

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.106 of 1994

Tuesday, this the 8th day of November, 1994.

CORAM

HON'BLE MR P SURYAPRAKASAM, JUDICIAL MEMBER

M.G.Idichandy,
S/o Scaria Varghese,
Vellavil Puthen Veedu,
Parambil P.O, Pandhalam.

...Applicant

By Advocate Mr HB Shenoy.

Vs.

1. Union of India through the Secretary,
Ministry of Railways,
Railway Board, New Delhi.
2. The Divisional Personnel Officer,
Southern Railway,
Trivandrum.
3. The Sr.Divisional Accounts Officer,
Southern Railway,
Trivandrum.
4. The Manager,
State Bank of Travancore,
Pandhalam.

By Advocate Mr P.A.Mohamed for Respondents 1 to 3.

O R D E R

P.SURYAPRAKASAM, JUDICIAL MEMBER

The applicant is a retired Senior Clerk of the Divisional Office, General Branch of the Trivandrum Division of the Southern Railway. According to him, he entered into service as a Casual Labourer on 27.1.55, and he retired on superannuation on 30.6.90. After the retirement of the applicant from service, Respondents paid the pensionary benefits including Death-cum- Retirement Gratuity to the applicant taking into account his regular service from 1.4.73 to 30.6.90 only. Aggrieved by the non-taking into

account of his earlier service from 1955 to 1973, he filed separate application claiming gratuity under the Payment of Gratuity Act before the Controlling Authority. The said application was ordered against which the applicant filed an Original Application which was also dismissed. Later, the applicant filed another application (O.A. 1096/91) claiming that his services from 1955 to 1973 must be taken into account for the purpose of pension and the pension fixed earlier is not in conformity with the Pension Rules. However, in the application, the applicant for the reasons best known to himself has not mentioned anything about the filing of earlier application before the Controlling Authority under the payment of Gratuity Act claiming gratuity for the whole period, namely, from 27.1.55 to 30.6.90.

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2. Respondents in the /said O.A. have mentioned about the earlier application filed before the Controlling Authority. All these factors were taken into account by this Tribunal which heard the O.A.1096/91 alongwith various other O.As. The Tribunal relied on K.G.Radhakrishna Panicker & Others Vs. Union of India and Others (ATR 1991(1)CAT 578 allowed the applications in the following words:

"16. In the above circumstances, we allow these applications to the extent of declaring that 50% of continuous casual service after the applicants had put in six months of such casual service, even with breaks, shall be reckoned for the purpose of pension. The breaks in casual service will not be taken into account for grant of temporary status but intermittent casual service shall be

taken into account for computation of six months period for the grant of temporary status to project casual labourer. The respondents are directed to refix the retiral benefits of the applicants on this basis and revise the retiral benefits accordingly and pay arrears, if any. Action on the above lines should be completed within a period of three months from the date of communication of this order."

3. The department on the basis of this judgment revised the retirement benefits of the applicant and passed the present impugned order A4 under which the pension which was earlier fixed at Rs 375/- was revised to Rs 490/-, and with regard to DCRG, the department stated that a sum of Rs 9062/- has been paid in excess towards DCRG. As against this, the present O.A. has been filed.

4. The arguments that has been advanced on behalf of the applicant as far as gratuity portion is concerned is that the same has already been decided by the Controlling Authority and been confirmed by the Tribunal itself and as such, it became final. So, therefore, under the guise of the order passed by the Tribunal in O.A.1096/91 (O.A.569/90 batch) action could not be taken for the purpose of revision of gratuity as such, and the excess amount, if any, could not be claimed now, as such. Applicant also relied on Section 4 clause 5 of the Gratuity Act which is as follows:

"(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer."

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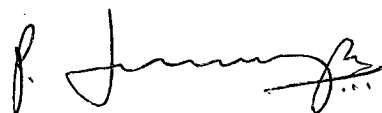
This Section is not applicable to the present facts of this case.

5. Counsel for respondents argued that the Railway Pension Rules 301 specifically deals with DCRG. The applicant cannot both approbate and reprobate and he cannot apply payment of Gratuity Act for the purpose of gratuity, and the Railway Rules for the purpose of pension. It must be one, and that is the Railway Rules. Therefore, the Railways have the power to revise it under the very same Tribunal's order passed in the aforesaid batch cases. The order does not specify that 50% of the past service of the applicant to be taken into account for the purpose of pension alone. In fact, the earlier application with regard to payment of gratuity has been considered since it has been taken as defence by the Railways as such, and passed the order wherein the Tribunal specifically directed as in para 2 supra. Both for payment of DCRG and Pension (retiral) benefits, the department has obeyed the directions given by the Tribunal in this regard, so therefore, this application has to be dismissed.

6. I am in full agreement with the arguments of the respondents, and hence the application is dismissed as devoid of merit .

7. There will be no order as to costs.

Dated the 8th day of November, 94.


P. SURYAPRAKASAM
JUDICIAL MEMBER
8/11/94

LIST OF ANNEXURES

1. Annexure A4: True copy of Order No.P.500/TVC/P/
0604202132 dt. 13.9.93 issued by the 3rd respondent.

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