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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1103/90.

DATE OF DECISION: 21-12-1990.

T.C. Saxena Applicant.

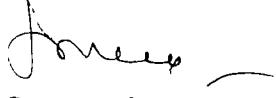
v/s.

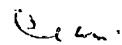
Union of India Respondents.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

Shri J.K. Bali, Counsel for the Applicant.
Shri O.N. Moolri, Counsel for the Respondents.

1. Whether Reporters of local papers may be allowed to see the judgment? ✓
2. To be referred to the Reporter or not? ✗
3. Whether their lordships wish to see the fair copy of the judgment? ✗
4. Whether to be circulated to all Benches of the Tribunal? ✗


(J.P. SHARMA)
Member (J)


(P.C. JAIN)
Member (A)

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(Judgement of the Bench delivered by
Hon'ble Mr. P.C. Jain, Member (A).)

JUDGMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who retired as Conductor from the Northern Railway on 31.1.1987 and who was not paid Death-cum-Retirement Gratuity and the commuted value of one-third pension, as applied for by him, immediately after his retirement from service, on account of a departmental inquiry continuing against him, has prayed for the following reliefs: -

- "1. Pay penal interest at the rate of 18% per annum (as per the judgement dated 18.8.87 of this Hon'ble Tribunal in O.A. No.156/87 in the case of Bansidhar V/s Union of India on delay in payment of gratuity as well as the amount of commuted pension from 1.2.87 to the date payments were actually made on 6.5.89 and 8.8.89 respectively.
2. Refund the amount of Rs.2946/- illegally deducted from the gratuity payable along with penal interest from 1.2.87 to the date of actual refund. "
2. The facts of the case, in brief, are that the applicant retired as Conductor from the Northern Railway on 31.1.1987. He had been issued a charge-sheet dated 17.5.85 and the departmental proceedings continued even

after his retirement and as a result, he was not paid the DCR gratuity and the commuted value of one-third of his pension, although he had applied for the same and the pension was duly sanctioned to him. On 9.3.1989, he was informed vide letter at Annexure A-2, that the charges levelled against him had not been established as per the findings of the Enquiry Office which were accepted and the case was filed. Consequently, he was paid a sum of Rs.14,974/- vide A.B. No.131 dated 28.4.89 and a sum of Rs.17,920/- vide A.B. No. PN 67, dated 26.12.1989 i.e., a total amount of Rs.32,894.00 towards DCR gratuity as against a sum of Rs.35,840.00 which was actually due to him. A sum of Rs.2,946/- was deducted on account of some alleged over-payments made to him during the service period. He was also authorised payment of Rs.45,439/- vide PPA No.08878992 dated 2.6.1989 towards commutation of one-third pension, which the applicant admits to have received on 8.8.89.

3. The case of the applicant is that the delay in payment of gratuity and commuted amount of pension entitles him to payment of penal interest and that recovery of Rs.2,946/- from his gratuity on account of some alleged over-payment is illegal and, as such, he is entitled to the said deduction along with penal interest thereon. His plea is that the respondents are to be blamed for delay in finalisation of the enquiry, which could be finalised even before his retirement.

4. The respondents had filed their written statement dated 11.9.90, in which they have stated that they have not received any representation from the applicant. They had withheld the gratuity of the applicant till disposal of the DAR case against him in terms of para 316(1) of the Manual of Railway Pension Rules, 1950. They have further stated that "the commutation of pension also could not be processed because of DAR proceedings under

para 1202 of the aforesaid Manual", and that both the DCR gratuity and the commutation value of the pension have been paid to him after disposal of the DAR proceedings. No malafides against any particular person have been alleged and there has been no callous indifference on the part of the respondents, as alleged by the applicant. A sum of Rs.2,946/-, according to the respondents, has been correctly recovered from him out of his DCR gratuity on account of over-payments made to him during his service and that the same is permissible under para 323 (1) of the aforesaid Manual. The question of any interest on the commuted value of pension is not admissible as the applicant continued to get full pension during that period and the payments were released to him within about two months of the conclusion of the enquiry.

5. We have heard the learned counsel for the parties and gone through the record of the case. We feel that the case can be disposed of at the admission stage itself as the learned counsel for the parties submitted their arguments both on admission and merits. The learned counsel for the applicant did not wish to file any rejoinder.

6. The learned counsel for the applicant stated at the bar that no show cause notice was given to the applicant for recovery of Rs.2,946/- out of his DCR gratuity, on account of any alleged over-payment. He also pleaded that the delay in commutation of pension affects the rate of payment and its restoration after 15 years. As regards payment of interest on withheld DCRG to Railway servants who are exonerated on the conclusion of disciplinary/judicial proceedings, he drew attention to the Railway Board's letter No.F(E)-(III)79-PNL/15, dated 25.5.83, according to which "the gratuity will be deemed to have fallen due on the date following the date of retirement for the purpose of payment of interest on

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delayed payment of gratuity" and these orders are effective from 10th January, 1983.

