

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Reetobroto Kumar Mitra

MAT 739 of 2017

Rabindra Nath Das
Versus
Union of India & Ors..

With
MAT 693 of 2017

Union of India & Ors..
Versus
Rabindra Nath Das

For the Appellant : *Mr. Achin Kumar Majumdar,*
in MAT 739 of 2017 *Ms. Ananya Adhikary.*
&
For the Respondent
in MAT 693 of 2017

For the Appellants : *Mr. Sanjit Kumar Ghosh,*
in MAT 693 of 2017 *Mr. Raja Ghosh.*
&
For the Respondents
in MAT 739 of 2017

Hearing is concluded on : *29th April, 2025.*

Judgment On : **7th May, 2025.**

Tapabrata Chakraborty, J.

1. The appeal being MAT 693 of 2017 has been filed by the Union of India and its functionaries and the appeal being MAT 739 of 2017 has been filed by the writ petitioner, namely, Rabindranath Das (hereinafter referred to as Rabindra). Both the appeals have been preferred challenging a judgment dated 05.04.2017 passed by the learned single Judge by which two writ petitions being WP 1208 (W) of 2009 and WP 15925 (W) of 2016 preferred by Rabindra were disposed of. The first writ petition being WP 1208 (W) of 2009 was preferred by Rabindra challenging three chargesheets, two of them were dated 31.07.2007 and the third one was dated 14.08.2007. The second writ petition being WP 15925 (W) of 2016 was preferred challenging, *inter alia*, an order dated 20.04.2016 issued by the Senior Divisional Security Commissioner, Railway Protection Force, Eastern Railway (hereinafter referred to as SDSC).

2. Shorn of unnecessary details the facts are that while Rabindra was working in the post of Sub Inspector of Railway Protection Force, (hereinafter referred to as RPF) at Kanchrapara he was issued a chargesheet being no. CS/S/153/02/207 dated 31.07.2007 alleging, *inter alia*, that he has misbehaved with an officer and had held a press conference with media reporters and another chargesheet being CS/S/153/03/207 dated 31.07.2007 alleging gross negligence and slack supervision for failure to prevent crime. A further chargesheet being CS/S/153/04/207 dated 14.08.2007 was issued alleging gross negligence and slack supervision as

regards incorporation of GD entries. Challenging the said chargesheets, Rabindra preferred a writ petition being WP 1208 (W) of 2009, in which an interim order was passed on 04.03.2010 directing that *'let no steps be taken against the petitioner in pursuance of the chargesheet which is subject of dispute in the present proceedings'*. Subsequent thereto, a chargesheet dated 09.12.2011 was issued against Rabindra alleging unauthorized absence and in the disciplinary proceedings (hereinafter referred to as DPs), as initiated on the basis of the said chargesheet, an order of removal was passed on 01.06.2012. Challenging the same, Rabindra preferred a statutory appeal in which the Appellate Authority (hereinafter referred to as AA) passed an order on 24.05.2013 modifying the order of punishment of removable to an order of compulsory retirement. Rabindra accepted the said order and thereafter submitted several representations claiming disbursement of the consequential benefits including gratuity and commutation pension on the basis of the said order passed by the AA. Subsequent thereto, by a memo dated 20.04.2016 issued by the SDSC it was informed that *'since 03 (Three) Nos. Of DAR cases under Rules-153 of RPF Rules 1987 are pending against him till date and those DAR cases are not yet disposed off due to stay order of Hon'ble High Court. APO-I/MLDT opined that only provisional pension without commutation of pension may be sanctioned withholding DCRG. Leave salary may also be retained if there is a possibility of money recoverable in terms SL. No.131/97 & 19/84 by D.A.'* In the said memo it was also informed that *'Retirement Certificate has been issued on 31.03.2016 which has been sent to him in his home address through by post'*. Challenging the said order the

petitioner preferred the second writ petition. Both the writ petitions were disposed of by the judgment impugned in the present appeal.

3. Mr. Ghosh learned advocate appearing for the appellants in MAT 693 of 2017 argues that the learned single Judge erred in law in declaring that the DPs pertaining to chargesheets dated 31.07.2007 and chargesheet dated 14.08.2007 have been rendered infructuous in view of the order of compulsory retirement before the authorities could complete the said DPs initiated in terms of the provisions of provisions of Rule 153 of 1987 Rules. The respective DPs were distinct and different and the employer could not have been divested of its authority to impose separate punishments upon establishment of the delinquent's culpability in the respective DPs. The learned single Judge thus erred in law in stepping into the shoes of the DA. In support of such argument reliance has been placed upon the judgment delivered in the case of *Union of India (UOI) and Others Vs. Om Prakash Yadav*, reported in (2013) 1 Apex Court Judgments (SC) 62.

