

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 154/90

199

RECORDED

DATE OF DECISION 6.8.1991.Union of India PetitionerShri G.N. Moolri, Advocate for the Petitioner(s)

Versus

Smt. Sushma Mathur & Ors., RespondentShri K.C. Gautam, Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. T.S. Oberoi, Member (J)The Hon'ble Mr. I.K. Rasgotra, Member (A)

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 .

Shri Rasgotra
 (I.K. RASGOTRA)
 MEMBER (A)

6.8.91.

T.S. Oberoi
 (T.S. OBEROI)
 MEMBER (J)

6.8.91.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.No. 154/90

Date of Decision: 6.8.1991.

UNION OF INDIA

.....

APPLICANT

VERSUS

SMT. SUSHMA MATHUR & ORS.

.....

RESPONDENTS.

CORAM:-

THE HON'BLE MR. T.S. OBEROI, MEMBER(J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A)

SHRI O.N. MOOLRI, COUNSEL FOR THE APPLICANT.

SHRI K.C. GAUTAM, COUNSEL FOR THE RESPONDENTS.

JUDGEMENT

(of the Bench delivered by Hon'ble Mr. T.S. Oberoi, Member(J)).

This is a long standing and protracted matter concerning the claim in respect of leave salary, and interest on S.C. (Gratuity) to Provident Fund, in respect of late Shri Manmohan Mathur, a permanent employee of the Northern Railway, as a driver, by his legal heirs, namely, wife, son and daughter.

2. Originally, Suit No.155/87 was filed by the L.Rs of late Shri Mathur, in the court of learned District Judge, Delhi, and after notice etc. to the respondents, a written statement was also filed on behalf of the respondents. The learned Addl.Distt.Judge, to whom the case was marked, however, directed the personal presence, in the court, of a responsible officer of the respondents' department, who were, however, represented through their counsel, for admission/denial of the documents, filed on behalf of the plaintiffs. But, inspite of a number opportunities having been given for the purpose, no one appeared, and the learned trial judge, by invoking provisions

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contained in Order 8 Rule 4(2), Civil Procedure Code, 1908, decided the case of the plaintiff and decreed their Suit for Rs. 39439/-, with costs and 12% p.a. interest, future and pendentelite, from the date of filing of the suit, till realisation. An execution application was moved by the applicants/plaintiffs in due course, upon which warrants of attachment were also issued by the learned judge. It was at this stage, the respondents got better advised, and came before this Tribunal, by way of present application, seeking setting aside of the judgement and decree, passed by the learned Addl. District Judge, Delhi, on the ground that being a service matter, the learned Civil Court concerned, had no jurisdiction to entertain the matter or pass the judgement and decree, it did, and hence the same were non-est, besides being time-barred, etc.

3. When the matter came to be heard before us, on 31.1.1990, after hearing the learned counsel for the applicants before us (Respondents in the Civil Suit), the following order, was passed:

"Heard Shri O.N. Moolri, counsel for the applicant. Issue notice to the respondents on admission, returnable on 9.2.1990.

As regards the interim relief, we direct that a sum of Rs.3000/- be paid to the legal heirs of late Shri Manmohan Mathur, against the amount for which attachment warrants have been issued, subject to the final adjustment at appropriate stage. The warrants of attachment issued by the court of Shri R.K. Sain, Additional District Judge, are stayed till 9.2.1990.

Issue Dasti."

sd/-
(I.K. RASGOTRA)
MEMBER(A)

sd/-
(T.S. OBEROI)
MEMBER(J)

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4. On the next date i.e. on 9.2.90, when the respondents appeared through their counsel, the learned counsel for the applicants was asked, in order to sort out and simplify the matter, to file a statement with respect of such items of the claim, put up by the respondents, as may be payable to them, as per the applicants. The same was filed by the applicants, and objections thereto by the respondents also filed, and mutually exchanged. They were also asked to file a written note, each, to facilitate disposal of the matter.

5. Written statement/counter and rejoinder were also filed by the parties. In the written statement filed by the respondents, it was objected to, that a judgement and decree passed by a Civil Court cannot be challenged before this Tribunal, by way of present application, especially, when in the written statement filed in that court, no objection regarding jurisdiction of that court was taken. The objection regarding limitation was also resisted, being a matter concerning leave salary and interest on S.C. (Gratuity) to Provident Fund etc. In the rejoinder filed on behalf of the applicants, the points earlier raised in the O.A., were reiterated.

6. We have also heard the learned counsel for the parties and have carefully perused the material, on record, together with the written notes, filed by them.

7. We would like to first take up the aspect of jurisdiction i.e. as to whether the Civil court had the jurisdiction to entertain a matter like this, after coming into force of the Administrative Tribunals Act, 1985, w.e.f. 1.11.1985. Admittedly, Shri Manmohan Mathur was a Railway employee, and the matter involved his pay and allowances relating to various spells of leave period, and interest on the amounts of S.C. (Gratuity) to Provident Fund

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which, in accordance with the provisions contained in Section 3(q), read with Section 14 of the Administrative Tribunals Act, 1985, come within domain of this Tribunal, to the exclusion of all Civil Courts, with the exception of Hon'ble Supreme Court of India. Hence, we hold the applicants' objection, in this regard, as a valid one.

