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Central Administrative Tribunal
Principal Bench

O.A. 1638/99

New Delhi this the 25 th day of February, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Khem Chand,
S/o Shri Yad Ram,
R/o H.No. 302, Gali No. 24,
Onkar Nagar, Trinagar,
Delhi-110035.

Applicant.

By Advocate Shri Pratap Rai.

Versus

1. Union of India through
the General Manager,
Northern Railway, Baroda House,
New Delhi-1.

2. The Divisional Railway Manager,
Northern Railway, Bikaner.

Respondents.

By Advocate Shri R.L. Dhawan.

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Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 claiming interest on non-payment/delayed payment of certain amounts of his retiral benefits.

2. The brief facts of the case are that the applicant retired on superannuation on 30.11.1997 from the post of Booking Supervisor with the respondents. Shri Pratap Rai, learned counsel has submitted that the claim of the applicant for interest is made on the following three amounts:

(i) The respondents had illegally with-held an amount of Rs.10,000/- from the Death-cum-Retirement Gratuity (DCRG) of the applicant against possible Commercial

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Debits. Later on, admittedly the respondents had paid an amount of Rs.6464/- on 11.3.1999 by a cheque dated 8.3.1999. He, therefore, claims that he is entitled to the payment of balance amount of Rs.3536/- and 18% interest on the amount of Rs.10,000/- delayed upto 11.3.1999 but due on 1.11.1997 which amounts to Rs.2200/-by way of interest.

(ii) The respondents had wrongly calculated his leave due to him which had been corrected later on and they had paid the balance amount of 59 days leave encashment amounting to Rs.13,393/- on which he claims 18% interest w.e.f. 1.12.1997 to 31.7.1999.

(iii) On pension commutation amount, the respondents had paid Rs.50,577/- to the applicant in December, 1997 and another amount of Rs.1,10,834/- was paid on 21.10.1998. According to him, the second amount was payable on 1.12.1997 and, therefore, the interest is payable for the delay.

3. I have heard Shri Pratap Rai, learned counsel for the applicant and Shri R.L. Dhawan, learned counsel for the respondents and perused the pleadings.

4. The respondents in their reply have denied that any amount by way of interest, as claimed by the applicant is due to him on the retiral benefits which have been paid to him. Learned counsel for the applicant has relied on the judgement of the Supreme Court in **State of Kerala Vs. M.**

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Padmanabhan Nair (1985 (1) LLJ 530). The respondents have submitted that this judgement is not applicable to the facts in the present case as there has been no delay in making payment of the due amounts to the applicant. Shri R.L. Dhawan, learned counsel has submitted that under sub-rules (2) and (4) of Rule 15 of the Railway Services (Pension) Rules, 1993, (hereinafter referred to as 'the Pension Rules'), the Railway or Government dues ascertained and assessed, which remain outstanding till the date of retirement can be adjusted against the amount of the retirement gratuity or death gratuity or terminal gratuity and recovery of the dues *can be made* against the retiring Railway servant. The respondents have stated that at the time when the applicant retired from service on 30.11.1997, they had with-held an amount of Rs.10,000/- from his DCRG temporarily, for want of receipt of the Commercial debits. When the competent authority, that is the Divisional Commercial Manager, Bikaner intimated commercial debit of Rs.3536/- against the applicant vide his letter dated 6.1.1998 (Annexure R-2), in accordance with Rule 15 of the Rules, the Government dues were adjusted against the DCRG amounts. Learned counsel for the respondents has, therefore, submitted that the balance amount of Rs.6464/- was thereafter paid by cheque to the applicant on 5.3.1999 and there is no administrative lapse on the part of the respondents in releasing this amount which attracts any interest. Shri Rai, learned counsel, however, submits that the respondents have not assessed the Government dues and, therefore, could not have with-held these amounts from the pension. He has relied on the judgement of the High Court of Delhi in **C.K. Razdan Vs. Municipal Corporation of Delhi** (1997 I.L.L.J) 31) and judgement of the High Court of

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Karnataka in ~~Smt.~~ **Vasanthi Devi Vs. Vijaya Bank, Ashok Nagar Branch, Mangalore** (1997 II.L.L.J. 188) (copies placed on record).

