

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.466/11

Friday this the 26th day of August 2011

C O R A M :

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

K.N.Rajappan,
S/o.K.Nanu,
Retd. Mechanical Fitter,
Office of the Deputy Chief Engineer (Construction),
Southern Railway, Chennai Division.
Residing at Alum Moottil Padinjattethil,
Thekkumkara, Pullichira P.O., Quilon District.

....Applicant

(By Advocate Mr.T.C.Govindaswamy)

V e r s u s

1. Union of India represented by the General Manager,
Southern Railway, Park Town P.O.,
Chennai – 600 003.
2. The Divisional Personnel Officer,
Southern Railway, Park Town P.O.,
Chennai – 600 003.
3. The Divisional Finance Manager,
Southern Railway, Park Town P.O.,
Chennai – 600 003.
4. The Financial Adviser & Chief Accounts Officer,
Southern Railway, Park Town P.O.,
Chennai – 600 003.Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

This application having been heard on 26th August 2011 this Tribunal
on the same day delivered the following :-

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ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The claim of the applicant in this OA is payment of pension and interest on delayed payment of pension. The respondents fairly concede the former claim, but are reluctant in respect of the latter. The question is whether the applicant is due for interest as claimed.

2. The facts capsule : The applicant superannuated from the Services of the Railways on 31-02-2007. Initially he was not paid any pension and he had to approach the Tribunal through OA.284 of 2008 and based on the direction given therein, he was considered for payment of pension. At the time of superannuation, he did not have the full extent of qualifying service of 33 years. The Revised Pension Rules in pursuance of the acceptance of the recommendations of the VI Pay Commission came into force effective from 02-09-1998. As such the applicant was granted pension as per the rules applicable as on the date of his superannuation. Annexure A-1 Pension Payment Order refers. The applicant had also availed of commutation facility.

3. The Revised pension rules were made effective from 01-01-2006 onwards vide Annexure A-3 R.B.E. No. 222/2009 which adopted the provisions of Office Memorandum dated 10-12-2009 of the Department of Pension & Pensioners' Welfare O.M. No. 38/37/08-P&PW(A) dated 10-12-

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2009, which *inter alia* provides that linking of full pension with 33 years of qualifying service shall be dispensed with, with effect from 01-01-2006 instead of 02-09-2008. Thus, it was expected of the respondents to revise the pension of the applicant also as his date of retirement is posterior to 01-01-2006. As the same was not done, he gave a representation vide Annexure A-4 letter dated 07-06-2010 and since there was no response, he has filed this OA claiming *inter alia* the following :-

- (a) *Revision of monthly pension and other terminal benefits in the light of A3 order read with RBE No. 112/08 (Annexure A-2);*
- (b) *Payment of interest "12% per annum on the arrears of pension from 01-07-2010 and on arrears of pension upto 01-07-2010 as also on the commuted value of pension.*

4. Respondents have conceded the claim of the applicant as to revision of pension on the basis of Annexure A-3 order read with A-2 order. However, as regards interest, their contention is as under :-

- (a) *The applicant has never made any representation so far. In many such cases where the representation has been made, the cases have been reviewed and payment has been made. However, in this case, though the applicant is very well aware of the revised regulations, he has not made any representation so far.*
- (b) *There are various clarifications/orders in this issue. The applicant's case has been dealt with by more than three departments namely, Construction, Finance wing of the Construction and third, the Divisional Personnel Officer and Finance Department of the Chennai Division. Therefore, delay is inevitable.*

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5. A feeble attempt had also been made by way of stating that the applicant all along had been furnishing his Chennai Address, while in so far as his representation is concerned, with a view to having the jurisdiction of this Bench, he had given an another address.

6. Counsel for the applicant submitted that when the respondents have agreed as to the entitlement of the applicant to the grant of revised pension, they were expected to revise the pension within a reasonable time. A period of six months is considered as reasonable. This having not been done, the applicant had moved the representation. As regards the alleged non receipt of the representation, the counsel submitted that the applicant did submit the representation.

7. Counsel for the respondents submitted that the time consumed in revising the pension was inevitable.

8. Arguments were heard and documents perused. On the question of entitlement to interest, the Apex Court has in the case of ***Union of India v. Justice S.S. Sandhawalia, (1994) 2 SCC 240*** has stated as under :-

Once it is established that an amount legally due to a party was not paid to it, the party responsible for withholding the same must pay interest at a rate considered reasonable by the Court. Therefore, we do not see any reason to interfere with the High Court's order directing payment of interest at 12% per annum on the balance of the death-cum-retirement gratuity which was delayed by almost a year.



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9. Thus, that an amount legally due to the applicant has not been paid on time, the party responsible for withholding the same must pay the interest at a rate considered reasonable by the Court. As regards the controversy relating to submission of representation, it is not that the applicant has to prefer a representation, which alone gives him the right to claim. It is for the respondents to revise of their own. No representation is sought at the time whenever the pension gets revised in the wake of pay commission recommendations. Further, the case of the applicant is not that old to justify that unless representation is made respondents would not be in a position to revise the pension. The first PPO itself was issued only on 16 September, 2009 and the issue of the Railway Board was in December. In February 2010, the applicant did prefer a representation, though in certain other context. His is a case where the very pension itself had been granted only after the applicant approached the Court. Thus, the respondents could have easily considered the case of the applicant of their own for revision of pension. Thus, the amount due to the applicant has been withheld by the respondents. This makes the applicant entitled for claiming interest on the basis of the above decision of the Apex Court.

10. Next is the question of rate of interest payable. The applicant has claimed interest at 12% per annum. The Apex Court has in the case of *Clariant International Ltd. v. Securities & Exchange Board of India*, (2004) 8 SCC 524 has held as under :-

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The courts of law can take judicial notice of both inflation as also fall in bank rate of interest. The bank rate of interest both for commercial purposes and other purposes has been the subject-matter of statutory provisions as also the judge-made laws. Even in cases of victims of motor vehicle accidents, the courts have upon taking note of the fall in the rate of interest held 9% interest to be reasonable.

11. The applicant is a senior citizen and is entitled to higher bank rate of interest. The same is around 9% per annum. The interest shall be held to be due, though not from the beginning of 2010, at least from 01-07-2010 as rightly claimed by the applicant. However, there is no question of interest on the quantum of difference in commutation as the benefit of commutation is not automatic and the same has to be applied for by the applicant. Hence, it is declared that the applicant is entitled to interest @ 9% per annum for the period from 01-07-2010 till the date of payment of the arrears of pension due to the applicant. This amount shall be paid within a period of two months from the date of communication of this order.

12. Under the circumstances, there shall be no orders as to costs.

(Dated this the 26th day of August 2011)



Dr.K.B.S.RAJAN
JUDICIAL MEMBER

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