

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10705 OF 2025

Union of India	]
Through Sr. Divisional	]
Medical Officer,	]
Divisional Health Unit (Kurla)	]
Mumbai Division Central Railway	]
Kurla Railway Colony, Sable Nagar,	]
Maharashtra – 400 089	] .. Petitioner

Versus

1. Arun P. Attrade	]
Age 67 Occ: Retd.	]
Retired Chief Pharmacist,	]
Divisional Railway Hospital	]
Kalyan, Mumbai Division	]
Central Railway Mumbai – 421602	]
2. The Executive Director	]
Railway Board, Rail Bhavan,	]
Raisina Road, New Delhi,	]
Delhi- 110 001	]
3. The General Manager,	]
Central Railway Mumbai CSMT	]
Mumbai – 400001.	]
4. The Additional Chief	]
Medical Suptt., DRH, (Kalyan)	]
Mumbai Division, Central Railway	]
Kalyan (E) Maharashtra-421301	] .. Respondents

ALONG WITH

INTERIM APPLICATION NO.12271 OF 2025

IN

WRIT PETITION NO.10705 OF 2025

Arun P. Attrade	] .. Applicant
Vs.	
Union of India and Others	] ..Respondents

Mr. Akash K. Kotecha, Advocate for Petitioner.

Mr. Samir Singh, Advocate for Respondent No.1/Applicant.

**CORAM : SHREE CHANDRASHEKHAR, CJ &
GAUTAM A. ANKHAD, J.**

DATE : 10TH OCTOBER 2025.

PER, GAUTAM A. ANKHAD, J.

The petitioner has challenged the impugned order and judgment dated 17th September 2024 passed by the Central Administrative Tribunal at Mumbai in Original Application No.95 of 2023.

2. Respondent no.1 was appointed as a junior Pharmacist under the respondent no.4 on 8th December 1979. During service, on 31st July 2013, the respondent no.1 was placed under suspension and charged of having demanded and accepted illegal gratification/bribe of Rs 300/- from a decoy patient to facilitate issuance of Duty Certificate. The suspension was revoked on 29th January 2014. Thereafter on 13th November 2014, departmental inquiry proceedings were initiated against Respondent No.1 and a charge-sheet was issued. Respondent No.1 superannuated from service on 31st July 2015, whilst the inquiry proceedings were still pending. The inquiry concluded in February 2016. Based on the Inquiry Officer report of 18th March 2016 several years later in 2022, advice from the Union Public Service Commission ("UPSC") was sought regarding the disciplinary action to be taken under Rule 9 of the Railway Services (Pension) Rules, 1993 ("Railway Rules").

3. Respondent No.1 submitted a representation challenging the findings of the Inquiry Officer. On 11th November 2022, after

considering the UPSC's advice and the inquiry report, the petitioner passed an order imposing the penalty of withholding 100% of the monthly pension otherwise admissible to Respondent No.1 and permanently withholding his entire gratuity. Aggrieved by the order of punishment, Respondent No.1 filed Original Application No. 95 of 2023 before the Tribunal. After hearing the parties, the Tribunal by the impugned order dated 17th September 2024 allowed the Original Application and held as follows:

"I) Original Application is allowed.

II) The order of termination dated 11th November, 2022 is set aside. The applicant shall be entitled to provisional pension from the date of termination till today and will also get the same till the final order is passed by the Disciplinary Authority. Pending MAs, if any, stand closed. No order as to costs."

4. Mr. Akash K. Kotecha, the learned counsel for the petitioner has assailed the impugned order on the ground that the respondent No.1 did not examine any witnesses or produce documentary evidence before the Inquiry Officer. It is further submitted that the Tribunal erred in its interpretation of Rule 9 of the Railway Services (Pension) Rules, 1993, under which the President is empowered to withhold the pension of a delinquent employee once misconduct is established. On this basis, it was contended that the impugned order deserves to be set aside. On the other hand, Mr. Samir Singh, the learned counsel for the respondent no.1, supported the findings and reasoning of the Tribunal.

5. We have heard the learned counsel for the parties and examined the record. In our view, no ground has been made out to warrant interference with the impugned order. In "*Deokinandan Prasad v. State of Bihar*" (1971) 2 SCC 330 a Constitution Bench of

the Hon'ble Supreme Court held that pension is a right, and payment of pension does not depend upon the discretion of the Government. It is governed by statutory rules, and any government servant who satisfies the requirements of those rules is entitled to claim it. The Court emphasized that the grant of pension is not a matter of grace or generosity. It is well-settled law as held by the Hon'ble Supreme Court in "*State of Jharkhand & Ors. v. Jitendra Kumar Srivastava & Anr.*" (2013) 12 SCC 210 that a person cannot be deprived of his pension except by authority of law. Pension and gratuity are not mere bounties. They are earned by an employee by virtue of long and satisfactory service and are in the nature of "property". Such rights cannot be taken away except by following due process, as mandated under Article 300A of the Constitution of India. Mr. Kotecha, learned counsel for the petitioner, has been unable to point out any provision under the Railway Services (Pension) Rules, 1993, which authorizes the withholding of pension while departmental or judicial proceedings are still pending. Rule 9 of the Railway Services (Pension) Rules, 1993 reads as under:-

"9. Right of the President to withhold or withdraw pension.-

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either 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.

