

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 727/93
T.A. No.

DATE OF DECISION 11 -7-1995

Shri Chhanalal Gopalji Patel Petitioner

Mr. P.K. Handa Advocate for the Petitioner(s)

Versus

Union of India and Others Respondent

Mr. N.S. Sheyde Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.B. Patel Vice Chairman

The Hon'ble Mr. K. Ramamoorthy Member (A)

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

Shri Chhanalal Gopalji Patel
 6/11, New Bhagwati Nagar Co-op. Society
 Saraspur, Ahmedabad 380 018.

Applicant.

Advocate Mr. P.K. Handa

Versus

1. The General Manager
 Western Railway
 Church gate Bombay.
2. The Senior Divisional Commercial
 Superintendent, Western Railway
 Pratapnagar, Vadodara
3. The Government of India
 New Delhi.

Respondents.

Advocate Mr. N.S. Shevde

J U D G M E N T

In

Date: 11-7-95

O.A. 727 of 1993

Per Hon'ble Shri K. Ramamoorthy

Member (A)

The present application has been filed to secure interest payment for delayed payment of Gratuity amount due to the applicant. The applicant was an employee of the respondents Railway Department with whom he was working as Chief Booking Clerk at Ahmedabad. He had sought voluntary retirement and he was allowed to get himself voluntarily retired with effect from 31-7-1990. It is the claim of the applicant that he received his dues only

on 7-1-1993 whereas the same should have been paid to him on the date of his voluntary retirement or immediately thereafter. This not having taken place it is the claim of the applicant that he should be paid interest for the period of delay which has occurred in the payment of his Gratuity amount as per the current rules for payment of interest when such payment gets delayed.

2. In thier reply, the respondents have contended that at the time the applicant sought retirement there was already an order against the applicant for seeking recovery of an outstanding amount due against Special Ticket (Party Ticket) which the applicant had issued. The outstanding amount was of the order of Rs. 47,772/- which was agreed to be deducted from other retiral benefits which had become due to the applicant. The retiral benefits could be given only after the consent letter to deduct this amount was received. The respondents had further averred in their written statement that though they had agreed to permit the applicant to retire voluntarily a major bribe and corruption case was pending against the applicant then which was closed only on 14-8-1992. The respondents further state that they had again sought permission of the applicant for deduction of the amount of Rs. 47,772/- referred to above, after the closure of the bribe and corruption case. This was received on 7/12/1992 whereafter only the respondents could take any action. The payment was made soon thereafter on 7-1-1993. Hence the respondents have claimed that no interest payment was due to the paid to the applicant.

3. The fact that the Gratuity amount was actually paid on 7-1-1993 only i.e. after 2½ years of his retirement date is not disputed. The applicant has also not disputed the deduction of the amount of Rs. 47,772/- as recoverable from him towards under-charging on the Special Party Ticket. It is also admitted that what is sought by way of interest is interest only on the held back amount of Rs. 45211/- and not on the actual amount of Rs. 92983/- which represented the amount of D.C.R.G. which was payable to the applicant.

4. In this case the applicant was given permission to retire voluntarily and such permission was given only after due notice by the applicant. The act of permission given to retire voluntarily implied that the applicant is entitled to all retiral benefits. The learned counsel for the respondents drew our attention to Para 2308 A of the Indian Railway Establishment Code and stated that the fact of an employee retiring voluntarily will not by itself take away the right of the department to held back the am unt of Gratuity, DCRG if some proceedings were to ensue. The relevant rule is reproduced as under:

"2308 A (C.S.R. 351 B) -- (1) Where any departmental or judicial proceeding is instituted under Rule 2308 (C.S.R. 351 A) or where a departmental proceeding is con ined under clause (a) of the proviso thereto against a Railway servant who has retired on attaining the age of compulsory retirement or otherwise he shall be paid during the period commencing from the date of his retirement to the date on which upon conclusion of such proceeding final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his

qualifying service up to the date of retirement or if he was under suspension on the date of retirement upto the date immediately proceeding the date on which he was placed under suspension but no gratuity or death cum retirement gratuity shall be paid to him until the conclusion of such proceeding and the issue of final orders thereon.

(2) Payment of provisional pension made under clause (1) shall be adjusted against the final retirement benefits sanctioned to such Railway servant upon conclusion of the aforesaid proceeding but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

The counsel for the Railways wanted to lay stress on the phrase "or otherwise".

5. *Prima facie*, this Tribunal is not able to accept the position that the case of a Government servant retiring on the actual date of super annuation and the case of a Government servant retiring voluntarily after due notice are on equal footing. In the latter case decision is taken after due notice with the right to refuse permission, which is not available in the case of super annuation which comes on the date of attaining of a particular age. If there was a case of "major bribe and corruption" pending this factor should have been taken into consideration while granting permission for voluntary retirement. Be that as it may, it is now admitted that the department had also chosen to drop such proceedings. In the absence of any condition attached to such dropping of proceeding, presumption has to be drawn in favour of the applicant, this decision being in the nature of exonerations.

In this particular view of the case, therefore, not only does the applicant get entitled to his retiral dues which has been held back but also entitled to interest payment as he had suffered financial loss by the delayed release of such amount. The respondents cannot claim the excuse that further permission was sought for from the applicant specifically at the time of seeking voluntarily retirement. The reasons for delay caused in releasing the amount, therefore, is not accepted.

6. The applicant is entitled to payment of interest as per the existing Railway Rules for payment of interest on the amount of Rs. 45211/- released only on 7-1-1993. Action may now be taken to make this payment within a period of three months from now.

7. The petition succeeds. No order as to costs.



(K. Ramamoorthy)
Member (A)



(N.B. Patel)
Vice Chairman.