7. The learned counsel for the respondents, on the other hand, pleaded that in accordance with para 316(1) of the Manual of Railway Pension Rules, 1950, no gratuity or death-cum-retirement gratuity is to be paid to a railway servant until the conclusion of such proceeding and the issue of final orders thereon. He also drew attention to para 1202 of the Manual ibid which provides that "a Railway servant against whom a judicial or a departmental proceeding has been instituted or a pensioner against whom any such proceeding has been instituted or continued under Rule 2308 (C.S.R. 351-A)-R.II, shall not be permitted to commute any part of his pension during the pendency of such proceeding." The learned counsel for the applicant, however, stated that para 1211 of the Manual ibid provides that "Whatever the date of actual payment, the amount paid and the effect upon the pension shall be the same as if the commuted value were paid on the date on which commutation became absolute. If the commuted portion of the pension has been drawn after the date on which the commutation became absolute, the amount drawn shall be deducted from the amount payable in commutation." He also cited authorities* to show that the amount of gratuity could not be withheld for more than six months and that for the deduction made out of his gratuity, he should have been issued a show cause notice.

8. So far as the question of payment of DCR gratuity is concerned, there is no dispute about the fact that the respondents are fully empowered to withhold the

* 1987 (3) ATC 441.

1989 (9) ATC 650.

1987 (3) ATC 432.

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DCR gratuity until the conclusion of the departmental proceedings and the issue of final orders thereon, as provided in para 316(1) of the Manual ibid, but the instructions issued by the Railway Board in their letter dated 25.5.83 mentioned above, makes it clear that in order to mitigate the hardship to the railway servants who, on the conclusion of the proceedings are fully exonerated, it has been decided that the interest on delayed payment of DCRG may also be allowed in their case. In the instant case, the letter dated 9.3.1989 issued by the Sr. Divl. Commercial Superintendent, Northern Railway (Annexure A-2) states very clearly that the charges levelled against the applicant had not been established and the case was filed. Thus, the applicant is entitled to claim interest on the delayed payment of DCR gratuity for the period beyond three months after the gratuity became due i.e., the date following the date of his retirement. The rate of interest payable on such a delayed payment as indicated in the aforesaid letter of the Railway Board dated 25.5.83 is 5% per annum. Unless there has been any revision in the rate of interest payable after the said letter dated 25.5.83, the applicant cannot claim interest at any higher rate when he is basing his claim on the authority of the aforesaid letter of the Railway Board.

9. As regards the deduction of Rs.2,946/- out of the DCR gratuity of the applicant on account of some alleged over-payments, stated to have been made under para 323(i) of the Manual ibid, it may be stated that although it is permissible to make recovery of Government dues from the death-cum-retirement gratuity due even without obtaining the consent of the employee, in the interest of natural justice, it is desirable that the person concerned should be explained about the details of the recoveries made so that he gets an opportunity

to show cause, if any. Recovery of an amount without the previous knowledge and without giving details thereof and/or issue of a show cause notice would be beyond the principles of natural justice.

10. As regards the claim of the applicant for payment of interest on the amount of commuted value of pension, we have not been shown any provision under which such an interest could be allowed. Para 1211 however, states that "Whatever the date of actual payment, the amount paid and the effect upon the pension shall be the same as if the commuted value were paid on the date on which commutation became absolute. If the commuted portion of the pension has been drawn after the date on which the commutation became absolute, the amount drawn shall be deducted from the amount payable in commutation." In the counter-affidavit, the respondent have stated that "The question of any interest on the commuted value of pension does not arise and is not admissible as the applicant was not put to any monetary loss as reduction in pension takes place on payment of the purchase value and till then the ex-employee continues to get full pension." In view of this, the applicant, in any case, is not entitled to any payment of interest on the commuted value of pension. If, however, by virtue of the provision of para 1211 of the Manual ibid, he is a gainer in any way, the respondents may recast the amount of commutation accordingly, but without payment of any interest thereon.

11. In view of the foregoing discussion, the application is partly allowed in terms of the following directions to the respondents: -

- (1) The applicant shall be paid interest on the delayed payment of DCR gratuity for the period beyond three months after the gratuity became due i.e., the date following the date of his retirement at the rate of

5 per cent per annum or at such higher rate in lieu of 5 per cent, if any fixed in such cases after the issue of instructions contained in the letter of Railway Board dated 25.5.1983 ibid.

(2) The applicant will be provided details of the recovery of Rs.2,946/- made out of his DCR gratuity and given an opportunity to explain his case. If he feels aggrieved by the final decision of the respondents in this regard, he will be at liberty to approach this Tribunal again.

(3) If in accordance with para 1211 of the Manual of Railway Pension Rules, 1950, the applicant is a gainer in any way, the respondents shall recast the amount of commutation accordingly, but without payment of any interest thereon.

(4) The respondents shall take action as per above directions within a period of two months from the date they receive a copy of this order.

We leave the parties to bear their own costs.

J. P. Sharma
(J.P. SHARMA)
Member (J)

C. C. Jain
(P.C. JAIN)
Member (A)