

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 263/97
T.A. No.

1999

DATE OF DECISION 22.03.1999

Amrit Lal Borana

Petitioner

S.K. Malik

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

V.D. Vyas

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Gopal Singh, Administrative Member

The Hon'ble Mr. --

1. Whether Reporters of local papers may be allowed to see the Judgement ? +
2. To be referred to the Reporter or not ? Yes
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 ? +

Gopal Singh
(GOPAL S. SINGH)
ADM. MEMBER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

(V)

Date of order : 22.03.99

O.A. No. 263/97

Amrit Lal Borana son of Shri Ramlal ji Borana aged about 67 years
r/o. Paras Sumati Sadan, Railway Hospital Road, Jodhpur (Retired
Assistant Controller of Stores from the Office of the Dy.
Controller of Stores, Northern Railway, Jodhpur).

... Applicant.

versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Chief Personnel Officer (Gazetted) Northern Railway, Baroda House, New Delhi.
3. The Controller of Stores, Northern Railway, Baroda House, New Delhi.
4. The Dy. Controller of Stores, Northern Railway, Jodhpur.
5. The Workshop Accounts Officer, Northern Railway, Jodhpur.

... Respondents.

Mr. S.K. Malik, Counsel for the applicant.

Mr. V.D. Vyas, Counsel for the respondents.

CORAM:

Hon'ble Mr. Gopal Singh, Administrative Member.

.....

BY THE COURT:

Applicant, Amrit Lal Borana, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying as under :-

Gopal Singh

"(i) That by an appropriate writ, order or directions, the respondents be directed to make payment of commutation amount of pension of Rs. 57990/- alongwith bank rate of interest @ 18% per annum with effect from 1.11.1988, till the final payment is made to the applicant.

(ii) That by an appropriate writ, order or directions, the respondents be directed to release and pay bank rate of interest @ 18% per annum on DCRG Rs. 46613/-, leave encashment Rs.27800/- and Group Insurance Rs.2022/- with effect from 1.11.1988 to 13.8.96 on DCRG and leave encashment and 27.8.96 on Group Insurance and thereafter further interest thereof till the final payment is made to the applicant.

(ii-A) That the respondents be directed to make payments on account of commutation amount of pension, DCRG, leave encashment and Group Insurance which comes to Rs. 1,34,425/- as on 1.11.1988 alongwith bank rate of interest @ 18% per annum after deducting the payments which have already been made by the respondents to the applicant from time to time, till the final payment is made.

(iii) That by an appropriate writ, order or direction, respondents be directed 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 about 9 years.

(iii-A) That by an appropriate writ order or direction, impugned order No. E/141/680/Viz.E(D&A) of 24.7.97 Annexure R/2 complete and other consequential orders thereto be declared illegal and be quashed and set aside as if the same were never passed against the applicant with all consequential benefits.

(iv) That the respondents be directed to make payment of final pension instead of provisional pension.

(v) The exemplary cost may be awarded against the respondents for causing undue harassment to the applicant".

2. The brief facts of the case are that the applicant while holding the post of Assistant Controller of Stores in the office of the Dy. Controller of Stores, Northern Railway, Jodhpur, retired on superannuation on 31.10.1988. He was served with a charge-sheet under Rule 9 of Railway Servants (D&A) Rules, 1968, for a major penalty on 28.10.1988, enquiry officer was appointed

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on 21.5.90, enquiry officer submitted his report on 18.1.96 holding the applicant not guilty. The disciplinary authority, however, differing with the findings of the enquiry officer imposed a penalty of 10% cut in monthly pension for a period of one year vide order dated 11.7.97 (Annexure R/2). This penalty was set aside on a review petition filed by the applicant vide respondents' order dated 21.8.98. The respondents had withheld the gratuity, commutation of pension amount, leave encashment and the amount payable under the Group Insurance Scheme on the ground that the applicant was facing charge-sheet for a major penalty. The applicant was, however, sanctioned provisional pension.

