06.01.2022
Court No.4
Item No.30
SB

WP.CT 88 of 2021

Union of India &Ors.
Vs
Pundu Sadboo

Mr. Sovan Mukherjee …. For the petitioners

Mr. Ujjal Roy
Mr. Arpa Chakraborty … For the Respondent

The instant writ petition has been filed challenging the order and judgment of the Central Administrative Tribunal, Calcutta Bench passed on 11.08.2021 in O.A. 350/1452 of 2018 directing the petitioner authority to release the withheld death-cum-retiral gratuity amount within four weeks from the date of receipt of copy of the order.

Shorn of unnecessary details the private respondent was working with the railways and was entrusted the onerous task of verifying the load and to avoid the overloading which has the impact on the loss to the railway exchequer. The authority subsequently issued a letter on 19.12.2014 to the officer for verification of the loading at the originating station and submit report in this regard. Subsequently, on 28.02.2015 the said officer intimated to the superior that there has been an overloading at the originating station and the railway exchequer is burdened with Rs.20,04,040/-, the break up and the details whereof was annexed to the said letter with nomenclature under charges statement duly signed by the said officer.

Subsequently, the letter of demand was raised upon the petitioner and ultimately the amount to the tune of Rs.11 lakhs and above was deducted from the pensionary / retiral benefit of the petitioner after his attainment of superannuation on 31.10.2016.

The aforesaid action of the authority constrained the private respondent to file a tribunal application challenging and / or assailing the action of the authority in deducting the aforesaid amount from the pensionary / retiral benefit and in course of hearing it transpires that a comprehensive representation was made by the private respondent to the competent authority raising the question of such action which was kept in suspended animation as no decision was taken thereof. The tribunal directed the said authority to dispose of the said representation after affording an opportunity of hearing to the petitioner. Ultimately decision was taken negativing the contention of the petitioner that the authority can deduct such amount from the pensionary / retiral benefits.

The aforesaid decision is again challenged by the petitioner by instituting a proceeding before the tribunal. By the impugned order, the tribunal directed the release of such amount within a period of four weeks which led the union of India, the petitioner herein to file the instant writ petition.

The facts which have been adumbrated herein are more or less undisputed. The entire writ petition runs into several pages banking upon the stand that the demand having raised against the petitioner is in fact a departmental or disciplinary proceeding and, therefore, Rule 9 of the Railway Services (Pension Rules) 1993 is applicable. Before embarking further journey it would relevant to quote Rule 9 of the said Rules which runs thus:-

"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. (Authority: Railway Board's letter No. 2011/F (E) III/1(1)9dated 23.09.13)

(2) The departmental proceedings referred to in sub-rue (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.(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."

From the meaningful reading of the said provision, there is no ambiguity in our mind that the said provisions get activated only after the employee retires from service. The said rule enjoins that the President can withhold or withdraw a pension or the gratuity or both either in full or in part or for any specified period, the whole or the part of the pecuniary loss caused to the railways. There is no fetter on the part of the railway either to withhold or recover any pecuniary loss caused from the pension or the gratuity of the erring officer. However, what has been overlooked by the authority is that the aforesaid situation may only arise if in any departmental or judicial proceeding the pensioner is found guilty of grave misconduct or negligence during the period of his service.

We invited the attention of the learned counsel appearing on behalf of the petitioners whether any departmental proceeding was initiated against the private respondent either during his service or after his retirement. The stand which has been projected before us that the letter dated 28.02.2015 constitutes the disciplinary proceedings because of the fact that it contains the under charges statement meaning thereby the charges which are required to be framed in the disciplinary proceeding was communicated to the private respondent. The attention was also drawn to Sub Rule 5 of Rule 9 to the effect that the departmental proceeding shall be deemed to be instituted on the date on which the under charges statement was issued to the railway servant or was placed under suspension. According to the learned advocate for the petitioner the under charges statement accompanied with the letter dated 28.02.2015 is, in fact, the initiation of the departmental proceeding and therefore the contention of the petitioner that no departmental proceeding was initiated is unfounded, incorrect and not tenable in law.

We are afraid to accept such interpretation assigned to the provisions contained in Rule 9 of the said Rules. Sub-Rule 5 indicates the commencement of the disciplinary proceeding and the under charges statement which in normal parlance is known as Article of charges to be the foundation stone of proceeding. Though we have not been taken to the single Rules concerning the Disciplinary Proceeding but the manner in which the disciplinary proceeding is contemplated does not appear to us to be in consonance with the statutory provisions. The under charges statement will clearly and explicitly indicate the statement of definite / specific misconduct or negligence and not what the authority found or perceived at the time of inspection. No show-cause notice has been issued nor any inquiry officer was appointed which are one of the ordinary incident of the disciplinary proceeding. By no stretch of imagination the letter dated 25.02.2015 or the annexure appended relating to under charges statement can be construed to be the starting point of initiation of the disciplinary proceeding. The under charges statement can never be construed as the demand having raised but must clearly, explicitly and without any ambiguity indicate the alleged misconduct or the negligence which augmented the loss suffered by the railways. Such misconception in our opinion is patent and the demand so raised cannot be construed as the show-cause notice or the exercise in furtherance of the disciplinary proceeding. The authority cannot do anything unless conferred by the statutory Act or the rules. If there is any specific provision contained therein and procedure to be adopted, the same has to be strictly adhered to as any departure thereof would entail the action of the authority liable to be struck down in exercise of the judicial fiat. Till now the disciplinary proceeding has not been initiated and by passing of time, the same cannot be initiated because of the embargo created in Rule 9 of the said rules and, therefore, we do not find any justification in the action of the railway authority in deducting the amount from the retiral / pensionary benefits admissible to the private respondent.

We thus, do not find any infirmity or any illegality in the judgement and order of the tribunal.

The writ petition is thus dismissed.

There shall be no order as to costs.

Because of pendency of the instant writ petition, the time indicated by the tribunal has lapsed. We, therefore, extend the time to release the deducted amount by two months from date.

(Rabindranath Samanta, J.) **(Harish Tandon, J.)**