

192

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 1145 OF 2004
Cuttack, this the 16th day of May, 2006.

A.R.Samantaray Applicant.
Versus
Union of India & Ors. Respondents.

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *yes*
2. Whether it be circulated to all the Benches of CAT or not? *yes*

B.B. Mishra
(B.B.MISHRA)
MEMBER (ADMINISTRATIVE)

13

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.1145 OF 2004

Cuttack, this the 16th day of May, 2006

C O R A M:-

THE HON'BLE MR.B.B.MISHRA, MEMBER (ADMN.)

Shri A.R.Samantaray, Aged about 67 years,
S/o. Late Akrura Samantaray,
Retired as Office Superintendent Grade-I,
under Senior Divisional Personnel Officer,
Khurda Road, S.E.Railway (as then was)
at present residing at Village/PO: Randha,
Via: Golanthra, Dist. Ganjam, PIN-761008.

..... **APPLICANT.**

For the Applicant: Mr. Achintya Das, Advocate.

-VERSUS-

1. Union of India service through
General Manager, E.Co. Railway,
Chandrasekharapur, Bhubaneswar.
2. Divisional Railway Manager,
E.Co. Railway, Khurda Road,
PO: Jatni, Dist.: Khurda, PIN-752 050.
3. Sr. Divisional Accounts Officer,
S.E.Railway, Khurda Road,
PO: Jatni, Dist: Khurda, PIN-752 050.

B.B.M.

Bhubaneswar, Dist. Khurda.

4. Sr. Divisional Personnel Officer, E. Co. Railway, Khurda Road, PO: Jatni, Dist: Khurda, PIN-752050.

..... RESPONDENTS.

For the Respondents: M/s. S.K.Ojha, A.K.Sahoo, Advocate
for Railways.

ORDER

Shorn of unnecessary details, it would suffice to say that Applicant Shri A.R. Samantaray while working as Office Superintendent Grade-I under Senior Divisional Personnel Officer, South Eastern Railway(as then was), Khurda Road was placed under suspension with effect from 17-01-1996 pending investigation of a case instituted by the CBI. During the period under suspension he retired from Railway service on superannuation with effect from 30-04-1996. While the matter stood thus, he was issued with a major penalty charge-sheet on 13-08-1996. But the charges leveled against the Applicant having not been established, the Disciplinary Proceedings was dropped on 14-01-2004. Due to pendency of the said Disciplinary Proceedings the Applicant was only sanctioned the provisional pension and all other retirement dues were released in his favour after disciplinary proceeding initiated against him was dropped. Be that as it

nnr

may, the applicant, claiming interest on certain retirement dues, preferred representations under Annexure-A/4 dated 10-01-2004 and Annexure-A/5 dated 29-08-2004. The applicant having received no reply with reference to those representations nor his grievances having been redressed by the Railway authorities, has approached this Tribunal in the present Original Application under section 19 of the Administrative Tribunals Act, 1985 praying for the following relief(s):-

“8.1. To direct the respondents to make payment of interest @ 12% p.a. on the DCRG and other dues amount of Rs. 1.85,566/- from 01-05-1996 to 15-07-2004 in favour of the Applicant;

8.2. To direct the respondents to pay compensation of Rs.3,00,000/- to the applicant for causing undue harassment, humiliation and mental agony to the Applicant and his family for last 8 1/2 years;

8.3. The exemplary cost may be awarded against the Respondents for causing undue harassment to the Applicant;

8.4. To grant any other relief including cost as deem fit by the Hon'ble Tribunal”.

2. Respondent-Railways, after taking several dates/adjournments ultimately filed their counter on 03/03/2006, inter alia stating therein that since the Disciplinary Proceedings initiated against the Applicant was not finalized, the leave salary could not be paid to him and after finalization of the proceedings on 24-01-2004, the leave salary of the Applicant was passed for payment on 25-07-2004. They have stated that

BPJ-2

there is no rule for payment of interest on the delayed payment of leave salary and arrears of pension except DCRG amount. They have also disclosed that the steps have been taken for payment of interest on the DCRG amount of the Applicant. It has been stated by the Respondents that the Applicant is not entitled to interest on the Pension and commutation of certain portion of pension on the ground that that the amount received by the Applicant towards provisional pension was in fact the exactly the same amount settled as final pension. On these grounds, the Respondents have opposed the prayer of the Applicant.

