

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.613/2007

Dated the 25th day of April, 2008.

CORAM :

HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER

- 1 P Madhavan Nair
Retd. A Special Driver,
Southern Railway, Shornur
Residing at Vadakkedath House,
Pudussery, Cheruthuruthy P.O.,
Trichur District, PIN-679 531
- 2 R Ranganathan R.
Retd. A Special Driver,
Southern Railway, Palakkad Divn.
Residing at: Perianaicken Palayam,
SRKV Post, Coimbatore.
- 3 K.P.Saraswathy
W/o.K Padmanabhan Nair
Retd. Guard, Special, S.Rly, Shornur
Residing at Usha Nivas, Nedungottur,
Shornur-679 121. ... Applicants

By Advocate Mr.T.C.G.Swamy

V/s

- 1 Union of India represented by
The General Manager,
Southern Railway, Headquarters Office,
Park Town, Chennai
- 2 The Senior Divisional Personnel Officer
Southern Railway, Palghat Division
Palghat. ... Respondents

By Advocate Mr.Thomas Mathew Nellimoottil

The application having been heard on 21.04.08 the Tribunal delivered the following on 25.4.2008

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(ORDER)

Hon'ble Mr. George Paracken, Judicial Member

The applicants in this joint application has sought a direction to respondents to grant them interest @ 12% per annum on the delayed payment of pension and gratuity. In this regard, they are relying upon the order of the Madras Bench of this Tribunal dated 24.1.2007 in OA 321/06 and connected cases.

2 The facts in brief are that as per Rule 2544(g)(i) and 2544 (g) (ii) of Indian Railway Establishment Code (IREC for short), the applicants were entitled to draw a running allowance of 75% of the pay and the same was treated as part of the emoluments for calculation of pension and other retirement benefits. However, by an administrative order issued by Railway Board dated 22.3.1976, the limit of running allowance for pensionary purpose was reduced from 75% to 45% with retrospective effect from 1.1.73. The Principal Bench of this Tribunal vide its order dated 6.8.86 quashed the aforesaid letter of the Railway Board dated 22.3.76 and resultantly the limit of 75% prescribed in the aforesaid rules continued. The matter again came up before the Full Bench of this Tribunal in the case of C.R. Rangadhamiah and Ors V/s. Chairman Railway Board and Ors – 1994 (27) ATC (FB) 129) and vide order dated 16.12.93 while allowing the OA, the Full Bench gave the following directions:-

1 The respondents shall recompute the pension and other retiral benefits of the applicants or their L.Rs in accordance with Rule 2544 as was in force before it was amended by notification



dated 5.12.1988.

2 The arrears due to the applicants/L.Rs on the basis of the recomputation as aforesaid shall be calculated and paid.

3 These directions shall be carried out within a period of three months from the date of receipt of the copy of this order.

4 If the amounts due to the applicants/L.Rs are not paid within the prescribed time the amounts due shall be paid with interest at 12% per annum from the date of this order till the date of payment.

5 The applicants shall be entitled to costs at the rate of Rs.500/- in respect of each application.

6 The payment of pension and retirement benefits as per the aforesaid directions shall stand regulated/adjusted in accordance with the orders/directions as may be issued by the Supreme court in SLP No.10373 of 1990 against the directions of the Ernakulam Bench of the Tribunal in Application No.K-269 of 1988."

3 The aforesaid order of the Full Bench was challenged before the Hon'ble Supreme Court, but the same was dismissed vide judgment dated 25.7.1997 [Chairman Railway Board and Ors.Vs. C.R.Randgadhariah and Ors (1997 SCC (L&S) 1527)]. Thereafter the Railway Board vide Annexure A-1 letter No.RBE 135/97 dated 14.10.1997 (Annexure A-1), passed the following orders:-

"R.B.E.No. 135/97

Subject: Civil Appeal Nos.4174-82 of 1995

(Chairman Railway Board and Ors.Vs.

C.R. Randgadhariah and Ors) and

other tagged SLPs.