8. The next point which may be taken up is regarding limitation. To that, to say the least, we are of the view that being a matter concerning emoluments/dues of leave salary and interest, etc., though it was enjoined upon the applicant to pursue his case repeatedly and vigorously (which, in fact, he did, as a perusal of the correspondence on record, discloses, particularly, a letter (R-13 at page 39 of the paper-book), from him to the Divisional Railway Manager, Northern Railway, Ferozepur Cantt, his parent office, in which he commenced his service, with various transfers to other divisions, including a sojourn in Zambia, from June, 1967 to June, 1972, it was equally incumbent upon the respondents, as model employers, to look after their employee well, and at least pay promptly, what was very much due to him. The objection of the applicants, in this regard, is accordingly held as non-maintainable.

9. Now, coming to various items of claim, put up by the Respondents (L.Rs of late Shri Mathur); precisely, the same relate to the following:-

1. Arrears of Salary:

- (i) for the leave period from 13.6.1972 to 12.10.1972;
- (ii) for the leave period from 13.10.1972 to 12.11.1972;
- (iii) for the period 13.11.1972 to 4.12.1972 for which Shri Mathur awaited posting orders, and which was treated as duty;

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(iv) from 5.12.1972 to 13.3.1973; admitted
vide R-5, filed by the respondents,
herein; and

(v) from 14.3.1973 to 13.4.1973, vide Annexure
R-4, filed by respondents.

Here, it may be explained that there is a little over-lapping in the periods, mentioned in item 4 & 5 of the statement filed by the respondents (P.25 of the paper-book), which has been straightened up/by us, as above, in the light of the reply to the same, filed by the applicants (P.62-64, together with the accompanying papers, thereto). Further, it may be clarified that there is a little divergence in the type of leave claimed, as due, by L.Rs of Shri Mathur, and as eventually sanctioned to him, by the applicants, as would be evident from Annexures R-1 to R-5 filed by L.Rs of Shri Mathur, as against Annexures R-3 (P.57), R-4 (p.65), R-5 (p.66), and R-9 to R-13 (Pages 70 to 74, respectively), filed by the applicants, in this O.A. With regard to this, suffice it to say that in the spirit of our earlier observations regarding the claim being related to leave entitlements, and interest, etc., and hence, the objections on this account were ignored, in the same strain, we are inclined to hold that leave as per entitlement to late Shri Mathur, as re-appraised and re-calculated, by the department concerned, as per their annexures, referred to above, in all fairness, should be accepted, as having been granted to him. As such, the amount of Rs.981/- as mentioned by them in R-13 (P.74 of the paper-book) be suitably adjusted/recovered, against the amount now due to Shri Mathur, and for that matter, to his L.Rs.

2. Interest claimed and/or allowed.

The claimants have asked for interest
@12% on the amounts due payment to Shri

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16

Mathur or his L.Rs. The department/applicants before us, had owned liability to pay interest, according to a recent Circular of Railway Board @ 7% for the first year, and @ 10% for the period, if any, thereafter, but the applicants, vide para-7 of their reply dt. 23.10.90 (P.80 of the paper-book) have limited the period to barely 7 or 8 months. The department has also stated in their letter (P.32 of the paper-book) that interest on the S.C.(Provident Fund) has since been paid for six months from 17.9.1975 to March, 1976. As such, interest on Provident Fund account will be due to the claimants from 1.4.1976 to the date of payment, at the permissible rate of interest, on such subscriptions. The claimants, on the other hand, have asked for the interest from the date Shri Mathur had tendered his resignation i.e. w.e.f. 17.9.1975, submitting that the same should have been accepted immediately. The department objects that the resignation could not be accepted, as Shri Mathur remained on unauthorised absence, for a considerable period, on account of which disciplinary proceedings were contemplated against him, but as his whereabouts were not known, the same could not be initiated, for major or minor penalty, against him, and this has contributed towards the delay in acceptance of Shri Mathur's resignation, and consequently, in payment of his retiral dues. It was also alleged that with a view to evade disciplinary action against him, Shri Mathur deliberately did not inform about his whereabouts to

