

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1147/2001

(21)

New Delhi, this the 12th day of August, 2002

Hon'ble Sh. Govindan S.Tampi, Member (A)

K.L.Kohli
S/o late SH. R.K.Kohli
Retd. District Controller of Stores
Northern Railway.

R/o D-195, Saket
New Delhi - 110 017.

(By Advocate Sh. K.N.R.Pillai)

...Applicants

V E R S U S

1. Union of India through
The Secretary
Ministry of Railways
Rail Bhawan, New Delhi.

2. The General Manager
Northern Railway
Baroda House, New Delhi.

(By Advocate Sh. R.L.Dhawan)

...Respondents

O R D E R (ORAL)

By Sh. Govindan S.Tampi,

Request for payment of interest on retirement benefits @ 12 % from the dates, the payments were due to the dates they were released, is *in subject of Rs 84.*
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2. S/Sh. K.N.R.Pillai and R.L.Dhawan, Id. counsel appeared for the applicant and the respondents respectively.

3. Sh. K.L.Kohli, the applicant who remained under suspension from 23-9-76 till 31-3-77, when he was due for retirement and when CBI prosecution against him led to his discharge on 15-2-95, filed OA No. 2134/95, claiming some reliefs, when it was pointed out by the respondents that most of the reliefs had been given, which was not the case. OA

was disposed of on 11-10-99 with the directions to make all payments within two months with interest @ 12%. Payment of DCRG due on 31-3-87 was made in October 1997, ^{and} balance of salary in October 1997 though difference of pension due between 1-5-77 to 31-3-77 is yet to be paid. In their order dated 1-11-94, disposing the OA 2134/95, the Tribunal had directed payment of 12 % compound interest for delayed payment of dues - like DCRG. Though period of suspension covered was as long as 19 years, petitioner's case for payment of interest was entertained for just ~~Rs~~ Rs 2781/- with the remaining portion of the claims being denied on the ground that he had been communicated "Govt. displeasure" in 1996 and, therefore, according to rules only those of the dues accruing after 3 months from then could be considered; Respondents have not produced the rules relied upon by them. Railway Ministry's communication of 1-11-94 showed that when the delay in payment was due to administrative reasons, beyond the control of the Govt. servant 12 % was payable. In this case, ^{as} ~~he~~ was made a victim of CBI's action, ending in his discharge, he was entitled for interest for the full period. Retirement dues are the property of the pensioner and when the same are delayed, he should be granted interest. Respondents have not extended this benefit to the applicant and hence this OA.

4. Grounds raised in this OA are as below :-

i) delayed payment of retirement dues, meant withholding of the applicant's property for no justified reason, and the same attracted payment of interest as the case prosecuted against him by the CBI, ended in his discharge.

ii) the respondents' plea that payment of interest was due not from the day dues accrued but after three months from the date of communication of displeasure, has no basis.

5. Sh. K.N.R. Pillai, ld. counsel for the applicant reiterated the above points.

6. In the reply, filed on behalf of the respondents and reiterated by Sh. R.L.Dhawan, their counsel, it is pointed out that the OA is hit by res-judicata (as the applicant was seeking to have the issue settled in OA 2134/95 re-argued) as well as by limitation. (as OA has been filed in May 2001, long after his representation has been rejected in May 2000). All the points raised in the OA are denied by the respondents. The applicant retired on superannuation on 31-3-97. Proceedings initiated by CBI against him, ended in acquittal in the court on benefit of doubt but it was not a total exoneration and the Govt's 'displeasure' was communicated on 18-7-96. Dues were settled thereafter on 18-11-97 and interest @ 12 % was also given for the delay from 19-10-96 to 18-11-97 i.e. three months after communication of delay in terms of Tribunal's order. Nothing else was payable, as has been clearly shown in the respondent's letter dated 4-5-2000. According to

them, retirement dues like DCRG became due for payment on 18-7-96 but as it was paid on 18-11-97, interest was paid for the period 19-10-96 to 18-11-97. Further, when the exoneration is not absolute, gratuity etc. becomes due from the date, competent authority passes the order to pay the same. This view has been endorsed by the Tribunal, states Sh. Dhawan. OA, therefore, deserves dismissal, Sh. Dhawan argues.

