

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.587/2002

Monday this the 19th day of May, 2003.

C O R A M

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

K.Rajgopal
S/o Late C.Damodharan
Assistant Executive Engineer
RE/TCR (Retired)
Southern Railway, Trichur.
Residing at 'Amritha'
23, Girinagar, Engineering College P.O.
Palakkad.

Applicant

(By advocate Mr.T.N.Sukumaran)

Versus

1. Union of India represented by
The General Manager
Southern Railway
Chennai.
2. Chief Personnel Officer
Southern Railway
Headquarters Office
Chennai.
3. Chief Project Manager
Railway Electrification
Southern Railway
Madras.

Respondents

(By advocate Mrs.Sumathi Dandapani)

The application having been heard on 19th May, 2003, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

Applicant, a retired Assistant Executive Engineer, Railway Electrification, Madras Egmore, voluntarily retired with effect from 4.9.2000. His basic salary was Rs.12,000/- from 1.6.2000. He completed over 36 years of service in the Indian Railways with effect from 23.12.1963. Immediately after retirement he received the payment of encashment of his leave at his credit at the rate of his last pay drawn Rs.12000 and payment of provident fund during the months of October and November 2000 respectively. He was entitled to get pension, DCRG and pension commutation which

was not received on the due date. He made several representations to the respondents but of no avail. He submitted Annexure A-1 application dated 18.9.2001 to Pension Adalat as he was in great financial difficulty. According to the applicant, no disciplinary proceeding was pending against him and no amount was due from him to the department and there was no impediment or legal obstruction in granting pensionary benefits to him. At last the pensionary benefits were granted on 4.1.2002 i.e. 16 months after the retirement. No provisional pension was granted during this period. According to the applicant, there was no break in service or reversion at any point of time. For no fault of his, his pensionary benefits were delayed. As there was delay of 16 months in granting pensionary benefits, he was entitled to get penal interest at the rate of 18% for the delayed period in disbursement of pensionary benefits and compensation thereof. Aggrieved by the inaction of the respondents, he has filed this application for the following reliefs:

- i) To call for the records leading to the issuance of pensionary benefits of applicant and all files relating to action taken on A-1 & A-2.
- ii) To grant 18 per cent interest on the 16 months delayed payment of pensionary benefits viz. pension, DCRG, Commutation of pension etc. with effect from 4.9.2000 till 4.1.2002.
- iii) To issue direction to the respondents to recover all amounts to be granted under relief No.(ii) from the officer/others who are responsible for the inordinate delay.
- iv) To grant compensation of Rs.50,000 to the applicant for the wilful negligence and purposeful inaction by delaying the payment of pensionary benefits to the applicant.

2. Respondents have filed a detailed reply statement denying the claim of the applicant. It is also submitted that there has not been any culpable delay on the part of the respondents in

disbursing the pensionary benefits to the applicant. Further it is submitted that while working as Senior Section Engineer/Permanent Way/Palakkad the applicant was promoted to Group B service on adhoc basis during various spells. He was promoted on adhoc basis from 14.6.96 to 27.8.97 whereas he was reverted on 28.8.97. Again he was promoted as Assistant Executive Engineer (Adhoc) on 15.10.97 and was reverted on 27.9.99. He was again promoted on 17.11.99 as Assistant Executive Engineer (Adhoc). Even though the applicant was reverted on 27.9.99, the reversion was not given effect to by the Railway Electrification Organization and the applicant continued in the same post from 27.9.99 to 16.11.99 i.e. till the next date of adhoc promotion. The applicant voluntarily retired from service on 4.9.2000, holding the post of Assistant Executive Engineer (Adhoc) in the scale of Rs.7500-12000. His leave salary was settled by the RE/MS taking his basic pay as Rs.12000 and he was paid all dues except pensionary benefit, Death-cum-Retirement Gratuity and Commutation. It is further averred that the Railway Electrification Project/Chennai is a temporary organization and sine the applicant holds lien in Southern Railway, his pension papers were forwarded to the Southern Railway for arranging DCRG and pension. Consequently by R-1(a) office order dated 19.10.2000 his pay was fixed due to his adhoc promotion to Group-B service and subsequent reversion and repromotion as Assistant Executive Engineer. The Chief Personnel Officer, Southern Railway was addressed for modification of the order as the applicant had continued to work as Assistant Executive Engineer without reversion in the project. However the General Manager (P), Madras by R-1(b) order dated 14.12.2000 turned down the above request. The General Manager/Central Organization for

Railway Electrification, Allahabad under whom the applicant was working had requested the General Manager, Madras to reconsider R-1(b) decision. Accordingly the General Manager, Southern Railway reconsidered the issue and allowed his adhoc promotion without reversion for pensionary benefits and settlement was finally arranged without any reversion. It is averred that the delay in disbursement of pensionary benefits occurred due to the discrepancy in regard to his last pay and there was no negligence or inaction on the part of the respondents and submitted that OA may be dismissed.

3. I have heard Sh.T.N.Sukumaran, the learned counsel of the applicant and Mrs.Sumathi Dandapani, the counsel appearing for the respondents. The learned counsel of the applicant took me through various pleadings in the OA. The applicant filed a rejoinder contending that the reversion orders as referred in the reply statement were not communicated to the applicant at any point of time and no reversion was taken effect at any point of time during the tenure of the applicant.

