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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration No.241 of 1986 (T)

Vishwa Nath Agarwal Applicant

Versus

Union of India and Another Respondents.

Hon.S.Zaheer Hasan, V.C.

Hon. Ajay Johri, A.M.

(By Hon. Ajay Johri, A.M.)

Shri Vishwa Nath Agarwal the petitioner was employed as a Sub Head in the office of the Senior Divisional Accounts Officer Northern Railway at Moradabad. He retired on 30.11.1983 having joined the railways on 6.11.1944 as an office clerk. He was paid a sum of Rs.17,613-75 as Death-cum-Retirement Gratuity on 13.5.85. He has claimed that his gratuity should have been paid in accordance with the Payment of Gratuity Act, 1972. The calculations should have been made on lines indicated by him in para 7 of his petition and the amount should have totalled to Rs.35,831-25. He has come to the Tribunal with a petition for the payment of the balance amount of the gratuity as calculated by him in accordance with Sections 2(s), 4(2), 4(3) of the Payment of Gratuity Act, 1972 and also payment of interest as per Section 8 of the Payment of Gratuity Act, 1972. He has filed the petition under Section 19 of the Administrative Tribunals Act XIII of 1985.

2. The petitioner has also given another application claiming that he has come to know that the rules for the purpose of payment of gratuity have been revised by the Railway Administration in respect of employees who have

retired on or after 31.3.1985 vide Board's letter No.PC.III/85/DP dated 27.6.1985. As a result of this revision 100% of the Dearness Allowance is included in the calculation of the gratuity whereas under the old Rules the employees were entitled to get only 42.5% of the pay as Dearness Allowance and Dearness Pay for purposes of calculation of gratuity. The petitioner has challenged that this revision in respect of only those retiring on or after 31.3.1985 tantamounted to discrimination and is wholly arbitrary and is without any reasonable basis and infringes Article 14 of the Constitution of India. He has therefore claimed that notwithstanding the fact that he retired on 30.11.1983 the provisions of the letter of the Railway Board revising the method of the calculation should also be applied to his case and to that of all pensioners irrespective of the dates of retirement.

3. We have heard the counsel for both the parties. The petitioner is a Railway employee. In a similar case Subhash Chander Gupta Versus Union of India, C.W.P. No.2111 of 1985 which was decided on 25.4.85 on receipt on transfer from the Delhi High Court by the Central Administrative Tribunal, Principal Bench at Delhi, 1986(2) SLR -779, it was claimed by the applicant who was a railway employee that the payment of gratuity be made to him under the Payment of Gratuity Act, 1972. It was held that the Railways have their own Gratuity Rules which are applicable both for terminal purposes as well as for Death-cum-Retirement Gratuity purposes. In the presence of these specific rules the Railways are not governed by the rules of the Payment of Gratuity Act, 1972. The petitioner's case is not different to that quoted here.

Railways have made their own rules which are called State Railway Gratuity Rules. These are applicable to ~~temporary~~³⁴ railway servants recruited under the normal Recruitment Rules who have not opted for pension scheme. Under the liberalized pension rules which have also been comprehensively framed and which apply to all railway servants who entered in service on or after the date of issue of pension rules i.e. 16.11.1957 as well as to all railway servants who were in service on 1.4.1957 or have joined service ~~on~~^{or between} 1.4.57 and 16.11.57 and opted for pension rules in preference to the existing Provident Fund Rules. Death-cum-Retirement Gratuity is covered by these liberalized pension rules for such employees who are governed by these rules. Thus it would be very clear that there are separate rules for gratuity on the railways covering both types of employees i.e. those who are covered by the Provident Fund Rules as well ³⁵ ~~as~~^{there} as who are covered by the Liberalized Pension Rules. Railways thus have their own separate detailed rules on which calculations of gratuity are made. We have not been given any convincing arguments to enable us to differ from the views taken by the Principal Bench of the Central Administrative Tribunal at Delhi in the decision cited in this paragraph. The petitioner is an ex railway employee and is fully covered by these rules. The Payment of Gratuity Act, 1972 does not apply to him.

