

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD**

(THIS THE 09th DAY OF December, 2010)

Hon'ble Dr.K.B.S. Rajan, Member (J)
Hon'ble Mr. S. N. Shukla, Member (A)

**Original Application No.1365 of 2005
(U/S 19, Administrative Tribunal Act, 1985)**

Krishna Murari, S/o Tokan Singh
Resident of M/10/70 D Kakar Matt
P.O. DLW, Varanasi.

..... Applicant

Present for Applicants : Shri S. K. Dey, Advocate.
Shri: S.K. Mishra, Advocate

Versus

1. Union of India, through General Manager,
Diesel Locomotive Works, DLW Maduadih,
Varanasi.
2. The General Manager, Diesel Locomotive Works,
DLW Maduadih, Varanasi.
3. Shri M.M. Ansari, Inspector, RPF Post Office,
Maduadih, Varanasi.

..... Respondents

Present for Respondents : Shri A. K. Sinha, Advocate.

ORDER

(Delivered by Hon. Dr. K.B.S. Rajan, Member-J)

The applicant who entered the service of the respondents in September 1956 and superannuated on 31.1.1996 was involved in a criminal matter in January 1996 and was kept under suspension from 24.1.1996. Both criminal as well as disciplinary proceedings under D&A Rules were initiated against the applicant. Initially in the criminal matter the trial court convicted the applicant under section 3 of Railway Property Unlawful Possession Act. However, in

the criminal revision petition he was acquitted. The High court while acquitting the applicant held as under:-

*“When these few iron angles, G.I. Tank were purchased and its receipts were filed by Shri Krishna Murari, no offence can fasten on Him. It is not the case of the prosecution that the Railway godowns were open and accessible to the entire sundry, the seized articles have been pilfered by the accused applicants. Merely assuming that the seized articles belonged to the Railways, conviction of Shri Krishna Mohan was recorded, which is not sustainable from the evidence on record.....
 No intention on his part for accepting the stolen goods can well be inferred.”*

2. After the above judgment of the High Court dated 16.6.2003, the respondents revoked the suspension vide order dated 16.3.2004 and treated the period of suspension from 18.1.1996 to 31.1.1996 as period spent on duty (Annexure A-3 refers). It was thereafter that the respondents released the terminal dues to the applicant. In fact in so far as commutation was concerned the applicant has to move the Tribunal by filing OA No. 365/2005 which was disposed of on 6.4.2005 and thereafter that commutation was allowed.
3. Through this petition the applicant has claimed interest for the delayed payment of terminal benefits, paid on 2.3.2004 and 22.8.2005. He has also prayed for a direction to the respondents for payment of subsistence allowance from 1.2.1996 to 16.3.2004.
4. The respondents have contested the OA. While the facts of the case have not been disputed, in so far as the claim of the applicant is concerned, they have maintained that the applicant's gratuity and commutation value were accordingly with-held in

accordance with the Statutory Provisions contained in Railway Service (Pension) Rules, 1993. The applicant has filed his rejoinder reiterating his contentions raised in the OA.

5. The counsel for the applicant argued that the case of the applicant is not one whereby the acquittal was by any benefit of doubt but it was clear honourable acquittal. As such, it must be deemed that there was no criminal case at all. Consequently, it should also be deemed that there was no disciplinary proceeding at all as the same was dropped on the basis of the acquittal. Counsel for the respondents has contented that generally interest on delayed payment is granted when there is undue, unjustified and unexplainable delay and cases wherein an individual is under cloud and proceedings are pending, in such cases interest on delayed payment is not allowed.

