

GAHC010078442024



AS:11018-DB

2024:GAU-

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2477/2024

THE UNION OF INDIA AND 8 ORS.
REPRESENTED BY THE GENERAL MANAGER, N.F. RAILWAY, MALIGAON,
GUWAHATI, ASSAM-781011.

2: THE GENERAL MANAGER

N.F. RAILWAY
MALIGAON
GUWAHATI
ASSAM
PIN- 781011.

3: THE DIVISIONAL RAILWAY MANAGER (P)
N.F. RAILWAY
ALIPURDUAR JN
PIN- 736123.

4: THE PRINCIPAL CHIEF SIGNAL AND TELECOMMUNICATION ENGINEER
N.F. RAILWAY
MALIGAON
GHY
ASSAM
PIN- 781011.

5: THE ADDL. DIVISIONAL RAILWAY MANAGER
O/O- THE DIVISIONAL RAILWAY MANAGER
N.F. RAILWAY
ALIPURDUAR JN
PIN- 736123.

6: THE SR. DIVISIONAL SIGNAL AND TELECOMMUNICATION ENGINEER
N.F. RAILWAY
ALIPURDUAR JN.

PIN- 736123.

7: FINANCIAL ADVISOR AND CHIEF ACCOUNTS OFFICER
N.F. RAILWAY
MALIGAON
PIN- 781011.

8: SR. DIVISIONAL FINANCIAL MANAGER
O/O- THE DIVISIONAL RAILWAY MANAGER (P)
N.F. RAILWAY
ALIPURDUAR JN.
PIN- 736123.

9: NARENDRA SINGH
SR. DIVISIONAL SIGNAL AND TELECOMMUNICATION ENGINEER
N.F. RAILWAY
ALIPURDUAR JN.
PIN 736123

VERSUS

UTPAL DATTA TALUKDAR
S/O- LATE SUDHARANJAN DUTTA TALUKDAR, EX. SR. SECTION
ENGINEER/SIGNAL/ALIPURDUAR JN., RESIDENT OF 1174 A.D.S. COLONY,
P.O. ALIPURDUAR JN., ALIPURDUAR, WEST BENGAL, PIN- 736123.

Advocate for the Petitioner : MS. B SARMA,

Advocate for the Respondent : DR G J SHARMA, FOR CAVEATOR

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Date : 06-11-2024

Date : 12-11-2024

JUDGMENT & ORDER (CAV)

(N. Unni Krishnan Nair. J)

Heard Ms. B. Sarma, learned CGC appearing on behalf of the petitioners. Also heard Dr. G. J. Sharma, learned counsel appearing for the sole respondent.

2. The present proceeding has been instituted by the petitioners, presenting a challenge to the order dated 05.12.2023, passed by the learned Central Administrative Tribunal, Guwahati Bench in Original Application No. 040/0062/2023.

3. The sole respondent, herein, on conclusion of a departmental proceeding initiated against him came to be imposed with a penalty of dismissal from service without any compassionate allowance i.e. Pension and Gratuity both, vide an order dated 27.09.2021, passed by the Disciplinary Authority. The appeal as preferred against the said order dated 27.09.2021 was also dismissed by the Appellate Authority vide an order dated 03.06.2022. The sole respondent had also preferred a revision petition in the matter, before the Revisional Authority, which was also rejected by the competent authority. The sole respondent, thereafter, instituted Original Application No. 62/2023 before the Central Administrative Tribunal, Guwahati Bench, praying for release of his Provident Fund dues along with the dues receivable under Group Insurance Scheme and also the benefits of Leave Encashment. The learned Tribunal, upon consideration of the issues so arising in the said O.A. No. 62/2023 was pleased vide order dated 05.12.2023, to dispose of the O.A., directing the petitioners, herein, to release to the sole respondent, herein, his Leave Encashment benefits after verifying his leave account. Being aggrieved, the petitioners have instituted the

present proceeding.

4. The issue arising in the present proceeding is as to whether a Railway employee imposed with the penalty of dismissal or removal from service is entitled to claim encashment of the leave in credit in his leave account.

5. The learned CGC appearing for the petitioners, by referring to the provisions of Rule 504 of the Indian Railway Establishment Code, (Vol-I) has submitted that a Railway servant who is dismissed or removed, or who resigns from railway service is not entitled to claim the leave in credit in his leave account, inasmuch as, the same ceases from the date of such dismissal or removal, or resignation. The learned CGC has further submitted that the learned Tribunal had committed an error in concluding that the provisions of Rule 504 of the said Code would have no relevancy with regard to the claim of Leave Encashment as raised by the sole respondent before it. The learned CGC in the above premises submits that the learned Tribunal having passed the order dated 05.12.2023, basing on an erroneous conclusion; the order dated 05.12.2023 stands vitiated and requires interference from this Court.