3. Heard Mr. Achintya Das, learned Counsel appearing for the Applicant and Mr. S.K.Ojha, Learned Counsel appearing for the Respondents-Railways and perused the materials placed on record.

4. Mr. Achintya Das, learned counsel appearing for the Applicant has submitted that withholding the sums due to encashment in favour of the applicant was arbitrary and unilateral action and, therefore, the Applicant is entitled to interest on the said amount. He has also submitted that delay in finalization of the disciplinary proceedings is not attributable to the applicant and therefore, the applicant should not be made to suffer for the laches on the part of the Respondents and on this ground alone, the applicant is entitled to interest on the delayed payment of differential salary

may be

for the period from 17.1.1996 to 30.04.1996, leave salary, gratuity (DCRG) and arrears revised pension. In support of his contention, the learned counsel for the applicant brought to my notice Rule 10 of Railway Services (Pension) Rules, 1993 and the decision of the Jodhpur Bench of this Tribunal rendered in the case of Amrit Lal Borana versus Union of India and others- reported in 1999 (3) Administrative Total Judgments at page 512.

Per contra, learned Counsel appearing for the Railways/Respondents, reiterating the stand as taken in the counter, submitted that nowhere the Applicant had ever challenged the delay in finalization of the disciplinary proceedings and since a major penalty proceedings was initiated against him, his retirement dues were rightly withheld and therefore, the Applicant is estopped under law to claim interest without challenging the proceedings at the relevant time. He has also submitted that there is no rule for payment of interest on the delayed payment of leave salary encashment. With regard to the decision of the Jodhpur Bench of the Tribunal (supra), it has been submitted by the learned counsel for the Respondents that the context in which that decision was taken by the Jodhpur Bench is quite in distinction to the present one and therefore, the said decision is not applied to the instant case. He has further submitted that before applying the ratio of a decision to a particular case the

100/1

Court/Tribunal should, in the first instance, come to ~~the~~ conclusion that the facts and circumstances of the case in hand are one and the same as that of the case already decided and judgment cited and/or the issues/ principles to be decided by the Court/Tribunal emanate from the same and similar facts and circumstances as that of the case already decided and judgment cited. He further added that without the Court/Tribunal being convinced with regard to the facts and circumstances of the case based on which certain judgment has been passed are one and the same to the case in hand, rationality in applying the ratio thereof would not create a healthy practice in the administration of justice. In this connection he has relied upon the decisions of the Hon'ble Apex Court rendered in the case of **Gangadhar Behera and others vrs. State of Orissa and others** (reported in AIR 2002 SC 3633). Paragraph - 28 of the said decision lays down that "There is always peril in treating the words of a judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases".

nm/

5. I have considered the rival arguments advanced at the Bar and given my anxious thoughts. Sub Rule (C) of rule 10 of Railway Services (Pension) Rules, 1993 provides as under:-

“(c) No gratuity shall be paid to the railway servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon; provided that where departmental proceedings have been instituted under the provisions of the Railway Servants Discipline and Appeal Rules, 1968, for imposing any of the penalties specified in clauses (i), (ii), (iii) and (iv) of rule 6 of the said rules, the payment of gratuity shall be authorized to be paid to the railway servant”.

6. Neither any rule or instructions have been produced by the Respondents/Railways authorizing them to withhold the leave encashment dues of a retired railway servant pending investigation of criminal case or disciplinary proceedings. Therefore, there is no iota of doubt to hold that withholding of leave encashment dues of the Applicant was totally unauthorized one. Now it is to be decided as to whether the Applicant is entitled to any interest on such delayed payment of leave encashment in absence of the Rules. Leave Encashment dues are statutory right of a retired Government Servant. It is the settled position of law that no dues of a retired Govt. servant can be withheld without any express sanction under Rules. It is also settled position of law that in case of delay in payment