6. Arguments were heard and documents perused. There is no denial of the fact that there has been delay in payment of the terminal dues. The question is whether the delay was inevitable and even if it was inevitable, whether interest would be payable on delayed payment. The law on the subject could be discerned through the decisions of the Apex Court in the following cases:-

i) *Union of India v. Justice S.S. Sandhawalia, (1994) 2 SCC 240*

Once it is established that an amount legally due to a party was not paid to it, the party responsible for withholding the same must pay interest at a rate considered reasonable by the Court. Therefore, we do not see any reason to interfere with the High Court's order directing payment of interest at 12% per annum on the balance of the death-cum-retirement gratuity which was delayed by almost a year.

ii) *Clariant International Ltd. v. Securities & Exchange Board of India*, (2004) 8 SCC 524, the Apex Court has held as under:-

The courts of law can take judicial notice of both inflation as also fall in bank rate of interest. The bank rate of interest both for commercial purposes and other purposes has been the subject-matter of statutory provisions as also the judge-made laws. Even in cases of victims of motor vehicle accidents, the courts have upon taking note of the fall in the rate of interest held 9% interest to be reasonable.

iii) In *Uma Agrawal (Dr) v. State of U.P.*, (1999) 3 SCC 438, the Apex Court has held as under:-

5. We have referred in sufficient detail to the Rules and instructions which prescribe the time-schedule for the various steps to be taken in regard to the payment of pension and other retiral benefits. This we have done to remind the various governmental departments of their duties in initiating various steps at least two years in advance of the date of retirement. If the Rules/instructions are followed strictly, much of the litigation can be avoided and retired government servants will not feel harassed because after all, grant of pension is not a bounty but a right of the government servant. The Government is obliged to follow the Rules mentioned in the earlier part of this order in letter and in spirit. Delay in settlement of retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too there is a prescribed procedure. This is indeed unfortunate. In cases where a retired government servant claims interest for delayed payment, the court can certainly keep in mind the time-schedule prescribed in the Rules/instructions apart from other relevant factors applicable to each case.

(iv) In *Vijay L. Mehrotra v. State of U.P.*, (2001) 9 SCC 687 the judgment reads as under:-

1. Special leave granted, limited to the question of granting of interest.

2. The appellant retired from service on 31-8-1997. From the response filed by the respondent, it is clear that most of the payments of the retiral benefits to her were made a long after she retired on 31-8-1997. The details of the payments so made are as under:

Sl. No. Particulars Amount paid Date

(i) GPF 90% Rs 1,80,899.00 27-11-1997

(ii) GPF 10% Rs 20,751.00 25-4-1998

(iii) GIS Rs 13,379.00 27-2-1998

(iv) Encashment of leave Rs 41,358.00 27-9-1998

- (v) Arrears of pay Rs 15,495.00 27-9-1998
- (vi) Gratuity Rs 1,09,753.00 5-12-1998
- (vii) Commuted pension Rs 20,484.00 5-12-1998
- (viii) Detained amount Rs 45,000.00 5-11-1999

3. In case of an employee retiring after having rendered service, it is expected that all the payment of the retiral benefits should be paid on the date of retirement or soon thereafter if for some unforeseen circumstances the payments could not be made on the date of retirement.

4. In this case, there is absolutely no reason or justification for not making the payments for months together. We, therefore, direct the respondent to pay to the appellant within 12 weeks from today simple interest at the rate of 18 per cent with effect from the date of her retirement, i.e., 31-8-1997 till the date of payments.

5. The appeal is allowed to the above extent.

(v) In *Bal Kishore Mody v. Arun Kumar Singh*, (2001) 10 SCC 174, the Apex Court has stated as under:-

"4. At the time of the hearing of the matter, considering the delay in making payment of retiral benefits, learned counsel appearing on behalf of the respondent State submitted that this Court may pass appropriate orders giving direction to pay interest on the said amount and the State Government would pay the same within one month from the date of the order. He further submitted that appropriate action would be taken against the officer(s) concerned who delayed the payment of retiral benefits. In this view of the matter, we do not propose to take any further action in these contempt proceedings.

5. Hence it is directed that the respondents shall pay interest on the retiral benefits from 15-1-1996 till the date of payment at the rate of 15 per cent per annum."

