

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 2212/89  
T.A. No.

199

DATE OF DECISION 16.8.1990.

|                         |   |
|-------------------------|---|
| Shri S.C. Upadhyay      | <del>Petitioner</del> Applicant                     |
| Shri G.D. Bhandari      | Advocate for the <del>Petitioner(s)</del> Applicant |
| Versus                  |   |
| Union of India & Others | Respondent  |
| Shri D.N. Moolri        | Advocate for the Respondent(s)                      |

## CORAM

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

(Judgement delivered by Hon'ble Mr. D.K. Chakravorty, Member)

The grievance of the applicant pertains to the non-payment of his pension and other retirement benefits to him consequent upon his voluntary retirement from railway service.

2. The facts in brief are that the applicant joined railway service in 1965. At the time of seeking voluntary retirement in 1988, <sup>he was</sup> holding the post of Electrical Signal Maintainer, Grade I. He gave a notice of voluntary retirement on 15.6.1988, wherein he stated that he was not in a position to continue in service for various attendant reasons. He had stated that he was submitting his notice "provided I stand entitled to normal pensionary and other service benefits." He had indicated

that the notice might be treated as three months' notice. The respondents accepted his notice on 10.8.1989, which was after a lapse of more than one year. He was, however, not paid any pension or other retirement benefits till he filed the present application on 3.11.1989.

3. When the application came up for admission on 7.11.1989, the Tribunal passed an ex parte interim order to the effect that the respondents shall not dispossess the applicant of the railway quarter No.16/2, Railway Colony, Sarojini Nagar, New Delhi, subject to his liability to pay licence fee, etc., under the relevant rules. The said interim order has been continued thereafter.

4. The applicant had made representations to the respondents on 9.8.1989, 4.9.1989 and 19.10.1989 for early payment of retirement benefits. He did not receive any reply from the respondents.

5. The respondents have stated in their counter-affidavit that the Provident Fund was released to the applicant in February, 1990, while the leave encashment and L.I.C. due to him were paid in October, 1989. The commutation of pension was also released to him in Oct., 1989. They have, however, withheld the gratuity as the applicant has not yet vacated the accommodation allowed to him.

6. The contention of the applicant is that he would have vacated the Government accommodation had he been paid the retirement dues within a reasonable time. The respondents had accepted his conditional voluntary retirement, namely, that his retirement was subject to his entitlement to pensionary and other service benefits. He

has alleged that the respondents delayed the payment of his pension and retirement benefits as he was a Trade Union Leader who had represented the cases of aggrieved Railway employees to high officials of the Vigilance Branch and to the Railway Minister, which had caused annoyance to them. The respondents have, however, denied this allegation. According to them, the gratuity becomes payable only after the employee produces a 'No Demand' certificate and no such certificate will be issued till the railway accommodation is vacated by him.

7. We have considered the rival contentions of both the parties. To our mind, the delay in vacation of the Government accommodation in the instant case, was not deliberate. Had the applicant been given his pension and retirement benefits within time, the respondents could have contended that the applicant's continuance in the Government accommodation was unjustified. In State of Kerala and Others Vs. M. Padmanabhan Nair, A.I.R. 1985 S.C. 356, the Supreme Court has observed as follows:-

"Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."

8. The Supreme Court took note of the fact that there may be some delay by reason of non-production of the 'Last Pay Certificate' and the 'No Liability Certificate' from the concerned department. In this context, the

Supreme Court observed that it is the responsibility of

the Government department to ensure that all the relevant documents are completed at least a week before the date of retirement. The following observations made by the Supreme Court are pertinent:-

".....Since the date of retirement of every Government servant is very much known in advance, we fail to appreciate why the process of collecting the requisite information and issuance of these two documents should not be completed at least a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following month. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over emphasised and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement."

9. In the instant case, there was delay in the release of the retirement benefits to the applicant, which has not been satisfactorily explained by the respondents. The applicant continued in the Government accommodation by virtue of the stay order passed by this Tribunal on 7.11.1989 which was continued thereafter until the orders on the application were reserved on 7.8.1990. The rules relating to the production of 'No Demand' certificate would, no doubt, be relevant in a normal case, where there has been some lapse on the part of the employee in complying with the formalities required under the rules. In the instant case, the applicant had given his notice more than one year before the respondents accepted his notice and allowed him to retire voluntarily. As the delay in releasing the pension and retirement benefits is not attributable to the applicant, we see no justification

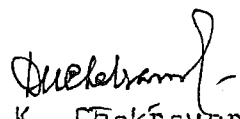
in withholding the entire amount of gratuity, as has been done in the instant case.

10. In a somewhat similar case, the Tribunal has directed that the respondents will charge only the normal rent from the employee till he vacated the house, and that the respondents will not be liable to pay any interest on the delayed payment of gratuity (see B.S. Mainee Vs. Union of India & Others, A.T.R. 1989 (1), CAT 696). In that case, the Tribunal directed that the employee is liable to pay only the normal licence fee and that he would not be entitled to claim interest on delayed payment of gratuity. In the instant case, the applicant had continued for about three months in the Government accommodation after the respondents passed their order whereby he was retired from 10.8.1989. Thereafter, he continued in the Government accommodation by virtue of the stay order passed by this Tribunal.


11. In the conspectus of the facts and circumstances of the case, we are of the opinion that withholding of the entire amount of gratuity was not legally sustainable. We, therefore, direct that the respondents shall release the amount of gratuity payable to the applicant after deducting therefrom the normal licence fee payable from 10.8.1989 to the date of payment of the amount to the applicant. We further hold that during the subsistence of the stay order passed by this Tribunal, the applicant shall be charged only the <sup>normal</sup> ~~licence~~ fee. However, the applicant will not be entitled to any interest for delayed payment of the retirement benefits.

12. The application is disposed of with the aforesaid directions at the admission stage itself. The respondents shall comply with the above directions within a period of three months from the date of communication of this order.

There will be no order as to costs.

  
(D.K. Chakravarty)  
Administrative Member

16/8/90

  
(P.K. Kartha)  
Vice-Chairman (Judl.)