2026:AHC:226560-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 20561 of 2023

Union of India and 3 others

…..Petitioner(s)

Versus

Raja Ram Prasad and another

…..Respondent(s)

Counsel for Petitioner(s) : Anurag Sharma

Counsel for Respondent(s) : Vinod Kumar

Chief Justice's Court

HON'BLE ARUN BHANSALI, CHIEF JUSTICE
HON'BLE KSHITIJ SHAILENDRA, J.

1. Heard Shri Anurag Sharma, learned counsel for the petitioners and Shri Vinod Kumar, learned counsel for respondent no. 1 (‘the respondent’).

2. This writ petition has been filed challenging the order dated 18.07.2023, whereby the Central Administrative Tribunal, Allahabad Bench, Allahabad (‘the Tribunal’) has allowed Original Application (‘O.A.’) No. 1087 of 2019 filed by the respondent, setting aside the orders dated 16.11.2015 and 03.10.2018, impugned therein, with a further direction to the petitioners to issue fresh Pension Payment Order (‘PPO’) in favour of the respondent entitling him full pension and gratuity. The Tribunal has further observed that 1/3rd amount, which has

already been deducted from the pension, shall be refunded to the respondent along with 6% simple interest and if any deduction has been made from the gratuity, the same shall also be refunded along with 6% simple interest to him.

3. The respondent was appointed as a substitute in the Railways on 28.05.1980. He got temporary status on 28.09.1980 and after serving on various posts over a long period of time, he was promoted as Clerk Grade-I in the year 2003. A departmental charge sheet was issued to him on 15.09.2009 and based upon an inquiry held, he was found to have secured initial appointment by concealing his correct parentage. An order came to be passed on 18.02.2011 compulsorily retiring the respondent from service. Though the respondent did not assail the order of punishment, the petitioners filed revision seeking enhancement of punishment, however, by an order dated 19.07.2011, the revisional authority upheld the order of compulsory retirement.

4. The respondent, thereafter, raised an issue regarding quantum of pension admissible/payable to him and after exchange of certain intra-departmental communications, a PPO was prepared on 16.11.2015 indicating pension payable to the respondent and the same was paid to him.

5. The respondent filed O.A. No. 391 of 2018 before the Tribunal raising a challenge to settlement of dues to the extent of only 2/3rd quantum and raising grievance to get full pension and gratuity. The O.A. was disposed of by order dated 17.04.2018 with a direction to the competent authority to decide representation dated 31.05.2016 filed by the respondent in accordance with law by passing a reasoned and speaking order. The authority, thereafter, passed an order dated 03.10.2018 observing that there being sufficient evidence on record to establish that the respondent had fraudulently obtained employment based upon his incorrect parentage, major penalty was awarded to him and it had been decided by the Disciplinary Authority to pay 2/3rd

quantum of pension and gratuity dislodging the respondent's claim for full pension.

6. The respondent, then, filed O.A. giving rise to this writ petition challenging the quantum of pension and gratuity with a further challenge to the order dated 03.10.2018 seeking to release full amount of pension and gratuity to him along with interest. The reliefs were claimed based upon the plea that the deductions made by the petitioners and settlement of dues were not based upon any order and since the punishment order did not contain indication of deduction of 1/3rd of pension, all deductions made by the petitioners were unsustainable.

7. The O.A. was contested by the petitioners taking stand that, based upon the charges established against the respondent in the inquiry proceedings, the order of major penalty (compulsory retirement) having attained finality, the department had rightly arrived at a conclusion to release only 2/3rd of pension and gratuity, which decision could not be said to be illegal.

8. The Tribunal, by order dated 18.07.2023, allowed the O.A. by observing that reducing pension of the respondent to the extent of 2/3rd was not supported by any order passed by the competent authority and set aside the orders impugned therein and issued directions indicated herein-before.

9. Learned counsel for the petitioners has made submissions that settlement of pensionary and gratuity benefits is as per Rule 64 of **Railway Services (Pension) Rules, 1993**, wherein it is provided that when a Railway servant is compulsorily retired from service as a penalty, pension or gratuity or both may be granted at a rate not less than two-third and not more than full compensation pension or gratuity or both, admissible to him on the date of his compulsory retirement. Submission, therefore, is that the respondent could not claim entire pension or gratuity as a vested right.