(No.PC-III/92/CTC-1/2 dated 14.10.97)

Hon'ble Supreme Court vide their judgment dated 25.7.97 has dismissed the above cited Civil Appeals together with other tagged SLPs which related to the issue of computation of certain percentages of Running Allowance for pension and retiral benefits of running staff Relevant extracts of Hon'ble Supreme Court's above judgment are as follows:-

"...Once it is held that pension payable to such employees had to be computed in accordance with Rule 2544 as it stood on the date of their retirement, it is obvious that as a result of the amendment which have been introduced in Rule 2544 by the impugned notifications dated Dec 5, 1988 the pension that would be payable would be less than the amount that would have been payable as per Rule 2544 as it stood on the date of retirement. The Full Bench of the Tribunal has, in our opinion, right taken the view that the amendments that were made in Rule 2544 by the impugned notifications dated Dec. 5 1988 to the extent the said



amendments have been given retrospective effect of as to reduce the maximum limit from 75% to 45% in respect of the period from Jan 1, 1973 to March 31, 1979 and reduce it to 55% in respect of the period from April 1, 1979, are unreasonable and arbitrary and are violative of the rights guaranteed under Articles 14 and 16 of the Constitution.

For the reasons mentioned the appeals as well as Special Leave Petitions filed by the Union of India and Railway Administration are dismissed. But in the circumstances, there will be no order as to costs.

2 Accordingly Ministry of Railways (Railway Board) have decided that:

(i) The pension and other retiral benefits of the running staff who retired between 1.1.73 to 4.12.88 and were in above cited Civil Appeals/ SLPs as well as other similarly situated employees may be computed in accordance with Rule 2544 R-II as was in force before it was amended by notification dated 5.12.88.

(ii) The arrears on account of recomputation of pension and other retiral benefits as abovesaid may be calculated and paid to these employees their legal heirs.

3 Above instructions may be implemented immediately and compliance reported to Board's office."

4 However, the interest on delayed payment of pension and gratuity in implementation of the aforesaid orders of the Full Bench was still not settled and the litigation continued. Finally, the Railway Board vide Annexure A-2 order RBE 159/2004 dated 21.7.2004 issued the following orders:-

"GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

No.E(PILA)II-2002/R 5-4 RBE No.159/2004
New Delhi dated:21-7-2004.

The General Managers/CAO(R)s,
All Indian Railways & Production Units.

Subject: Payment of interest on arrears due on account of recomputation of pension and other retiral benefits as a result of implementation of Supreme Court's judgment dated 25.7.1997 in C.A.Nos. 4174-82 of 1995 and other tagged SLPs

Attention is invited to Board's letter No.PC-III/92/CTC-1/2 dated 17-4-1998 on the above subject



wherein it was provided that interest at the rate of 12% on the arrears falling due in terms of Board's letter No.PC-III/92/CTC-1/2 dated 14-10-1997 may be paid to all the applicants from the date of the respective judgment/s.


2 The matter regarding payment of interest on the arrears falling due in terms of Board's letter dated 14-10-1997 *ibid* to the running staff/their legal heirs who had not approached any judicial forum was under consideration of the Board for quite some time, particularly in view of a few judgments delivered on this aspect by certain judicial for a. The issue has accordingly been examined carefully taking all aspects of the matter into consideration and in partial modification of the instructions contained in para-2 of the above letter dated 17-4-1999, it has now been decided that interest at the rate of 12% on the arrears falling due to all the beneficiaries in terms of Board's letter of even number dated 14-10-1997, excepting those who are covered by the instructions dated 17-4-1998 *ibid*, may be paid irrespective of the fact whether they had approached any judicial forum or not. In such cases, the period for computing delay in payment of arrears is to be reckoned from the date of the Supreme Court's judgment dated 25-7-1997 in the cited case.

3 It is desired that immediate necessary action may be taken to arrange payments in light of the decision contained in Para 2 above. Cases filed by the concerned ex-employees/their legal heir claiming benefit of interest on delayed payment of arrears due in terms of letter dated 14-10-1997, if any, may please be got abated by bringing the decision contained in Para 2 above to the notice or the respective CAT, High Court or Supreme Court.