4. Respondents filed an additional reply statement to the rejoinder contending that the applicant's leave salary, group insurance and provident fund had been arranged in time and conceded that there was some administrative delay in forwarding the pension papers to the General Manager and it took some time to reconsider the issue and allowed the applicant's adhoc promotion without reversion for pensionary benefits and his settlement was finally arranged without reversion. There was no wilful inaction or culpable delay on the part of the respondents. The discrepancy had occurred^o due to fixation of applicant's last pay.



5. Applicant also filed an additional rejoinder reiterating the pleadings already taken.

6. The learned counsel of the applicant submitted that as per Rule 78 of Railway Services (Pension) Rules 1993, it should have been the duty of the respondents to have proper arrangements made before the employee retired for all his pensionary benefits and DCRG and any dereliction amounts to be culpable and wilful negligence and, therefore, he is entitled to get interest. Learned counsel for the respondents on the other hand submitted that it was due to processing/finalising of the applicant's last pay to be fixed that necessitated this delay and, therefore, the respondents could not be held responsible for such lapse or delay.

7. I have heard the learned counsel for the parties and have given due consideration to the submissions made by them. The short question for consideration is whether there was any delay caused in disbursing the pensionary benefits and DCRG of the applicant. The Hon'ble Supreme Court in many cases had made it clear that pensionary benefits of an employee is not a bounty or a concession to be granted by the employer. The learned counsel of the applicant brought to my notice Rule 87 (1 to 3) wherein it has been stipulated that interest has to be paid if the delay was on account of administrative lapse. The relevant portion of Rule 87 of Railway Services (Pension) Rules reads as under:

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- (1) If the payment of gratuity has been authorized after three months from the date when its payment became due on superannuation and it is clearly established that the delay in payment was attributable to administrative lapse, interest at such rate as may be specified from time to time by the Central Government in his behalf on the amount of Gratuity in respect of the period beyond three months shall be paid.

Provided that the delay in the payment was not caused on account of failure on the part of the railway servant to comply with the procedure laid down in this chapter.

- (2) Every case of delayed payment of gratuity shall be considered by the General Manager or Administrative Head of Railway Unit, as the case may be, and where the said General Manager or Administrative Head is satisfied that the delay in the payment of gratuity was caused on account of administrative lapse, he shall order for arranging the payment of interest on delayed payment of Death-cum-Retirement gratuity shall rest with General Manager or Administrative Head of the Railway Unit and shall not be delegated to any lower authority.
- (3) In all cases where the payment of interest has been ordered, the Railway shall fix the responsibility and take disciplinary action against the railway servant or servants concerned who are found responsible for the delay in the payment of gratuity..

8. It is very clear that as per Rule 78, every Head of office shall undertake the work of preparation of pension papers in Form 7, two years before the date on which a railway servant is due to retire on superannuation, or on the date on which he proceeds on leave preparatory to retirement, whichever is earlier. Therefore, on going through the rule position, it is clear that the respondents should have taken appropriate steps in disbursement of the pensionary benefits and DCRG of the applicant and initiation of the process should have been made six months prior to the retirement of the applicant. In this case it is found that no such steps had been taken by the respondents in that regard. In a celebrated decision reported in AIR 1999 SC 1212 Dr. Uma Agarwal Vs. State of U.P. & another the Hon'ble Supreme Court had made it clear that Government Department should initiate various steps for compilation of all necessary data and preparation of necessary document at least two years in advance of the date of retirement of an employee and the delay caused in that case had been penalized by the Apex Court. Referring to FR 56 of the FRSR, the Hon'ble Supreme Court stated that in preparation of pension papers, every Head of Office shall

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undertake the work of preparation of pension papers in Form 7 two years before the date on which the Government servant is due to retire on superannuation or on the date on which he proceeds on leave preparatory to retirement whichever is earlier. Therefore, the contention of the respondents that there was no wilful delay on their part cannot be accepted. Nothing has been brought to my notice that they have initiated any steps to disburse the pensionary benefits at least 6 months prior to the retirement of the employee. Had they initiated the process of disbursement of the pensionary benefits 6 months prior to the retirement of the applicant, this would not have happened. Therefore, the contention that the delay was caused due to the fact that the last pay of the applicant had to be fixed would not stand good. Apart from that, even assuming that the last pay on the alleged revision was not known to them, they could have at least disbursed the eligible pension to him as per the last pay drawn according to their assessment or a provisional pension could have been arranged. For the above reason, I am of the view that there was delay on the part of the respondents in disbursing the pensionary benefits to the applicant and the respondents are liable to pay interest as per the rules quoted above. Then the question comes what is the percentage of interest and the period. The claim that has been put forth by the applicant is 18% interest from the date on which it was operative. In A-1 representation dated 18.9.2001 the applicant had claimed 12% interest and in the OA he has claimed 18%. But considering the present rate of interest of banking institutions/treasury rate, I find that awarding 9% interest would be justified in this case. The claim of the applicant for disbursement of the pension/DCRG etc. is not quantified in the OA. The applicant will be

entitled to interest only on the amount of delayed pension and DCRG (not on commuted amount), that too for a period from 4.11.2000 (4.9.2000 is his date of retirement and 2 months' further time granted for processing the same) till date of disbursal i.e.4.1.2002. I do not find any reason to grant compensation nor give any directions to fix the liability on any officer, as prayed in the OA.

9. In the conspectus of the facts and circumstances, I direct the respondents to calculate interest on the delayed pension and DCRG at 9% from 4.11.2000 to 4.1.2002 (not on commuted value). Respondents are directed to disburse this amount as expeditiously as possible in any case within three months from the date of receipt of a copy of this order. No order as to costs.

Dated 19th May, 2003.



K.V. SACHIDANANDAN
(JUDICIAL MEMBER)

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