3. Since the departmental proceedings were being delayed, the applicant approached this Tribunal vide O.A. No. 469/94 praying for a direction to the respondents for release of DCRG, commutation of pension, leave encashment, Group Insurance amount, etc. alongwith interest from the date of his retirement and the Tribunal vide its order dated 25.8.95 had observed as under:-

"6. In the circumstances, we direct the respondents to complete the total disciplinary proceedings including the order of the disciplinary authority within a period of six months from the date of receipt of a copy of this order failing which the enquiry proceedings against the applicant shall be deemed to have been quashed with all consequential benefits. In case the applicant does not co-operate with the Enquiry Officer, inquiry shall proceed ex-parte against him. As regards leave encashment and the insurance amount, the respondents are directed to release them in favour of the applicant within a period of three months from the date of receipt of a copy of this order failing which the respondents shall be liable to pay interest on these amounts to the applicant at the rate of 12% per annum till the date of final payment. This O.A. stands disposed of as above with no order as to costs".

4. In compliance to the above order, the respondents had made the payment of leave encashment and the insurance amount on 13.8.96 and 27.8.96 respectively alongwith interest @ 12% per annum for the period from 25.11.95 till the date of payment. The respondents had also released the amount of gratuity on 13.8.96 alongwith interest for the period from 25.11.95 till the date of payment.

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5. Notices were issued to the respondents and they have filed their reply.

6. I have heard the learned counsel for the parties and have perused the records of the case carefully.

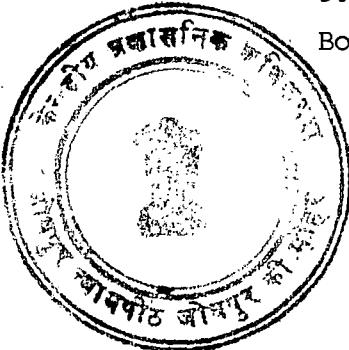
7. As a matter of fact, the retiral benefits, i.e., gratuity, leave encashment, commutation of pension and Group Insurance amount become payable to the retiring official on the date of superannuation itself unless these are withheld by a separate order. The retirement benefits is not a bounty payable 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 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 9 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 payments, like Leave Encashment and 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 OA 469/94, which was decided by this Tribunal vide its order dated 25.8.95. In this order dated 25.8.95, 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 on these amounts if the

Leave

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. It is not clear from the aforesaid order as to from which date the interest was payable. Interpreting the above order liberally, it would mean that the interest was payable only from the date of three months after the date of the order. The respondents had accordingly made the payment of leave encashment and Group Insurance Scheme alongwith interest. This order of the Tribunal was never challenged by the applicant as regard to the date from which the interest was payable on these amounts. Thus, the order of the Tribunal dated 25.8.95 have attained finality and no change can be introduced at this stage. The applicant cannot agitate the same issue again and again.

8. Rule 10 (C) of Railway Pension Rules provides that no gratuity shall be paid to the Railway servant till the conclusion of departmental proceedings (for major penalty) and issue of final orders thereon. The gratuity was, however, released on 13.8.96 before the final orders were issued.

9. In regard to delayed payment of D.C.R.G, the Railway Board orders/instructions are reproduced below :-


"Interest on delayed payment of D.C.R.G. : An interest @ 10% per annum may be allowed on the delayed payment of gratuity for the period beyond three months after it becomes due and would be payable till the end of the month preceding the month in which the payment is actually made. G.O.I., M.O.H. (DPAR) Office Memorandum dated 28.7.84. The interest will be allowed only where it is clearly established that the payment of D.C.R.G. was delayed on account of administrative lapse or for the reason beyond the control of the Railway servant concerned. In all cases where interest has to be paid action should be taken by the Railway Administration to fix up responsibility for the delay and disciplinary action should be taken against the staff responsible for it. [R.B's No. F(E)III-79-EN-1/15 dated 3.9.79] (N.R., S.N. 7400). With a view to simplify the procedure, the Railway Board has delegated the powers of payment of interest on delayed payment of gratuity to the General Managers in respect of the staff working under them. These powers will not be further delegated by the General Managers to any lower authority.

[R.Bs No. F(E)III/79/PNI/15 dated 23.1.87] (N.R., S.N. 9168).

