

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 438 of 1991
T. A. No.

DATE OF DECISION 10-2-1992

Divisional Personnel Officer, Applicant (s)
S.Rly, Trivandrum

Smt Sumathi Dandapani Advocate for the Applicant (s)

Versus

MG Idichandy & another Respondent (s)

Mr HB Shenoy Advocate for the Respondent (s) No. 1

CORAM :

The Hon'ble Mr. SP MUKERJI, VICE CHAIRMAN

&

The Hon'ble Mr. AV HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

The applicant, the Divisional Personnel Officer, Southern Railway, Trivandrum has filed this application under Section 19 of the Administrative Tribunals Act challenging the legality, propriety and correctness of the order dated 31.10.1990 and Assistant Labour Commissioner(C), Thiruvananthapuram of the second respondent, the Controlling Authority/under Payment of Gratuity Act in an application filed before it by the first respondent directing the applicant to pay to the first respondent an amount of Rs.25,442/- after adjusting the amount, if any, paid as gratuity to him within one month from the date of the order.

2. The facts are as follows. The first respondent who joined the services of the Railway Administration as a Casual

Mazdoor on 27.1.1955 was eventually absorbed in the regular service of the Railways and retired on superannuation as a Senior Clerk on 30.6.1990 while he was drawing a monthly pay of Rs.1260/-. As the Railway Administration had offered to him only Rs.11,025/- as gratuity for the period of his service from 1.4.1973 to 30.6.1990, the ^{1st} respondent filed an application under Form 'N' before the second respondent claiming that he was entitled to a sum of Rs.25,442/- as gratuity and praying for a direction to the applicant to pay the amount. The applicant contended that the first respondent was entitled only to a sum of Rs.11,025/- as gratuity for the service from 1.4.1973 to 30.6.1990. Finding that a period 18 years from 31.1.1955 to 1.4.1973 which was rendered by the first respondent as a Casual Labourer was not taken into account by the Railway Administration for fixing the gratuity payable to him and taking note of the fact that the Railway Administration had issued certain instructions extending the provisions of Payment of Gratuity Act to the Casual Labourers, the second respondent allowed the application and passed the impugned order. It appears that the case of the applicant that in the Railway Board's circular wherein the provisions of Payment of Gratuity Act were made applicable to the Casual Mazdoors, it was stipulated that separate orders would be issued in cases of Casual Mazdoors who continued in service after attainment of temporary status and had regularly absorbed in service and that as no further instruction had been issued by the Railway Board, the provisions of the Payment of Gratuity Act cannot be applied to persons of that category was not accepted by the second

respondent. Aggrieved by the decision of the second respondent, the applicant has filed this application. It has been averred in the application that the regular Railway employees are governed by ^{the} Manual of Pension Rules which provides for ~~the~~ Payment of Gratuity to them and that therefore the Payment of Gratuity Act is not applicable in their case. Reliance has been placed on the decision of the Principal Bench of the Central Administrative Tribunal in Subhash Chander Gupta V. Union of India and others, 1986 ATC, 425.

3. We have heard the learned counsel on either side and have also perused the documents produced. The learned counsel for the applicant argued that as the regular Railway employees are governed by the Manual of Pension Rules in regard to the terminal benefits, payable to them including gratuity, the provisions of Payment of Gratuity Act is not applicable to them and that the second respondent has committed a grave error of law and has passed the impugned order without jurisdiction. In Subhash Chander's ^{case} ~~the~~ Principal Bench of the CAT has held that a Railway servant who resigned from service is not entitled to any gratuity on the basis of paragraph 311 and 623 of the ^{Manual of} Railway Pension Rules. The learned counsel submitted that the case of ^{1st} ~~the respondent~~ is similar to the case under citation and that therefore it may be held that the decision of the second respondent directing the applicant to pay the second respondent gratuity, ~~xxxxxxxxxxxxxxxx~~ was one passed without jurisdiction. The facts in Subhash Chander Gupta's case and the facts of this case are totally different. In the case of Subhash Chander Gupta, he

joined service as a regular employee under the Railways and resigned before the completion of a period of 7 years. He was governed by the Manual of Railway Servants Pension Rules. But in this case the applicant started his career as a Casual Mazdoor and remained as such for more than 18 years. He got absorbed in the Railway Service only thereafter. ~~xxxxxxxx~~ For his service as Casual Mazdoor in the Railways he would be eligible to get gratuity. This has not been calculated and paid to him as admitted in the pleadings. The Railway Board had issued a letter No.E(II)85 AT/GR.I dated 26.2.1986 in regard to the application of Payment of Gratuity Act and the rules framed thereunder to the Casual Labourer on Railways. It was made it clear in this letter that the provisions of the Payment of Gratuity Act, 1972 would be applicable to Casual Mazdoors. Though it was also stated in the letter that further order would ^{be} issued by the Railway Board in respect of Casual Labour who continued to be in employment and who are appointed to regular service in a Railway post, it appears that no such further order was issued. Taking note of the Railway Board's letter extending the provisions of the Payment of Gratuity Act to the Casual Labour, the second respondent held that the applicant before it, namely, the first respondent who had rendered 18 years of Casual employment which service was not reckoned by the Railway Administration for the purpose of granting terminal benefits should not be made to suffer on account of ~~the~~ ^{an} inaction on the part of the Railway Administration to issue a further instruction covering cases of Casual Labour eventually absorbed in regular service and allowed the claim

directing the applicant herein to pay the gratuity as adjudged by it. We find that this decision of the second respondent is fully justified and that it was made legally^c and with jurisdiction. If the applicant was aggrieved by the above decision, the remedy for the applicant was to file an appeal as provided for under Section 7 of the Payment of Gratuity Act.

4. In the conspectus of facts and circumstances, finding no merit in the application, we dismiss the same without any order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


(SP MUKERJI)
VICE CHAIRMAN

10-2-1992

trs