6. I have considered the matter. Neither of the preliminary objections raised by the respondents is correct. Res-judicata does not arise, as the applicant is seeking the correct implementation of the directions of the Tribunal in OA 2134/95 issued on 11-10-99 and is not re-arguing the case. Limitation will not apply as this is a matter of pension which is a continuous cause of action and the OA has the protection of the Hon'ble Apex Court in the M.R.Gupta's case (1995(5)SCALE 29SC).

7. What the applicant seeks is the payment of interest @ 12 % on his pensionary dues from the dates when they became due to the dates they were released. It is not disputed that the applicant retired on superannuation on 31-3-77, when he was under suspension on account of the pending criminal prosecution. It is also true that he was discharged by the Court of Special Judge, CBI, Jodhpur. Respondents, however, plead that it was not a verdict of not guilty. According to them, the order of communication of Govt's displeasure showed that the record of the applicant was tainted and, therefore, the pensionary dues became payable only three months

thereafter. They rely upon the decisions of the Tribunal dated 11-10-99 to follow the proceedings of 1-11-94 (No. F(E) III/94/PNI/28 dated 1-11-1994) and compute the period of three months from the date of communication of the displeasure. This has no sanction in law. Acquittal is discharge from the ~~proceedings~~ ^{is} whether the verdict of not guilty or on benefit of doubt. Respondents cannot interpret the decision in the way they choose just to deny the benefit to the applicant. If they had any doubt about the decision they should have gone back to the Court to have the matter clarified. Instead of doing so they had chosen to issue the communication of displeasure, only to deny the applicant his due. I recall that in a similar case the Tribunal had negatived the plea of the respondents (once again Railways) seeking approval of their action in denying pensionary dues and interest thereon to the applicant, taking shelter behind the communication of displeasure - a totally non-existent penalty. Decision in that case (OA 145/98 filed by C.L. Batra vs. ~~Word~~ and decided on 10-10-2000, ^{and upheld by the High Court} is squarely applicable in this case. Adopting the same ^{hold} that the displeasure is not a penalty and the respondents action in relying upon it for postponing the payment of dues were wrong and have to be interfered with.

8. While disposing of OA 2134/95 on 1.11.1994 the Tribunal had directed as below:-

In the circumstances, it is directed that respondents make all the payments to the applicant within a period of two months from the date of receipt of a copy of this order alongwith interest @ 12% in accordance with the proceedings dated

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1.1.1994 of the Railway Ministry. If the respondents are in any way, responsible for the delayed payment, they may consider and pass appropriate order in this regard and pay the interest in

accordance with the above order. OA is accordingly disposed of. No costs.

Relevant portion of Railways proceedings of

1.11.1994 reads as below:-

The Government have had under consideration, the question of enhancing the rate of interest payable to a Railway servant on delayed payment of Death-cum-Retirement Gratuity where delay occurs on account of administrative lapse or for reasons beyond the control of Railway servant concerned. In supersession of Board's letter No. P(E)III/79/PN115 dated 14.9.1984, the President is now pleased to decide that where the payment of DCRG has been delayed beyond (three) months from the date of retirement, an interest at the rate applicable to SRPP deposits (at present 12 per cent per annum, compound annually will be paid to retired dependents of deceased Railway servant.

In the instant case, the date of retirement of the applicant was 31.3.1977 and the same has to be treated as the correct date for release of retirement dues DCRG etc. - as the prosecution which led to his suspension prior to his superannuation, had ended in his acquittal. 18.7.1996 the date which the respondents want to supplant in this regard taking a cue from the communication of the non-existent penalty of displeasure has no relevance at all. It is found that the dues have been released with reference to 18.7.1996 and it has to be corrected with reference to 31.3.1977 and the delay in the release would have to be re worked accordingly and the differential amount of interest be paid. Nothing short of it would be just and proper.

9. In the above view of the matter, the OA succeeds and is accordingly allowed. The impugned order dated 4.5.2000 is quashed and set aside and the respondents are directed to re-calculate the outstanding dues from 1.4.1977, and pay interest @ 12% on them from that date to the date of their ultimate release. This shall be done within three months from the date of receipt of a copy of this order. No costs.

(GOVINDAN SHAMPI)
MEMBER (A)

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