6. Per contra, Dr. G. J. Sharma, learned counsel for the respondent by referring to the provisions of Rule 542 (2) (b) of the IREC has contended that the Railway authorities are required to credit Earned Leave at the rate of 2½ days per completed calendar month up to the end of the calendar month preceding the calendar month in which such Railway employee is removed or dismissed from service, or dies in service. It is contended that the stipulations as contained in the provisions of Rule 542 (2) (b), requiring computation of earned leave even in case of a dismissed or removed railway servant, would go to show that even a Railway employee imposed with the penalty of dismissal, would be entitled to claim Leave Encashment to the extent of the leave credited to his leave account. Dr. G. J. Sharma, learned counsel has further in support of his case, placed reliance on the provisions of Rule 550(B)(1)(ii) of the IREC.

7. Dr. Sharma, by referring to the order of the Disciplinary Authority dated

27.09.2021, has contended that the Disciplinary Authority had only withheld the Pension and Gratuity of the sole respondent along with denial of any compassionate allowance while imposing the penalty of dismissal from service upon him. The Disciplinary Authority not having withheld the Leave Encashment benefits due to the sole respondent, the respondent authorities cannot deny the said benefit to the sole respondent. Dr. Sharma further submits that during the pendency of the proceeding before the learned Tribunal, the respondent authorities had released to the sole respondent, the amounts due to him under the Provident Fund account as well as under the Group Insurance Scheme. Accordingly, Mr. Sharma submits that there exists no bar for the applicant to receive his Leave Encashment benefits to the extent of the leave credited and available in his leave account.

8. Dr. G. J. Sharma, learned counsel in support of his submission, has placed reliance on a decision of the Hon'ble Supreme Court in the case of **State of Rajasthan & Ors. V. O. P. Gupta** reported in **[2022 Live Law (SC) 785]**.

9. We have heard the learned counsel appearing for the parties and also perused the materials available on record.

10. At the outset, it is required to be noted that, as on date, the penalty of dismissal along with the stipulations so made, therein by the Disciplinary Authority while imposing the same on the sole respondent, has not been interfered with by any authority. From the materials on record, it is revealed that the sole respondent had presented a challenge to the order of his dismissal before the learned Tribunal by way of instituting Original Application No. 120/2023, which is presently pending disposal.

11. The Disciplinary Authority, on conclusion of the departmental proceeding instituted against the sole respondent, had imposed the following penalty upon him:-

“Dismissal from service without any compassionate allowance i.e. Pension & Gratuity both”.

12. Rule 504 of the IREC (Vol-I) being relevant to the issue arising in the present

proceeding is extracted herein below:-

“504. Effect of dismissal, removal or resignation on leave at credit—

(1) Except as provided in rule 541 and this rule, any claim to leave to the credit of a railway servant, who is dismissed or removed or who resigns from railway service ceases from the date of such dismissal or removal or resignation.

(2) where a railway servant applies for another post under the Government of India but outside the Railways, if such application is forwarded through proper channel and the applicant is required to resign his post before taking up the new one, such resignation shall not result in the lapse of the leave to his credit.

(3) A railway servant who is dismissed or removed from service and is reinstated on appeal or revision shall be entitled to count for leave his service prior to dismissal, or removal, as the case may be.

(4) A railway servant, who having retired on compensation or invalid pension or gratuity is re-employed and allowed to count his past service for pension or State Railway Provident Fund benefits, as the case may be, shall be entitled to count his former service towards leave.”

13. A perusal of the provisions of Rule 504 as extracted herein above, would go to show that any claim to leave to the credit of a Railway servant who is dismissed or removed, or resigns from railway service, ceases from the date of such dismissal, removal or resignation. The provisions of Rule 40 of the Railway Services (Pension) Rules, 1993, also mandates that dismissal or removal of a Railway servant from a service or post leads to forfeiture of his past service. The provisions of Rule 40 of the said Rules of 1993, being relevant is extracted herein below:-

*“40. **Forfeiture of service on dismissal or removal**—Dismissal or removal of a railway servant from a service or post shall lead to forfeiture of his past service”.*

14. A reading of the provisions of Rule 40 of the said Rules of 1993 would go to show that on imposition of the penalty of dismissal or removal upon a Railway servant, the same automatically leads to forfeiture of his past service. Leave is earned by an employee on account of the services rendered by him and if such past service, upon imposition of the penalty of dismissal or removal stands forfeited, the leave earned on account of such past service must also be held to have been forfeited.

15. In the light of the provisions of Rule 40 of the said Rules of 1993, the stipulation made in Rule 504 of IREC to the effect that any claim to leave to the credit of the Railway servant, ceases from the date of such dismissal, removal or resignation has to be understood to have stipulated that on account of the forfeiture of the past services rendered by such employee prior to being imposed with the penalty of dismissal or removal, the leave earned by the employee on account of such forfeited past service also stands forfeited. Any other interpretation would result in a violence being caused to the express provisions of Rule 504 of IREC.

16. The above being the conclusion reached by us with regard to the provisions of Rule 504 of the IREC (Vol-I), it has to be concluded that the penalty of dismissal as imposed upon the sole respondent herein, being in existence as on date, the sole respondent would not be entitled to claim Leave Encashment benefits, inasmuch as, upon imposition of penalty of dismissal upon him, the leave credited to his leave account and available would also stand forfeited along with forfeiture of his past services.

