

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

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Date of Order : 14.09.2001

O.A.NO. 13/2001 With M.A.No. 8/2001

(In O.A.No.13/2001)

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Om Prakash Duggal S/o Shri Anant Ramji Duggal, retired Assistant Operating Superintendent, Northern Railway, Bikaner, Resident of II-D-24 Jai Narain Vyas Colony, Bikaner (Rajasthan).

.....Applicant.

VERSUS

1. Union of India through General Manager, Northern Railway Headquarters Baroda House, New Delh.
2. General Manager (Personnel), Northern Railway, Headquarters Baroda House, New Delhi.
3. Divisional Railway Manager, Northern Railway, Divisional Office, Bikaner (Rajasthan) 334 001.
4. Senior Divisional Personnel Officer, Northern Railway, Divisional Office, Bikaner (Rajasthan) 334001.
5. Divisional Accounts Officer, Northern Railway Divisional Office, Bikaner (Rajasthan) 334 001.

.....Respondents.

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CORAM :

Hon'ble Mr.A.K.Misra, Judicial Member

Hon'ble Mr.A.P.Nagrath, Administrative Member

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Mr. Bharat Singh, Counsel for the applicant.

Mr. Salil Trivedi, Counsel for the respondents.

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ORDER

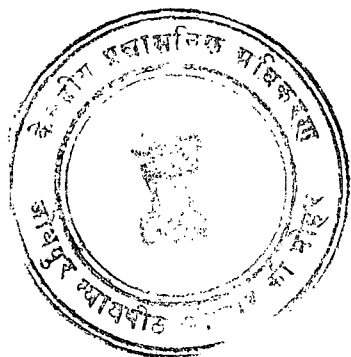
PER HON'BLE MR.A.P.NAGRATH :

The applicant, while working as Assistant Operating Superintendent, was issued with a Chargesheet dated 24.12.1991. He retired on superannuation on 31.3.1992. Because of the pending departmental proceedings, his Death-cum-Retirement-Gratuity (D.C.R.G.), was not paid to him. On conclusion of the departmental proceedings, an amount of Rs. 50,256/- was paid to the applicant as Gratuity on 10.10.2000. The applicant has filed this O.A. claiming Interest on this amount of gratuity at the rate of 18% p.a. w.e.f. 1.4.1992 till the date of payment.

2. The respondents have denied the claim of the applicant on the plea that Para 316 (1) of Manual of Railway Pension Rules, 1950 (for short "the M.O.P.R.) provides for with-holding of pension including gratuity if, on the date of retirement, departmental proceedings are pending against the employee. It has been stated in the written reply that these departmental proceedings against the applicant were dropped vide letter dated 9.11.1999 (Annex.A/1), after communicating the Government's dis-pleasure. Soon after the proceedings were dropped, ~~and~~ the gratuity has been paid to the applicant on 10.10.2000. In this view, the respondents contend that there has been no delay in releasing the amount of gratuity with-held and thus, the applicant is not entitled to payment of any interest.

3. A Misc.Application has also been filed by the applicant for condonation of delay. The O.A. was filed on 5.1.2001 and the cause of action arose only on 10.10.2000 when the amount of gratuity with-held,





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was actually paid to the applicant. With reference to this date of 10.10.2000, we do not find any delay in filing this application. In our view, this M.A. praying for condonation of delay is, unnecessary and does not call for any orders from us. The M.A. is disposed of accordingly.

4. The learned counsel for the applicant questioned the action of the respondents for with-holding the gratuity on the plea that the charge against the applicant was not very grave. For this purpose, he placed reliance on Rule 315 of the M.O.P.R., the judgement of the Principal Bench in O.A.No. 61/1967 - Amrit Singh Vs. UOI & Ors. decided on 6.9.1988, the judgement of Full Bench of the Central Administrative Tribunal passed in O.A.No. 2573/1989 - Wazir Chand Vs. UOI & Others decided on 25.10.1990 and a judgement of Hon'ble the Supreme Court reported in 1999 SCC (L&S) 804 - Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Others. The judgement of Full Bench in O.A. No. 2573/1989, Wazir Chand's case, is not relevant to the issue before us as in that case the gratuity has been with-held for non vacation of the Railway quarter. The decision of the Principal Bench in O.A. No. 61/67 Amrit Singh Vs. UOI & Ors, in fact lent support to the action of the respondents in with-holding the gratuity. We have not been able to appreciate as to what support, the learned counsel for the applicant wanted to draw from this decision. In the case of 1999 SCC (L&S) 804 - Bhagirathi Jena, Hon'ble the Supreme Court had the occasion to deliberate on the Orissa Financial State Corporation Staff Regulations, 1975 and the effect of the rules on retiral benefits in a case where departmental inquiry is pending before retirement. Since this case is in reference to the Orissa Financial State Corporation Staff Regulations, 1975, can have no relevance to the matter before us

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which relates to payment of gratuity to a Railway servant. The contention of the learned counsel was that the very act of with-holding the gratuity was illegal and thus the applicant is entitled to receive interest on the amount of gratuity with-held right from 1.4.1992.

