

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Original Application No. 1774 of 1994  
Transfer Application no.

Date of Decision 10-12-97

Prem Chandra shukla

Applicant(s)

Counsel for the applicant Shri R.S. Mishra  
Counsel for the  
Applicant(s)

VERSUS

Union of India & ors.

Respondent(s)

Shri P. Mathur

Counsel for the  
Respondent(s)

CORAM

Hon'ble Mr. D.S. Bawej, A.M.

Hon'ble Mr.

1.

1. Whether Reporters of local papers may be allowed to  
see the judgment ?

2. To be referred to the Reporters or not ?

3. Whether their Lordship wish to see the fair copy of  
the judgment ?

6. Whether to be circulated to all Benches ?

8/Jan/97  
(SIGNATURE)

rsd  
R.P.D.S./

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLD.BENCH  
ALLAHABAD

DATED : ALLD.ON THIS 10th DAY OF DECEMBER, 1997

CORAM : HON'BLE MR.D.S.BAJEJA, MEMBER(A)

ORIGINAL APPLICATION NO.1774 OF 1994

Prem Chandra Shukla S/o Late Sri Shukh Deo  
 Shukla Retired Chief Ticket Inspector R/o  
 372, Faithfulganj, Kanpur.

..... Applicant

C / A :- Shri R.S.Mishra

Versus

- (1) Union of India through General Manager,  
 Northern Rly., Baroda House, New Delhi.  
 (2) D.R.M., Northern Rly., Allahabad Division,  
 Allahabad.

..... Respondents

C / R :- Shri P.Mathur

ORDER

( By Hon'ble Mr. D.S.Bajaja, A.M. )

This application has been filed seeking the following reliefs:-

(a) Respondents be directed to make payment of Death - Cum-Retirement Gratuity ~~in~~(D.C.R.G.of) Rs.45,375/-as due to the applicant.

(b) To direct respondents to pay interest of 18% per annum on the delayed payment of D.C.R.G. from 01.01.1994..

2. The applicant while working as Chief Inspector(Tickets), Northern Rly., Kanpur Central, superannuated on 31.12.93. The applicant was entitled to receive D.C.R.G.of Rs.45,375.00 on the date of retirement but the same was not paid to the applicant. The applicant made representation against the same. Feeling aggrieved by delay in payment, the present application has been filed on 24.11.94. The main contention of the applicant is that under Payment of Gratuity Act, 1972, he is entitled to get the payment of Gratuity within 30 days from the date of retirement and for any delay in payment, is entitled for interest for the same.

(S)

3. The respondents have contested the application by filing Counter reply through Shri D.P.Singh, Divisional Commercial Manager, Allahabad Division. The respondents have submitted that applicant was a commercial staff dealing with the cash handling. In case of such staff, as per Railway Board's Order dt.17.11.87, D.C.R.G.payment may be retained for a period of six months to meet the commercial debits of staff concerned. In the present case, the matter was under clearance from the office of the Dy.Commercial Supdt., Varanasi and as soon as clearance was received, full payment of Gratuity retaining Rs.10,000/- had been paid to the applicant. It is further contended that Rs.10,000/- has been withheld on account of case no.3244 of 1993 filed by one Shri Biresher Bannerjee before the Consumer Forum, Calcutta wherein the applicant has been impleaded as one of the opposite parties. Respondents further submit that the case of applicant is not covered by Section 8 of the Payment of Gratuity Act,1972 and he is not entitled for payment of any interest. Respondents further pleaded that since due payment of D.C.R.G.has been already made to the applicant, there remains no cause of grievance and the present application deserves to be dismissed.

4. The applicant has filed two rejoinder affidavits. Applicant has contested the averments of the respondents. The applicant has admitted receipt of payment of DCRG retaining Rs.10,000/-. However, applicant has contended that ~~as per the~~ Railway Board's Circular referred to above by the respondents, the payment of DCRG could be held up for three months only and for any further delay interest @ 10% becomes due for payment. The right of the applicant for payment of DCRG and interest is covered by the Railways Service Pension Rules,1993. The applicant also refuted the submissions of the respondents with regard to the impleadment of the applicant as one of the opposite parties in the case filed before the Consumer Forum, Calcutta. The applicant contends that neither he has been summoned by Consumer Forum nor the respondents have advised him about any liability fixed on the applicant. In view of this, withholding of payment of Rs.10,000/-is illegal and he deserves this payment immediately.