5. Learned counsel for the respondents has submitted that with regard to the delay in payment of leave encashment for 59 days, as claimed by the applicant, the applicant had earlier availed this leave on RMC and only on 15.11.1997 he made request for treating that period as Commuted Leave which was considered and allowed. Consequently, the applicant was paid the leave encashment of Rs.13,399/- on 13.9.1999. They have, therefore, submitted that there is no delay on this account also to allow interest on this amount.

6. The claim in paragraph 4.4 of the O.A. for interest has also been denied by the respondents on the ground that the payment of difference in the amount was the result of the recommendations of the 5th Pay Commission which were accepted by the Government in 1997 w.e.f. 1.1.1996. Learned counsel for the respondents has, therefore, submitted that on this amount also, there has been no wanton delay in paying the due amounts. He has, therefore, submitted that the claim for interest on the aforesaid three amounts is not justified and has prayed that the O.A. may be dismissed.

7. I have carefully considered the pleadings and the rival contentions of the learned counsel for the parties.

8. Under Rule 15 of the Rules, the Railway or Government dues which remain outstanding till the date of retirement can be adjusted against the amount of retirement gratuity or death gratuity, in accordance with the provisions

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of sub-rule (4). Under this Rule, the respondents have debited an amount of of Rs.3536/- against the applicant as Commercial Debit. Under Rule 15(2) of the Rules, the respondents themselves have been empowered to adjust such an amount from retirement gratuity or death gratuity or terminal gratuity and recover the same against the retiring Government servant. In the circumstances of the case, the recovery of this amount by the respondents cannot be stated to be contrary to the Rules. It is also relevant to note that the applicant has not challenged either the Rules or the procedure laid down in the Pension Rules. The judgement of the Hon'ble Supreme Court in **R. Kapur Vs. Director of Inspection, Income Tax and Anr.** (Annexure A-6) deals with the issue of with-holding of gratuity for not vacating Government accommodation and for not paying damages levied under the relevant rules. The facts of the case are, therefore, distinguishable from the present facts, where the amount with-held by the respondents is Government dues as given in Rule 15 of the Rules. The other judgements relied upon by the counsel for the applicant are also distinguishable and will not assist the applicant in the facts and circumstances of the case, having regard to the specific rule which empowers the Railway administration to adjust the Government dues as given therein from death gratuity, terminal gratuity or retirement gratuity. It is also relevant to mention that Rule 15(3)(b) provides that for the purpose of this Rule, the expression "Railway or Government dues" includes dues other than those pertaining to Railway or Government accommodation. (See the recent judgement of the Tribunal in **R. Kapur Vs. Director of Inspection, Research, Statistical, Publications and Public**

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Relations (Income-Tax) and Anr. (OA 1119/96), decided on 15.2.2000). The other cases relied upon by the applicant will also not assist him as the facts are distinguishable. In view of the provisions of the Rules, the claim for interest on Rs.6,464/- does not lie and is rejected.

9. Regarding claim for interest on payment of balance 59 days leave encashment, it is seen that from the facts mentioned above that the applicant himself had made request for treating the earlier period of leave on R.M.C. as commuted leave only two weeks before his date of retirement. This request has been accepted by the competent authority and payment has been made to him. In the circumstance, the claim of the applicant for 18% interest on this amount from 1.12.1997 cannot be accepted. However, at the same time, there appears to be some undue delay on the part of the respondents in accepting his request and arranging payments to him either on 31.7.1999 as mentioned by the applicant or 13.9.1999 as mentioned by the respondents. In any case, taking into account the facts and circumstances of the case, the applicant would be entitled to payment of 10% interest from three months from the date of receipt of his request made on 15.11.1997, till the date of actual payment.

10. On the revised commutation pension amount resulting from the recommendations of the 5th Pay Commission which have been accepted by the Government w.e.f. 1.1.1996, it is noted that an amount of Rs.1,10,834/- was paid to him on 21.10.1998. In the circumstances of the case, the

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applicant would be entitled to interest @ 10% per annum, on the amount of pension commutation after three months of the date of his retirement, that is from 1.3.1998 till the date of actual payment.

11. In the result, O.A partly succeeds as given ^{is} ~~above~~ in paragraphs 9 and 10 above. Necessary action shall be taken by the respondents to make the payments as above, within three months from the date of receipt of a copy of this order. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

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