(2) The departmental proceedings referred to in sub-rule (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 were 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 instituted 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.*
 - (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 an order of dismissal from service could be made 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 96 shall be sanctioned.*
- 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. Rule 9, on which reliance has been placed, has no application to the present case. It is an admitted position that the inquiry had not concluded when the petitioner retired from service on 31st July 2015. Placing reliance on the judgment of the Hon'ble Supreme Court in *Union of India vs. S.K. Kapoor*, (2011) 4 SCC 589, the Tribunal has held that principles of natural justice have been violated as the advice of UPSC was not communicated to the delinquent / respondent no.1. Since there is violation of natural justice, the order of termination dated 11th November 2022 has been set aside. Therefore, pension would not have been withheld under Rule 9 and in our view, the Tribunal has correctly held that the respondent no.1 was entitled to provisional pension.

7. We also note from the order dated 11th November 2022 that the evidence of the most material witness, the decoy patient Shri Amar Singh Meena (PW-1), was not recorded and was dropped from the proceedings due to his purported unauthorized absence. The relevant portions of the order read as under:

“5.6.....Another contention of the Charged Pensioner is that some documents related to PW1, being the material witness, were not provided on grounds being not relevant. As per judgment of the Hon'ble Supreme Court in Raizada Trilok Nath V/S UOI failure to furnish copies of documents such as FIR, statements etc. amounts to violation of Article 311(2) of the Constitution. The question of relevancy should be looked at from the point of view of the defence. Even if the documents requested for defence, is not relevant the request for access should not be rejected. Hence, the power to refuse access should be sparingly exercised. However, if it is so decided, the reason should be cogent and substantial and should invariably be recorded in writing. In addition, the Inquiry Officer, in hurry to complete the enquiry, dropped PW-1 with vested interest and without his consent.”

“5.9. The President, regarding the dropping of the PW1, has observed that during the inquiry held on 21.09.2015 and 26.11.2015, the Presenting Officer had conveyed that PW1 is on unauthorized absence from his duties w.e.f. 13.04.2014 as per

SSE/PWAY/PNVL letter dated 15.09.2015 and that he was not available for RH and cross-examination. However, all efforts were made to produce him in the inquiry but these were not fruitful. It is, thus seen that PW1 could not be produced since his whereabouts were not traceable. Accordingly, PW1 was dropped by the Inquiry Officer.....”

8. While it may not be necessary for the department to examine every witness, it is imperative that a witness whose testimony is essential to the “unfolding of the narrative” must be examined. The non-examination of PW-1 goes to the root of the inquiry. A reasonable opportunity of showing cause against the proposed action necessarily includes an opportunity to effectively defend oneself against the charges. The government servant must be given an opportunity to deny the charge and establish his innocence. In the present case, the main witness was not brought for cross-examination and the respondent no.1 was not furnished with the letter dated 15th September 2015 or other documents sought by him through his letter dated 28th October 2015 concerning the unauthorized absence of PW-1. In *Kashinath Dikshita v. Union of India*, (1986) 3 SCC 229, the Hon’ble Supreme Court held:

“12. Be that as it may, even without going into minute details it is evident that the appellant was entitled to have an access to the documents and statements throughout the course of the inquiry. He would have needed these documents and statements in order to cross-examine the 38 witnesses who were produced at the inquiry to establish the charges against him. So also at the time of arguments, he would have needed the copies of the documents. So also he would have needed the copies of the documents to enable him to effectively cross-examine the witnesses with reference to the contents of the documents. It is obvious that he could not have done so if copies had not been made available to him. Taking an overall view of the matter we have no doubt in our mind that the appellant has been denied a reasonable opportunity of exonerating himself. We do not consider it necessary to quote extensively from the authorities cited on behalf of the parties, beyond making passing reference to some of the citations, for, whether or not there has been a denial to afford a reasonable opportunity in the backdrop of this case must substantially depend upon the facts pertaining to this matter.

- 13.** *The appellant relied on Tirlok Nath v. Union of India¹³ in support of the proposition that if a public servant facing an inquiry is not supplied copies of documents, it would amount to denial of reasonable opportunity. It has been held in this case:*

“Had he decided to do so, the document would have been useful to the appellant for cross-examining the witnesses who deposed against him. Again had the copies of the documents been furnished to the appellant he might, after perusing them, have exercised his right under the rule and asked for an oral inquiry to be held. Therefore, in our view the failure of the Inquiry Officer to furnish the appellant with copies of the documents such as the FIR and the statements recorded at Shidipura house and during the investigation must be held to have caused prejudice to the appellant in making his defence at the inquiry.”

Reliance has also been placed on State of Punjab v. Bhagat Ram¹⁴ and State of U.P. v. Mohd. Sharif¹⁵ in support of the proposition that copies of statements of witnesses must be supplied to the government servant facing a departmental inquiry. It has been emphatically stated in State of Punjab v. Bhagat Ram¹⁴ by this Court as under: [SCC p. 156, SCC (L&S) p. 19, paras 6, 7 and 8]

“The State contended that the respondent was not entitled to get copies of statements. The reasoning of the State was that the respondent was given the opportunity to cross-examine the witnesses and during the cross-examination the respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence.

The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against the charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government servant he will not be able to have an effective and useful cross-examination.

It is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the government servant. A synopsis does not satisfy the requirements of giving the government servant a reasonable

opportunity of showing cause against the action proposed to be taken.”

14. *In view of the pronouncements of this Court it is impossible to take any other view.”*

9. We thus find no infirmity in the impugned order. The Tribunal has correctly held that the respondent no.1 is entitled to provisional pension from the date of termination until a final order is passed by the Disciplinary Authority. Writ Petition No.10705 of 2025 lacks merit and is dismissed with no order as to costs. In view of dismissal of the writ petition, Interim Application No.12271 of 2025 does not survive and is disposed of.

[GAUTAM A. ANKHAD, J.]

[CHIEF JUSTICE]

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