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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK

ORIGINAL APPLICATION NO.171 OF 2007

Cuttack this the 6th day of March, 2009

Jhati Parida Applicant
-VERSUS-
Union of India and others Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not ?
- 2) Whether it be circulated to the P.B. of CAT or not?


(K. THANKAPPAN)
JUDICIAL MEMBER

6

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.171 OF 2007

Cuttack this the 6th day of March, 2009

CORAM:

HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

Jhati Parida, aged about 58 years, widow of late Sankar Parida, Ex-Bridge Khalasi under BRI/Reg./Birupa, S.E.Railway (now E.C.Railway), permanent resident of Vill/PO-Marjitapur, PS-Dharmasala, Dist-Jajpur

...Applicant

By the Advocates: M/s.N.R.Routray

S.Mishra

-VERSUS-

1. Union of India represented through the General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar
2. Sr.Personnel Officer (Con)/Coordination, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar
3. Chief Administrative Officer (Con) East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar
4. F.A. & C.A.O. (Con), East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar

...Respondents

By the Advocates: Mr.T.Rath

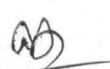
ORDER

HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER:

In this Original Application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has sought for the following relief:

"Direct the Respondents to pay the interest on the gratuity amount i.e., from the date of entitle to the date of actual payment made".

2. The applicant is the widow of one Sankar Parida, who passed away on 11.8.1989 while working as Casual Khalasi with temporary status with effect from 1.1.1981, After the death of the railway employee, the Chief



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Engineer, Chandrasekharpur, the 3rd Respondent of East Coast Railways, Rail Vihar, Bhubaneswar, issued an order No.C(Con)/HQ/BBS/PCR/1 dated 6.8.1999 regularizing the services of the deceased Sankar Parida retrospectively from 15.11.1975 against 40% PCR post of Khalasi. However, by a subsequent order dated 1.6.2001, the said regularization having been cancelled, the applicant approached this Tribunal by filing O.A.No.267/01. However, the said O.A. was dismissed by this Tribunal. While the matter stood thus, in the light of the judgment of the Apex Court in Ram Kumar vs. Union of India & Ors. reported in 1988 SC 390, a scheme for payment of service gratuity was introduced by the Railway Board as per the Railway Board's Establishment order No. 130/2000 dated 3.6.2000. In the light of the above scheme, according to the applicant, her late husband was due to get service gratuity under the provisions of Payment of Gratuity Act 1972 and in this background, she made representation to the Respondent-Department, which, however, having not been responded, the applicant moved this Tribunal in O.A.No.606/2004. The Tribunal as per order dated 13.10.2006 disposed of the said O.A. with direction to the Respondents to recalculate the interest on the gratuity amount as per the Rules/Act from the date of death of the husband of the applicant till actual payment is made to her and a statement showing the calculation may be prepared and sent to the applicant within the time stipulated therein. In pursuance of the above direction, the Respondent-Department ^{ought to} ~~appears~~ to have prepared a

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statement showing the service particulars and calculation of casual service period qualifying service, gratuity & interest for payment of Gratuity under Gratuity Act, 1972 as per Est.Srl.No.125/2000 (Annexure-A/4). It is the case of the applicant that in the calculation sheet the Respondents have calculated 10% interest on gratuity from 1.6.2004 to 31.7.2006 instead of 11.8.1989/31.12.1981, which is an outcome of non-application of mind. Being aggrieved by the calculation of interest to be paid to the applicant on the gratuity, the applicant filed the present O.A. with the prayer referred to above.

