

(2023) 07 CAT CK 0039

In the Central Administrative Tribunal

Case No : Original Application No.1087 Of 2019

Raja Ram Prasad

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 18-07-2023

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2023) 07 CAT CK 0039

Hon'ble Judges : Om Prakash VII, Member (J)

Bench : Single Bench

Advocate : Vinod Kumar, Subhash Chandra Mishra

Final Decision : Allowed

Judgement

Om Prakash VII, Member (J)

1. Shri Vinod Kumar, learned counsel for the applicant, and Shri Subhash Chandra Mishra, learned counsel for the respondents, were present at the time of hearing.

2. Present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act 1985 challenging the pension order dated 16.11.2015 passed by the Senior Divisional Finance Manager, East Central Railway Mughalsarai and following reliefs have been sought:

“(i) To issue an order or direction in the suitable nature quashing the quantum of calculation in respect of pension and gratuity dated 16.11.2015 passed by the Senior Divisional Finance Manager, East Central Railway Mughalsarai (Annexure No. A-1 to this original application with Compilation No.I).

(ii). To issue an order or direction in the suitable nature quashing the impugned order dated 03.10.2018 passed by the respondents (Annexure No. A-2 to this original application with Compilation No.I).

(iii) To issue an order or direction in the suitable nature directing the respondents

department to release the full settlement dues of the applicant as well as pension alongwith market rate of interest on the delaying payment as per railway board circular itself.

(iv) To issue an order or direction in the suitable nature directing the respondents department to decide the pending claim of the applicant by passing reasoned and speaking order.

(v) To issue any order or direction, which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

(vi) To award the cost of the application to the applicant."

3. Brief facts of this case are that the applicant was working as senior clerk under the control of Senior Section Engineer (Diesel) East Central Railway at Mughalsarai Division, Mughalsarai. He was charge sheeted with the memorandum of major charge sheet dated 15.09.2009. After conclusion of the departmental inquiry pursuant to the aforesaid charge sheet, the inquiry officer submitted a report upon which the disciplinary authority had passed an order of punishment dated 18.02.2011 by which the applicant was awarded the punishment of compulsory retirement from services. After this the applicant did not file any appeal against the same. However, the respondents authorities put up the case of the applicant before the Revisional authority i.e. Divisional Railway Manager (P), East Central Railway Mughalsarai upon which the revisional authority passed an order on 19.07.2011 by which it upheld the punishment order dated 18.02.2011. The applicant again approached the office of the respondents department requesting the release of the entire settlement dues in his favour in view of the punishment order of compulsory retirement dated 18.02.2011 as per Railway Service Rules. Thereafter, the respondent department i.e. Assistant Personnel Officer, issued a letter/order on 26.05.2015 seeking clarification from the office of respondent No.2 about the decision for release of pension and gratuity under the pension rules to the applicant. However, pursuant to the aforesaid letter dated 26.05.2015, no decision has been taken by the disciplinary authority i.e. Senior DME/DSL/MGS in respect of the quantum of pension and gratuity and till date no such decisions were communicated to the applicant. Thereafter, another letter was issued on 16.11.2015 from the office of Accounts Department East Central Railway Mughalsarai i.e. Senior Divisional Finance Manager, East Central Railway Mughalsarai by which his pension was calculated only 2/3rd and not full as per pension rules, and also settlement dues were released in the same ratio. Feeling aggrieved, the applicant submitted a detailed representation on 31.05.2016 requesting therein to release the entire settlement dues as well as pension in his favour as per settled provision of law/rules provided in the Railway Servant Disciplinary and Appeal Rules. On receiving no response, he approached before this Tribunal through O.A./398/2018 which was disposed of with direction to the respondents to consider and decide the claim of the applicant. In compliance to the aforesaid order, respondent no.2 passed a speaking order which was communicated to the applicant vide letter

dated 03.10.2018 by which the claim of the applicant was rejected stating therein that since there was order of disciplinary authority to only pay 2/3rd of quantum of pension and gratuity to the applicant.