[Signature]

of statutory retirement dues, the employer/Government is liable to pay interest. This view is also fortified by the decision of the Hon'ble Apex Court of India rendered in the case of State of Kerala and others VRS. M.Padmanabhan Nair (reported in AIR 1985 SC 356); in the case of Dr. Uma Agrawal VRS State of UP and another (reported in AIR 1999 SC 1212); by the Hon'ble High Court of Orissa in the case of Dhruba Charan Panda vrs. State of Orissa (reported in 1999(II)OLR 433) and by the Hon'ble Calcutta High Court in the case of Bidhu Bhusan Bhattacharya vrs. State of West Bengal (reported in (2004) 1 ATT (HC) 458. I am convinced that the decision cited by the learned counsel for the Applicant rendered in the case of Amrit Lal (Supra) deals with the facts and circumstances akin to the present case. The observations made in paragraph 7 of the aforesaid case read as under:-

"7. As a matter of fact, the retiral benefits, i.e., gratuity, leave encashment, commutation of pension and Group Insurance amount become payable to the retiring official on the date of superannuation itself unless these are withheld by a separate order. The retirement benefits is not a bounty payable on the sweet will and pleasure of the Government and that on the other hand, the right of pension and other retirement benefits is a valuable right vesting in the Government servant. In terms of Rule-5 of the Railway Services (Commutation of Pension) Rules, the commutation of pension is not permitted to a Government servant against whom departmental or judicial proceedings as referred to in Rule-19 of the Railway Pension Rules have been instituted before the date of his retirement, during pendency of such proceedings. The Respondents, however, had no authority to withhold other payment, like Leave Encashment and

my

201

Group Insurance amount. These amounts became payable on the very next day of the retirement of the applicant from service and he has been deprived of his financial benefits for a sufficiently long time for no rhyme or reason. In this back ground, the prayer of the Applicant for payment of interest on these amounts right from the day he retired seems justified and deserves to be allowed. The question of payment of interest on the amount of leave encashment and Group Insurance Scheme was also raised by the applicant earlier in his O.A. No. 469/94, which was decided by this Tribunal vide its order dated 25-08-1995. In this order dated 25.8.1995, the respondents were directed to release the amount of leave encashment and Group Insurance Scheme in favour of the applicant within a period of three months from the date of receipt of a copy of that order failing which they were liable to pay interest on these amounts @ 12% per annum till the date of final payment. A common interpretation of the above order would imply that the respondents would require to pay the amount on account of leave encashment and Group Insurance Scheme to the applicant within a period of three months from the date of issue of that order. In other words, no interest was payable to these amounts if the payment was made to the applicant within the period of three months. In case the payment was not made within the stipulated period, the respondents were liable to pay interest on that amount."

7. The aforesaid decision dealing with payment of retirement dues and interest thereon of a retired railway servant squarely covers and governs the issues in hand. Otherwise also, the Applicant is entitled to get interest as there is no argument against the fact that had he retired without suffering any departmental proceedings, he would have got his dues; which would have generated interest. This being the position, I have no hesitation but to hold that the Applicant is entitled to interest on the delayed payment of leave encashment dues from the date of his retirement till the date of actual payment. The Respondents are, therefore, directed to

10/11/95



calculate and pay interest to the Applicant on the leave encashment dues @ 8% per annum from the date of his retirement till the date of actual payment, within a period of 45 days from the date of receipt of a copy of this order.

8. The prayer of the applicant for payment of interest on the arrear salary for the period from 17-01-1996 to 30-04-1996 (i.e. when the Applicant was placed under suspension) is rejected, as the Applicant has been paid the arrears of salary on conclusion of the disciplinary proceedings.

9. As the Respondents have already admitted in their counter that steps have been taken for payment of interest on the delayed payment of DCRG, I hope and trust that they will take a view over this matter as per rule at the earliest dispatch, and in the circumstances, no direction need be issued. The prayer for payment of interest on the arrears of revised pension is accordingly rejected as it does not stand to reason.

10. With the observations and directions made above, this O.A. is disposed of. No costs.


(B.B.MISHRA)
MEMBER(ADMN.)