

(2022) 09 KL CK 0185

In the High Court Of Kerala

Case No : Original Petition (CAT) No. 14 Of 2022

General Manager Southern Railway, Park Town, Chennai
600003

APPELLANT

Vs

R.Harindrakumar

RESPONDENT

Date of Decision : 30-09-2022

Acts Referred:

Railway Services (Pension) Rules 1993 — Rule 41, 42, 64

Citation : (2022) 09 KL CK 0185

Hon'ble Judges : A.K.Jayasankaran Nambiar, J;Mohammed Nias C.P., J

Bench : Division Bench

Advocate : N.K.Subramanian, Manu S., Martin G.Thottam

Final Decision : Allowed

Judgement

Mohammed Nias.C.P.J

1. The General Manager, Southern Railway, Chennai, and its officials are the petitioners in the above Original Petition (CAT) challenging the order in the Original Application filed by the respondent herein that set aside Annexures A3 and A6 orders sanctioning 2/3rd pension and 2/3rd gratuity as Compensation Pension respectively and directed the petitioners to pay to the applicant the full pension with effect from 26.10.2004, date of compulsory retirement.

2. The short facts necessary for the disposal of this original petition are as follows:-

The respondent herein, the applicant before the Tribunal was working as a Senior Clerk in Southern Railway and was given a penalty of compulsory retirement from service with effect from 25.10.2004, pursuant to a disciplinary proceeding that alleged that the applicant had obtained employment in the Railways under the Sports Quota by producing a fraudulent sports certificate. The punishment granted to the first respondent herein was questioned by him by filing OA No. 781/2005 before the Central Administrative Tribunal (CAT) Ernakulam, which

dismissed the same by Annexure R1 order. The review attempted as RA No.52/2008 was also dismissed by the Tribunal by Annexure R2 order. Both these orders were challenged before this Court in WP(C)No.12315 of 2019, which was also dismissed confirming the orders of the Tribunal by Annexure R3. After the culmination of the proceedings as above mentioned, the petitioners settled the retirement benefits and as per the orders impugned sanctioned 2/3rd pension and 2/3rd gratuity as Compensation Pension under the Railway Services (Pension) Rules 1993 (for short 'the Rules') were passed. Those orders restricting the pension and gratuity were challenged before the CAT by filing OA No. 180/00885/2018. The Tribunal on the basis of the judgment of this Court in WP(C)No.24260 of 2006 dated 12.03.2007 held that the grant of compulsory retirement pension ought to have been simultaneously made along with the order of compulsory retirement and that not having been done, it must be treated that the applicant is entitled to full pension as the disciplinary authority in the original instance in Annexure A1 did not choose to pass any orders reducing the pension. It is the said order of the Tribunal that is challenged in this original petition.

3. The learned Deputy Solicitor General, Sri.Manu submits that the very basis of the order of the Tribunal was the judgment of this Court in WP(C)No.24260 of 2006 which held that the order reducing pension must be simultaneously passed along with the order of the disciplinary authority imposing the punishment. This view of the Court was held to be per incurium by a later judgment of this Court in WP(C)No.27942 of 2007 and therefore, the very basis of the order of the Tribunal has vanished. It is his further submission that this Court by Annexure R3 judgment had clearly found that the petitioner ought to have been granted the punishment of dismissal and that leniency was shown by the petitioners herein while granting a lesser punishment of compulsory retirement. He also argues that there is nothing in Rule 64 that contemplates passing of orders under the said Rule simultaneously with the order of the disciplinary authority and therefore the latter Division Bench has correctly interpreted the said Rule and held that the earlier decision is per incurium.