6. In all the above cases, there appears no distinction between pensionary benefits and other retiral benefits. Any amount which becomes payable on retirement becomes retiral benefits.

vi) *Ghaziabad Development Authority v. Balbir Singh*, (2004) 5 SCC

65 wherein the Apex Court has held as under:-

“A Division Bench of the High Court of Punjab speaking through Tek Chand, J. in CIT v. Dr Sham Lal Narula, thus articulated the concept of interest: (AIR p. 414, para 8) :

'8 . The words 'interest' and 'compensation' are sometimes used interchangeably and on other occasions they have distinct connotation. Interest in general terms is the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another. In its narrow sense, interest is understood to mean the amount which one has contracted to pay for use of borrowed money. ... In whatever category interest in a particular case may be put, it is a consideration paid either for the use of money or for forbearance in demanding it, after it has fallen due, and thus, it is a charge for the use or forbearance of money. In this sense, it is a compensation allowed by law or fixed by parties, or permitted by custom or usage, for use of money, belonging to another, or for the delay in paying money after it has become payable.' ”

vii) *S.K. Dua v. State of Haryana*, (2008) 3 SCC 44, at page 47 :

If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of “bounty” is, in our opinion, well founded and needs no authority in support thereof.

7. The above decisions of the Apex Court go to show that interest is generally payable on delayed payment, more particularly the terminal benefits, which are not bounty as held in *S..K. Dua (supra)*. But such payment of interest is payable as per relevant Rules. Rules on the subject mainly dictate the terms of interest.

8. The Central Civil Services (Pension) Rules, 1972 provide for payment of interest on delayed payment and the same reads as under:-

In order to mitigate the hardship to the Government servants who, on the conclusion of the proceedings are fully exonerated, it has been decided that the interest on delayed payment of retirement gratuity may also be allowed in their cases, in accordance with the aforesaid instructions. In other words, in such cases, the gratuity will be deemed to have fallen due on the date following the date of retirement for the purpose of payment of gratuity. The benefit of these instructions will, however, not be available to such of the Government servants who die during the pendency of judicial/disciplinary proceedings against them and against whom proceedings are consequently dropped.

The applicant is however, being governed by Railway Pension Rules.

There, the provisions, vide rule 87 of the Railway Services (Pension) Rules, 1993, read as under:-

If the payment of gratuity has been authorized after three months from the date when its payment became due on superannuation and it is clearly established that the delay in payment was attributable to administrative lapse, interest at such rate as may be specified from time by the Central Government in this behalf on the amount of gratuity in respect of the period beyond three months shall be paid.

Provided that the delay in the payment was not caused on account of failure on the part of the railway servant to comply with the procedure laid down in this Chapter.

(2) Every case of delayed payment of gratuity shall be considered by the General Manager or the Administrative Head of the Railway Unit, as the case may be and when the said General Manager or Administrative Head is satisfied that the delay in the payment of gratuity was caused on account of administrative lapse, he shall order for arranging the payment of interest. The powers to pass order for payment of interest on delayed payment of death-cum-retirement gratuity shall not be delegated to any lower authority.

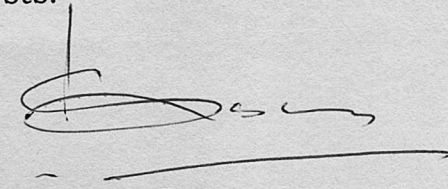
(3) In all such cases where the payment of interest has been ordered, the Railway shall fix the responsibility and take disciplinary action against the railway servant or servants concerned who are found responsible for the delay in the payment of gratuity.

9. The case of the applicant has to be considered on the above lines. The General Manager is the authority to decide the matter as to whether the applicant is entitled to interest or not. While so deciding he may take into account the rule mentioned above and the fact that the applicant was honourably acquitted and that the

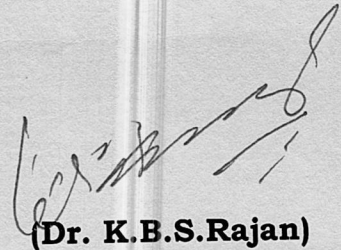
disciplinary proceedings have been dropped should also be kept in mind. There is no indication from the record that the case has been referred to the General Manager.

10. The O.A. is thus disposed of with a direction to General Manager to apply the provisions of Rule 87 of the Railway Services (Pension) Rules, 1993 as extracted above and arrive at a judicious decision within a period of two months from the date of communication of this order. The General Manager shall also take into consideration the fact that the acquittal of the applicant was a honourable acquittal and that penalty proceedings initiated against the applicant by the respondents had to be dropped.

No costs.



(S.N.Shukla)
MEMBER (A)



(Dr. K.B.S.Rajan)
MEMBER (J)

UV/