10. Further submission has been made that orders were passed by the authorities not only in 2015 but also in pursuance of directions issued by the Tribunal in the earlier round of litigation and, hence, it cannot be said that the deduction is without any order and the plea raised by the respondent that in the order of compulsory retirement, no indication was made regarding deduction of pension/gratuity, is not supported by any rule and, hence, the order passed by the Tribunal on that ground cannot be sustained. In support of his submissions, learned counsel has placed reliance upon judgment of **Kerala High Court in OP (CAT) No. 14 of 2022: The General Manager, Southern Railway, Park Town, Chennai and others Vs. R. Harindrakumar**, decided on 30.09.2022.

11. On the other hand, learned counsel for the respondent has made submissions that it was obligatory on the part of the Disciplinary Authority to either indicate in the order of compulsory retirement or simultaneously pass a separate order alongwith the punishment order indicating the quantum of punishment and since no reasoned order was passed on the day when penalty of compulsory retirement was imposed, issuance of PPO in 2015 on a reduced quantum was unsustainable. In support of his submissions, learned counsel has placed reliance on judgment of Hon'ble Supreme Court in **Vijay Kumar Vs. Central Bank of India and others: 2025 SCC OnLine SC 1442**, particularly paragraphs 17 and 18 thereof, wherein requirement of passing an order while denying full pension is indicated.

12. It has further been argued that the authority, which has passed the order dated 03.10.2018 in pursuance of the order passed by the Tribunal in the earlier round of litigation, was not the competent authority and, hence, the earlier order passed by the Tribunal was not complied with in its true letter and spirit.

13. We have considered the submissions made and have perused the material available on record.

14. There is no dispute about the finality attached to the order of compulsory retirement and also about applicability of Rule 64 of the

Rules, 1993 in relation to grant of pension and gratuity. The contentious issue raised before the Court is as to whether Rule 64 obliges the authorities to indicate in the order imposing penalty of compulsory retirement or in a separate order passed on the same day, reasons for grant of pension/gratuity at a rate not less than two-third and not more than full compensation pension or gratuity or both and as to whether on account of passing of no such order, whether deduction made is sustainable.

15. For a ready reference, Rule 64 of the Rules, 1993 needs reproduction; the same reads as under:-

> "**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**.
>
> (2) Whenever, in the case of a railway servant the President passes an order (whether original, appellate or in the exercise of power of review) awarding a pension less than the full compensation pension admissible under these rule, the Union Public Service Commission shall be consulted before such order is passed."

16. A perusal of sub-rule (1) of Rule 64 indicates that the same does not provide for passing of any order while granting pension or gratuity in a case where a Railway servant is compulsorily retired from service as a measure of penalty. The requirement of passing of an order is, however, indicated in sub-rule (2) of Rule 64, but the same applies in a situation where order is passed by the President of India, either originally or in exercise of appellate or review jurisdiction and, only in such a case, the requirement is that the an order can be passed in prior consultation with Union Public Service Commission.

17. Admittedly, the present case does not fall in the category of cases where sub-rule (2) of Rule 64 applies and, therefore, once the legislature has not incorporated requirement of passing an order in cases covered by sub-rule (1) of Rule 64, the Court is not inclined to read something which is not provided in the Rule itself so as to accept what was agitated by the respondent before the Tribunal as also argued before this Court.

18. We find that the judgment of Kerala High Court in the case of **R. Harindrakumar** (supra) deals with exactly the same situation which has arisen in the present case and the ratio laid down in the said judgment needs reproduction. Paragraphs 4, 5 and 6 of the said judgment read as under:-

> "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."**
>
> (emphasis by Court)

19. The Kerala High Court has, in so many words, laid down that it is the absolute discretion of the competent authority to grant either 2/3rd or full pension and the claimant does not have any vested right to seek claim for the entire pension or gratuity and the plea raised that such a reduction was not indicated at the time of inflicting the punishment would mean that the employee is entitled to full pension, was found to be not acceptable. The Kerala High Court has further observed that the punishment following the disciplinary proceedings is 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 and the argument that imposition of punishment as well as the decision under Rule 64 has to be simultaneously made, was rejected.

20. We fully endorse the view taken by the Kerala High Court in the case of **R. Harindrakumar** (supra) and looking at the very language used in sub-rule (1) of Rule 64, we are not inclined to accept the submissions made on behalf of the respondent that since no order was passed reducing the quantum of pension/gratuity at the time when the order of compulsory retirement was passed, the respondent would be entitled to full pension. We may further observe that if the plea raised on behalf of the respondent is accepted, the same would mean that in absence of any order passed by the competent authority while compulsorily retiring the employee, no pension/gratuity at all can be released. This Court, therefore, finds no reason to accept the plea raised only in a single direction which suits to the respondent.