5. I have heard Shri R.S.Mishra and Shri P.Mathur, learned counsel for the Applicant and learned counsel for the respondents respectively.

6. As evident from the averments of the either parties, it is noted that during the pendency of this O.A., payment of DCRG had been made to the applicant retaining Rs.10,000/-. Neither respondents nor the applicant have indicated the actual date of payment. Even during hearing when this question was put to the parties, none of them was able to indicate the actual date of payment. In any way, since it is admitted by the applicant that he has received the payment of DCRG retaining Rs.10,000/- only, the only issue which needs to be examined is with regard to claim for payment of interest for delay in payment and the legality in withholding the payment of Rs.10,000/-.

(R)

(6)

7. The respondents have pleaded that DCRG of the applicant was withheld in terms of Railway Board's Circular dt.17.11.87 which provides withholding of DCRG for a period of six months after retirement. I have carefully gone through this Circular and find that this Circular though stipulates period of six months for withholding payment of DCRG but in para 8, it is also mentioned that after expiry of 31.12.88, the matter would be considered for further reducing the time limit to three months. Subsequent to this, Railways Service Pension Rules,1993 have been issued in which provision for recovery and adjustment of Governments and Railway's dues from the pensionary benefits have been laid down in Rule 15. Sub Rule 4(i)(a) of the Rule 15 provides for claims of amount of ~~loss~~ which could be recovered from the pensionary benefits. Sub Rule 4(iv)(b) provides that dues mentioned in Sub Rule 4(i)(a) should be assessed and adjusted within a period of three months from the date of retirement of the Railway Servant concerned. These provisions in the Railways Service Pension Rules clearly demonstrate that the rules laid down as per the letter dt.17.11.87 have been modified laying down the period from 6 months to 3 months. Keeping in view the provisions in Railways Service Pension Rules, <sup>1993</sup> as detailed above, the payment of DCRG of the applicant could be held up for a period of three months only and for any delay thereafter, the applicant is entitled for payment of interest. The respondents have taken a plea that the applicant is not entitled for payment of interest under the Payment of Gratuity Act,1972. It is rather surprising that respondents have taken such a plea in the face of clear departmental rules laid down with regard to payment of interest. The learned counsel for the applicant brought a copy of the Railway Board's Circular wherein interest has been revised to 12% per annum compounded annually in case payment of DCRG is delayed beyond three months from the date of retirement. Since as recorded earlier, the payment of DCRG has been delayed to the applicant beyond the stipulated period, the applicant is entitled for payment of interest as per the extant rules @ 12% per annum compounded annually till the date of actual payment excluding the period of three months from the date of retirement.

8. The respondents have retained Rs.10,000/-from the DCRG payment of the applicant on the plea that some case in the Consumer Forum is pending at Calcutta in which the applicant is one of the opposite parties. The applicant has refuted this contention stating that he is neither summoned by the Forum nor the respondents have indicated any liability fixed on the applicant. There is no refuting of the contentions made by the applicant in the rejoinder reply. The respondents have also not indicated the present status of the case. The respondents have also not filed the copy of the Petition ~~filed~~ where the applicant has been made one of the opposite parties. Further, as per the extant rules, as discussed earlier, the liability should be assessed and adjusted within a period of three months from the date of retirement. Referring to Rule 15 Sub Rule 4(iii)(a), it is provided that for the dues as mentioned in Sub Rule 4(i)(a), a suitable cash deposit may be taken from the Railway servant <sup>or</sup> only such a portion of D.C.R.G. as may be considered

(7)

(7)

sufficient, may be withheld till the outstanding dues are assessed and adjusted. The respondents have not come out that applicant at any time has been advised of the assessment of the liability on account of case filed in the Consumer Forum ~~nor~~ <sup>&c/o</sup> he has been asked for any suitable cash deposit. The respondents have taken the action to retain the amount of Rs.10,000/-without any intimation to the applicant. Under these circumstances, I am of the view that the action of the respondents in withholding the payment of Rs.10,000/- cannot be ~~assessed~~ <sup>sustained</sup> legal as per the extant rules. The applicant, therefore, deserves the payment of Rs.10,000/-retained by the respondents with the payment of interest of 12% per annum, as indicated earlier, from the date of retirement to till the date of actual payment excluding the period of three months from the date of retirement.

9. In the result of the above, the applicant is allowed with the directions as contained in para nos.(7) & (8) above. No order as to costs.

*S. B. N. N. S.*  
MEMBER (A)

/rsd/