4. He argues that if a DP against a delinquent in a discipline force is initiated in respect of misconduct committed and if he retires from service before the completion of the DP, it is always open to the employer to direct deduction in his pension on the proof of the allegations established against him. By the impugned order, such authority of the employer was illegally usurped. In support of such contention reliance has been placed upon the judgment delivered in the case of *Takhatray, Shivadattaray Mankad Vs. State of Gujrat* reported in (1989) AIR (SC) 1843.

5. He contends that in a DP even after quashing of the dismissal order, the charges remain alive. The non-conclusion of the subsisting DPs in the present case was due to the restrain order passed by the competent Court. The employer's right to establish the charges cannot be permanently crippled on the logic of subsistence of such interim order moreso when upon detection of an irregularity in a DP, the Court may revert it to the required stage and direct for its logical conclusion. In support of such contention reliance has been placed upon the judgments delivered in the cases of *State of Uttar Pradesh VS. Brahm Datt Sharma and Another*, reported in (1987) AIR (SC) 943 and *South Bengal State Transport Corporation VS. Ashok Kumar Ghosh and Others*, reported in (2010) 11 SCC 71.

6. Mr. Ghosh argues that an order dated 20.04.2016 passed by the SDSC does not suffer from any jurisdictional error inasmuch as under the provisions of Rules 9 and 10 of the Pension Rules the employee becomes entitled to provisional pension during subsistence of departmental or judicial proceedings on the date of his retirement. Such arguments, as advanced, were glossed over by the learned single Judge and no finding was returned on the same. Such infirmity warrants interference of this Court.

7. According to Mr. Ghosh, the appeals need to be reheard as the judgment in the same was delivered about four months after the judgment was reserved. The hiatus period is much more than a reasonable period and such delay is violative of constitutional rights of the litigants.

8. Mr. Ghosh further submits that the learned single Judge had rightly rejected Rabindra's prayer for payment of interest upon gratuity and commutation pension in the light of the gravity of charges in the DPs which could not be brought to its logical conclusion. The right to avail interest did not accrue in favour of Rabindra. Interest can be undertaken only when any amount is due. In view of the provisions of the Pension Rules his right towards disbursement of pension and gratuity did not crystallize in view of pendency of the DPs.

9. Mr. Majumder, learned advocate appearing for the Rabindra denies and dispute the contention of Mr. Ghosh and submits that the DPs pertaining to two chargesheets dated 31.07.2007 and a chargesheet dated 14.08.2007 were not DPs under the provisions of Rule 9 of the Pension Rules and that as such on the strength of the said DPs initiated under Rule 153 of the 1987 Rules, the RPF authorities could not have ever withheld Rabindra's pensionary benefits. The charges leveled against Rabindra in the said DPs cannot be construed to be of grave misconduct as defined under Rule 8 (5) (b) of the Pension Rules. In support of such contention reliance has been placed upon the judgment delivered in the case of *Sri. Swapan Kumar Dasgupta vs. Union of India and Others*, reported in 2015 SCC OnLine Cal 6875.

10. He further submits that the order of compulsory retirement was accepted by Rabindra and pursuant to the said order the retirement certificate was also issued by the RPF authorities, as would be explicit from the memo dated 20.04.2016 issued by the SDSC. The employer employee

relationship admittedly stood ceased on and from the said date. Upon cessation of such relationship the question of continuance of the pending DPs under the 1987 Rules could not have occasioned and that as such the learned single Judge rightly observed that the said DPs have been rendered infructuous in view of the order of compulsory retirement.

11. He argues that the learned single Judge could not have denied interest to Rabindra upon arriving at a *prima facie* finding as regards Rabindra's culpability in the DPs which could not be completed. The authorities could not have withheld the benefits consequential to the order of compulsory retirement which included gratuity and commutation pension. The same was withheld by the employer at its own risk and peril and they cannot wriggle out of the consequences of deliberate withholding of such benefits which have the traits of constitutional rights. Interest is not a penalty but is a normal accretion upon capital and having withheld the admitted dues, the authorities are liable to pay interest. In support of such contention reliance has been placed upon the judgment delivered in the case of *Md. Farid Vs. Union of India*, reported in 2024 (4) CHN (CAL) 332.

12. We have examined the submissions advanced by the learned advocates appearing for the respective parties in the contours of the aforesaid factual situation.