21. In so far as the decision in the case of **Vijay Kumar** (supra), as relied upon by learned counsel for the respondent is concerned, a perusal thereof indicates that the said matter had arisen from **Central Bank of India (Employees') Pension Regulations, 1995** and the Hon'ble

Supreme Court dealt with Regulation 33 thereof, wherein it is provided that employee has a right to receive pension not less than 2/3rd of the full pension and deduction can be made only after prior consultation with the Board of Directors. Discussion was made qua Regulation 33(2) of the Regulations, 1995, which contained a provision for consultation with the Board of Directors. However, the provision indicates that such consultation is required when ‘competent authority’ passes an order whether in exercise of original, appellate or review power and it was in that background, the Hon’ble Supreme Court observed that consultation from the Board of Directors is required and necessity of passing an order to that effect would arise.

22. In the present case, as indicated herein-before, though the requirement of consultation is there in sub-rule (2) of Rule 64 of the applicable Rules of 1993, however, the same applies only in a situation where order is passed not by the competent authority but by the President of India and, therefore, the judgment in the case of **Vijay Kumar** (supra) being distinguishable on facts and based upon different regulations containing a different provision, would be of no help to the respondent. The said judgment cannot be applied also for the reason that in banking services, the officials at different levels have been designated as competent authorities and President of India has no role in service matters relating to bank employees, whereas in Railways, situation is altogether different and role of the President of India is well defined in Regulations/Circulars/Memoranda.

23. As far as the submission made on behalf of the respondent that no order was passed by the competent authority and indication made that 2/3rd pension/gratuity admissible/payable to the respondent, was not an order but notings on the file, the Court deems it appropriate to reproduce Annexure-6 to the writ petition, which reads as under:-

93

Sub: Major penalty DAR case against Sri Raja Ram Prasad, ex.Sr.Clerk under SSES/Dsl/MGS.

Ref: GM (P)/ECR/HJP's letter no. E/ECR/DAR/Revision/Disposal/R.R.Prasad/13 dated 26.05.15

In connection with major penalty DAR vigilance case against Sri Raja Ram Prasad, Ex.Sr.Clerk under Sr.DME(Dsl) he was imposed punishment for compulsory retirement vide Sr.DME/Dsl/MGS's punishment notice dt. 18.02.2011 vide page 116 to 117. The punishment imposed by DA being not accepted by GM (Vig)/HJP case was referred to GM(P)/HJP for further necessary action by the CME/ECR vide page 124. GM(P) had communicated the decision of CME and accordingly GM(Vig)/HJP was apprised vide page 126.

GM (Vig)/HJP vide his letter no. dt. 11.6.14 placed at page 151 has intimated that the major penalty DAR case against Sri Raja Ram Prasad has been closed. However, payable of pension benefits should be decided in consultation with CPO's office as per ruling applicable to such cases of seeking employment by fraudulent means.

In this regard GM (P)/HJP was requested vide this office letter dt. 28.3.14 vide page 160 to communicate the decision regarding payment of settlement dues to be made to Sri Raja Ram Prasad.

GM (P)/ECR/HJP vide letter no. E/ECR/DAR/Revision/Disposal/R.R.Prasad/13 dated 17.7.14 had intimated that " A railway servant compulsorily retired from service as penalty may be granted, by the authority competent to impose such penalty, pension or gratuity, or both at a rate not less than two third and not mare than full compensation pension or gratuity, or both admissible to him on the date of his compulsory retirement.

Sr.DME (Dsl) in the capacity of D.A in his order placed at page 114 has not passed order regarding grant of pension or gratuity of Sri Raja Ram Prasad, as such, to comply with GM (P)'s instruction case was put up to Sr.DME (Dsl) for taking further action and as per remarks of Sr.DME (Dsl) and OS/Ruling case was again sent to GM (P) for further order.

Now GM (P)/HJP vide his letter dt. 166 has intimated that the question to be decided is the quantum of pension and gratuity " which is not to be less than 2/3rd and not more than full". Thus as per pension rule the decision has to be taken by the disciplinary authority i.e. Sr.DME (Dl). It is a case purely of sanction of pension and gratuity under Pension rule and not decision of penalty under D&A rule. may kindly be seen.

