

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.604/2000.

Tuesday, this the 10th day of October, 2000.

CORAM:

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

1. I.Ravindranathan,
Retired Mail Driver(Southern Railway),
No.VIII/289, Latha Nivas,
Shornur.
 2. K.P.Chandrasekharan,
Retired Mail Driver(Southern Railway,
"Shri Chandran",
Kunnathuthazhathu Veedu,
Nedungotoor,
Shornur.
 3. J.P.Cherian,
Retired Passenger Driver(Southern Railway)
"Cherian's Cottage",
Manjhakhad,
Shornur.
 4. K.Premakumaran,
Retired Mail Driver(Southern Railway),
"Alathur House",
Post Parode, "Kottayi",
via Palghat.
 5. K.Abraham,
Retired Mail Driver,
Nedumparambil House,
Kadungamangalam, Railway Gate,
Thiruvankulam,
Ernakulam District.
- Applicants

By Advocate Mr TC Govindaswamy

Vs

1. Union of India, represented by
the Secretary to Government of India,
Ministry of Railways,
Rail Bhavan, New Delhi.
 2. The Divisional Railway Manager
(Southern Railway),
Palghat Division, Palghat.
 3. The Divisional Accounts Officer
(Southern Railway),
Palghat Division,
Palghat.
- Respondents

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By Advocate Mr K Karthikeya Panicker

The application having been heard on 10.10.2000, the Tribunal on the same day delivered the following:


O R D E R

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

The applicants five in number who were pensioners under the respondents, have filed this application jointly for a declaration that the delay in payment of arrears of pension and other retiral benefits to them on implementation of the recommendation of the Vth Central Pay Commission is arbitrary, discriminatory, unreasonable and unconstitutional and for a direction to the respondents to pay interest at the rate of 18% per annum to the applicants on the delayed payment of commuted value of pension, retirement gratuity, leave salary and arrears of pay which became due on implementation of the recommendation of the Vth Central Pay Commission to be calculated and paid at least with effect from 1.1.98.

2. It is alleged in the application that despite representations made on 1.1.98 and 18.2.98(A-3 and A-4), the disbursement of the amounts due were delayed unreasonably and the payments were made on the respective dates as shown in page 5 of the application and that for this delayed payment which occurred on account of administrative lapse, the applicants are entitled to get interest at the rate of 18% per annum.

3. A reply statement has been filed on behalf of the respondents. It is admitted that the applicants 1 to 5



retired on 31.8.97, 31.7.97, 31.5.97, 31.6.97 and 28.2.97 respectively and that their option as required under the rules were received on 17.12.97, 5.12.97, 2.12.97, 30.12.97 and 17.12.97 respectively. However, the respondents contend that after receipt of the option, at least two months' time is required for finalisation of the amounts due and its disbursement in the case of serving employees and that in the case of retired employees the time taken would be more as once the payment is made, it cannot be recovered from them. It is further stated in the reply statement that on receipt of the option, the entitlement of the applicants were worked out in the month of March and April 1998 and on getting concurrence from the Divisional Accounts Officer, payments were made on the dates as stated by the applicants. According to the respondents, as there is no inordinate delay in disbursement of the amount and delay was caused only on account of the fact that the cases of numerous pensioners had to be looked into, the respondents have pleaded that the claim for interest may be rejected. It is also contended that in view of the provisions in Rule 87 of Railway Services (Pension) Rules, 1993(sub rule 4), no interest is payable on the delayed payment of gratuity if the same is paid consequent on the decision of the Government taken subsequent to the retirement of the Railway servant.

4. I have gone through the pleadings and other materials placed on record and have heard the learned counsel on either side. As is conceded in the reply statement, the option from

the applicants as required as per rules for refixation of their pay and pension were received on various dates in December, 1997. Even according to the respondents, two months' time alone is required for finalisation of the entitlement of the receipt of the options in the case of serving employees. I do not find any logic in stating that the verification and fixation of the entitlement of pensioners would consume more time than serving employees. Even if it is assumed that the process should take a little more time, three months' time at the most should be sufficient to finalise the entitlement of the pensioners from the dates of receipt of their options. As the options from the applicants have been received admittedly in December, 1997 the respondents should have made payment the enhanced gratuity, enhanced commuted value of pension, enhanced leave salary and the arrears of salary to the applicants at least by the end of March, 1998. Despite the fact that the applicants had made representations in January and February, 1998, the respondents delayed the payment. I am of the considered view that the delay beyond 31st March, 1998 to make the payments to the applicants of the respective entitlement was on account of the lapse on the part of administration for which the applicants should not be made to suffer any loss. Had the amounts been received by the applicants at the appropriate time, they would have earned interest on the amounts. The argument of the respondents that in accordance with the provisions of sub rule 4 of Rule 87 of the Railway Services (Pension) Rules, 1993, there is no liability to pay interest on arrears of gratuity does not

stand on a close scrutiny of the rules and the facts situation. Sub rule 4 of Rule 87 reads as follows:

"If as a result of Government's decision taken subsequent to the retirement of a railway servant, the amount of gratuity already paid on his retirement is enhanced on account of -

- a) grant of emoluments higher than the emoluments on which gratuity already paid was determined, or
- b) liberalisation in the provisions of these rules from a date prior to the date of retirement of the railway servant concerned, no interest on the arrears of gratuity shall be paid."

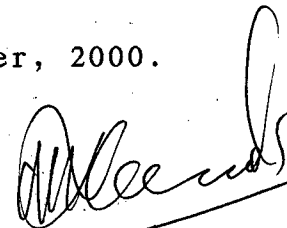
A proper interpretation of this rule would mean that if the additional gratuity is the result of enhanced pay and allowances which was approved after the retirement of the applicants, interest need not be paid with effect from the date of retirement or the due date of payment of gratuity reckoning the date of retirement. The enhancement in this case was a result of the orders of the Government revising the pay scales with effect from 1.1.96 i.e. prior to the retirement of the applicants. Further, in the O.M.F.No.45/86/97-P & P.W.(A) dated 27.10.1997 in para 11 it was mentioned that the enhanced pension should be made

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available to the pensioners before 30th November, 1997. Although the order in regard to the Railway employees was issued on 5.11.97(A-1), payments to the Railway pensioners also was required to be made without undue delay. Therefore it does not mean that ^{even} if the enhanced amount is kept out for an unduly long period, for no justifiable ^{reason} interest need not be paid.

5. In the result in the light of what is stated above, the application is allowed in part and the respondents are directed to pay to the applicants interest at the rate of 12% per annum on the delayed payment of gratuity, difference in enhanced commuted value of pension, arrears of salary and leave salary with effect from 1.4.1998 till the date on which payments were made. The above directions shall be complied with by making payments within two months from the date of receipt of a copy of this order.

Dated, the 10th of October, 2000.



A.V. HARIDASAN
VICE CHAIRMAN

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LIST OF ANNEXURES REFERRED TO IN THE ORDER:

1. A-1: A true copy of the Railway Board No.142/97 dated 5.11.97 issued by the Railway Board.
2. A-3: True copy of the representation dated 1.1.98 submitted by the 1st applicant to the 2nd respondent.
3. A-4: True copy of the representation dated 18.2.98 submitted by the applicant to the 2nd respondent