

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

ORIGINAL APPLICATION NO.1051 OF 2003.

Allahabad this the 5th day of JAN 2006.

Hon'ble Mr. K.B.S. Rajan, J.M

Sudama Ram, S/o late Sunder Ram, aged about 61 years & six months, Ex IRPS, retired working as DPO N.R., Allahabad R/o 205H/25L/IH, Anandpuram, Chakia, Allahabad.

.....Applicant.

(By Advocate: In Person.)

Versus.

1. Union of India through Secretary, Railway Board, Rail Bhawan, New Delhi.
2. G.M., NR., Baroda House, New Delhi.
3. Chief Personnel Officer, N.R., Baroda House, New Delhi.
4. D.R.M., N.C.R., Allahabad.
5. Sr. Divisional Accounts Officer, N.C.R., Allahabad.

.....Respondents.

(By Advocate : Sri P. Mathur)

O R D E R

The applicant has, through this OA, prayed for the following relief:-

"(i) to direct the respondent nos. 2 & 3 to regularize the left out period of waiting for orders i.e. 21.3.2001 to 16.4.2001 and 8.9.2001 to 7.10.2001 as duty under Rule 103(16) of Indian Railway Establishment Code Vol. I and allow leave encashment of 16 years LAP more at the maximum by crediting the wrongly debited leave of the applicant.

(ii) to direct the respondents to pay @ 18% compound interest on all delayed payments viz. gratuity,



commutation of pension and leave encashment as these benefits were payable on 1.2.2002.

2. Brief Facts of the case as given in the OA is as under:

(a) The applicant was posted as SPO, NCR, Allahabad on administrative grounds on 7.11.1996. He was transferred to N.R. and was asked to report to NR, Headquarters, New Delhi vide Railway Board's notice dated 31.7.2000.

(b) After being spared on 11.8.2000 and after availing joining time, the applicant reported to NR on 22.8.2000. The applicant remained on leave/sick as under :-

29.8.2000 to 6.9.2000 = LAP (9 days)
7.9.2000 to 15.12.2000 = Sick under Rly (CMS/Alld)
HLAP commuted.
16.12.2000 to 22.12.2000 = LAP (7 days)
23.12.2000 to 25.2.2001 = RMC (HLAP commuted)

(c) The applicant was kept for waiting for order. Vide letter dated 13.3.2001, the G.M. (P) NR, New Delhi issued posting order of the applicant for Bikaner Division, but Divisional Railway, Allahabad issued no notice further and the G.M. (P) vide his notice dated 4.4.2001 cancelled the posting orders for Bikaner Division and the applicant was allowed to take over the charge of DPO/NR, Allahabad on 17.4.2001. Thus, the applicant was kept for waiting from 26.2.2001.

(d) The applicant remained under Chief Medical Supdt., NR, Allahabad from 18.7.2001 to 7.9.2001 and he was allowed commuted leave of this sick

period. The applicant reported for duty on 10.9.2001 (being 9th September 2001 closed day). No posting order was issued till 30.9.2001, but the applicant was allowed duty after approval of DRM, Allahabad on 8.10.2001.

(e) The applicant represented to the G.M. (P) to regularise the period for waiting for orders as duty as per Rule 103 (16) of IREC Vol. I, which is reproduced below:

"103(16) Delay in taking charge of the duties:- Period of compulsory waiting by an officer for orders of Government posting him to a particular post, after he had reported, should be treated as duty."

(f) The G.M. (P) vide his letter dated 2.9.2002 sanctioned the period from 26.2.2001 to 20.3.2001 only. The applicant represented on 27.9.2002 and 26.3.2003 to regularise the balance period of waiting for orders as duty. No response has been made and also no payment of interest on delayed payment of DCRG leave encashment etc. was made. He had vacated the Railway accommodation well within the sanctioned period for retention i.e. 29.5.2002 where as retention of the Railway accommodation was sanctioned upto 31.5.2002.

 (g) The respondents have delivered the cheque for payment of the gratuity

Rs. 2,82,891.00 on 13.9.2002 after lapse of about more than 08 months which was paid on 28.9.2002 and Rs. 13,279 after lapse of about one year. The commutation of pension i.e. Rs. 2,72,875/- was credited on 5.6.2002. Hence the respondents are liable to pay interest @ 18% on all the above delayed payments.