17. The reliance placed by the learned counsel for the sole respondent, on the provisions of Rule 524 (2) (b) of the IREC, in our considered opinion would not advance the case of the sole respondent, inasmuch as, the said provision only mandates the manner of computation of Earned Leave in respect of an employee who is removed or dismissed from service or dies while in service. Further, the provisions of Rule 550 (B) (1) (ii) of the IREC would also be of no assistance to the sole

respondent, inasmuch as, he being a regular employee would not be covered by the said provision.

18. Having noticed the above position with regard to the Rules holding the field, we would not examine the conclusions drawn by the learned Tribunal in its order dated 05.12.2023. The conclusions being relevant is extracted herein below:-

“5. It is noted that Rule 503 is related with Right to leave i.e. whether leave can be claimed as a matter of right or not and the Rules 504 and 542 has no relevance. Therefore, Rules 503, 504 and 542 has no relevancy with the Leave Encashment which basically deals with the right of leave to the employees in different situations. Now come to the Rule 550, which deals with the different situation for cash payment in lieu to leave which is as under:-

- (A) In case of retirement on attaining the age of superannuation.*
- (B) In case of retirement other than on attaining the age of superannuation.
 - (1) In case of Premature/Voluntary retirement.*
 - (2) In case of retirement from service on attaining the age of retirement while under suspension or while disciplinary proceedings are pending against the applicant at the time of retirement.**
- (C) In case of invalidation from service.*
- (D) In case of re-employment.*
- (E) In case of resignation or quitting from service.*

Therefore, from the perusal of the leave Rule—550, it is evident that the situation enumerated in the said Rule is not at all relevant with regard to the leave encashment of the applicant. Since the respondents had already made payment of PF and GIS amount to the applicant, they are directed to make payment of Leave Encashment amount after verifying his leave due as per his service book within a period of six weeks from the date of receipt of a copy of this order.”

19. A perusal of the conclusions reached by the learned Tribunal in its order dated

05.12.2023, extracted herein above, would go to reveal that the learned Tribunal had proceeded to consider the issue arising before it by holding that the provisions of Rule 504 of the IREC would have no application and the same cannot be applied for denying to the petitioner his leave encashment benefits.

20. In view of the discussions made herein above by us, with regard to the purport of the stipulations contained in Rule 504 of the IREC and, it having been concluded that the sole respondent would not be entitled to claim leave encashment benefits in view of the fact that the penalty of dismissal from service as imposed upon him had also resulted in forfeiture of his past service and consequently, the leave so earned by him on account of such forfeited of past service would also stand forfeited, we are of the considered view that the learned Tribunal while passing the order dated 05.12.2023, failed to appreciate the issue arising before it in the proper perspective and accordingly, drew conclusions which are clearly erroneous. Accordingly, the order dated 05.12.2023 would call for an interference.

22. At this stage, the contention of the learned counsel for the sole respondent that the Disciplinary Authority in its order dated 27.09.2021, having not stipulated that the sole respondent would not be entitled to authorized his due leave encashment benefits, the sole respondent would be entitled to receive the said benefits, is required to be considered. The said contention is being considered, only to be rejected, inasmuch as, as concluded by us herein above, the denial of the benefits of leave encashment is a natural consequence of the imposition of the penalty of dismissal upon the sole respondent. The imposition of penalty of dismissal having the effect of causing automatic forfeiture of past service, the leave earned, on account of such forfeited past service would also automatically stands forfeited. Accordingly, the disciplinary authority is not called upon to make any observation while imposing the penalty of dismissal or removal upon a Railway servant, with regard to his disentanglement to the leave encashment benefits on account of imposition of the said penalty.

23. The decision of the Hon'ble Supreme Court in the case of **O. P. Gupta (supra)** relied upon by the learned counsel for the sole respondent, has been duly perused by us and we are of the considered view that the same would not advance the case of the sole respondent.

24. In view of the above conclusions reached by us in the matter, the impugned order dated 05.12.2023, passed by the learned Central Administrative Tribunal, Guwahati Bench in Original Application No. 040/0062/2023, stands set aside.

25. At this stage, it is to be observed that the conclusions reached by us, herein above, in this order, is so reached only with regard to the entitlement of the sole respondent for being authorized the Leave Encashment benefits during the existence of the penalty of dismissal as imposed upon him by the Disciplinary Authority, vide the order dated 27.09.2021.

26. We having not examined the validity of the disciplinary authorities order dated 27.09.2021 in the present proceeding, the conclusions reached herein above by us, would not stand in the way of the learned Tribunal while considering the challenge as presented by the sole respondent to the said order dated 27.09.2021, in the proceeding of Original Application No. 120/2023 and the same shall be so considered by the learned Tribunal, strictly, on its own merits and in accordance with law.

27. In view of the above, the writ petition stands disposed of.

JUDGE

CHIEF JUSTICE

Comparing Assistant