

Central Administrative Tribunal
Principal Bench: New Delhi

OA 1437/96

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New Delhi this the 29th day of May 1997.

Hon'ble Mr N. Sahu, Member (A)

Mr R.K. Ojha
S/o Late Mr S.N. Ojha
R/o 14/834 Lodhi Colony
New Delhi.

...Applicant.

(By advocate: Mr K.K.Rai)

Versus

Union of India through

1. Chairman
Railway Board
Ministry of Railways
Rail Bhawan
New Delhi - 110 001.

2. The North Eastern Railway
through its General Manager
Gorakhpur (U.P.)

...Respondents.

(By advocates: Mr P.S.Mahendru)

O R D E R (oral)

Hon'ble Mr N. Sahu, Member (A)

Heard learned counsel from both sides.

The relief prayed for in this petition is to quash Annexure-A which runs contrary to Annexure A-9 and to direct the respondents to pay the applicant in accordance with Annexure A-9. The most important prayer is for a direction to the respondents for payment of 18% interest on delayed payment of salary, pension and gratuity since it became due.

2. Under Annexure A-9 dated 30.5.94, the amounts payable have been computed and officially communicated to the applicant. They are :

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(i) Salary and other emoluments

w.e.f. 12.12.1963 to 31.5.1976 = Rs.65,500

(ii) Amount of pension w.e.f.-

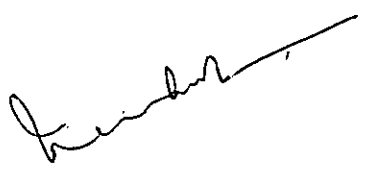
1.6.1976 to 16.12.1981 = Rs.23,438

(iii) Amount of D.C.R.G. = Rs. 8,993

TOTAL = Rs.97,931

3. Under Annexure-A, there was no dispute about the payment of salary but the Death Gratuity has been fixed at Rs. 7,902.50 in place of Rs. 8,993 indicated in Annexure A-9. Also, family pension has been computed at Rs. 22,936.95 as against Rs. 23,438. The impugned Annexure-A is dated 27.10.1995. The respondents have an inherent right of rectification if it is perceived to be a mistake, in accordance with law. But before scaling down the rate of payment, they should have given an opportunity to the applicant which they did not do. Even so, both family pension and death-gratuity are matters to be computed in accordance with the provisions of law. Even now respondents can recompute if there is a mistake but they can do so only after putting it across to the applicant. This they will do within four weeks from the date of receipt of a copy of this order.

4. The next relief prayed for is payment of interest. A little background of the case in as summary manner as possible will be appropriate:



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Mr. Sidha Nath Ojha, the late father of the applicant, was appointed as Signaller on 25.2.1937 in the B.N.W. Railway Company and subsequently by the Railway Board on 1.1.1943. On 12.11.1963, there was a confrontation between him and his superior officer. Thereafter, a complaint was filed by the applicant's father which was treated as his resignation from service and this was accepted vide order dated 2.12.1963. A representation against this order was rejected. Thereafter Mr. S.N. Ojha filed a suit for a declaration that the acceptance order of the alleged resignation was illegal before the First Additional Munsif, Gorakhpur who decreed the suit in his favour on 11.1.1973. The Railway Administration challenged the decree before Additional District Judge, Gorakhpur who dismissed the appeal on 4.1.1975. The matter was carried to the High Court of Allahabad which again dismissed the appeal of the Railways by order dated 20.10.1982. As far back as 15.2.1973, the applicant's father had sought reinstatement after the suit was decreed in his favour. The request for reinstatement was repeated on 10.1.75 when the first appeal of the Railways was dismissed. On 20.2.1982, the present applicant who is the son of Shri S.N. Ojha informed the General Manager, North Eastern Railway, Gorakhpur of the death of his father on 16.12.1981 and pleaded for payment of all his dues. This request was repeated after the High Court dismissed the appeal and treated it as abated. On 29.8.1989 again the applicant wrote for payment of arrears. Sanction was ultimately communicated officially on 7.9.92. Besides the difference in figures which is not substantial as mentioned earlier, the main question now is on the payment of interest. Learned counsel for the applicant stated that on 1.6.1976, the applicant would have normally retired. It is from

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this date that all retirement benefits accrued to him under law and it is from this date till the date of payment, interest is claimed at 18%.

5. Learned counsel for the respondents Mr. P.S. Mahendru stated that there was no claim for interest in any of the suits preferred before the Trial Court or in the appeal that was subsequently taken. ~~In the decree,~~ There is no justification for bringing any fresh claim outside the decree. Execution of a decree will be confined to subject matter of a decree. The Trial Court has not awarded any interest. Secondly, learned counsel submitted that every step had been taken by the respondents after the High Court abated the appeal to expedite the process of payment. This being a complicated matter, certain time has elapsed and this is not a case where interest can be claimed.

6. I have carefully considered the submissions of rival counsel. The Apex Court laid down ^{the} law that whenever any amount that is legally due, is not paid by the due date, interest is payable on the amount from the date it was legally due. On the question of payment of salary, treatment of the applicant as on duty for the entire period and payment of pension reckoning the entire period as service are facts which are not in dispute. That being so, the applicant should have been paid all his retirement dues and arrears of his salary w.e.f. 1.6.1976 when at that time the first appeal was decreed in his favour. The applicant's father died on 16.12.1981 and soon after the High Court also dismissed the second appeal in 1982. Once the Court upholds the right, there is no justification for any delay. Respondents have delayed this matter for 13 years even after the High Court order and made the payment in 1995. I hold that

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interest is payable to the applicant and the period would be, as claimed by the applicant's Counsel from 1.6.1976 when he would have normally retired till the date of payment.

7. I do not accept the claim for 18% interest in the facts and circumstances of the case. Learned counsel cited the decision in O.P.Gupta. Vs. UOI (AIR 1987(2) Page 258) wherein their Lordships themselves have stated that the Apex Court had been consistently awarding interest at the rate of 12% in all cases of delayed payment of pension.

8. I therefore direct the respondents to pay 12% interest on the undisputed amount of salary which is Rs. 65,000 from 1.6.76 to 20.6.95 and on the amount of gratuity and pension for this period which is to be calculated as directed at Para 3 above. The amount of interest so calculated will be remitted to the applicant within a period of three months from the date of receipt of a copy of this order. Parties to bear their own costs.

Narasimhasahu
(N. Sahu)
Member (A)

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