3. This Tribunal heard Shri N.Routray, learned counsel for the applicant and Shri T.Rath, learned counsel for the Respondents. Reiterating the averments in the O.A., the learned counsel appearing for the applicant contended that since the Railway Board has issued Annexure-A/1 order on 30.6.2000 from the date of issuance of the order, the applicant's husband was entitled to service gratuity and interest thereon. Further, it is contended that as per the order passed by this Tribunal in Annexure-A/3 order, the applicant is entitled to gratuity with interest on delayed payment from the date of death of her husband till the actual payment is made to her and as such, the present statement at Annexure-A/4 is irregular and illegal inasmuch as the authorities having calculated the gratuity due up to the end of the month preceding the date on which the payment was made, worked out the interest from 1.6.2004 to 31.7.1006 instead of 31.12.1981/11.8.1989 to 31.7.2006, which is not

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in accordance with RBE No.130/2000. The learned counsel further contended that the applicant is entitled to service gratuity with interest for the delayed payment from the date of Annexure-A/1 order, viz., from 30.6.2000 on which Annexure-A/1 scheme has been promulgated for providing payment of gratuity under the provisions of payment of Gratuity Act, 1972.

4. Resisting the above contentions and relying on the counter reply filed, Shri T.Rath, the counsel for the Respondents contended that the calculation as evidenced from Annexure-A/4 with regard to interest on gratuity amount is correct and as per the provisions of Annexure-A/1, the applicant is entitled to payment of gratuity only from the date of her filing option before the authorities to be governed for the period of temporary or casual service preceding the absorption in regular service of her husband or to be governed by the Scheme at Annexure-A/1 with a view to calculating the payment of gratuity for the casual period. The counsel further submitted that the applicant has filed option on 11.2.2004 and the present calculation made by the authorities for calculating interest on delayed payment is based on the option given by the applicant.

5. On evaluation of the contentions of the counsel on either sides and having gone through the documents produced in this O.A., the question to be considered is whether the applicant is entitled to relief that she has sought in this O.A. or not.

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6. The fact that the applicant's husband died on 11.8.1989 while he was working as Casual Khalasi is not in dispute. The applicant filed the application/representation for getting the benefit as per Annexure-2 only on 16.12.2002, which is also not in dispute. It is also undisputed that Annexure-A/1 notification came into force with effect from 30.6.2000 after the judgment of the Apex Court reported in Ram Kumar case (supra). The main contention of the applicant is that as per Annexure-A/1 scheme, the applicant became entitled for service gratuity of her husband from 31.12.1981 to 11.8.1989 and the period for calculating interest for the delayed payment shall be from that date onwards and not from 1.6.2004 to 31.7.2006. Before the above question could be considered, it is only advantageous to quote hereunder the relevant Scheme laying down grant of service gratuity to the casual employees whose services were subsequently regularized. In this connection, Paragraphs-2,3 and 4 of the scheme, which are relevant for the purpose, are quoted hereunder.

“2. Though the provisions of the payment of Gratuity Act, 1972 shall continue to be applicable to the casual labour for the purpose of calculating gratuity for the period of casual labour service up to the date preceding the date of absorption, it has been decided by the Board that such of the casual labours who continued to be in service and were/are absorbed against regular vacancies, shall be allowed to exercise an option as under (i) Payment of Gratuity under the provisions of the Payment of Gratuity Act, 1972 for the period of service upto the date preceding the date of absorption and for payment of gratuity and pension for the period of regular service under the provisions of Railway Service (Pension) Rules, 1993 OR (ii) to the payment of gratuity and pension counting half of the service rendered in temporary status and full service rendered on regular basis under the provisions of the Railway

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Services (Pension) Rules, 1993, besides gratuity under PG Act for the period preceding the attaining of temporary status.

3.1 In case option (i) above is exercised the Railway servants who have since retired/ceased to be in employment will become eligible for payment of gratuity for the period of casual labourer service upto the date preceding the date of absorption under the provisions of the payment of Gratuity Act, 1972 worked out on the basis of the wages admissible on the last date of temporary status service and for the period of delay in payment of gratuity, i.e., for the period from the date of absorption up to the end of the month preceding the date on which the payment is made, the amount of gratuity so worked out will carry an interest at the simple rate not exceeding the rate notified by the Government from time to time for payment of long term deposits. The Railway servants who have been absorbed against regular vacancies and are still in service shall be paid gratuity forthwith calculated under the provisions of the payment of Gratuity Act, 1972 for the period of Casual Labour service upto the date preceding the date of absorption together with interest of the simple rate as specified above for the period of delay in payment i.e., from the date it becomes due for payment upto the end of the month preceding the date on which the payment is made. At the time of retirement/final cessation, the Railway Servant shall be settled under the provisions of the Railway Services (Pension) Rules for the period of service from the date of absorption upto the date of retirement/final cessation.