4. Submission of learned counsel for the applicant is that the applicant was working as Senior Clerk under the control of Senior Section Engineer (Diesel) East Central Railway, Mughalsarai. A charge sheet was served upon him and the inquiry was concluded. Inquiry officer submitted a report whereby the disciplinary authority passed an order dated 18.02.2011 imposing upon him a punishment of compulsory retirement from service. Although the applicant did not challenge the order of compulsory retirement, the competent authority itself revised the punishment and ultimately a firm order was passed by the disciplinary authority suo moto. Respondents issued a pension paper deducting one third pension of the applicant. Referring to the entire document, it was argued that no such order has been passed by the disciplinary authority or revisionary authority and the deduction made from the pension of the applicant is not based on any order. This fact would be clarified from the documents annexed with the O.A. itself. Respondents have also not filed any document showing the order for deducting one third pension. It is further argued that since the punishment order does not contain the deduction of one third of the pension, therefore, the deduction is illegal. Similarly deduction from the gratuity is also illegal. To substantiate his argument, learned counsel for the applicant referred to the entire document annexed with the O.A. as well as rejoinder affidavit. He further argued that the O.A. be allowed and the respondents be directed to issue fresh PPO releasing the entire pensionary benefit and gratuity amount. It was also argued that the two third pension as well as the gratuity amount were released after four years. Thus, the respondent may also be directed to pay an interest thereon.

5. Learned counsel for the respondents argued that since the order of compulsory retirement was not challenged, thus, it has attained finality. Order of deduction was passed by the disciplinary authority. Due to this reason, the pension paper was issued deducting one third amount from the pension and gratuity of the applicant. There is no illegality in the deduction of one third amount from the pension as it is passed by the disciplinary authority. To substantiate this argument, learned counsel for the applicant referred to the counter affidavit (particularly to para 6 and 7) and further argued that since the order of compulsory retirement has attained finality, the relief claimed in the O.A. cannot be allowed. Thus, prayer was made for dismissal of the O.A.

6. I have considered the rival contentions of learned counsel appearing for both the parties and have gone through the entire documents on record.

7. As is evident from the records, the applicant was working as Senior Clerk under the control of Senior Section Engineer (Diesel), Eastern Central Railway, Mughalsarai Division. A charge sheet was served upon him, and after inquiry, punishment of compulsory retirement was imposed upon him. Applicant did not

file any appeal against it. Revisional authority revised the matter on its own and on scrutiny, upheld the punishment imposed upon the applicant. Thus, it is clear that punishment imposed upon the applicant has attained finality.

8. Submissions of the learned counsel for the applicant is that no order for deduction of 1/3rd of the pension was made by the punishment imposing authority and even by revisional authority. Instead, 1/3rd pension of the applicant was deducted and PPO was prepared only for 2/3rd amount. This was done on the ground that disciplinary authority has directed to do so.

9. If the submission raised on behalf of the learned counsel for the applicant is compared with the order dated 18.02.2011 passed by the Senior Divisional Mechanical Engineer (Diesel), East Central Railway, Mughalsarai, it is clear that after scrutiny they came to the conclusion that CO Raja Ram Prasad (the applicant) be compulsory retired from Railway services with immediate effect i.e., from 19.02.2011. Nothing was mentioned in it regarding deduction of the pension.

10. Plea taken by the learned counsel for the respondents that deduction is made on the basis of direction of the disciplinary authority is not acceptable. There must be some specific order passed by the competent authority for deduction of the pension. In the instant matter, applicant has been compulsory retired w.e.f. 19.02.2011 and by all consequences, applicant will be entitled for all the retiral benefits like pension, gratuity etc. until and unless ordered otherwise.

11. In this case, except compulsory retirement no other order has been passed. Thus, on close scrutiny of the entire facts and circumstances and comparing the same with the pleadings of the parties and submissions raised across the Bar, I am of the considered opinion that reducing the pension of the applicant to the extent of 2/3rd is not supported by any order passed by the competent authority and prayer made in the OA is liable to be allowed. Thus, the instant original application is allowed. Order dated 16.11.2015 and order dated 03.10.2018 are hereby set aside.

12. Respondents are hereby directed to issue fresh PPO in favour of the applicant entitling him full pension and gratuity within a period of four months from the date of receipt of certified copy of this judgment. 1/3rd amount which has already been deducted from the pension of the applicant which was not done on the basis of any order of competent authority, shall be refunded to the applicant within the same period @ 6% simple interest. If any deduction has been made from the Gratuity, same shall also be refunded within the same period @ 6% simple interest.

13. All associated MAs stand disposed of accordingly. No order as to costs.