13. Indisputably, two chargesheets dated 31.07.2007 and one chargesheet dated 14.08.2007 were issued proposing to hold inquiry against Rabindra under Rule 153 of the 1987 Rules. None of the said inquiries were

initiated under the provisions of Pension Rules. The order dated 24.05.2013 passed by AA in the DP which was initiated by the chargesheet dated 09.12.2011, was accepted by Rabindra. On the date of issuance of the AA, the interim order passed in the writ petition being WP 1208 (W) of 2009 on 04.03.2010 was subsisting. In the said conspectus, the learned single Judge rightly arrived at a finding that *‘with the petitioner being allowed to be compulsory retired in 2013, any pending departmental action beyond his date of Compulsory Retirement not being under Rule 9 (supra) is rendered infructuous’* and that *‘with the retirement of the petitioner no employer-employee relationship can be stated to be notionally alive for the purpose of preserving the departmental action’*. The pending DPs not being DPs under the Pension Rules could not have survived after the date of compulsory retirement. We do not find any infirmity in such findings moreso when the allegations in the said DPs also do not come under the purview of the definition of ‘grave misconduct’ under the Pension Rules. There is no allegation of any pecuniary loss and no charge sheet has been issued against Rabindra for recovery of any pecuniary loss which might have been caused to the authorities by any act of misconduct or negligence of Rabindra.

14. Records would reveal that no explanation could be furnished by the RPF authorities as to why no steps were taken to vacate the interim order which was passed by the competent Court and as to why the affidavit-in-opposition was also not filed. It is thus explicit that they themselves were not inclined to take effective steps towards completion of the DPs. Having failed to do so, they cannot argue that they should be allowed the complete the

said DPs even though Rabindra had accepted the order of compulsory retirement. Such acceptance of the order of compulsory retirement was duly intimated to the authorities. They cannot shift the burden upon Rabindra with an intent to call out an explanation to the effect that for his writ application and for the interim order passed in the same, the DPs could not be concluded prior to compulsory retirement of Rabindra.

15. It is well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make a lot of difference in decision making process. The judgment is a precedent for the issue of law that is raised and decided and not observations made in the facts of any particular case. There is no dispute as regards the proposition of law upon laid down in the judgments, upon which reliance has been placed by Mr. Ghosh but the same are distinguishable on facts. The judgment delivered in the case of *Md. Farid* (Supra), upon which reliance has been placed by Mr. Majumdar is also distinguishable on facts.

16. The direction in regard to the payment of interest only provides a 'just' compensation. Payment of interest has to be taken within the ambit of the expression 'just'. The Court should exercise restraint before passing an order saddling the employer with any financial burden. It is not a case simpliciter that Rabindra retired on a particular date and thereafter the employer withheld his pensionary benefits without any reason whatsoever. The facts would reveal that there were three pending DPs on the date of issuance of the order of compulsory retirement. Had the said order of

compulsory retirement, which was passed modifying an order of removal, been challenged by Rabindra, the pending DPs may not have been rendered infructuous. Having thus wriggled out of the rigors of the pending DPs, Rabindra cannot claim interest alleging that the authorities had deliberately withheld the benefits consequential to compulsory retirement. In such facts and circumstances of the case we are of the view that it was rightly found to be inexpedient to direct the employer to pay interest to Rabindra as claimed.

17. For the reasons discussed above, both the appeals being MAT 693 of 2017 and MAT 739 of 2017 and the connected applications, if any are dismissed.

18. Records would reveal that by an order dated 08.12.2017 passed in the present appeal, a co-ordinate Bench of this Court directed the RPF authorities *'to deposit the entire amount of terminal benefits due and payable to the respondent in compliance of the order impugned to this appeal, according to their own calculation, within the aforesaid period of December, 21, 2017 in a nationalized bank initially for a period of 12 months and to renew such fixed deposit from time to time till the disposal of this appeal'*. The said amount, as calculated to be Rs. 7,68,672/-, has already been deposited and the said amount has been kept as a fixed deposit, as would be explicit from the memo dated 17.12.2017, as produced by Mr. Ghosh. Let the said memo be kept on record.

19. In view thereof, this Court directs the RPF authorities to withdraw the deposited amount along with the accrued interest and to disburse the same

in favour of Rabindra together with all other consequential benefits, if any within a period of four weeks from the date of communication of this order.

20. There shall, however, be no order as to costs.

21. Urgent Photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Reetobroto Kumar Mitra, J.)

(Tapabrata Chakraborty, J.)