

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.
OA/050/00548/2016

Date of order reserved : 02.08.2019

Dated of order : 13th Sept., 2019

C O R A M

Hon'bleShriJayesh V. Bhairavia, Member [Judicial]
Hon'bleShri Dinesh Sharma, Member [Administrative]

Prem Kumar Sharma, S/o Late Gauri Shankar Sharma, resident of Flat No.103, Block Gajanan Complex, Ramjaypal Road, Bank Colony,, PS – Rupaspoor, Distt. – Patna.

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Applicants.

By Advocate : Ms. Mira Kumari.

Vs.

1. The Union of India through the General Manager, the East Central Railway, Hajipur, District – Vaishali [Bihar].
2. Divisional Railway Manager, East Central Railway, Danapur, District – Patna.
3. Senior Divisional Manager, East Central Railway, Danapur Division, Patna.
4. The Senior Divisional Personnel Officer, Danapur, Khagaul, Danapur, Dist.- Patna.

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Respondents.

By Advocate : Shri S.K.Pandey and Shri B.K. Choudhary

O R D E R

Per Jayesh V. Bhairavia , Member [J] : The applicant has filed the instant OA for quashing and setting aside the order dated 19.01.2011 as contained in Annexure-A/1 issued by the Senior Divisional Personnel Officer, Danapur. The applicant has further prayed for a direction upon the respondents that the absence of the applicant from duty from 11.03.2010 to 03.12.2010 may not be treated as a period of earned leave rather he should be treated on duty and for that period, all consequential benefits, including salary may be paid to him. The applicant has further prayed for a direction upon the respondents to release the amount of Gratuity and Leave Encashment.

2. The counsel for the applicant, to substantiate the prayer of the applicant mainly submitted that the applicant was initially appointed as Junior clerk on 29.06.1073 at Northern Railway and some times thereafter he was transferred to Eastern Railway, Jamalpur in the year 1073-74. He got several promotions and on attaining the age of superannuation, he retired as Office Superintendent on 31.01.2011. It is submitted that a vigilance case was lodged against unknown person in the year 2009 in Danapur Division. However, after his retirement, the applicant has been roped in said vigilance case. The CBI added the present applicant in final form with malafide intention and the said case is pending in the Court of CBI Judge, Patna.

3. It is submitted that the respondents have erroneously withhold the gratuity and leave encashment of the applicant against the said principle of law. It is contended that before his retirement the respondents had issued letter bearing no.11 dated 09.01.2011 whereby the service period of 11.03.2010 to 03.12.2010 was treated as earned leave. The applicant only came to know about this letter in the year 2013. Therefore, he has submitted representation dated 25.01.2013 addressed to Sr. Divisional Personnel Officer, Danapur to reconsider the said period as on duty since the applicant was not at fault to remain absent for the period 11.03.2010 to 03.12.2010. In this regard, counsel for the applicant submitted that during his service period, the respondents vide order dated 11.03.2010 transferred the applicant inter divisionally which was not permissible under the extant rule. The

said order was quashed and set aside by this Tribunal, vide order dated 16.04.2010 in OA 186/2010. Thereafter, the applicant was not allowed to join his duty. The writ petition filed against the said order by the respondents was also dismissed by the Hon'ble High Court of Patna, vide order dated 11.10.2010 in CWJC No. 14411/2010. In spite of that, the respondents have not allowed the applicant to resume his duty, therefore he has submitted various representations and subsequently, he was allowed to join his duty on 03.12.2010. Therefore, it is not correct on the part of the respondents to treat the said period as absence of the applicant, in fact the applicant was not at fault but just to harass the applicant, he has been deprived to perform his duty for the period from 13.03.2010 to 03.12.2010. Therefore, the impugned order dated 19.01.2011 [Annexure-A/1], whereby the respondents have regularized the said period and treated as earned leave, is bad in law as also arbitrary.

