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O.A.No.531/2001

ORDER DATED 11-12-2002.

Applicant while continuing as Chief Goods Supervisor in South Eastern Railway faced superannuation of service, on attaining the age of superannuation, on 31st January, 1997. There was delay in payment of terminal benefits to him; even though there was no dirty ~~lient~~ was pending against him. He received a sum of Rs.85,213/- as a part of gratuity on 15-7-1998. Nothing has been paid to the Applicant as compensation for the delay in disbursement of the gratuity, and, in the said premises, the Applicant has filed the present Original Application under section 19 of the Administrative Tribunals Act, 1985. He has also raised few other claims. However, during the pendency of this Original Application, several financial benefits have already been given to the Applicant and the only points remained to be answered in this O.A. as to whether the Applicant should be compensated for the delayed payment of gratuity and ^{as to whether} the deduction of Rs.1,738/- from the gratuity of the applicant was justified and permissible under law.

Heard Mr. S. Behera, learned Counsel for the Applicant and Mr. D. N. Mishra, learned Standing Counsel for the Railways appearing for the Respondents and perused the materials placed on records.

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Undisputedly, there was delay in making of payment of gratuity to the Applicant. Applicant faced retirement from service on 31st January, 1997 and the gratuity amount of ₹.85,213/- was paid to him on 15-7-1998. In reply to the claim of the Applicant, it was disclosed by the Respondents that there was delay in collecting the no objection certificate and as a result of which there was delay in making payment of gratuity to the Applicant. Collection of no objection certificate was the part of the duty of the Respondents and if delay in collecting the no objection certificate is not attributable to the Applicant, then the same can only be attributable to the administration of the Railways. In the facts and circumstances of the present case, nothing can be attributable to the Applicant for the delay in collecting the no objection certificate. Since the Applicant is not responsible for the delay in obtaining the no objection certificate, he is entitled to be compensated (for the delay in making payment of gratuity); for such contingency, Rule 87 of the Railway Services (Pensions) Rules, 1993 also takes care of in providing payment of interest to the retiree on the amount of gratuity. Relevant portion of Rule 87 of Railways Services (Pensions) Rules, 1993 read as under:-

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*87. INTEREST ON DELAYED PAYMENT OF GRATUITY.

(1) If the payment of gratuity has been authorised after three months from the date when its payment became due on superannuation and it is clearly established that the delay in payment was attributable to administrative lapse, interest at such rate as may be specified from time to time by the Central Government in this behalf on the amount of gratuity in respect of the period beyond three months shall be paid*.

When the Rule position as extracted above is very clear, the applicant is entitled to get interest interest on Rs.85,213/- which was paid as gratuity to the Applicant for the period between 31.1.97 and 15.7.98 minus 3 (three) months statutory period available to the Respondents.

In the aforesaid premises, this Original Application is allowed; requiring the Respondents to pay interest at the rate of 18% per annum on Rs.85,213/- for the period between 31.1.1997 and 15.7.1998 (minus 3 (three) months) within a period of three months from the date of receipt of a copy of the order.

The above direction has been given, after taking note of the decisions of the Hon'ble Apex Court of India, relied upon by the learned counsel for the Applicant, in the case of STATE OF KERALA AND OTHERS VRS. M. PADMANABHAN NAIR (1985(1)SCC 429) and DR. UMA AGRAWAL

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VRS. STATE OF U.P. AND ANOTHER (AISLJ 1999 (Vol.III) (Vol.No. 72) 212).

It has been brought to my notice that while making payment of gratuity (Rs.85,213/-) to the Applicant, the Respondents have deducted Rs.1,738/- illegally. It has been explained in their counter that the said amount has been deducted towards house rent and electricity charges. From the pleadings it is clear that before effective the deduction of Rs.1,738/- no notice was put to the Applicant to have his say in the matter and, as a consequence, the said action of the Respondents was an arbitrary one in gross violation of principles of natural justice/fragrance violation of Article 14 of the Constitution of India. That apart the Hon'ble Supreme Court of India in the case of GORAKHPUR UNIVERSITY AND OTHERS VRS. DR.SHITLA PRASAD NAGENDRA AND OTHERS (reported in AIR 2001 SC 2433) observed as follows:-

xx xx. the University cannot be held to be entitled to recover by way of adjustment such disputed sums or claims against the pension, gratuity and provident fund amounts indisputably due and unquestionably payable to the employee.*

In this view of the matter, the Applicant is also entitled to get an amount of Rs.1738/- from the Respondents with interest @ 5% per annum for the entire period during which the respondents have kept the amount with them, within a period of three months from the date

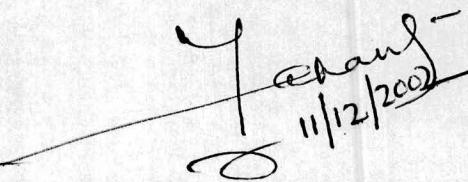
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of receipt of a copy of this order.

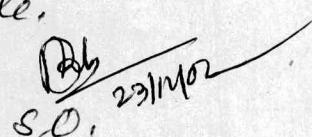
In the result, this Original Application is
allowed with the observations and directions made above.
No costs.

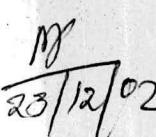

(MANORANJAN MOHANTY)
MEMBER(JUDICIAL)

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KNM/CM.

Copy of order dtd. 11.12.02
issued to the Counsel
for both side.


S.O. 23/12/02


M.P.
23/12/02