

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

The Hon'ble Justice Ranjit Kumar Bag
& The Hon'ble Dr. Subesh Kumar Das

Case No – **OA 44 OF 2016**

Santosh Kumar Karmakar Vs The State of West Bengal & Ors.

Serial No. and Date of order. 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary 3
<p style="text-align: center;">07 <u>04.06.2018</u></p>	<p>For the Applicant : Mr. Sibsankar Bandyopadhyay, Learned Advocate.</p> <p>For the Respondents : Mrs. Sunita Agarwal, Learned Advocate.</p> <p>For the AG (A&E),WB : Mr. B. Mitra, Departmental Representative.</p> <p>The grievance of the applicant in the present application is that the Pension Sanctioning Authority has not released Gratuity, Provident Fund and Pension of the applicant on the ground of pendency of the criminal proceeding against the applicant before the competent court of law.</p> <p>The applicant retired from service on June 30, 2000 while he was working under Superintendent of Police, Government Railway Police, Howrah. A criminal case being Criminal Misc. Case No. 2 of 1997 was instituted against the applicant on the allegation of committing offence under section 135 of the Customs Act, 1962. Admittedly, the said criminal case is still pending for adjudication before Learned Chief Judicial Magistrate, Berhampore in the district of Murshidabad. It appears from reply submitted by the respondents that a proceeding was also initiated against the applicant being Howrah GRP District Proceeding No. 6 of 1997 on February 4, 1997 which was concluded by passing an order for deduction of Rs.10,000/- from the</p>	

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Gratuity of the applicant. In view of the pendency of the criminal proceeding against the applicant, the Pension Sanctioning Authority could not release Gratuity and Pension in favour of the applicant due to specific bar under the provisions of Rule 10(2) and Rule 14 of West Bengal Death-cum-Retirement Benefit Rules, 1971 (hereinafter referred to as DCRB Rules, 1971).

Previously, the applicant moved this Tribunal by filing OA-1676 of 2009 which was disposed of on September 10, 2010 by giving direction to release admissible retiral benefits to the applicant only after getting satisfactory proof regarding disposal of the criminal proceeding. The Tribunal further gave direction for giving interim allowance to the applicant subject to adjustment of the said amount with the final order of pension to be passed by the Pension Sanctioning Authority. Ultimately, the Superintendent of Police, Government Railway Police, Howrah – Respondent No. 4 granted interim allowance in favour of the applicant @ Rs.1776/- per month w.e.f. July 1, 2000, but no provisional pension or gratuity was sanctioned in favour of the applicant.

Now, the question for consideration of the Tribunal is whether the applicant is entitled to get Pension, Gratuity and the amount of Provident Fund during pendency of the criminal proceeding against

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him. The provisions of Rule 10 (2) of DCRB Rules, 1971 lay down that a Government employee against whom a departmental proceeding or judicial proceeding is pending, may be granted provisional pension not exceeding maximum amount of pension admissible on the basis of qualifying service during pendency of the said judicial proceeding, but no gratuity will be paid to the said employee till conclusion of the proceeding. However, the provisions of Rule 14 of DCRB Rules, 1971 lay down that a Government employee against whom a criminal proceeding involving moral turpitude is pending before the competent court of law, shall not be sanctioned any pension till conclusion of the criminal proceeding, though the said employee is entitled to get interim allowance not exceeding 2/3rd of the amount of pension admissible to the said employee. On our query, Learned Counsel representing the respondents submits that the allegation against the applicant in the criminal case was for smuggling of goods and as such criminal proceeding under section 135 of the Customs Act, 1962 was instituted against the applicant after seizure of the smuggled goods. Admittedly, the said criminal proceeding is still pending for adjudication before Learned Chief Judicial Magistrate, Berhampore in the district of Murshidabad. In view of the above provisions of DCRB Rules, 1971, the applicant is not entitled to get pension or gratuity except interim allowance which has already been granted in favour of the applicant by the respondent no.

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4 @ Rs.1776/- per month w.e.f. July 1, 2000.

Learned Counsel for the applicant has relied on order dated July 31, 2015 passed by the Central Administrative Tribunal, Calcutta Bench in OA No. 350/00920/2014 (Jaharlal Rakshit v Union of India & Others) in support of his contention that the applicant is entitled to get pension in spite of pendency of criminal proceeding against him. In the said case of "Jaharlal Rakshit" the Central Administrative Tribunal dealt with the provisions of Rule 6 and 10(1)(c) and 10(2) of the Railway Service (Pension) Rules. The Central Administrative Tribunal did not deal with any claim for grant of pension during pendency of the criminal proceeding against the concerned Railway employee. In the instant case, the applicant has prayed for grant of pension during pendency of the criminal proceeding and as such the said case of "Jaharlal Rakshit" does not help the applicant in any manner.

Similarly, the applicant has relied on the decision of the Hon'ble High Court passed on July 5, 2013 in connection with WPCT 165 of 2013 (Shyam Sundar Bhar v Union of India & Others) in support of his contention that the applicant is entitled to get pension in spite of pendency of the criminal proceeding against him. In this case of "Shyam Sundar Bhar" the Hon'ble High Court dealt with the provisions of Rule 9(3) of the Railway Service (Pension) Rules, 1993 whereby the

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Railway employee who retired on attaining age of superannuation and against whom departmental or judicial proceedings are instituted is entitled to get provisional pension. The provisions of Rule 9(3) of the Railway Service (Pension) Rules, 1993 are not similar to the provisions of Rule 14 of DCRB Rules, 1971 whereby it is clearly laid down that a Government employee who retires from service and against whom a criminal proceeding involving moral turpitude is pending before a court of law, shall not be sanctioned any pension till conclusion of the said criminal proceeding, though he is entitled to get interim allowance. So, the decision of the Hon'ble High Court does not help the applicant to get pension during pendency of the criminal proceeding against him as the applicant is governed under the provisions of Rule 14 of DCRB Rules, 1971.

We have already observed that the criminal proceeding pending against the applicant is in connection with the smuggling of goods, which, no doubt, involves moral turpitude and thereby the applicant is not entitled to get pension during pendency of the criminal proceeding against him. However, the applicant is entitled to get the amount of Provident Fund as the said amount of money has nothing to do with pension and gratuity. In view of the clear bar under the provisions of Rule 14 and Rule 10(2) of the DCRB Rules, 1971, the applicant is not entitled to get any amount of gratuity or pension during pendency of

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the criminal proceeding against him.

In view of our above findings, the respondent no. 4 is directed to release the amount of Provident Fund of the applicant, if not already released within a period of 8 (eight) weeks from the date of communication of the order. The applicant is also at liberty to pray for increasing the amount of interim allowance by filing an application before the respondent no. 4 within a period of 4 (four) weeks from this date. If such application is submitted by the applicant before the respondent no. 4 within the stipulated period of time, the respondent no. 4 is directed to consider the said application in accordance with the provisions of law and to pass an order within a period of 8 (eight) weeks from the date of submission of the application by the applicant.

With the above direction, the Original Application stands disposed of.

The xerox certified copy of the order be supplied to the applicant on priority basis after observance of all formalities.

(S.K. DAS)
MEMBER(A)

(R. K. BAG)
MEMBER (J)

Sanjib