4. It is further submitted by the applicant that during the entire period of his service, there was no criminal case pending nor any departmental proceeding initiated against the applicant. Therefore, the impugned action of the respondents for withholding of retiral benefits like payment of gratuity and leave encashment is not permissible under the rules and various judgments rendered by the Hon'ble Apex Courts as well as Hon'ble High Courts. The applicant is suffering from heart disease for which he has placed reliance on the medical certificate, vide Annexure-A/7.

5. Counsel for the applicant placed reliance on the order judgment passed by the Hon'ble Apex Court in the case of State of Jharkhand and Ors. vs. Jitendra Kumar Srivastava & Ors. decided on 14th August, 2013 and submitted that the an amount of gratuity cannot be withheld.

6. The respondents have filed their written statement and denied the contentions of the applicant. It is submitted on behalf of the respondents that the applicant was involved in making irregularities during his posting as Office Superintendent, Pay Bill. He was transferred to Narkatiaganj on administrative ground, but the applicant did not join. However, the said transfer order was set aside by this Tribunal and upheld by the Hon'ble High Court of Patna, vide order dated 11.10.2010. Thereafter, the applicant joined his duty. The competent authority has passed an order for regularization of absence period from 11.03.2010 to 03.12.2010. The salary of the aforesaid has already been paid to the applicant. However, the claim of the applicant to treat the intervening period as duty is not admissible since the applicant had not performed his duty rather remained absence for such period.

7. It is further contended that claim for payment of gratuity is also not admissible on the ground that the CBI enquiry is going on and as per rule, during pendency of the enquiry gratuity is not payable. The gratuity amount will be paid after the outcome of CBI facts findings. At present the applicant is getting full pension. It is submitted that before enquiry report of CBI, it will be premature to say that the entire service of the applicant was fair and transparent. The CBI enquiry is going on and at this stage the claim of the applicant is not acceptable.

8. The Id. Counsel for the respondents placed reliance on provision of Rule 10 [c] of Railway Services [Pension] Rules, 1993 and submitted that no gratuity shall be paid to the Railway servant until the conclusion of departmental or judicial proceedings. He has placed reliance on judgment passed by Hon'ble Allahabad High Court in the case of Iniyatulla Khan vs. State of U.P. decided on 12th Jan., 2018 wherein it is held that where a departmental or judicial proceeding is pending on the date of retirement, the Railway employee is not entitled to claim payment of gratuity.

9. The applicant has filed his rejoinder reiterating his submissions. Additionally he has submitted that the applicant has no information regarding any criminal proceeding initiated against him till his retirement i.e. 31.01.2011. The respondents had allowed payment of leave encashment in the case of similarly placed employee, namely Dharmatma Singh, Ex. DPO, Danapur. Even he was facing departmental proceeding. However, in the case of the applicant neither the departmental proceeding was initiated or pending or any criminal proceeding was pending before any court of law at the time of his retirement, therefore, the applicant is entitled to receive his legitimate amount of gratuity and leave encashment.

10. Heard the learned counsel for the parties and perused the materials on record.

11. It is noticed that the respondents have withheld the amount of gratuity of the applicant mainly on the ground that on the date of retirement, CBI enquiry was going on. It is not in dispute that on the

date of retirement, no criminal complaint was registered nor any departmental proceeding was initiated or pending against the applicant. No material has been placed on record by the respondents about pendency of any departmental or judicial proceedings against the applicant, which can be said that the same was existing on the date of retirement of the applicant. Therefore, the provision of Rule 10 of Railway Services [Pension] Rules, 1993 in our considered view, cannot be made applicable in the present case. The Hon'ble Apex Court in the case of State of Jharkhand & Ors. vs. Jitendra Kumar Srivastava [supra], the right of the petitioner to receive pension as also the gratuity is property under Article 31[1] and by merely executive order, the State has no power to withhold the same. The said claim is also property under Article 19[i][f] of the constitution of India and it is not saved by Sub Article [5] of the Article 19. Therefore, denying the petitioner right to receive pension affects the fundamental right of the petitioner.

12. As noticed hereinabove,

Sd/-
[Dinesh Sharma]M[A]

mps.

Sd/-
[Jayesh V. Bhairavia]M[J]