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CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 611/96

Transfer Application No.

Date of Decision 19-12-96

Alex Nazareth

Petitioner/s

Shri H.A.Sawant

Advocate for  
the Petitioners

Versus

The D.R.M, W.Rly and G.M., W.Rly.

Respondent/s

Shri V.S.Masurkar

Advocate for  
the Respondents

CORAM :

Hon'ble Shri.M.R.Kolhatkar, Member (A)

Hon'ble Shri.

- (1) To be referred to the Reporter or not ? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal ? X

abp.

M.R.Kolhatkar  
(M.R.Kolhatkar)  
Member (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GULESTAN BLDG.NO.6, PRESCOT RD, 4TH FLR.

MUMBAI - 400 001.

ORIGINAL APPLICATION No, 611/96.

DATED THIS 19<sup>th</sup> DAY OF DECEMBER, 1996.

CORAM : Hon<sup>ble</sup> Shri M.R.Kolhatkar, Member (A).

Alex Nazareth,  
Retired Motorman,  
Bombay Division,  
Western Railway,  
Mumbai - resideing at  
8B/5, Shree Jawahar Co-operative Housing Society,  
Sodawala Lane, "Govindnagar", Borivli(West),  
Mumbai - 400 092. ... Applicant.

By Advocate Shri H.A.Sawant.

v/s.

The Divisional Railway Manager,  
Bombay Central Division,  
Divisional Office,  
Western Railway,  
Mumbai - 400 008.

The General Manager,  
Western Railway,  
Headquarter Office,  
Churchgate, Mumbai - 400 020. ... Respondents

By Advocate Shri V.S.Masurkar.

ORDER

X Per Shri M.R.Kolhatkar, Member (A) X

The applicant is a retired Motorman who sought and was sanctioned voluntary retirement w.e.f. 29/7/87. He seeks the relief of release of full amount of Gratuity of Rs.68,000/- with 18% interest from the date of retirement upto 16/7/94 when the respondents partly paid the DCRG amount of Rs.51,413/- after deducting electricity charges for the period from June,87 to September,93., and he also seeks a direction to respondents to issue post retirement complimentary passes in favour of the applicant from the year 1995.

2. It appears that the applicant's wife who <sup>was</sup> also an employee of Western Railway had sought regularisation of quarter and the same was sanctioned<sup>ed</sup> by the memorandum No. EC 58/13/2(C) dated 8/10/90 from Western Railway Headquarters office. The order though dated 8/10/90 purported to allot the quarter in question on vacation by the applicant., and a reminder was sent by the Office of the General Manager, Churchgate dated 17/7/91, pointing out that the railway quarters has been regularised in the name of the wife of the applicant and therefore the Gratuity of the applicant which has been held up may be released. However, the same could not be paid as mentioned above till 16/7/94. It appears that the wife of the applicant who became allottee of the quarter in question by virtue of order of allotment in her favour dated 8/10/90 had sent a letter dated 9/3/92 at Annexure - AA2 to the rejoinder requesting that the recovery of rent and electricity charges should be made from her salary from the date of voluntary retirement of her husband namely 29/7/87. This letter appears to have been ignored and the respondents have deducted electricity charges from the Gratuity amount and paid the balance as mentioned above.

3. The applicant relies on AIR 1990 SC 1923 in D.W. Kappor v/s. Union of India & Ors. for the proposition that Right to Gratuity is a statutory right and also relies on Chanparan Sugar Co. Ltd. v/s. Jt. Labour Commissioner & Ors. 1987 54 FJR 60 (PAT) F.B.) for the proposition that employee's right to interest on delayed payment is statutory. He also relies on Full Bench judgement in Wazirchand which observed that Withholding of post retirement complimentary passes on the

basis of the Railway Board's circular is ~~xxxx~~ illegal.

4. The respondents have opposed the OA. It is firstly contended that the OA is barred by limitation. Secondly, the Gratuity has already been paid after deduction of electricity charges and the delay in this regard was due to failure of the applicant to file a vacation report and failure of the applicant's wife to file an occupation report.

5. It is further contended that the applicant is not entitled to interest as Gratuity can be held back until and unless he vacates the quarters as held by Supreme Court in Union of India v/s. S.V. Ramteke SLP(C) No. 14609/95 decided on 4/12/95. According to respondents, therefore the OA deserves to be dismissed.

6. So far as the question of limitation is concerned, it appears that initially the applicant had filed a Joint OA and thereafter the same came to be separated, the relief in the other OA (19/96) being confined to the reliefs sought by the wife of the applicant who is also <sup>an</sup> employee of the Western Railway. In any case considering that the right to gratuity is part of the constitutional right to property though not a fundamental right and since there has been a delay in release of Gratuity even after orders of regularisation of quarter from 8/10/90, I am not inclined to dismiss the application on the ground of limitation. I also reject as hypertechnical the contention that vacation/occupation reports were not filed.

7. On merits, respondents appear to have failed to notice that by virtue of order of regularisation dated 8/10/90 applicant had no liability in relation to quarters in question w.e.f. 29/7/87. Therefore, the action of the respondents of deducting the electricity charges in respect of quarter

for the period from June, 87 to September, 93 is quite illegal. It is also clear from the letter dated 9/3/92 addressed by the applicant's wife who <sup>and</sup> was also a railway employee, who was the real occupant of the quarters that she was at all times willing to pay electricity charges from 29/7/87.

8. I am therefore of the view that the respondents ought to have released the Gratuity of the applicant in full after the passing of the regularisation of quarters.

