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O.A. No. 05 of 2008

Kirtan & Others ... Applicants
Versus
UOI & Ors. ... Respondents

Order dated 23rd October, 2009.

C O R A M

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

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All the Applicants (five in number) are the retired Group D employees of the construction organization of South Eastern Railway (now East Coast Railway). They have filed this Original Application jointly seeking direction to the Respondents to pay them interest on the delayed payment of gratuity in terms of Railway Board Circular dated 30.06.2000. It is the case of the Applicants that as no action was taken on their option submitted by them for payment of gratuity in terms of the Railway Board Circular dated 30.06.2000; they approached this Tribunal in OA No. 1098 of 2004 and 1099 of 2004. This Tribunal disposed of the matter on 23.11.2004 calling upon the Respondents to make payment of the gratuity amount to the applicants in terms of the aforesaid Railway Board Circular within a period of six months. The order of this Tribunal having not been complied with the Applicants filed CP No. 42 and 43 of 2005 in which on getting notice, the Respondents appeared before this Tribunal and stated that the applicants have not submitted their option to the proper authorities. In view of the above, the Applicants once again submitted their options seeking payment of gratuity only for the period of their casual service. Thereafter although the gratuity was paid to them,

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interest accrued thereon in terms of the aforesaid Railway Board circular having not been paid, in spite of representations, they have approached this Tribunal in the present OA.

2. The Respondents in their counter filed in this case have stated that the prayer of the applicant for payment of interest w.e.f. 1.1.1981 is thoroughly misconceived and cannot be given effect to; as Circular of the Railway Board for payment of gratuity for the service rendered by an employee of the railway on casual basis came into existence pursuant to the direction of the Hon'ble Apex Court only w.e.f. 30.06.2000 and as per the law the circular cannot have retrospective effect. Hence, the prayer of applicant for payment of interest w.e.f. 1.1.1981 is misconceived. Further case of the Respondents is that pursuant to the circular dated 30.06.2000 the Applicants exercised their option in the year 2004, 2005 and 2006. On receipt of the option, the matter was examined and finally the applicants were paid their gratuity in terms of the Railway Board's Circular referred to above. Accordingly, the Respondents objected to the prayer of the applicants and prayed for dismissal of this OA.

3. Reiteration of the contentions made in the respective pleadings of the parties was heard and materials placed on record were perused. I am of the view that the entire claim of the applicants is based on the RB's Circular dated 30.06.2000. Therefore, for the purpose of determination of the claim of the applicant it is worthwhile to examine the relevant portion of the circular which is quoted herein below:

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“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 labour 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 upto 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 repayment 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 become 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 retirements/final cessation.

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 of 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 pay is made.**”

6. The Railways shall *suo moto* take steps to examine all the past cases on the basis of records available and settle the claims accordingly. For this purpose, all the claimants may be suitably addressed on the basis of particulars available with the Railways so that the claimants or their legal heirs can claim the payment without delay. The Railway Administration shall extend all assistance to the retired as well as the serving Railway servants to exercise the option judiciously in order that

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the option exercised is advantageous to them. A compliance report may be sent to Board's office by 30.09.2000 duly indicating the total number of claims received, the number of claims settled and the reasons for delay in settlement."

4. It is evident from the record that after the decision of the Hon'ble Apex Court directing applicability of the Pay of Gratuity Act, 1972 to all casual labour employed in Railway, the Railway Board issued instructions extending the said benefits and directing payment of the gratuity for the casual period of service rendered in the Railway. The circular dated 30.06.2000 clearly envisages for payment of the gratuity (to the extent of the casual period of service rendered in the railway) to the employees retired meanwhile thereby giving the order retrospective effect. The Circular of the Railway Board dated 30.06.2000 specifically lays down that the Railway servants who have been absorbed against regular vacancies and are still in service shall be paid gratuity forthwith. This should be calculated under the provisions of the Payment of Gratuity Act 1972 for the period of casual labour service up-to 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 become due for payment up-to the end of the month preceding the date on which the payment is made.** It also lays down that the authorities concerned shall *suo moto* take steps to examine all the past cases on the basis of records available and settle the claims. Based on the above circular, the Respondents vide order under Annexure-A/2 series paid the Gratuity to the Applicants for the period of casual

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service rendered by them prior to 1981. They have also paid the gratuity with interest as evident from the order under Annexure-A/4. If according to the Respondents the Railway Board Circular dated 30.06.2000 has no retrospective implication, then how they have paid the applicants gratuity for the period of casual service admittedly rendered by the Applicants prior to the date of issue of the Railway Board's Circular dated 30.06.2000. In view of the above the stand of the Respondents that the circular dated 30.06.2000 having no retrospective effect the applicants are not entitled to interest is untenable. Next question comes for consideration whether the Applicant is entitled to interest for non-payment of the gratuity soon after the casual period of service of applicant. In this connection it is noted that Gratuity Act, 1972 has been made applicable to the casual labour of Railway by the order of the Hon'ble Apex Court and accordingly, the Railway Board issued the order for payment of gratuity and interest thereon. The circular clearly envisages that interest is payable on the gratuity amount **from the date it became due for payment up-to the end of the month preceding the date on which the payment is made.** It is well settled principle of law that where the language used in a statute is clear and unambiguous; the question of taking recourse to any principle of interpretation would not arise. Hence, there would have been no hesitation on the part of the Respondents for payment of interest on the gratuity amount paid to the Applicants.

5. For the discussions made above, I have no iota of doubt or hesitation to hold that non-payment of the interest on

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the delayed payment of the gratuity amount for the relevant period i.e. when it became due till the date of actual payment to the Applicants was/is in accordance with the Railway Board's Circular dated 30.06.2000. Hence, the Respondents are hereby directed to calculate and make payment of simple interest to each of the Applicants forthwith at any rate by the end of December, 2009. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.


(C.R. MOHAPATRA)
MEMBER (ADMN.)