

FINAL ORDER

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Wednesday, the twentieth day of July
One Thousand Nine Hundred and Eighty Eight

PRESENT

The Hon'ble Shri C.Venkataraman, Administrative
Member

and

The Hon'ble Shri G.Sreedharan Nair, Judicial Member

Original Application No. 107 of 1987-Kerala

N.Ramakrishna Panicker .. Applicant

-Vs.-

Railway

1.The Divisional Manager,
Southern Railway,
Divisional Manager's Office,
Personnel Division, Madras-3 .. Respondents

2.M/s Hindustan Newsprint Ltd.
represented by Managing Director,
Hindustan Newsprint Ltd.
Kottayam District

M/s M.R.Rajendran Nair)

Mary Isabella) .. Advocate for the
P.V.Asha) .. applicant
K.S.Ajayagosh)

M/s M.C.Cherian .. Advocate for the
Saramma Cherian & first respondent
T.A.Rajan

Mr. M.Ramachandran .. Advocate for the
second respondent

Order pronounced by
The Hon'ble Shri C.Venkataraman, Administrative
Member

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The applicant was working in
the Indian Railways from 28.11.1950. In

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1976, he went on deputation to the Hindustan Newsprint Limited (second respondent). He applied for voluntary retirement from the Railways so as to enable him to join the second respondent, a Govt. of India Undertaking. His request was accepted with effect from 28.2.1978.

On 7.11.1978, the Divisional Superintendent, Southern Railway, requested the second respondent to inform him as to whether the provident fund amount, including Govt. contribution and the gratuity payable to the applicant for his services rendered with the Railways up to 28.2.1978, could be transferred to the new employer. The public sector undertaking replied on 14.11.1978 stating that the applicant was governed by the Corporation's/Provident Contributory Fund Scheme and that the transfer of his contributory provident fund accumulation, including Govt. contribution should be transferred to the Corporation. However,

it was also stated that they do not accept transfer of other retirement benefit admissible to the applicant and therefore the gratuity should be paid directly to the individual concerned.

Accordingly, the special contribution by the Railways amount to Rs. 7155/- was paid to him directly by the Railways.

The case of the applicant is that the objection raised by the second respondent to receive the gratuity payable to the applicant from the railways was not correct. In fact, that mistake was found out by the second respondent himself and on 4.2.1986, a letter was addressed to the Divisional Superintendent, Southern Railway, by the second respondent, stating that on reconsideration it was observed that under the Hindustan Paper Corporation Gratuity Rules, it is permissible to reckon the service rendered under the Central Govt. as qualifying service for purposes of gratuity, provided the amount of gratuity earned under the Central Govt. is transferred to L

communication of 14.11.1978 and

that it was not possible to transfer

the gratuity any longer to the second

respondent. It was, however, suggested

that the same could be received by the

second respondent from the applicant,

in case he came forward to remit the

same, with interest.

The applicant's grievance now

is that the first respondent is not

willing to take the gratuity back from

him and remit it to the second respondent.

The second respondent in turn has taken

up the stand that the gratuity rules of

the Company do not permit receiving the

gratuity already drawn by a person in

respect of his service in a previous

organisation and accordingly had rejected

the applicant's request. As a result of

the rejection of his request by both

the first and the second respondents, it

has been pointed out by the applicant that

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he is put to considerable loss
because ^{the} gratuity based on his total
length of service at the time of his
~~maximum~~ retirement has been denied
to him. Accordingly he has prayed for
a declaration that the letter dt.14.11.1978
from the second respondent and the
letter dt.16.12.1986 from the first
respondent rejecting the applicant's
request, are void. The applicant has also
prayed for issue of a direction to
the first respondent to accept the
gratuity amount paid to him and remit
it to the second respondent or in the
alternative, direct the second respondent
to accept the amount of Rs.7155/- received
by the applicant as gratuity from the
railway and to pay the gratuity due to
the applicant by reckoning the service
rendered in the railways from 15.11.1950
to 28.2.1978 at the rate of 15/26th of
the monthly salary for every year of service.

