

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.287/06

Wednesday this the 28th day of March 2007

C O R A M :

HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN

P.C.Thommachi,
Retired Mail Driver,
Southern Railway, Ernakulam Junction.
Residing at Parackal House,
No.31/1018-A, Royal Nagar,
Ponnurunni, Vyttila, Cochin – 19.

...Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India represented by the General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 3.
2. The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum – 14.
3. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum,
Trivandrum – 14.

...Respondents

(By Advocate Mrs.Sumathi Dandapani, Sr. & Ms.P.K.Nandini)

This application having been heard on 28th March 2007 the Tribunal on the same day delivered the following :-

ORDER

HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN

The applicant is a retired Mail Driver of Southern Railway, Trivandrum Division. He has superannuated from service on 31.3.1997. He seeks the following reliefs :-

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1. Direct the respondents to pay interest on the delayed payment of retirement gratuity of Rs.2,67,449/- for the period from 1.7.1997 at the rates as prescribed by the Railway Board for delayed payment of retirement gratuity, to be calculated up to the date of full and final settlement of the same.

2. Declare that the respondents are not bound to recover interest on the amount of Rs.86,000/- paid to the applicant by way of retirement gratuity during 1995 for the period from 1.7.1997 and direct further to refund the amount of interest collected from the applicant's retirement gratuity on the amount of about Rs.86,000/- paid to the applicant for the period from 1.7.1997.

2. The background facts as narrated by the applicant are :- while he was working as a Mail Driver he was proceeded against by a charge memo dated 9.10.1990 which culminated in the imposition of a penalty of compulsory retirement with effect from 25.7.1991. On appeal the penalty of compulsory retirement was set aside holding that there was no evidence on record. Thus the applicant was reinstated back to service. Three years later by a suo motu revision the General Manager once again imposed a penalty of compulsory retirement with effect from 15.12.1994 to which the applicant submitted an appeal to the Railway Board and while the appeal was pending he was granted a retirement gratuity of Rs.86,000/-. On the disposal of the said appeal the applicant was again reinstated back with liberty to continue the proceedings thereafter. The applicant superannuated from service on 31.3.1997. Finally by order dated 9.1.2001 the applicant was imposed with a penalty of 10% cut in his pension for a period of three years (Annexure A-1). Retirement gratuity and regular pension were paid by order dated 21.5.2001 and the actual payment was made during June/July 2001. The amount of gratuity paid was Rs.2,67,449/- which was due to the applicant on that date. Out of the

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total amount due, an amount of Rs.23,384/- towards interest on Rs.86,609/- for the period from 1.1.1995 to 31.3.1997 was recovered. The applicant's contention is that whereas the respondents recovered interest on the gratuity paid to him he had not been paid any interest for the delayed payment of his retirement gratuity and the delay in finalisation of the proceedings after his retirement is directly attributable to the respondents. The applicant has relied on Rule 87 of the Railway Services (Pension) Rules 1993 which stipulates that if there is delay in payment of retirement gratuity beyond three months for no fault on the part of the retired Railway servant, Railway Administration is bound to pay interest on the delayed payment of gratuity.

3. Respondents have filed reply statement contending that the applicant was paid all the terminal benefits without any delay consequent on his compulsory retirement on 15.12.1994. Till his superannuation on 31.3.1997 the applicant had not remitted back the said benefits and had retained the amount for the period from the date of compulsory retirement to his reinstatement. Respondents had to make the payment of gratuity as the order in O.A.616/02 and the judgment of the Hon'ble High Court in WP(C) 9925/05 directed the respondents to make payment of benefits finally. The respondents had made over the final payment, therefore, in June/July 2001 itself.

4. During the hearing the counsel for the applicant brought to notice an order of the Railway Board dated 10th January 1983 which reads as under :-

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" Reference to this Ministry's letter of even number dated 3rd September 1979 wherein orders for payment of interest on the delayed payment of the DCRG at the rate of 5 percent per annum for the period beyond three months after the gratuity becomes due were issued. It was also stipulated therein that in cases of Railway servants against whom disciplinary or judicial proceedings have been instituted, gratuity if allowed to be drawn by the competent authority on the conclusion of such proceedings will be deemed to have fallen due on the date of issue of orders by the competent authority. In order to mitigate the hardship to the Railway servants who, on the conclusion of the proceedings are fully exonerated, it has been decided that the interest on delayed payment of DCRG may also be allowed in their case, in accordance with the aforesaid instructions. In other words, in such cases, the gratuity will be deemed to have fallen due on the date following the date of retirement for the purpose of payment of interest on delayed payment of gratuity. The benefit of these instructions will, however, not be available to such of the Railway servants who die during the pendency of judicial or disciplinary proceedings against them and against whom such proceedings are consequently dropped."

5. The respondents were directed to verify whether this order issued in 1983 is still in force. Today, when the matter came up for hearing, counsel for the respondents submitted that this order is still in force. Therefore in terms of this instruction interest on delayed payment of DCRG would become payable from three months from the date following the date of retirement of the applicant which is 1.7.1997. As already stated above, the applicant was paid retirement gratuity in January 1995 which had not been remitted back and the amount had been retained by the applicant and was recovered from the total amount paid in 2001 by the respondents. Hence the delayed payment can be reckoned only for an amount of Rs.2,67,449 minus Rs.86,609 already paid. Respondents shall pay interest on this balance amount at the rate of 5% per annum to the applicant as interest on delayed payment on gratuity for the period from 1.7.1997. This shall be done within a period of one month from the date of receipt of a copy of this order.

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6. The next question is regarding the second prayer of the applicant for refund of the amount of interest collected from the applicant's retirement gratuity on the amount of about Rs.86,000/- paid to the applicant. Respondents have calculated this amount for the period from 1.1.1995 to 31.3.1997, the date of his retirement and since the applicant had retained this amount without refunding the same he cannot claim refund of this amount of interest which is liable to be recovered. Hence the 2nd prayer of the applicant is not granted. The O.A is disposed of accordingly.

(Dated the 28th day of March 2007)

Sathi Nair

**SATHI NAIR
VICE CHAIRMAN**

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