

(3)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 475/1990 with M.A.No.170/93.

~~Exhibit~~

DATE OF DECISION 6-1-1994.

Jivrajbhai M. Sardhara, Petitioner

Mr. M.M. Xavier, Advocate for the Petitioner(x)

Versus

The Union of India & Ors. Respondents


Mr. R.M. Vin, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. V. Radhakrishnan, Admn. Member.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
 2. To be referred to the Reporter or not ?
 3. Whether their Lordships wish to see the fair copy of the Judgement ?
 4. Whether it needs to be circulated to other Benches of the Tribunal ?
- No



Jivrajbhai M. Sardhara,
Patel Kiritbhai Jivabhai's House,
G's Khadki, Subhash Pol,
KARAMSAD (Kheda District)
Retired Train Controller,
DRM BVP's Office,
Bhavnagar Para.

..... Applicant.

(Advocate: Mr. M.M. Xavier)

Versus.

1. The Union of India,
Owning and representing
Western Railway, through its
General Manager,
Western Railway,
Churchgate, Bombay - 20.
2. The Divisional Railway Manager,
Western Railway,
Bhavnagar Division,
Bhavnagar Para - 3.

..... Respondents.

(Advocate: Mr. R.M. Vin)

ORAL ORDER

O.A.No. 475 OF 1990

with

M.A.No. 170 OF 1993

Date: 6-1-1994.

Per: Hon'ble Mr. V.Radhakrishnan, Admn. Member.

Heard Mr. M.M. Xavier, learned advocate for the applicant and Mr. R.M. Vin, learned advocate for the respondents.

2. At the outset Mr.M.M.Xavier, on behalf of the applicant and on his instructions restricts his claim to the payment of interest on the delayed D.C.R.G and encashment of leave received by the applicant. The applicant was appointed on 4.4.1945 in Junagadh State Railway, which was later on amalgamated in Saurashtra

Railway and then in Western Railway. According to his service conditions he claimed to serve until the age of 60 years which was not agreed to by the Railway. He therefore, filed Special Civil Application No. 1483/79 before the Gujarat High Court and obtained a stay against his retirement at the age of 58 years. He attained the age of 60 years on 31-5-1981, the petition before the Gujarat High Court came up for hearing on 25-2-1985, and after hearing advocates of both sides the petition was disposed of as infructuous and hence withdrawn. The case of the applicant is that he did not receive his DCRG payment and encashment of leave immediately after his retirement. The applicant filed a Recovery Application before the Labour Court, Rajkot for his claim of DCRG and leave encashment. He also prayed for interest on delayed payment. The Recovery Application was transferred to the Labour Court at Bhavnagar which decided the case on 6.9.89. A sum of Rs. 25,000/- was determined as payable to the applicant under section 33(c)(2) of I.D.Act, 1947 and also a sum of Rs. 25/- towards cost was awarded. The Labour Court however, did not grant interest on the amount withheld on the ground of lack of jurisdiction.

3. The applicant thereafter represented to the Railways to pay the amount of DCRG and leave encashment.

He received a cheque of Rs. 1596/- on 16-4-1990 and another cheque of Rs. 14,121/- was received on 29.8.1992.

4. The respondents have contested the application. They have not given any specific reasons justifying the delayed payment of retirement dues to the applicant. Apart from repeating the defence taken at the Labour Court namely, the payment was not made as the applicant had approached the High Court and obtained stay for retention of upto the age of 60 years. It is a fact that the applicant completed the age of 60 years and left service on 31.5.1981 even though the Railways' claimed that he was eligible to continue only upto 58 years i.e., upto 31.5.1979. It is seen that the respondents had not taken any action to disburse the DCRG and leave encashment even on the basis of retirement age being 58 years for a quite long time. One of the contention was that the applicant had not vacated the railway quarter, but it has been affirmed by the applicant that the Railway quarter was vacated by him on 8.12.1981. The reason given by the respondents for not settling the retirement dues of the applicant, immediately after he retired or not at all convincing. Even after the Labour Court passed order in September 1989 the payment have been made partly on 16.4.1990 and major amount on 29.8.92. Therefore, it is clear that there has been undue delay in settlement of his retirement dues. In this connection it is to be

examined whether the applicant is entitled to any interest on retirement benefits for the delayed payment of gratuity and if so at what rate and for what period. In this connection a reference may be made to Note No.303 in Bahri's Railway Pension and Retirement Benefits. This note reads as under:-

- "(a) Railway Board vide their letter No.F(E) III-79/PNI/15, dated 14.9.1984 have issued instructions for the payment of interest on delayed payment of gratuity at the rate of 7% p.a. for the period beyond three months after retirement upto one year and 10% beyond one year provided it is clearly established that the payment of Retirement Gratuity/Death Gratuity was delayed on account of administrative lapse. In this connection, the responsibility should be fixed for delay~~ed~~ and disciplinary action should be taken against officer concerned.
- (b) In case of Railway servants against whom disciplinary or judicial proceedings have been instituted and on the conclusion of proceedings they are fully exonerated, the interest on delayed payment of Death gratuity/Retirement gratuity may be allowed in their cases. 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 interest on delayed 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.

(Bd's letter No.F(E) III-79 PNI/13, dated 25.5.1983 read with Dep'tt. of Per. & A.R. O.M. No. 1(4) Pen.Unit/82 dt.1.1.1983)"

It is clear on a bare reading of the above note that the Railway Board itself has issued instructions for the payment of interest on delayed payment of gratuity at the rate of 7% per annum for the period beyond three months after retirement upto one year and 10% beyond

one year, provided it is clearly established that the payment of Retirement Gratuity/Death Gratuity was delayed on account of administrative lapse. Clause (b) of the aforesaid Note.No. 303 deals with a case in which there is delay in payment of gratuity amount to a Railway servant against whom disciplinary or judicial proceedings have been instituted. In the present case there was no institution of any disciplinary or judicial proceedings by the respondents against the applicant either on the date of his retirement or even thereafter, Therefore, the applicant would be entitled to claim interest on the delayed payment gratuity. Following the judgment of Hon'ble Supreme Court in the case of State of Kerala & Ors. V/s. M. Padmanabhan Nair, AIR 1985 SC 356, this Bench of the Tribunal had decided in O.A. 195/91 as well as O.A. 294/90 that in case of unexplained delay of retirement benefits, interest is payable by the respondents. Accordingly the applicant is entitled for payment of interest as per Railway Board's instructions dated 14.9.84 quoted above as the payment has been delayed due to administrative lapses of the respondents. Accordingly I pass the following order:

O R D E R

Application is partly allowed. The respondents are directed to pay interest on the delayed

D.C.R.G and encashment of leave paid to the applicant at the rate of 7% per annum for the period beyond three months after the date of retirement of the applicant upto one year and 10% beyond one year to the actual date of payment. The respondents are directed to make the above payment within a period of three months from the date of the receipt of this order. The other reliefs prayed for in the application are rejected. As O.A is disposed of on the above line, M.A. 170/93 has become infructuous and stands disposed of accordingly. No order as to costs.



(V.Radhakrishnan)
Member(A)

vtc.