

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

Registration O.A. No. 198 of 1992

Union of India Applicant.

Versus

Mohd. Jamil Khan and another Respondents.

Hon'l Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. K. Obayya, Member (A)

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

Admit. Pleadings of this case are complete. We are going to disposed of this case with the consent of the counsel of the parties at the admission stage.

2. The Union of India has filed this application against the order dated 7.8.1991 passed by the Payment of Wages Authority, awarding a sum of Rs. 1,17,421.60 towards the wages, gratuity and interest of the respondent. Before dealing with the merits of the case, it is to be mentioned that the Railway Administration from the very beginning took a case which is away from the facts and it is regrettable that from the side of the Railway Administration, incorrect facts which do not bear scrutiny or which is against the records are pleaded, and if such things will go on, the time of the every authority, court and the Tribunal will be wasted and it is desirable that this should be brought to the notice of the administration and the administration should be careful for the same.

3. The facts stated above, indicates that the respondent of this application was appointed as Probationary Clerk on 3.3.1941 and served the Indian Railway as Assistant Goods Clerk at Varanasi and he was placed under suspension

in the year 1955 but he was later on reinstated on revocation of his suspension vide order dated 18.10.1955. He was again placed under suspension through order dated 25.4.1956., and this order was again revoked by office order dated 6.7.1965 and he was put to duty through order dated 3.7.1965. After revocation of the earlier suspension order, the respondent served with a charge-sheet on 30.4.1955 and on 13.5.1955 he submitted his reply and he was again suspended on 26.4.1956 and was served with IIInd charge--sheet and thereafter the respondent on 16.7.1956 demanded documents specified to meet the charges and to submit his reply but he was not supplied with the same and had submitted his reply in absence of the documents on 1.10.1956. The date of enquiry was also fixed. The applicant continued to make the complaints that reasonable opportunity has been denied to him and the relevant documents have also not been supplied to him. Ex-parte proceedings took place and the copy of the report was not supplied to the applicant and a show cause notice proposing the punishment removal from service was served upon him. Later on, it appears that by the General Manager's order, the enquiry proceedings were quashed and it was ordered that fresh enquiry be conducted by S.C.O.Varanasi on 5.11.1963 but no enquiry proceeded and the applicant was retired from service. The respondent,thereafter, approached to the Payment of Wages Authority under the Payment of Wages Act and filed an applicationmaking certain claims. This application was moved on 10.1.1977. The prescribed authority vide its order 17.1.1983 rejected the claim of the applicant and against this order, he filed an appeal before the District Judge , which was transferred to the court of IIIrd Additional District Judge, who vide its judgment and order dated 29.9.1983 allowed the same and set aside the order passed by the prescribed authority and

directed him to consider the matter a fresh in the light of the observations made above and make the order of payment which is legally due. The prescribed authority was further directed to consider other matters regarding payment of the actual amount due to the appellant as it has not been considered by him in his judgment and order merely on the ground that the application was not legally maintainable. It was thereafter, the matter came back to the Prescribed Authority and the Union of India has submitted the same and did not challenge the order passed by the appellate authority. But when the case was decided by the appellate authority, a technical plea has been taken that the application is barred by time but the prescribed authority has rejected the plea. It was then contended that the applicant who retired from service was under suspension, as such, in view of Section-7 Exp.II is applicable but when the applicant was retired from service, he was not under suspension, as such, this clause is not relevant for this very purpose. It was then contended that in view of paragraph-1345 (i) of the Railway Establishment Code, Vol.II, which provides that when a railway servant who has been suspended is reinstated while under the authority competent to order reinstatement shall consider and make a specific order;

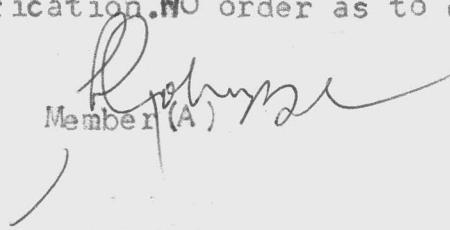
(a) regarding the pay and allowances to be paid to the railway servant for the period of suspension ending with reinstatement or the date of his retirement as the case may be;

As such, it was for the authority to pass such order. The applicant was retired from service, but no such order was passed against him, and after retirement the relationship between the master and servant came to an end and the Railway Administration could not have taken disciplinary proceedings against him, as such, para-1345 (i) of the

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Railway Establishment Code-Vol.II also does not apply in the instant case. On merits, it was contended that although, the prescribed authority has allowed the wages for the period when he was under suspension, the same could not have been done and the disciplinary proceedings against him was still pending. The disciplinary proceedings automatically came to an end when he retired from service as the relationship of master and servant came to an end after retirement. The suspension order of the applicant in every time was found unjustified and the same was revoked by the authority itself, as such, this was the case in which the applicant was wrongly deprived from the wages ~~once~~ to which, he was otherwise, entitled too, in case he was not placed under suspension at that time. The learned counsel then contended that the gratuity could not have been awarded by the authority under the payment of wages Act. Section 2(vi) provides that any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d): Clause-(d) provides that any sum which by reason of termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum whether with or without deductions but does not provide for the time within which the payment is to be made. Consequently, the authority under the payment of wages act has no jurisdiction to allow the gratuity. The learned counsel then seriously contended that under the fact, there is no provision for awarding the interest but the authority concerned, has awarded the interest to the respondent. Undoubtedly, there is no provision for awarding the interest under the Act, but the provision is for paying the compensation and in the instant case, the authority

under the payment of wages Act, instead of awarding the compensation has awarded the interest to the respondent. The amount of interest which has been awarded to the respondent by the payment of wages authority at the rate of 10% appears to be not genuine and it is reduced into 6%. The application is disposed of with the above modification. NO order as to costs.


Member (A)


Vice-Chairman

Dated: 21.7.1992

(n.u.)