

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.Churian ) .. Advocate for the  
Samma Churian & ) first respondent  
T.A.Rajan )

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

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

- - - - -

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



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 <sup>Contributory</sup> Provident 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

the Hindustan Paper Corporation.

The applicant has stated that the

Hindustan Paper Corporation on

several subsequent occasions had

accepted the transfer of gratuity

of officers coming over from Govt.

to Public Sector Undertakings, after

voluntary resignation from Govt.

The second respondent accordingly

requested the Divisional Superintendent,

Southern Railway, Madras, on 4.2.1986,

to remit the cash equivalent of gratuity

which was due to the applicant from

the railways on 28.2.1978 so that the

Public Sector Undertaking would be in

a position to grant the full gratuity

to the applicant on the basis of his

total length of service. To this, the

first respondent replied that the service

gratuity of Rs.7155/- had already been


paid to the applicant on 12.6.1980, in

terms of the second respondent's earlier

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



he is put to considerable loss  
because <sup>the</sup> gratuity based on his total  
length of service at the time of his  
~~xxxxxxx~~ 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'

✓

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 ~~must~~ <sup>will</sup> 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~~ <sup>and</sup> the gratuity from the  
Railways is receivable by the applicant  
by virtue of having been a railway  
servant, <sup>and</sup> 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 Administ-  
rative Tribunal has got jurisdiction to  
go into the matter under Sec.14(1)(b)  
of the Administrative Tribunals Act, 1985.  
This <sup>application</sup> 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 <sup>in</sup> 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

at 4.2.1986.

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

/13/

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*  
20-7-88

(G.Sreedharan Nair)  
Judicial Member

20.7.1988

Index: ~~yes~~/no

nks:13.7.