

Date of order : 19.01.1998.

O.A. No. 158 of 1997.

Bheem Karan Pande S/o Shri Megh Raj, aged about 64 years, retired Head Clerk under Dy. Chief Mechanical Engineer, Workshop, Northern Railway, Lalgarh, Bikaner R/o Behind Dairy Office, Indera Colony, Bikaner.

..... Applicant.

Vs.

1. Union of India through General Manager, Northern Railway, H.Q. Office, Baroda House, New Delhi.
2. Deputy Chief Mechanical Engineer (Workshop), Northern Railway, Lalgarh, Bikaner.
3. Assistant Personnel Officer (Workshop), Northern Railway, Lalgarh, Bikaner.

..... Respondents

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Mr. Y.K. Sharma, counsel for the applicant.

Mr. S.S. Vyas, counsel for the respondents.

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HONOURABLE MR. A.K. MISRA, JUDICIAL MEMBER

HONOURABLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER

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MR. A.K. MISRA, JUDICIAL MEMBER :

The applicant who retired as Head Clerk under Deputy Chief Mechanical Engineer, Northern Railway, Lalgarh, Bikaner, has moved this O.A. with the prayer that respondents be directed to pay interest @ 18% p.a. on Rs. 20,430/- which were belatedly paid to the applicant.

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2. Notice of the O.A. was given to the respondents who have filed their reply wherein the respondents have stated that applicant is not entitled to any interest as the relief of grant of interest was not given to the applicant in the earlier O.A. Therefore, the same should be deemed to have been refused. The O.A. is barred by limitation and has also no merits as such it should be dismissed.

3. The applicant has filed rejoinder in which it has been stated that the relief in respect of interest was not specifically refused by the Tribunal while passing the order dated 17.8.1994 in O.A. No. 49/1993.

4. We have heard the learned counsel for the parties and gone through the record.

5. From the record it is borne out that at the time when the applicant retired he was drawing Rs. 1800/- as basic pay as Head Clerk, but his pension was calculated on the basis of Rs. 1720/- p.m. as basic pay. The applicant thereafter filed an O.A. wherein he had prayed that the respondents be directed to make settlement dues of the applicant on the basis of Rs. 1800/- as basic pay and consequential benefits alongwith 12% interest thereon. Thereafter, the applicant was paid Rs. 20,430/- on various dates as detailed in Annex.A/3. From the ~~order~~ Annex.A/3 it appears that applicant retired on 31.7.1992 but his pensionary benefits were belatedly paid to him for which the applicant has claimed interest. So far as the facts stated above, there is no dispute between the parties. The dispute ~~arises~~ in this O.A. is regarding the maintainability of the application. The respondents have challenged the maintainability of this O.A. on three counts, viz,

(i) O.A. claiming only interest is not at all maintainable;
(ii) in the earlier O.A. the relief of interest was not granted, therefore, the same should be taken to have been refused and now the applicant cannot pray for the same; and
(iii) the present O.A. is quite belated and barred by time.

6. The learned counsel for respondents ~~xxxx~~ has elaborated the above objections in his arguments. On the other hand, the learned counsel for applicant has argued that on retirement of the applicant the pensionary benefits became due to him but a sum of Rs. 14,590/- was deducted by the respondents from the Death-cum-Retirement-Gratuity. Likewise, the applicant ~~x~~ was paid less because his pensionary benefits were calculated treating his pay as Rs. 1720/- (Basic Pay) and all through this period, the amount remained with the respondents and the applicant was deprived of the benefit of earning interest thereon.

7. We have considered the rival arguments of the parties' counsels. From the allegations of the applicant it is borne out that the payment was made by the respondents on various dates only after the applicant moved a Contempt Petition. The Review Petition of the applicant was also dismissed. Thus, the pensionary benefits to the tune of Rs. 20,430/- which ought to have been timely paid to the applicant, remained unpaid and the money continued to lie with the respondents. Therefore, in our opinion the applicant is entitled to interest on the amount as detailed in Annex.A/3 from the date it had become due i.e. ^{one} months ~~xxxx~~ after the date of superannuation of the applicant till it was actually paid to him.

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8. We are not convinced that the application is barred by limitation because the claim of the applicant in respect of amount of interest was rejected by the respondents vide their letter dated 17.6.1996 (Annex.A/1) and the O.A. was moved within one year therefrom.

9. The applicant had claimed interest on the amount claimed by him in the earlier O.A., but the matter of grant of interest or refusal thereof was not discussed in the order rendered by the Tribunal in O.A. No. 49/1993. Therefore, it cannot be said that the Tribunal had refused the payment of interest on the said amount. Had the matter of payment of interest been discussed in the body of the order ^{rendered} ~~granted~~ by the Tribunal, it could have been said that the Tribunal had consciously passed no orders regarding interest. ^{But this matter was not at all discussed in the order} For these reasons, arguments in this respect are rejected. The respondents had deducted a sum of Rs. 14,590/- from the Death-cum-Retirement Gratuity of the applicant on account of over payment in the past but fixation of pay was set aside by the Tribunal. Therefore, payment ought to have been made by the respondents promptly but they did not take any such action. Due to inaction of the respondents the money so deducted and money payable on account of other calculations remained unpaid till the applicant was forced to move a Contempt Petition. For these reasons, it cannot be said that the O.A. is not maintainable because the relief of only 'interest' has been claimed in the application. While retaining the money ~~with~~ the respondents ^{they} were benefited by utilising the same. On the other hand, applicant was deprived of utilising the same for his benefits. ~~on~~

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this count also, it would be reasonable to award interest to the applicant in respect of the amount belatedly paid.

10. In view of the above discussion we hold that applicant is entitled to interest on the belated payment. The O.A. deserves to be accepted.

O R D E R

11. The O.A. is, therefore, accepted and the respondents are directed to make payment of interest @ Rs. 12% p.a. to the applicant on Rs. 20,430/- from the date the payment became due i.e. ^{one} ~~three~~ months ^{from} after the date of superannuation of the applicant till the payment was actually made, within a period of three months from the date of this order.

The parties are left to bear their own costs.

Gopal Singh
(GOPAL SINGH)
Administrative Member

A.K.MISRA
(A.K.MISRA)
Judicial Member

Mehta,

SC
V. D. B.
22/1/98

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(3 vb)

Recd
of
22/1/98

Part II and III destroyed
in my presence on 23-3-2004
under the supervision of
Section Officer () as per
order dated 22/12/2003

23-3-04
Section Officer (Record)