5. On the other hand, the learned counsel for the respondents Shri Salil Trivedi very vehemently opposed the claim of the applicant mainly on the ground that the respondents had a legal right to with-hold the gratuity because of pending departmental proceedings and since the action was within legal provisions, the question of payment of interest would not arise when the payment has been made on conclusion of such proceedings. For this, the learned counsel referred to the judgement of this Tribunal passed in O.A. No. 176 of 1998 decided on 11.7.2001 - Smt. Laxmi Devi Vs. UOI & Others and the judgement delivered by Hon'ble the Supreme Court reported in (1999)_ 9 SCC 43 - R.Veerabhadram Vs. Government of Andhra Pradesh. The learned counsel very forcefully argued that in the case of R.Veerabhadram, the Apex Court had held that in view of Rule 52 of Andhra Pradesh Revised Pension Rules, 1980, the respondents in that case could legally with-hold the gratuity during the pendency of the judicial proceedings and hence, did not warrant payment of interest. The learned counsel further stated that it was also observed in this case that ^{since} ^{was} the gratuity ^{was} with-hold in accordance with the rules and subsequently released, interest is not payable on the amount so with-held.

6. We have perused the order of Hon'ble the Supreme Court in R. Veerabhadram's case. In that case, the A.P. Revised Pension Rules, 1980, have been discussed and Hon'ble the Supreme Court held that because of provisions of Rule 52 (1) (c) and an express order of the




Tribunal which was binding on the appellant and the respondent under which the Tribunal had directed that the D.C.R.G. was not to be paid to the appellant till the judicial proceedings were concluded and final orders passed thereon, it cannot be said that there was any illegality in with-holding of gratuity by the respondents in the case of the appellant and that there is no reason to order payment of any interest on the amount of gratuity so with-held. We have given very anxious consideration to the contention of the learned counsel for the respondents that in view of this legal proposition, as propounded in this judgement of the Apex Court, the applicant before us, is also not entitled to the payment of interest. We do not find ourselves agreeing with this interpretation of the learned counsel. The applicant is governed by the pension rules as applicable to the Central Government employees and these rules did not come up for consideration before the Hon'ble Supreme Court. Central Civil Services (Pension) Rules, on which the Railway Pension Rules are also based, provide for regulating the interest on delayed payment of gratuity under Rule 68. There is a specific Government of India's Decision dated 11.7.1979 on the subject of Admissibility of interest on gratuity allowed after conclusion of judicial/departmental proceedings. Para 3 of the letter dated 11.7.1979 reads as follows :-



" 3. In order to mitigate the hardship to the Government servants who, on the conclusion of the proceedings are fully exonerated, it has been decided that the interest on delayed payment of retirement gratuity may also be allowed in their cases, in accordance with the aforesaid instructions. In other words, in such cases, the gratuity will be deemed to have fallen due on the date following the date of retirement for the purpose of payment of interest on delayed payment of gratuity. The benefit of these instructions will, however, not be available to such of the Government servants who die during the pendency of judicial/

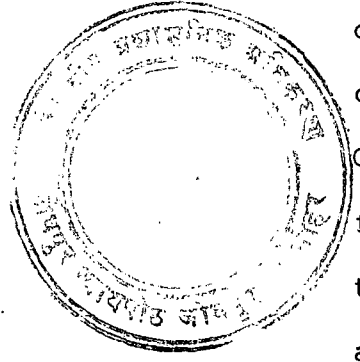
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disciplinary proceedings against him and against whom proceedings are consequently dropped."

In view of this clear decision of the Government, we do not find any reason or justification for the respondents to have not paid interest to the applicant. The interest is to be paid considering, as if, the gratuity had fallen due on the date following the date of retirement under the rules. In such an event if the gratuity is not paid within a period of three months from the date of retirement, interest becomes payable after this period of three months. In the instant case, the applicant retired on 31.3.1992 so he is entitled to payment of interest w.e.f. 1.7.1992 upto the date of payment. We are not impressed by the argument of the learned counsel for the respondents that this was not a case of full exoneration as Government's displeasure had been communicated to the applicant even though the proceedings were dropped. Once the proceedings are dropped, it automatically becomes a case of full exoneration. Government's displeasure does not fall under any of the prescribed penalties. If no penalty is imposed and the proceedings are dropped, thus, it becomes a case of full exoneration. We also find that in this case, advice of U.P.S.C. had been sought and the Commission after going through the case and discussing the findings of the departmental proceedings, advised the respondent-department that the ends of justice would be met in this case if the proceedings against the charged official, are dropped and he be exonerated of the charges. Having been fully exonerated, he is entitled to receive interest on the amount of gratuity which was with-held.

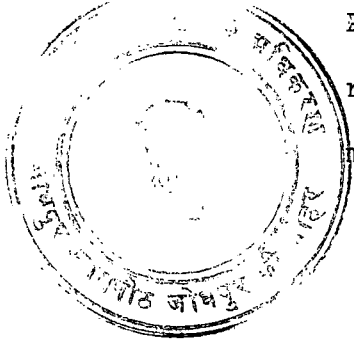
7. In the light of the foregoing discussions, we allow this O.A. and direct the respondents to pay to the applicant, Interest on the amount of Death-cum-Retirement-Gratuity which was with-held on the date of his

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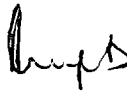
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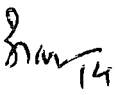
retirement which is to be paid w.e.f. 1.7.1992 to 10.10.2000 . The rate of interest applicable shall be the same as applied to General Provident Fund deposits from time to time during this period. The respondents shall comply with this order within a period of three months from the date of receipt of a copy of this order.



If the payment of the amount which becomes due as a result of this order, is not made to the applicant within a period of three months, as specified by us, he shall be entitled to receive interest on this amount at the rate of 9½ percent beyond this period of three months up to the date of payment. This Interest, if becomes payable, shall be recovered from the official found responsible for causing delay in implementation of our orders.

8. The parties are, however, left to bear their own cost.


(A.P.Nagrath)
Adm.Member


(A.K.Misra)
Judl.Member

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