

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 306 of 2018

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Rabi Narayan Mohanty, aged about 66 years, S/o Late Raghab Charan Mohanty, retired Junior Clerk, O/o Dy.CEE/Con./ECoR/BBS, resident of At-Andarpur, PO-Kalyan Nagar, Dist-Cuttack-753013, Odisha.

.....Applicant

VERSUS

1. Union of India, represented through the General Manager, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda-752017.
2. Chief Personnel Officer/East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda-752017.
3. Chief Administrative Officer/Con./East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda – 752017.
4. Deputy Chief Personnel Officer (Con), East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda – 752017.

.....Respondents.

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.T.Rath, counsel

Heard & reserved on : 8.11.2019 Order on : 19.11.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

Although the applicant has filed this OA seeking the reliefs in this OA which included release of the DCRG and other retirement benefits, but at the time of hearing, learned counsel for the applicant submitted that during the pendency of the OA, the applicant has received all the retirement dues as prayed for and he restricts his claim to para 8(b) of the OA, which states as under:-

“b) And to direct the Respondents to pay 12% interest on Rs. 2,84,847/- for the period from October, 2011 to till date of actual payment;”

2. Heard learned counsel for the applicant who submitted that when the applicant retired from railway service on 30.6.2011 on superannuation, an amount of Rs. 2,84,847/- was deducted from his DCRG amount towards rent/penal rent for retention of railway quarter. The applicant filed the OA No. 192/2018 which was disposed of vide order dated 12.4.2018 passed by this Tribunal (Ann.-A/9) with a direction to the respondents to dispose of the

applicant's representation. The respondents have thereafter, passed the impugned order dated 7.8.2018 (Ann.-A/10) rejecting the representation of the applicant on the ground that since the applicant was getting the provisional pension, his DCRG amount of Rs. 2,84,847/- has been withheld. It is also mentioned that the applicant had challenged the order of the Tribunal in another dispute before Hon'ble High Court and since a judicial proceeding was pending the DCRG could not be released.

3. Vide order dated 26.7.2018 of this Tribunal, the submission of the applicant's counsel that the DCRG is to be paid as per the pay drawn by the applicant at the lower post and if after disposal of his writ petition, the applicant will be entitled for higher pay, then his DCRG amount will increase. Thereafter, the respondents have sanctioned final pension and released the DCRG amount of Rs. 2,84,847/- on p.4.2019 vide the copy of the PPO and release order at Annexure-R/4 of the Counter as stated in para 10 of the Counter.

4. Learned counsel for the respondents was heard. He reiterated the contentions in the Counter that the entire retirement benefits have already been disbursed to the applicant. Regarding payment of interest, it is submitted by the respondents' counsel that the delay was due to pending judicial proceedings, for which, the delay cannot be ascribed to the respondents and hence, the interest as claimed is not payable.

5. The only issue to be decided in this case is whether the delay in disbursement of the DCRG. The respondents have taken a stand that since a judicial proceeding (writ filed by the applicant challenging his reversion in which no relief was granted by the Tribunal) was pending, his final pension and DCRG could not be released. I am not able to accept such contentions of the respondents. Although no provision of the rules has been cited for withholding the DCRG of the applicant for the reason of his filing the writ petition, the rule 9 and 10 of the Railway Services (Pension) Rules, 1993 will be applicable. The sub-rules 3, 4 and 5 of rule 9 of the above rules state:-

“(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. (Authority: Railway Board's letter No. F(E)III/99/PN 1/(Modification) dated 23.5.2000)

(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."

6. It is clear from above provisions of the rules, the judicial proceeding in question for withholding pension of the Railway servant under the Rule 9 of the Railway Services (Pension) Rules, 1993, is required to be a criminal or civil proceedings instituted against the railway servant. The writ petition filed by the applicant in this case was for some claims of the applicant, which were not allowed by the respondents. It cannot be treated as a judicial proceeding against the applicant for the purpose of the Rule 9. In fact it is a judicial proceeding filed by the applicant against the respondents. Hence, the respondents' decision to withhold pension/DCRG benefits of the applicant on account of the pending writ petition was not in accordance with the rules. The withheld DCRG was released on 9.4.2019 as stated in the Counter as against the date of retirement i.e. 30.6.2011. Since withholding of release of DCRG by the respondents was in violation of the rules, the applicant will be entitled for payment of interest on delayed release of gratuity as per the provisions of the Rules.

7. In the circumstances, the respondents are directed to pay interest on the delayed release of the DCRG amounting to Rs. 2,84,847/- to the applicant from 1.10.2011 till 9.4.2019 at the rate of interest as specified under the rules, within 3 months from the date of receipt of a copy of this order. In case the amount of interest is not paid within the time as stated above, then the interest at a higher rate of 12% (as claimed by the applicant) will be payable for the period from 1.10.2011 till 9.4.2019 on Rs. 2,84,847/- subject to condition that the amount of interest so paid to the applicant will be recovered from the officials found responsible for such delay in payment of DCRG and interest to the applicant as per provisions of law.

8. The OA is allowed to the extent as mentioned above. No order as to cost.

(GOKUL CHANDRA PATI)
MEMBER (A)