In the light of GM (P)/HJP's letter placed at page 166, Sr.DME/Dsl/MGS may be requested to decide the quantum of pension and gratuity

Submitted please

Bimal 16/6/15
DCM/Vig.

OS/Confdl In the light of GM(V)/HJP's letter placed below Sr. DME/Dsl may be requested to decide quantum of pension and gratuity pl.
16/6/15

APO-I 16.6.15

Sr.DME (Dsl) 2/3rd of quantum of pension and gratuity is sanctioned in favour of Sri Raja Ram Prasad, ex Sr. Clerk. May pl. take further n/action.
29/6/15
29/6/15
(SR DME/DSL/MGS)

APO/II/MGS for info as per comments above.
1.7.15

I stands.

Jitendra Kumar

मण्डल कार्मिक अधिकारी
पूर्व मध्य रेल, पं दीन दयाल उपा
Divisional Personal Office
E.C. Rly. DDU

24. A perusal of the above document indicates that the General Manager (Personal) had intimated that the question *qua* the quantum of pension and gratuity has to be decided by the Disciplinary Authority, i.e. Senior DME (Divisional) as the same is a case purely of sanction of pension and gratuity under Pension Rules and not a decision of penalty under Disciplinary and Appeal Rules and, accordingly, a request was made to DME/Dsl/MGS to decide the quantum of pension and gratuity.

25. The above noting is dated 16.06.2015 and the subsequent noting dated 29.06.2015 was made by the Senior DME/Dsl/MGS himself indicating '*2/3rd of quantum of pension and gratuity is sanctioned in favour of Sri Raja Ram Prasad, ex sr. clerk. May pl. take further n/action*'.

26. In the opinion of the Court, once the petitioners, at their competent level, addressed the issue of admissibility of pension and arrived at a decision to release 2/3rd pension and gratuity in favour of the respondent, the requirement of Rule 64 of Rules, 1993 stood fulfilled. Even otherwise, once a reasoned and speaking order was passed on 03.10.2018 in pursuance of the order passed by the Tribunal in previous O.A. reiterating the decision taken in 2015, we do not find any substance in the submissions made on behalf of the respondent that there is no order determining the entitlement of the respondent *qua* pension/gratuity.

27. In view of the above discussion, we find that the Tribunal has erred in allowing the O.A. only on the ground that the reduction in the pension was not supported by any order passed by the competent authority. Consequently, the order passed by the Tribunal deserves to be set aside.

28. This Court had passed an interim order dated 19.12.2023 providing that the petitioners would compute compensation pension payable to the respondent on the date of award of penalty of compulsory retirement and the amount would be paid to him. Subject to such compliance, effect and operation of the order dated 18.7.2023 passed by the Tribunal was stayed.

29. An affidavit of compliance and rejoinder affidavit have been filed on behalf of the petitioners annexing therewith a copy of another order dated 09.01.2024 indicating computations based upon interim order passed by this Court and also releasing balance amount in favour of the respondent. We find that the respondent has, thus, received the amount over and above his entitlement.

30. The writ petition is **allowed**.

31. The order dated 18.07.2023 passed by the Tribunal in O.A. No. 1087 of 2019 is **set aside** and the O.A. No. 1087 of 2019 stands **dismissed**.

32. The interim order dated 19.12.2023 passed by this Court stands merged in this final order. Consequently, whatever benefits were granted to or released in favour of the respondent in pursuance of the interim order, are liable to be returned by him as per the principle of restitution embodied in Section 144 of Code of Civil Procedure, 1908.

33. The petitioners are, thus, permitted to compute sums released in favour of the respondent in pursuance of the interim order dated 19.12.2023 passed by this Court uptil now, within a period of **one month** from today and, thereafter, intimate the respondent about refunding the said amount to the petitioners by appropriate mode. In the event of failure on the part of the respondent to refund the said amount, the petitioners would be free to recover the same from the respondent in accordance with law.

34. Further, the respondent would be entitled to pensionary benefits as per determination made earlier, i.e. quantifying the same on 2/3rd value.

(Kshitij Shailendra,J.) (Arun Bhansali,CJ.)

October 30, 2026
AKShukla/-

Digitally signed by :-
ANIL KUMAR SHUKLA
High Court of Judicature at Allahabad