4. On the subject of violation of Article 14 of the Constitution of India on account of onward revision of the gratuity calculations prospectively as claimed by the petitioner in his subsequent application a recent judgement reported in A.T.R. 1986(2) S.C. 245 in Special

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Leave Petitions (Civil) Nos 14179-80 of 1985 decided on July 25, 1986 on the question whether gratuity must be paid on the stepped up basis to all those who have retired before the date of the onward revision with retrospective effect even if the provision provides for prospective operation, in order not to offend Article 14 of the Constitution of India. The Hon'ble Supreme Court agreed with the views of the Division Bench of the High Court of Andhra Pradesh which has said 'no' to this question. The Hon'ble Supreme Court in this case held as follows :-

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" In our opinion it rightly says so. The upward revision of gratuity takes effect from the specified date (April 1, 1978) with prospective effect. The High Court has rightly understood and correctly applied the principle propounded by this Court in Nakara's case (AIR 1983 SC 130). There is no illegality or unconstitutionality (from the platform of Article 14 of the Constitution of India) involved in providing for prospective operation from the specified date. Even if that part of the Notification which provides for enforcement with effect from the specified date is struck down the provision can but have prospective operation - not retrospective operation. In that event (if the specified date line is effaced), it will operate only prospectively with effect from the date of issuance of the notification since it does not retrospectively apply to all those who have already retired before the said date. Giving prospective operation to such payments cannot by any stretch of imagination be condemned as offending Article 14. It would be futile to contend that no upward revision of gratuity amount can be made in harmony with Article 14

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unless it also provides for payment on the revised basis to all those who have already retired between the date of commencement of the Constitution in 1950, and the date of upward revision. There is, therefore, no escape from the conclusion that the High Court was perfectly right in repelling the petitioners' plea in this behalf. Just as one who files a suit even one day after the expiry of limitation would lose his right to sue, one who retires even a day prior to enforcement of the upward revision would not get the benefit." The petitioner's pleadings in this case stand answered automatically and he has therefore no case for claim for application of the revised formula in his case - a formula which came into operation from a date after his retirement. It is thus seen that D.S. Nakara's case (AIR 1983 S.C. 130) which has been relied upon by the petitioner does not draw a parallel to his case for adopting revised calculations for the payment of the gratuity. These are applicable from a prospective date and not retrospective date.

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5. The petitioner has also relied on 1981 LAB. I.C. 40 a judgement of the Bombay High Court in the case of M/s Vasant Industrial and Engg. Works Bombay Versus Narayan Damodar Desai and Another. This case deals with the Payment of Gratuity Act, 1972 and as has already been indicated above, Railways having a separate Rule for Payment of Gratuity, the Payment of Gratuity Act, 1972 does not apply to a railway employee. In view of the decision of the Supreme Court which has been quoted in para supra the reliance placed by the petitioner on the Allahabad High Court judgement in Civil

Misc. Writ Petition No. 11521 of 1980 which dealt with U.P. Retirement Benefit Rules, Payment of revised scale of pension, Death-cum-Retirement Gratuity and Family Pension holding that the directions were discriminatory and violative of Article 14 of the Constitution of India cannot stand scrutiny. The law laid down by the Hon'ble Supreme Court is sufficiently clear on this point.

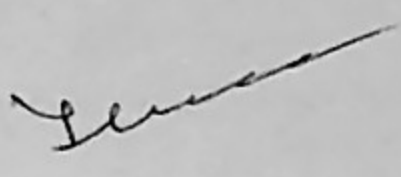
6. In the result the petitioner has no case as far as payment of gratuity under the Payment of Gratuity Act, 1972 is concerned. He has also no case for revised calculation of his gratuity in accordance with the orders issued by the Railway Board in June, 1985. His petition is therefore dismissed on these two accounts. The petitioner has however claimed interest on the delayed payment of his retirement benefits on account of the delay on the part of Administration in getting his service records from the Court of the Additional Munsif Moradabad where they were filed in Civil Suit No.62/67 and which case stood finalised in 1969. The petitioner retired from service on 13.11.83. The Railway obtained his service book on 18.1.85 and made payment to him on 13.5.85. The petitioner has suffered on account of delayed payment of his gratuity for the period 13.11.83 to 13.5.85. The petitioner is not responsible for this delay. For delayed payment interest is admissible in accordance with the instructions issued by the Railways in November, 1984. In this connection Railway Board's letter No.F(E)111-83 1/7 dated 16.11.84 would be relevant. This letter says that where the payment of SC to PF is delayed or where it is withheld the Railway will allow interest @ 7% for the

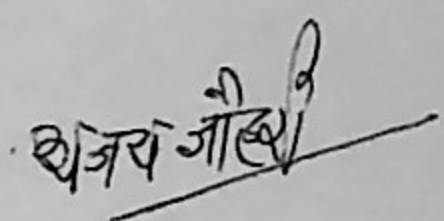
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period beyond 3 months upto one year and 10% beyond this from the date payment became due. The Administration should therefore pay him interest if it has already ^{been} not/paid in accordance with these instructions as the petitioner has suffered on account of delay in the payment of his gratuity.

7. The petition is accordingly decided. There are no orders as to costs.


V.C.


A.M.

RKM

Dated the 28th Oct., 1986.