3. Brief contentions of the respondents as given in the counter is as under:-

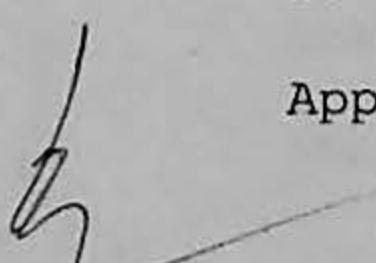
- (a) In terms of the Railway boards order dated 31.7.2000, the applicant was posted as DPO, NR, vide office order dated 25.8.2000 and he assumed the post of DPO on 28.8.2000.
- (b) Vide his application dated 22.8.2000 he had requested for grant of two month's leave w.e.f. 24.8.2000. On reporting for duty on 26.2.2001, his posting orders as DPO, Bikaner was issued vide Headquarters notice dated 21.3.2001. The intervening period from 26.2.2001 to 20.3.2001 was regularised as waiting for orders.
- (c) Instead of assuming the charge, the applicant has made a representation through Sri Dharam Raj Singh Patel, Hon'ble Member of Parliament for cancellation of the order. The aforesaid representation was duly received under Railway Board's letter dated 10.5.2001. The applicant, however, has denied this argument in his Rejoinder. Prior to receipt of the said representation, the respondents had already taken a decision

to cancel the transfer order. An order to this effect was issued vide Notice dated 4.4.2001 and the applicant had joined as DPO, N.R., Allahabad on 17.4.2001.

- (d) The so called claim of the applicant for joining time due to his transfer to Bikaner Division is not at all tenable as neither the applicant had joined as DPO, Bikaner rather had preferred an application.
- (e) The period from 21.3.2001 to 16.4.2001 and 10.9.2001 to 8.10.2001 cannot be treated as waiting for the orders as in the present case the basic test to be followed while regularizing any portion as waiting for order is as to whether the said portion of absence is an account of circumstances not attributable to him.
- (f) Various portions sought to be regularised as waiting for orders do not conform to this test except from 26.2.2001 to 20.3.2001. The applicant has been paid all his necessary dues immediately after completing the requisite formalities within the stipulated period and as such no interest whatsoever is due to be paid to the applicant

4. Respondents have further furnished supplementary counter and the applicant for his part filed the rejoinder.

5. Arguments were heard and the documents perused. Applicant, in respect of his entitlement to the



payment of interest on gratuity and other terminal benefits, relied upon the decision of the Apex Court in the case of R. Kapur vs Director of Inspection (Printing and Publication) Income Tax and Another, reported in 1994(6) SCC 589.

6. The relief sought is in two portions. One of them relates to treating certain period (in two spells) as waiting period for duty as per provisions of Rule 103(16) of the IREC Vol. I and the other is towards interest on delayed payment.

7. As regards the first relief, the period involved is - 21-03-2001 to 16-04-2001 and 07-09-2001 to 07-10-2001. The applicant after having been declared medically fit, reported for duty on 26-02-2001. He was kept in the waiting period from then, and it was on 21-03-2001 he was posted to Bikaner Division. There is no document to show that the applicant was relieved on that date. Though the respondents have contended that the applicant had through a Minister approached the Railway Board for cancellation of his posting (which has been emphatically denied by the applicant), which was stated to have been received by the Zonal Office through the Railway Board's letter dated 10-05-2001, well before the alleged receipt of that communication, the respondents had cancelled the posting order vide order dated 04-04-2001 issued by the GM(P) Northern Railway, on the basis of which



approval by the local authority, i.e. OSD NCR was given on 16-04-2001 allowing the applicant to join duties at Allahabad. Thus, the applicant could join on 17-04-2001. Thus, the cancellation of posting is independent of the communication received from the Railways. Hence, the period from 21-03-2001 to 16-04-2001 when the applicant was available for performance of his duties has to be regularized under the provisions of Rule 103(16) of the I.R.E.C. Volume I. As regards the subsequent period between 08-09-2001 to 07-10-2001, vide para 4.4 of the OA the applicant was recommended sick leave upto 07-09-2001 and he reported to duty on 10-09-2001, 9th September 2001 being a closed holiday. The medical fitness being upto 7th, there is no mention about 8th September, 2001. The respondents have not denied this portion and that the applicant was issued posting order on 30-09-2001 and he was allowed to join only on 7th October, 2001 after the DRM has approved the posting has also not been denied. In fact it is admitted when the respondents have stated that due to creation of Zones, approval of OSD, NCR was a must. Thus, from 10-09-2001 (not from 08-09-2001) to 7-10-2001 there was no order for the applicant as where to resume duties and this period also fully qualifies for being regularized under the provisions of Rule 103(16) I.R.E.C., Vol. I.

8. Next is about the delayed payment of interest.

As regards the same the applicant has relied upon

the judgment of the Apex Court in the case of R. Kapur (supra). The said judgment refers in turn the decision of the Apex Court in the case of State of Karnataka Vs M. Padmanabhan Nair (1985) 1 SCC 429. Relevant portion is as under:-

10. This Court in M. Padmanabhan Nair case¹ has held as under:

"Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."