4. The learned counsel for the applicant-first respondent, however contends that the punishment of compulsory retirement given is distinct from dismissal or removal, and therefore it cannot lead to forfeiture of past service. Reliance is placed on Rule 41 and 42 of the Rules, 1993. According to the learned counsel, since there is no provision for forfeiting the past service in cases of compulsory retirement, and in the absence of the disciplinary authority reducing the pension while imposing punishment, a second exercise of power under Rule 64 tantamounts to a second punishment, and therefore the said action of reducing the pension is illegal. The learned counsel further argues that Rule 64 can only be interpreted as an enabling provision which confers the power on the disciplinary authority to give more rigor to the punishment by reducing the pension and gratuity up to 2/3rd to which one is normally entitled as per the qualifying service. On the facts of the case the disciplinary authority having

chosen not to restrict/reduce the pension while passing even order dated 20.02.2004, the impugned order reducing the pension after 11 years of imposition of compulsory retirement and much after the cessation of the jural relationship is impermissible and virtually inflicting a second enhanced punishment. He also argues that he is entitled to full pension and the order of the Tribunal need not be interfered with.

5. Before proceeding further, it is profitable to extract Rule 40, 41 and 64 of the Rules.

"40. Forfeiture of service on dismissal or removal-Dissmissal or removal of a railway servant from a service or post shall lead to forfeiture of his past service.

41. Forfeiture of service on resignation – (1) Resignation by a railway servant from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority shall lead to forfeiture of his past service.

xxxxxx

64. Compulsory retirement pension – (1) A railway servant compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty, pension or gratuity, or both at a rate not less than two-thirds and not more than full compensation pension or gratuity, or both admissible to him on the date of his compulsory retirement"

4. A reading of the above rules would clearly indicate that, a railway servant compulsorily retired from service as a penalty may be granted pension or gratuity or both at the rate not less that 2/3rd and not more than full compensation pension or gratuity, which clearly shows that the quantum is completely at the discretion of the competent authority to grant either 2/3rd or full pension and within the band of 2/3rd to full which is an absolute discretion of the employer and the applicant does not have any vested right to stake claim for the entire pension or gratuity in cases where he is imposed a penalty of compulsory retirement. Thus, past service can be forfeited or pension withheld to the extent the Regulations so permit. This exercise of discretion under the rules cannot be termed as a second punishment for more reasons than one.

5. Secondly, it has been noticed that the above rules contemplate the exercise of discretion after the punishment is imposed thereby indicating the stage of exercise of discretion. As rightly held by the co-ordinate Bench in the judgment in WP(C) No.27942 of 2007, that the imposing of punishment and the exercise of discretion determining the quantum payable as pension or gratuity need not be simultaneous differing from the earlier view and holding the earlier view as per incurium. Resultantly, the very basis of the order of the Tribunal cannot be sustained. We are also not impressed with the argument of the learned counsel for the respondents that not imposing a reduction in pension or gratuity at the time of inflicting the punishment should mean that he is entitled to full pension. As held earlier the question of grant of pension or its quantum is determined only

after the punishment is imposed after the culmination of the disciplinary proceedings. We are in respectful agreement with the view expressed in the judgment in WP(C)No. 27942 of 2007.

6. Further it is to be noted that a punishment following the disciplinary proceedings are governed by Railway Services (Conduct) Rules 1966 and Railway Servants (Discipline and Appeal) Rules, 1968 while action of withholding of 25% of the pension is taken under the provisions of the Railway Services (Pension) Rules, 1993. Thus, both the actions i.e. imposing the penalty of compulsory retirement and withholding of 25% of the pension are under different Rules and Regulations. This also compels us to reject the argument on behalf of the respondent that the imposition of punishment as well as the decision under Rule 1964 has to be simultaneously made.

7. The learned counsel for the respondent argued that there has been delay in passing orders granting the pensionary benefits due to him. We note that the respondent's request for pension was dated 18.2.2015, after the dismissal of the writ petition challenging the orders of the Tribunal confirming the punishment. The petitioner had directed the respondent to re-submit the duly filled pension papers which was done by the respondent only one year after the direction. In such circumstances, we cannot attribute any delay on the part of the petitioners for the delay in the grant of pension.

8. Under such circumstances, we do not find any error in the exercise of jurisdiction by the authority in fixing the pension and gratuity in Annexures A3 and A6. The said orders cannot be faulted on any count and they are upheld. In the light of the above finding, the judgment of the Tribunal needs to be set aside. Consequently, OA No180/00885/2018 filed before the Tribunal will stand dismissed.

The OP(CAT) is allowed as above .