

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

ALLAHABAD

Dated: This the 07th day of November 2019

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER – J

Original Application No.330/00153/2014

Abdul Majeed S/o Late Kasim Ali Resident of House No. 146F Ahmad Nagar, Chaksa Husain Gorakhpur, Gorakhpur.

..... Applicant

By Adv: Shri Siddharth Saran

V E R S U S

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Financial Advisor, Chief Account Officer (Administration), North Eastern Railway, Gorakhpur.

..... Respondents

By Adv: Ms. Shruti Malviya

ORDER

1. The present Original Application has been filed by applicant Abdul Majeed under Section 19 of the Administrative Tribunal Act, 1985 seeking the following reliefs :-

“(a) Issue a writ, order or direction in the nature of mandamus directing the respondent No.2 release the death cum/retirement gratuity with the interest existing today.

(b) Issue a writ, order or direction in the nature of mandamus directing the respondent No.2 to release the commuted value of pension.

(c) Issue any other order or direction which this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.

(d) Award costs of this Original Application to the applicant".

2. The dispute in the present O.A. is confined to prayer of applicant seeking the gratuity amount and pension on his retirement which has not been disbursed to him by the respondent-department. Admittedly, the gratuity amount and pension has not been paid to the applicant since his retirement on the ground that judicial proceedings in shape of a criminal case for offence u/s 120B/429/446/467/471 IPC/3(2) read with 13 (1) D.P.C. Act is pending against the applicant in the Court of Special Judge (CBI), Lucknow. It is the case of applicant that in view of law laid down by Hon'ble Apex Court in Bengali Baboo v/s State of U.P., 2003 (3) AWC 1760 and Maharaj Bhardwaj v/s U.P.Co-operative, 2008(1) ULBEC 3045, the pension and gratuity amount of applicant cannot be withheld by the respondents. Hence the present O.A.
3. As per, the counter affidavit, due to pendency of the aforementioned case against the applicant, in terms of Rule 9 read with Rule 10 of Railway Services (Pension) Rules, 1993, said retiral benefits have been withheld by the respondents till the final disposal of the judicial proceeding though provisional pension is being paid to the applicant.
4. I have heard and considered the arguments of learned counsels for the parties and gone through the material on record.
5. Learned counsel for applicant argued that the mere pendency of the criminal appeal in the Court will not disentitle the applicant to get his gratuity.
6. On the other hand, learned counsel for respondents relying upon Rule 9 read with Rule 10 of the Railway Services (Pension) Rules,

1993 argued that since admittedly judicial proceeding is pending against the applicant, as per, Rule 9 read with Rule 10, gratuity and pension cannot be paid to the government servant i.e. the applicant until conclusion of criminal proceedings.

7. Rule 9 and 10 of Railway Services (Pension) Rules, 1993 read as under:

“Rule 9. Right of the President to withhold or withdraw pension. (1) The President reserves 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 thousand five hundred per mensem.

(2) The departmental proceedings referred to in sub-rule

(1) –

(a) if instituted while the railway servant was in service whether before his retirement or during his re-employment, shall after the final retirement of the railway servant, be deemed to be proceeding under this rule and shall be continued and concluded by the authority by which they commenced in the same manner as if the railway servant had continued in service.

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President;

(b) if not institute while the railway servant was in service, whether before his retirement or during his re-employment-

(i) shall not be instituted save with the sanction of the President; (ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which and order in relation to the railway servant during his service.

(3) In the case of a railway servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in rule 10 shall be sanctioned.

(4) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one third of the pension admissible on the date of retirement of a railway servant.

(5) For the purpose of this rule –

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the railway servant or pensioner, or if the railway servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted-

(i) in the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognisance, is made; and

(ii) in the case of civil proceedings, on the date the plaint is presented in the Court.

Rule 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 bases 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, 1968, for imposing any of the penalties specified in clauses (i), (ii), (iii a) 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".

8. Hon'ble Supreme Court also dealt with this issue while interpreting Rule 52 (C) of A.P. Revised Pension Rules, 1980 in the case of R. Veerabhadram Vs. Govt. of A.P., (1999) 9 SCC 43 in the context of analogous provisions of the corresponding Rules of Andhra Pradesh Government and upheld the action of the State Government to withhold the gratuity of the employee during the pendency of criminal proceedings.
9. Rules 52(c) of the A.P. Revised Pension Rules, 1980, which reads as "No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon"
10. While interpreting 52(c) of the A.P. Revised Pension Rules, 1980, Hon'ble Apex Court in R. Veerabhadram Vs. Govt. of A.P., (1999) 9 SCC 43 held that "The payment of gratuity was withheld, in the present case, since the criminal prosecution was pending against the appellant when he retired. Rule 52(c) of the A. P. Revised Pension Rules, 1980 expressly permits the State to withhold gratuity

during the pendency of any judicial proceedings against the employee. In the present case, apart from Rule 52(c), there was also an express order of the Tribunal which was binding on the appellant and the respondent under which the Tribunal had directed that death-cum-retirement gratuity was not to be paid to the appellant till the judicial proceedings were concluded and final orders were passed thereon. In view of this order as well as in view of Rule 52(c), it cannot be said that there was any illegal withholding of gratuity by the respondent in the case of the appellant."

11. In the instant case, the allegation against applicant is that judicial proceedings as detailed above are pending against the applicant, as such, the prayer of applicant for a direction to the respondents to release the pension and gratuity cannot be acceded to. It be noted that charge for which the applicant has been convicted is serious in nature and surely not a simple offence. For the foregoing discussions, it is not possible for this Tribunal to give a direction to the respondents to release the withheld gratuity/pension amount before finalization of the pending criminal case.
12. In view of the facts of the case, I am of the opinion that no good ground has been made by the applicant for allowing the application and quashing the impugned order. The application being meritless is dismissed. In circumstance of the case, parties are left to bear their own costs.

(Rakesh Sagar Jain)

Member (J)

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