11. The Tribunal having come to the conclusion that DCRG cannot be withheld merely because the claim for damages for unauthorised occupation is pending, should in our considered opinion, have granted interest at the rate of 18% since right to gratuity is not dependent upon the appellant vacating the official accommodation. Having regard to these circumstances, we feel that it is a fit case in which the award of 18% is warranted and it is so ordered. The DCRG due to the appellant will carry interest at the rate of 18% per annum from 1-6-1986 till the date of payment. Of course this shall be without prejudice to the right of the respondent to recover damages under Fundamental Rule 48-A. Thus, the civil appeal is allowed. However, there shall be no order as to costs."

9. In a recent case of **Secy, ONGC Ltd. v. V.U. Warrier**, (2005) 5 SCC 245, the Apex Court has held as under:-

20. It is well settled that gratuity is earned by an employee for long and meritorious service rendered by him. Gratuity is not paid to the employee gratuitously or merely as a matter of boon. It is paid to him for the service rendered by him to the employer (vide Garment Cleaning Works v. Workmen) (1962) 1 SCR 711

In Calcutta Insurance Co. Ltd. v. Workmen (1967) 2 SCR 596 after considering earlier decisions, this Court observed that "long and meritorious service" must mean long and unbroken period of service meritorious to the end. As the period of service must be unbroken, so must the continuity of meritorious service be a

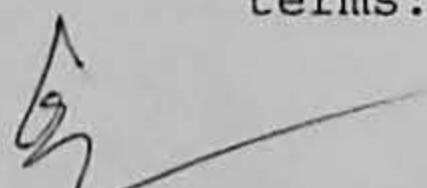
condition for entitling the workman to gratuity. If a workman commits such misconduct as causes financial loss to his employer, the employer would under the general law have a right of action against the employee for the loss caused and making a provision for withholding payment of gratuity where such loss caused to the employer does not seem to aid the harmonious employment of labourers or workmen. The Court proceeded to state that the misconduct may be such as to undermine the discipline in the workers — a case in which it would be extremely difficult to assess the financial loss to the employer."

10. In the above case, the Apex Court has held that recovery of penal rent for unauthorized occupation of government accommodation, by way of adjustment of gratuity is well permissible. This means that till the government servant vacates the accommodation, provision exists for withholding of the DCR Gratuity. Release of gratuity would be thus only after vacation of accommodation and if there be unauthorized occupation, the relevant penal rent or damage charges are adjusted from the Gratuity and if there is no such penal rent, the DCR Gratuity is released in tact. In the instant case since the accommodation has been vacated only on 29-05-2002, till then the respondents are fully justified in retaining the gratuity with them, albeit, the applicant did not hold the accommodation un-authorisedly. It is only thereafter that the gratuity could be released. The gratuity amount was released as per the applicant on 13-09-2002. Allowing a reasonable time of one month from the date of vacation of accommodation for processing the release of gratuity, the respondents ought to have

released the amount of gratuity at least by 28-06-2002. Thus, there is a delay of 2 months and 15 days for which interest on Rs 2,82,891/- becomes payable. The rate of interest would, however, have to be in tune with the prevailing bank rate of interest on deposits, as observed by the Apex Court in the case of *T.N. State Transport Corpn. Ltd. v. S. Rajapriya*, (2005) 6 SCC 236, wherein the Apex Court has stated, "The Tribunal has fixed interest @ 9% per annum from the date of the claim petition. Taking note of the prevailing rate of interest on bank deposits, the same is fixed at 7.5% per annum." (Here the payment was due from late 2001)

11. As regards payment of interest on commutation of pension as claimed, the same has to be rejected in view of the fact that entitlement to commutation is based on certain other factors including medical examination and more over, till commutation takes place the applicant was granted full pension. As regards interest on Rs 13,279/- no details thereof have been given by the applicant and hence, the same also does not qualify for interest.

12. In the end the OA is allowed upto the following terms:-

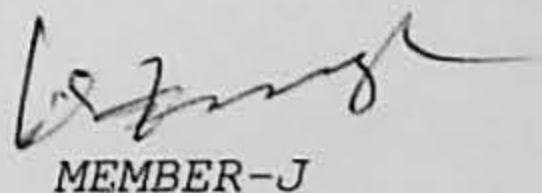
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(a) The applicant is entitled to have the period from 21-03-2001 to 16-04-2001 and from 10-09-2001 to 07-10-2001 regularized as waiting period for duty in accordance with the provisions of Rule 103(16) of the IREC Vol I and respondents are directed to work out the pay due for the aforesaid period and increment the same with interest at Rs 7.5% from 01-05-02 (three months after retirement) till date of payment.

(b) The respondents are also directed to pay interest @ 7.5% on Rs 2,82,891/- being the amount of gratuity from for two and a half month.

Claim for interest on delayed payment of leave encashment and commutation of pension is rejected.

13. The above amount shall be paid to the applicant within a period of four months from the date of receipt of this order. No cost.



MEMBER-J

Girish/-