

IN THE CENTRAL ADMINISTRATION TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No.812/2000

This the 9th day of August, 2001

HON'BLE SHRI KULDIP SINGH, MEMBER (J)

Shri Jagdisy Chander Sharma
S/o Shri Lakshmi Narain Upadhaya,
Ex. Senior Sectional Engineer,
under Divl. Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.

..... Applicant

(By Advocate: Shri B.S. Mainee)

VERSUS

UNION OF INDIA
THROUGH:

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Rly. Manager,
Northern Railway,
State Entry Road,
New Delhi.

..... Respondents

(By Advocate: Shri P.M. Ahlawat)

ORDER (ORAL)

The applicant has filed this OA seeking the following reliefs:-

(i) That the Hon'ble Tribunal may be pleased to allow this application and direct the respondents to pay interest on the amount of Rs.1,49,962/- at the rate of 18% P.A. from the period from 1.11.1997 to 21.1.2000 in respect of gratuity and also interest on the amount of Rs.15,524/- paid against leave encashment salary for the period from 1.8.1997 to 21.1.2000 at the rate of 18% P.A.

(ii) That this Hon'ble Tribunal may be graciously

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pleased to impose exemplary cost against the respondents for not only delaying the payment of gratuity but also for forcing the applicant to approach the Hon'ble Tribunal at the second round although in accordance with law and rules the respondents ought to have paid the interest alongwith payment of gratuity/leave encashment salary.

(iii) That any other or further relief which the Hon'ble Tribunal may deem fit and proper on the facts and in the circumstances of the case may kindly be awarded in favour of the applicant.

2. Facts in brief are that the applicant had retired from service on 31.7.97. His retiral benefits were not paid in time so he had filed an OA which was registered as OA 1238/98 and was decided on 18.1.2000. In the said OA the respondents counsel had given details of payments which were to be paid to the applicant so the OA was disposed of with a direction to the respondents that the applicant shall contact the concerned officer in the Accounts Section along with copy of this order on any working day for needful to be done. It was further directed that the respondents shall ensure that the amounts due to the applicant be paid forthwith when the applicant appears before them in accordance with rules and instructions.

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3. It appears that after this order had been passed the applicant appeared before the Accounts Officer (Pension) on 20.1.2000, on which date the Accounts Officer directed the applicant to go to the cashier for receiving his dues. Accordingly the applicant contacted the Cashier on 21.1.2000 who handed over to him two cheques: one for the amount of Rs.1,49,962/- and another for Rs.15,524/- against DCRG and leave encashment salary respectively. Though the applicant has challenged the calculation of the amounts but states that since the payment has been delayed so respondents are liable to pay interest at the rate of 18% from the date they became due.

4. Respondents are contesting the OA and have filed a reply. They have taken a preliminary objection that the second OA is barred by principles of res judicata.

5. The respondents have also taken a plea that the Gratuity could not be paid for want of clearance of HBA as the balance amount was to be recovered from Gratuity and the payment of DCRG is stated to have been delayed due to "No Dues clearance" of HBA loan, as the balance of loan was to be recovered from the DCRG and all other retiral benefits including leave encashment etc., which is stated to have been paid on the last working day.

6. It is also submitted that the interest is not admissible on the payments of arrear on account of difference due to revision of pay as a result of 5th CPC as per extant statutory rules.

7. I have heard the learned counsel for the parties and gone through the records of the case.

8. As regard the plea of the respondents that the second O.A. is barred by principles of res judicata I find that this plea is not available to the respondents as a perusal of the order vide which the earlier OA was disposed of shows that the matter in question has not been adjudicated upon because the counsel for the respondents had made a statement that the applicant can go to the office of the respondents and can collect the amount due. Now as far the present case is concerned the respondents have taken a plea that DCRG amount was withheld since the HBA advance was not cleared. However, the counsel for the applicant has referred to Annexure A-3 which gives a detail as to how the HBA advance had been paid back by the employee to his department and the notings on this aspect which is on page 14 of the paper book show that before the employee had retired the HBA advance was cleared by the employee.

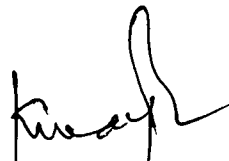
9. So the next plea taken by the respondents is that only difference in amount of DCRG and leave encashment which had fallen due only after the pay revision was accepted after the recommendations of the 5th CPC and stated that as per the extant rules no interest is liable to be paid on the same. To my mind this contention again is not tenable because in case the payment of the revised amount of leave encashment is to be paid immediately on the date it became due on the recommendations of the 5th CPC and when a notification

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had been issued with regard to leave encashment and revised pay of the employee, the same has to be paid in time and if there is further delay in payment thereof then the department cannot escape of its liability and are liable to pay interest.

10. Hence, I allow the OA and direct that the respondents shall pay interest to the applicant at the rate of 12% on DCRG as well as on the delayed payment of leave encashment at the rate of 12% from the date when the said amount had become due. This may be done within a period of 3 months from the date of receipt of a copy of this order. No costs.


(KULDIP SINGH)
MEMBER (J)

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