

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE: 17.8.93

O.A. 520/92

A. V. Narayanan
Thekke Mazheekkattil
P.O. Iringal
Kozhikode District

Applicant

Vs.

1. Union of India represented by
the General Manager,
Southern Railway, Madras
2. The Divisional Railway Manager,
Palghat Division of Southern
Railway, Palghat
3. The Divisional Accounts Officer,
Palghat Division of Southern
Railway, Palghat
4. The Sr. Divisional Personnel
Officer, Palghat Division,
Southern Railway, Palghat

Respondents

Mr. V.K. Raveendran

Counsel for the
applicant

Mr. M. C. Cherian

Counsel for the
respondents.

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THE HON'BLE MR. N. DHARMADAN JUDICIAL MEMBER

JUDGMENT

MR. N. DHARMADAN JUDICIAL MEMBER

The short question arising in this case is the liability of a retired Railway employee for payment of interest at the rate of 10% for an amount legally due to the Railways from the employee after his retirement on superannuation.

2. The applicant was retired from service on 30.6.88 without correcting his date of birth in the Service Book on the basis of the request made by the applicant. He filed O.A.K. 302/88 for correction of the date of birth and reinstatement in service. That original application was allowed and the applicant was reinstated in service on 23.5.89. ~~On his earlier~~ retirement on 30.6.88, a sum of

Rs. 44681/- was paid to the applicant towards retirement benefits. When the applicant was reinstated on 23.5.89, he was asked to refund the retirement benefits already paid to him in 1988. The applicant did not remit the amount but requested to recover the same from his salary on easy monthly instalments. The Railways made periodical recoveries from his salary from 23.5.89 till his retirement on superannuation on 28.2.91. In the meantime, the applicant also claimed 12% interest for the arrears of salary due to him from 1.7.88 to 22.5.89, the period during which he was out of service on account of the wrong ⁴ ~~entry~~ of the Railways in regard to the age of the applicant. Ultimately, after his retirement on 28.2.91, while ~~making~~ adjustments with the pensionary benefits, an amount of Rs. 5390/- was deducted from his commuted pension as interest at the rate of 10% for the delayed ⁵ ~~payment~~ of pensionary benefits already received by him in the year 1988 ~~after~~ his earlier retirement.

3. The dispute in this case boils down to the liability of the applicant towards payment of interest amounting to Rs. 5390/-. The learned counsel for the applicant submitted that no interest can be charged on the applicant for the delayed remittance of the pensionary benefits already received by him in 1988 because his request for recovery of the amount by making deduction from his monthly salary after reinstatement on 23.5.89 was acted upon and the amounts were deducted by the respondents on that basis. Hence, the Railways are estopped from charging interest on the amount. He has also relied on the decision of the Delhi High Court in V. S. Challappa V. Comptroller Auditor General of India, New Delhi and another, 1983 LAB I.C. 1837. Para 7 of the judgment is extracted below:-

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"Interest can be charged under law only in three cases where (1) there is an agreement, express or implied, between the parties to pay interest (2) when there is a statutory provision

regarding payment of interest and (3) when a notice is given by one party to another under the interest Act that if he fails to pay the amount due interest will be charged from him. (See Bengal Nagpur Ry Co. v. Ruttanji Ramji, AIR 1938 PC 67(70)). The present case does not fall within any one of these three categories. The Government cannot claim to deduct interest from gratuity. The deduction of Rs. 1963.20 I hold to be illegal."

4. According to ^{the} applicant, no notice was issued calling upon him to pay interest @ 10%. Applicant also claims that he is legally entitled to get interest @ 12% for the delayed payment of salary during the period ~~1.7.88~~⁴ to 24.5.89. The said amount of interest ought to have been adjusted towards the amount due to the Railways from the applicant.

5. The respondents on the other hand contended that immediately after his earlier retirement on 30.6.88 after proper calculation a sum of Rs. 44681 was paid to the applicant. On the basis of the decision in WAK 302/88 the applicant was reinstated on 23.5.89. At that time a sum of Rs. 49301/- was due to the Railways from the applicant. The Railway is also entitled to interest ~~at~~⁴ the normal rate of 10%. However, when the applicant made a request for deduction of the amount from his salary it was accepted and deductions were made. Even then, the applicant's liability for payment of interest remains on account of the fact that the applicant failed to refund the amount in lump sum.

6. Having regard to the facts and circumstances of the case, I am of the view that the applicant ~~was~~⁴ liable to refund the sum of Rs. 49301/- on his reinstatement. This legal liability ought to have been discharged by the applicant without any notice for he has been reinstated by the Railways on 23.5.89. ~~But he has~~⁴ expressed his willingness to make the payment by adjusting the same with his monthly salary so as to enable him to discharge the liability in instalments. The offer made by the applicant to make payment ^{is deemed to} ~~included~~⁴ an offer to payment of interest ^{also}⁴. Hence, I am of the view that the

decision relied on by the applicant has no application on the facts of this case. Any person who admits the liability is bound to make the payment in accordance with law which may include interest as well. It is an admitted fact that the applicant has received an amount of Rs. 49301/- as on 22.5.89 from the Railway at the time when he was reinstated in service. Since he has been reinstated pursuant to the directions of this Tribunal, the respondents have fulfilled their part of the obligation but the applicant did not discharge his obligation of remitting back the pensionary benefits already received after his retirement in 1988 in lump sum. Since he did not remit the amount in lump sum there is nothing wrong in charging interest at the normal rate on the amount due to the Railway. In this view of the matter, the applicant is liable to make payment due to the Railway with normal interest at the rate of 6%.


7. In this connection while holding that the applicant is liable to pay interest, the case of the applicant to get interest from the Railways for the amount of salary for the period from 1.7.88 till 23.5.89 also deserves consideration. Applicant's contention is that he was forced to retire from service on 1.7.88 for no fault of him. He was reinstated pursuant to the judgment only on 23.5.89. For the total amount of arrears of salary, the Railway is bound to pay 12% interest which was not paid to him. This is also a reasonable claim and on the basis of the principle stated above, it goes without saying that the Railway is bound to pay interest on the amount due to the applicant, as salary during the period 1.7.88 to 22.5.89, at the rate of 6%.

8. Under these circumstances, having regard to the above facts and findings, I am satisfied that this application can be disposed of with appropriate directions after setting aside Annexure A-IV.

9. Accordingly, I quash Annexure A-IV and direct the third respondent to calculate the interest at the rate of 6% on the total amount due to the applicant towards the salary, which has already been paid to the applicant from 1.7.88 to 22.5.89, and deduct that amount from the interest payable by the applicant to the Railway, which also should be calculated on the balance amount of Rs. 22108/- at the rate of 6%. The third respondent shall comply with the above direction and fix the liability of the applicant after making proper adjustments and issue notice to him before making any recovery in this behalf from the applicants in the manner indicated above.

10. The application is allowed to the extent indicated above.

11. There shall be no order as to costs.


17.8.93.

(N. DHARMADAN)
JUDICIAL MEMBER
17.8.93

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List of Annexures

1. Annexure A-IV : letter dated 3.10.91