

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, P A T N A

O.A.NO.: 475/96.

JULY
DATE OF DECISION : 2 - JUNE - 99.

K.P.Gupta, son of Late Ram Lakan Lal, Ex-Office Superintendent, Personnel Branch, office of the D.R.M., Eastern Railway, Danapur, at present Railway Quarter No.228/DEF, New Colony, Eastern Railway, Danapur, District Patna.APPLICANT.

By Advocate : Shri M.P.Dixit.

Vrs.

1. The Union of India through the General Manager, Eastern Railway, 17, Netaji Subhash Marg, Fairly Palace, Calcutta-700 001 [West Bengal].
2. The Divisional Railway Manager, Esatern Railway, Danapur, P.O. Khagaul, P.S.: Khagaul, District Patna.
3. The Sr. Divisional Personnel Officer, Eastern Railway, Danapur, P.O. Khagaul, P.S.: Khagaul, District Patna.RESPONDENTS.

By Advocate : Shri A.K.Tripathy.

C O R A M

HON'BLE MR. JUSTICE S.NARAYAN, VICE-CHAIRMAN.

O R D E R

S.NARAYAN, V.C.:- By an amendment sought for [and also allowed], this O.A. has been confined only to a relief for grant of interest on account of delayed payment of gratuity, being Rs. 79,551/-, and packing allowance, being Rs.2,025/-, with effect from 1st February, 1996 [being the date of superannuation], upto 3rd February, 1997 [being the date of actual payment], togetherwith costs.

S. Narayan

2. The bare facts relevant for the present were almost uncontroverted and were as follows.
3. The applicant, being an employee under the Eastern Railways, had been provided with a residential

railway quarters no.228/DEF, New Colony, Eastern Railways, Danapur. He retired from service w.e.f. 31st January, 1996. Prior to his retirement his son, Shri P.K.Roy, Station Master, Danapur, Eastern Railways, was allowed to share the same quarters with the applicant as per order, dated 31st July, 1995, of the competent authority. After the retirement, the applicant continued to retain the said quarters along with his son. A request was, of course, made by an application, dated 1st January, 1996, of the applicant's son to allot the said quarters in his full name from the date of retirement of his Father. The quarters was, however, allotted to the applicant's son by an order, dated 8th January, 1997, of the Railways with retrospective effect from 1st February, 1996, i.e. from the date of actual retirement of his Father [the applicant].

4. The admitted facts, as noticed above, would be derived from the written statement itself of the respondent Railways. It further stands admitted ~~from~~ on the record that almost simultaneously with the allotment of the quarters in the name of the applicant's son, the amount of gratuity and other dues of the applicant was released and this happened only during the pendency of the instant O.A.

5. Obviously, the delay in releasing the amount of gratuity and other dues such as, packing allowance, was for a year i.e. from 1st February, 1996 [the date of retirement] to 3rd February, 1997 [the date of actual payment]. A valid question has thus been raised whether the applicant was entitled to interest on the amount of gratuity and other allowances for the aforesaid intervening period of about one year and, if so, what



would be the adequate rate of interest ? Before the question, as raised in the instant case, is determined, it would be apt to take note of the legal proposition which has been established by an unbroken catena of authorities of the Supreme Court. In the case of State of Kerala & Ors. Vrs. M.Padmnabhan Nair, reported in AIR 1985 SC 356, the Supreme Court declared that" the pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement, but are valuable rights and property under their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."

Yet in another case, being D.S.Nakara Vrs. Union of India & Ors., reported in 1983 [1] SCC 305, the Supreme Court with almost the same view, as above, held that pension is a right and the payment of it does not depend on the discretion of the Government, but is governed by the rules and a Government servant coming within those rules is entitled to claim pension and further, that the grant of pension does not depend on anyone discretion.

6. Infact, the claim of gratuity and packing allowance, as made by the applicant, has not been disputed by the respondent Railways, which has simply raised a plea that the amount as such has been withheld and kept in pending because the applicant was retaining the railway quarters. This plea of the Railways was, however, not at all tenable in the instant case for the simple reason that it would be derived from the admitted facts, noted above, that there was no fault on



the part of the applicant which could have warranted any action of withholding the gratuity and the packing allowance. The admitted facts would go to establish on the record that the applicant's son, who also happened to be a Railway employee, had been permitted to share the quarters with his Father by a specific order, dated 31st July, 1995, and furthermore, that ~~from~~ a month prior to retirement of his Father, he [the applicant's son] filed an application, dated 1st January, 1996, to allot the said quarters in his name. On such a prayer made by the applicant's son, the railway authorities took a decision as late as on 8th January, 1997, by passing an order allotting the said quarters in his name with retrospective effect from 1st February, 1996. This ~~decision~~ could have ^{been} very well taken soon after the retirement of the applicant with the result that there was no occasion to withhold his gratuity and packing allowance. It was, of course, contended, *inter-alia*, in the written statement that the applicant's son was required to file an affidavit that he had no residential house at that particular station either in his name or in the name of his Father and such an affidavit was filed only on 31st December, 1996. Even if we accept it for the sake of assumption that there was some delay in filing the affidavit, it goes without saying that the fault was on the part of the applicant's son, who had been duly permitted to share the quarters with his Father [the applicant]. Since the affidavit was not to be filed by the applicant, there was no fault on his part so as to withhold the payment of gratuity and packing allowance. It may, however, be pointed out that in a rejoinder filed to the written statement, the applicant has asserted that



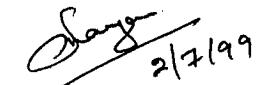
the affidavit was filed by the son on the very next day of a letter, dated 30th December, 1996, sent by the Railway authorities to his son. One would surely prefer to accept this submission made on behalf of the applicant that there was no reason for the applicant's son to stand in the way of timely payment of gratuity to his Father.

7. In the facts, as noticed above, it goes without saying that there was no lapse on the part of the applicant which could warrant the delay in releasing the amount of gratuity and packing allowance by the Railway authorities. Learned counsel for the respondents while drawing my attention to a decision of the Supreme Court in the case of Union of India & Ors. Vrs. Ujagar Lal, reported in 1996 [11] SCC 116, has urged that a retired employee was not entitled to any amount of interest if the gratuity has been withheld for reason other than administrative lapses. The legal proposition as such, was, of course, worth banking upon before taking any decision in the case, but the peculiar facts, which were almost admitted ~~in~~ the record, would reveal that the delay, whatsoever, was not ~~on~~ account of any lapse or unauthorised occupation of the railway quarter by the applicant. Had any prompt action taken by the Railway administration soon after the retirement of the applicant on the application of his son for regularising the allotment of the quarters, there would not have arisen any occasion of the delay as it has occurred in the instant case.



8. Regard having had to the facts and circumstances of the case, I am of the considered opinion that the applicant was certainly entitled to

interest over the amount of gratuity and packing allowance which had been withheld by the Railway authorities for no sufficient ground. This O.A. is, accordingly, allowed and the quantum of interest is determined at the rate of 18% per annum for the relevant period which, in my opinion, would meet the ends of justice. The amount of interest calculated as such, must be paid to the applicant within three months from the date hereof. There shall be, however, no order as to costs.


2/7/99

[S.NARAYAN]
VICE-CHAIRMAN.

SKJ