of the entire matter, including the applicant's claim for Gratuity, as directed by the Tribunal in O.A.No. 966/2013, and, in compliance of Paragraph 36 of the same. The Respondent authorities shall complete the entire exercise within a period of eight weeks from the date of receipt of a copy of this order.

In case the Respondent authorities have already issued the speaking order in compliance of the direction of this Tribunal in O.A. No. 966/2013, a copy of the same be forthwith furnished to the applicant, who may, thereafter, agitate the matter afresh, if so aggrieved and advised.

8. With the above directions, the O.A. is disposed of. There will be no orders on costs.

(Dr.Nandita Chatterjee)  
Member (A)

(Bidisha Banerjee)  
Member (J)

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