The Supreme Court in its judgement reported in

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A.I.R. 1985 at page 356, held that Pension and Gratuity are no longer bounty to be distributed by the Government to its employees on their retirement but have become, under the decision of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment.

In case of Rly. servants against whom disciplinary or judicial proceedings have been instituted, & on the conclusion of proceedings they are fully exonerated, the interest on delayed payment of DCRG may be allowed in their case in accordance with the above instructions. In other words, gratuity in such cases will be deemed to have fallen due on the date following the date of retirement for the purpose of payment of interest on gratuity. The benefit of these instructions is, however, not be available to railway servants who die during the pendency of judicial or disciplinary proceedings.

[R.Bs No. F(E)III 79 PN 1/13 dated 25.5.83] (N.R., S.N. 8327)."

10. Since the applicant has been exonerated of all the charges, he becomes entitled to interest on delayed payment of D.C.R.G. and the same deserves to be allowed.

11. It has already been mentioned that an employee against whom departmental proceedings have been instituted before retirement cannot be permitted to commute a part of his pension. On conclusion of departmental proceedings, he would, however, be entitled to commute his pension. In this connection, Railway Board Orders/instructions dealing with the issue is reproduced below :-

"A railway servant who on conclusion of the departmental or judicial proceedings initiated while he was in service, is granted pension in whole or in part will be eligible to commute a portion of that pension without medical examination. For this purpose, the period of one year will be reckoned from the date of the orders issued on the conclusion of the proceedings. This benefit is, however, admissible only to those Railway servants who, on the date of retirement were entitled to the benefit of commutation of pension without medical examination.

[R.Bs NO.F(E)III/76 PN 1/7 dated 17.11.81] (N.R., S.NO. 7936)."

12. It is seen from the file that the disciplinary authority had initially imposed the penalty of withholding of 10% of monthly pension vide order dated 11.7.97 (Annexure R/2). A review petition was filed against this order and the same had been

disallowed

set aside vide order dated 21.8.98. It would thus be seen that the departmental proceedings were concluded on 21.8.98 and this order of the President dated 21.8.98 was conveyed to the applicant vide respondent's letter dated 24.8.98 (Annexure R/4). The applicant can, therefore, now apply for commutation of pension within one year of this date, i.e., by 23.8.99 without undergoing any medical examination, in terms of Railway Board order cited above. The only question now remains to be examined is which pension is to be offered for commutation, i.e., original pension sanctioned or the pension drawn as on date of the application for commutation. The Railway Services (Commutation of Pension) Rules do not throw any light on this. It can logically be inferred that the pensioner would offer the pension for commutation that he is drawing on the date of application for commutation. Seeing in this view, the applicant would now be entitled to commute a part of his present pension, i.e., the pension that he draws on the date of application for commutation.

13. It is seen that the departmental proceedings have taken 10 long years for conclusion. It is also seen from the record that out of 11 hearing given by the enquiry officer, the presenting officer could not attend on five occasions. There are no reason to believe that the enquiry has been delayed for any fault on the part of the applicant. The applicant has all along suffered harrassment, financial loss and mental agony and, therefore, he deserves to be compensated for the same.

14. In the light of the above discussion, the O.A. is disposed of with the following directions :-

- (i) The respondents would pay the interest @ 12% per annum compounding annually on the amount of D.C.R.G. from 1.11.1988 till the date of payment. The interest already paid on D.C.R.G. may be adjusted in the interest payable now in terms of this order of the Tribunal.
- (ii) The respondents would issue final Pension Payment Order in lieu of Provisional order for pension.
- (iii) The applicant will be entitled to commutation of a *(afalsg)*

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part of his present pension, if he submits application for the same before 23.8.99, without medical examination.

(iv)

For the harrassment and mental agony suffered by the applicant during the past 11 years, I consider it just and proper to award a cost of Rs. 5000/- to the applicant.

14. The above directions are to be complied with within a period of three months from the date of receipt of a copy of this order.

Gopal Singh

(Gopal Singh)
Adm. Member

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