11

the department, and, therefore, was himself responsible for the delay involved. We have carefully considered this aspect. As has been mentioned earlier, in a part of this judgement, Shri Mathur had been pressing for the acceptance of his resignation, tendered w.e.f. 17.9.1975, as would be evident from the correspondence on record, particularly from the letter at page 39 (R-13 of the paper-book). No matter, action under the disciplinary proceedings, for major or minor penalty, was contemplated against Shri Mathur, which, according to the department, had to be dropped on his sad demise, on 11.3.1982, to our mind, the two proceedings, i.e., the payment of retiral dues to Shri Mathur and the contemplated action against him, were entirely different. As a model employer, the department ought to have taken prompt action in accepting or otherwise of his resignation, and taking other consequential action. Indecision in taking action, if any, against him for his long unauthorised absence, cannot be allowed to be used against him, to deny interest on the payments, due to him, for the period of delay, as the delay in making payment is the direct result of the respondents' indecision. Accordingly, we find force in the claim of the L.Rs. of late Shri Mathur, for the interest of the amount, after reasonable and permissible period, after his date of tendering resignation. As regards the rate of interest, considering the spell of period involved, ranging from 1975 onwards, and taking into consideration that C.P.C. allowed 6% of interest, during the relevant time, while, the departmental circular, as mentioned above, @ 7% for the first year, and 10% for period thereafter, we consider that

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interests of justice will be served if the claimants are allowed interest @ 6% for the period from the date when the rates as per Railway Board Circular, referred to above, came into force, and for one year thereafter, at 7%, and for the subsequent period at 10%, till the date when a sum of Rs.3000/- was paid, by way of interim relief, to the L.Rs of late Shri Mathur, vide our order dt. 31.1.90, reproduced in earlier part of this judgement. After deducting the amount of Rs.3000/-, as admitted by the department, in one of their replies filed by them, the interest on the remaining amount @ 10%, till the date of actual payment to the L.Rs of Shri Mathur, shall also be paid.

3. Costs and damages/compensation.

As regards the costs, since the applicants had not chosen appropriate forum, as discussed above, they will be entitled to costs incurred by them, in the present O.A. only, and not in the Civil Suit No.155/87, instituted by them in the Civil Court. Regarding damages/compensation, the claimants/L.Rs of late Shri Mathur have put in a claim of Rs.25,000/-, as ^{per} item 9 of their statement at page 25 of the paper-book. They have also cited some rulings*,

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1. (1984) I S.C. Cases 32 - Ram Pal Singh Vs. U.O.I. & Ors.
2. (1984) I S.C. Cases 162 (Sohan Singh Vs. U.O.I. & Another).
3. (1984) Supplementary S.C.S. 384 (Naval Kishore Iwerhman Vs. M/s Darbshaw B. Cursekjee's Sons & Others).

in support of their claim. We have carefully gone through the rulings referred to by the claimants and may, with due difference, say that each case has, primarily, to be decided, in the face of the facts and circumstances of its own. In view of the peculiar facts of this case, involving something attributable to late Shri Mathur as well, inasmuch as, with a view to evade possible action against him, he did not give due intimation to his department, about his whereabouts, for a considerable period, we are of the view that no compensation/damages need be granted to his L.Rs., as prayed by them. We accordingly disallow their claim in this respect. It may also be mentioned here that though the claimants have asked for higher rate of interest, and have referred to 1985(1) SLR S.C. 750 (The State of Kerala & Others Vs. M. Padmanabhan Nair), in support of their contention, in which it was held that the department should be burdened with interest at the current market rates, it may, with respect, be said that, as earlier mentioned, keeping in view the long period involved, during which the market rates must have fluctuated, we consider that the interests as allowed, at the rates mentioned above, would meet the ends of justice. We hold accordingly.

10. We hope and trust that because of too much delay already involved in the finalisation the claim of the claimants, the department concerned would do well to expedite finalisation of the claim, in accordance with the above, without any further delay, and possibly within a period of four months, from the date of receipt of a copy of this judgement.

11. Before concluding, we may refer to another aspect of the case. The claimants vide their reply/objections against amended reply dt. 23.7.90, filed on behalf of the applicants, (P.75 to 78 of the paper-book), which was filed on 20.8.90, had intimated that Respondent No.1,

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Smt. Sushma Mathur, widow of late Shri Manmohan Mathur had also expired on 5.8.90. Though no regular application, as required vide Rule 18 of Central Administrative Tribunal (Procedure) Rules, 1987, had been filed by them, the intimation, however, having been given within 30 days of the death of Smt. Sushma Mathur, and no objection, on this account, having been raised by the department/applicants, we by making use of the provisions contained in Section 22(1) of Administrative Tribunals Act, 1985, hold that the intimation by the claimants, as per their above mentioned reply/objection dt. 20.8.90, would meet the requirement, in this regard. Accordingly, the payment as may be worked out, to be due towards them, be paid to the remaining L.Rs of late Shri Mathur, namely, Sh. Rajat Mathur(son), and Ms. Anuradha (daughter), already shown as Respondents 2 and 3 in the present O.A.,^{in equal share,} on their furnishing a simple undertaking, to the department concerned, to the effect that in the event of any dispute emerging or arising, in this regard, they shall be liable to refund the amount received by them, including the sum of Rs. 3000/- earlier allowed, as interim relief, if so directed by this Tribunal.

12. O.A. decided, on the above lines, with costs of this O.A. payable to the claimants, as earlier allowed.

Rasgotra
(I.K. RASGOTRA)
MEMBER(A)
6.8.91.

Oberoi
(T.S. OBEROI)
MEMBER(J)
6.8.91.