3.2 In all such cases where a retired employee opts for payment of gratuity under the payment of Gratuity Act for period upto the date of absorption, the over payments, if any, due to 50% of this period having been counted for pensionary benefits at the time of settlement, would be recovered/adjusted along with same rate of interest as payable under payment of Gratuity Act, 1972.

4. In case option (ii) above is exercised, half of the period of temporary status service and full period of regular service will be taken into account for grant of pensionary benefits under the Railway Services (Pension) Rules, 1993. If the Railway Servant is eligible to draw gratuity under the provisions of the payment of Gratuity Act, 1972, for the period of service prior to grant of temporary status, the same shall be worked out on the basis of emoluments admissible on the date preceding the date on which he was granted temporary status. The amount of gratuity thus worked out shall be paid along with the interest at the rate specified above for the period of delay i.e., from the date it became due for payment following grant of temporary status upto the end of the month preceding the date on which the payment is made".

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Reading of the above paragraphs would clearly indicate that the casual employees whose services have been regularized subsequent to the casual service should have given an option as to whether they would be governed by the provisions of Payment of Gratuity Act, 1972 for the period of service up to the date preceding the date of absorption for payment of gratuity and pension for the period of regular service under the provisions of Railway Services (Pension) Rules, 1993 or by the payment of gratuity and pension counting half of the service rendered in temporary status and full service rendered on regular basis under the provisions of Railway Services (Pension) Rules, 1993, apart from the gratuity under the Payment of Gratuity Act for the period preceding the attaining of temporary status. This means, unless and until an option is given by the casual employee any gratuity or the calculation of interest for the delayed payment of gratuity as per the provisions of the scheme cannot be worked out. Admittedly, the applicant had filed her application/option only on 11.2.2004. It is to be noted from the counter filed for and on behalf of the Respondents as under:

“In the present case the applicant exercised her option in the prescribed proforma only on 11.2.2004 therefore leaving first 3 months interest was correctly calculated and was drawn w.e.f. 1.6.2004 to 31.7.2006 and an amount of Rs.2642/- towards principal gratuity amount and Rs.572/- towards the interest, altogether Rs.3240/- was paid to the applicant in the month of August/September, 2006. Therefore, there has been no violation of the Railway Board’s Instructions contained under RBE No.130/2000”.

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The contention of the learned counsel for the applicant is that as per paragraph-6 of Annexure-A/1, the Railway Administration shall extend all assistance to the retirees as well as serving Railway employees to exercise option judiciously and a duty is cast on the Railway Administration to allow gratuity from 30.6.2000. Reading of this paragraph would only show that the Respondents have got a duty to see that the above order is complied with duly indicating the total number of claims received, the number of claims settled, and the reasons for delay in settlement, etc. It is set out in the scheme that the Railway employee shall give an option whether to be governed under the Payment of Gratuity Act or under the provisions of the Railway Services (Pension) Rules, 1993. It is also to be observed that even though this Tribunal directed in Annexure-A/3 order that the applicant is entitled to interest for the delayed payment, that by itself will not restrict the provisions of Annexure-A/1 Scheme for filing option which, according to the Respondents, was filed by the applicant only on 11.2.2004. If so, the calculation made with regard to the interest on delayed payment is tenable and does not warrant any interference by this Tribunal.

7. For the reasons discussed above, the O.A. being devoid of merit is dismissed. No costs.

K.T. APPAN
(K.T. THANKAPPAN)
JUDICIAL MEMBER