The first respondent has filed a counter affidavit in which it has been brought out that the service gratuity due to the applicant had already been paid to the applicant in 1980 and that there is no provision to take it back and remit the same to the second respondent. As far as the first respondent is concerned all amounts due to the applicant had been paid as per the rules and accordingly he cannot have any grievance on that account. The counter affidavit concludes stating that this original application be dismissed as far as the first respondent is concerned.

The second respondent has stated in a counter affidavit that the Tribunal has no jurisdiction to grant the relief as prayed for against the second respondent.

It has been pointed out that as no notification under Sec.14(2) of the Administrative Tribunals'

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Act, 1985, making applicable the

provisions of Sec.14(3) of the

Administrative Tribunals' Act, 1985,

has been issued in respect of
to the second respondent, the

present application is not maintainable

against the second respondent. It has

further been stated that Rs.10067.80/-

had been sanctioned on 12.1.1987 to

the applicant towards settlement of

gratuity to him for his service under

the Corporation, at the time of his

retirement. Accordingly, the second

respondent has prayed for a dismissal

of the application.

As regards the question of

jurisdiction of this Tribunal, raised

by the second respondent, it ^{will} ~~must~~ be

seen that the relief claimed by the

applicant relates primarily to the

transfer of service gratuity earned by

the applicant for the period of his

service rendered with the Railways. That

gratuity has nothing to do with the service of the applicant, subsequent to his absorption in the Public Sector Undertaking. ~~as~~ The gratuity from the Railways is receivable by the applicant by virtue of having been a railway and servant, ~~he~~ was entitled to get it transferred to the Public Sector Undertaking where he initially went on deputation and subsequently got absorbed permanently. Any refusal on the part of the first respondent to transfer such a gratuity or a refusal on the part of the second respondent to accept such gratuity can give rise to a grievance to the applicant and we are of the view that the Central Administrative Tribunal has got jurisdiction to go into the matter under Sec.14(1)(b) of the Administrative Tribunals Act, 1985.
This ^{application} does not fall under Sec.14(2) ~~or~~ and 14(3) of the aforesaid Act.

The applicant was permanently absorbed under the second respondent in 1978. Even though he had a right to get his service gratuity transferred to the second respondent and the first respondent was willing to effect such a transfer, it was not actually done, only because of the letter dt.14.11.1978(Annexure-III to the application) sent to the first respondent by the second respondent. But for the categorical refusal to accept the transfer of other retirement benefits admissible to the applicant, the first respondent would have transferred the service gratuity of the applicant to the second respondent instead of paying it directly to the applicant. The direct payment to the applicant by the first respondent of his service gratuity is also the result of a positive suggestion made to the first respondent by the second respondent. It has been conceded that in the second

respondent's letter of 4.2.1986
(Annexure - IV) that the Hindustan
Paper Corporation Gratuity Rules
permit the receipt of gratuity by
the Corporation in respect of employees
coming from Central Government or other
Public Sector Undertakings. It has
also been stated ⁱⁿ that letter that the
Corporation had on several occasions
accepted such a transfer of gratuity
in respect of persons coming over
from other Public Sector Undertakings.
There is ~~also~~ a request in that letter
that the gratuity due to the applicant
as on 28.2.1978 may be remitted to the
second respondent at the earliest. We
can understand the difficulty of the
first respondent in making remittance
because the gratuity had already been
paid to the applicant in 1980, i.e. long
before receipt of the second respondent's
letter. The second respondent's subsequent



stand that the amount cannot be received from the applicant is purely a technical one, and it should not result in any adverse consequence to the applicant, especially when viewed against the reply sent by the second respondent on 14.11.1978 to the first respondent. Accordingly, we direct that if the applicant comes forward to make payment of the full amount of his service gratuity received by him from the Railways, together with interest at 12% p.a., from the date of its receipt by him to the date of its payment to the second respondent, the latter should accept such payment, treating it as transfer of the service gratuity in respect of the applicant's service in the railways by the first respondent. On that basis, the final settlement of the

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applicant's claim should be

effected by the second respondent.

The application is allowed as

above.

C Venkataraman

(C.Venkataraman)
Administrative Member

G.Sreedharan Nair
Judicial Member

20-7-88

20.7.1988

Index: yes/no

nks:13.7.