4 This issues with the concurrence of the Finance Directorate of the Ministry of Railways:
Kindly acknowledge receipt.

(P.K.Goel)
Director, Pay Commission
Railway Board"

5 Again there was a dispute with regard to the date from which the interest has to be paid and many of the affected persons approached the Madras Bench of the Tribunal through various OAs. The said Bench vide its order dated 24.1.2007 allowed those OAs and declared that the applicant's therein were entitled to payment for interest from 12.6.1993 as held by the Full Bench. The respondents implemented the aforesaid orders of the Tribunal as evident from the Annexure A-4 letter issued to the




first applicant in the aforesaid OA, Mr.M.S.Masilamani.

6 The applicants have submitted that they could not approach his Tribunal earlier and in the light of Annexure A-1 Railway Board orders, they were granted revision of pension and gratuity only in the year 1999. They were granted interest on delayed payment of pension, gratuity in the light of Annexure A 2 letter of the Railway Board dated 21.7.2004 calculating the same from the date of decision of Apex Court till the date of payment. However, no interest was paid from 16.12.1993 to 25.7.1997. Having come to know the Annexure A-3 decision of the Madras Bench dated 24.1.2007, the first applicant made the Annexure A-5 representation dated 25.6.2007 seeking payment of interest from 16.12.1993 as in the case of other similarly placed persons. The counsel for the applicant has submitted that the applicants have also made similar representations to the respondents. Since there was no response from the respondents to the aforesaid representations they approached this Tribunal to grant them also interest @ 12% per annum for the period from 16.12.93 to 25.7.1997.


7 During the pendency of this OA, the third applicant Shri Padmanabhan Nair passed away on 6.12.2007 and his wife has been substituted in his place on LR..

8 The respondents in their reply has first of all raised the objection of limitation stating that the cause of action has arisen in 1997 or at the latest on 21.7.2004 whereas the present OA has been filed on 1.10.2007. They have also submitted that the Annexure A-3 judgment and order of the Madras Bench of this Tribunal dated 24.1.2007 does not give



them a fresh cause of action. Since the applicants had no grievance against the Respondents for not granting of interest from 1993 to 1997 for all these years, they have acquiesced to what all transpired all these years. On the merit of the case they have submitted that on the basis of the judgments of the Apex Court, they have been granted interest w.e.f. 25.7.1997 @ 12% and paid to them on 2.9.2005, 20.9.2006 and 9.8.2005. respectively. They have also submitted that since the applicants are not parties to the Annexure A-3 orders of the Madras Bench, they are not entitled to any benefit based on the said judgment.

9 We have heard Advocate Mr.T.C.Govindswamy for the Applicant and Advocate Mr.Varghese John for Mr.Thomas Mathew Nellimoottil for the respondents. No doubt the applicants are similarly placed with the applicants in OA 321/2006 and connected cases decided by the Madras Bench of this Tribunal on 24.1.2007. A perusal of the said order would show that the issue has already been considered by the Full Bench of this Tribunal in OA Nos.395 to 403 of 1991 and connected cases decided on 16.12.1993 and following the decision of the said Full Bench, this Tribunal in OA 377/02 and connected OAs decided on 16.9.2002 rejected the contention of the respondents that since the applicants therein were not parties to the earlier case, they are not entitled to interest at 12% from 16.12.1993 in terms of the Railway Board's letter dated 17.4.1998. The Madras Bench did not find any justifying ground to accept the aforesaid contention of respondents. Since the applicants therein were similarly placed persons, the Madras Bench held that they were also



entitled for payment of interest from 16.12.93 as held by the Full Bench. Admittedly, the applicants in this case are also similarly placed and just because they have not approached the Tribunal earlier they cannot be denied the right accrued to them by the judgment of Full Bench dated 16.12.93.

10 In the facts and circumstances, I reject the contention of the respondents both on the question of limitation as well as on merits and allow this OA. I hold that the applicants in this OA are also similarly placed persons and they are entitled to interest @ 12% per annum on the delayed payment of pension and gratuity as directed by the Annexure A-3 order of the Madras Bench of this Tribunal dated 24.1.2007 in OA 321/2006 and connected cases for the period from 16.12.93 to 25.7.1997. The same shall be paid to the Applicants within two months from the date of receipt of copy of this order. There shall be no orders as to costs.


GEORGE PARACKEN
JUDICIAL MEMBER

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