9. The next question is whether the applicant is entitled to grant of interest on the Gratuity <sup>or from what date.</sup> The applicant has claimed interest from 29/7/87 that being the date of his voluntary retirement, however, the fiction of relation back of the date of occupation cannot be pressed <sup>to service</sup> to mean that the applicant in fact vacated the quarter on 29/7/87. The order of regularisation was issued on 8/10/90 and therefore the applicant can be considered to have vacated the quarter only from the date of issue of order of regularisation and <sup>even</sup> not earlier. However, on this footing, there is a substantial delay in the release of Gratuity amount as well as an unjustified holding back of Rs. 16,617/- on account of electricity charges the delay extending from 8/10/90 to 16/7/94, for which applicant is entitled to interest. I am of the view that this proposition is also supported by S.V. Ramteke's case in which the Hon'ble Supreme Court stated that interest will not be payable till one month of the vacation of the quarter. From this point of view, the applicant is entitled to interest from one month from the date of vacation i.e. one month from 8/10/90 i.e. 8/11/90.

10. So far as the passes are concerned, I hold the applicant is ~~xxxx~~ entitled to Post retirement passes from 1995.


However, <sup>as</sup> the post retirement pass/<sup>es</sup> lapse after expiry of relevant calender year, the applicant is entitled to Post Retirement passes from 1995 onwards.

11. I therefore dispose of this OA by passing the following order:-

1. Respondents are directed to refund the amount of Rs.16,617/- withheld from the Gratuity of the applicant. They are at liberty to recover it from his wife.
2. Respondents are ~~xxx~~ directed to pay interest at the rate of 12% for the delayed payment of Gratuity for the period from 8/11/90 upto 16/7/94.
3. Respondents are ~~xxx~~ directed to release Post retirement passes in favour of applicant for 1995 and for subsequent years subject to rules in this regard.

Action in this regard may be completed within three months from the date of pronouncement of the order. There will be no orders as to costs.

abp.

  
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(M. R. KOLHATKAR)  
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH  
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C.P. 88/97 in  
Original Application No. 611/96

Monday the 31st day of August 1998

CORAM: Hon'ble Shri Justice R.G. Vaidyanatha, Vice Chairman  
Hon'ble Shri D.S. Baweja, Member (A)

Alex Nazareth ... Applicant.

By Advocate Shri H.A. Sawant.

V/s.

The Divisional Railway Manager,  
Bombay Central Division  
Divisional Office,  
Western Railway  
Mumbai.

The General Manager,  
Western Railway,  
Headquarter Office,  
Churchgate,  
Mumbai.

... Respondents.

By Advocate Shri V.S. Masurkar.

ORDER (ORAL)

¶ Per Shri Justice R.G. Vaidyanatha, Vice Chairman ¶

This C.P. has been filed by the applicant alleging that the respondents have committed contempt of not paying full amount of gratuity with interest as directed by the order of this Tribunal dated 19.12.96. The respondents have filed reply. We have heard counsel for both sides.

2. The Tribunal by its order dated 19.12.96 directed the respondents to refund Rs. 16,617/- . This part of the order has been complied with and the applicant has received the amount. The applicant contended that the respondents have not complied with para 2 of the order of the Tribunal, which directs the respondents to pay gratuity together with 12% interest from 8.11.90 to 16.7.94.

According to the applicant he is entitled to interest on the entire amount of Rs. 68,000/- from 8.11.90 to 16.7.94. The respondents contended that they are liable to pay interest on Rs. 51,413/- which has been withheld by them.

3. After hearing both the sides, we are of the view that the respondents are liable to pay interest for the entire gratuity amount of Rs. 68,000/- from 8.11.90 to 16.7.94. This we can gather from para 9 of the order of the Tribunal. The Tribunal had directed the respondents to refund the amount of Rs. 16,617/- and also interest at 12% on the delayed payment of remaining gratuity amount. Therefore the Tribunal had directed the respondents to pay interest on the entire amount of Rs. 68,000/- for the period from 8.11.90 to 16.7.94. Hence the respondents are liable to pay interest on the entire amount. The respondents have paid interest only on Rs. 16,617/- but no interest has been paid on Rs. 51,413/- for the said period.

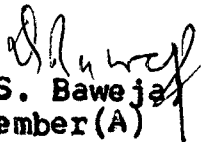
4. The respondents have paid interest of Rs. 7,361/- on Rs. 16,617/- from 8.11.90 to 16.7.94. The respondents have not paid interest on the remaining gratuity amount of Rs. 51,413/- from 8.11.90 to 16.7.94. In our view as per the order of the Tribunal the respondents are bound to pay interest for the entire gratuity amount which includes the sum of Rs. 16,617/- and 51,413/-

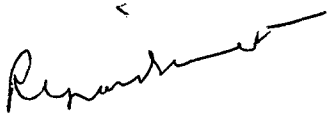
As far as the question of this part of the order is concerned we may not hold the respondents guilty as they have mis-interpreted the order of the Tribunal. We therefore give one more opportunity to the respondents to comply with the order of the Tribunal, failing which we give liberty to the applicant to file <sup>fresh</sup> contempt <sup>petition</sup>.



5. The learned counsel for the respondents submits that the applicant's wife is liable to pay Electricity charges. We are not concerned about the respondent's demand against the applicant's wife regarding Electricity charges. It is for the respondents to take proper action according to law.

6. In the result C.P. 88/97 is disposed of with a direction to the respondents to calculate and pay the interest at 12% per annum on the amount of Rs. 51,413/- from 8.11.90 to 16.7.94 within a period of two months from the date of receipt of a copy of this order. In the circumstances there will be no order as to costs.

  
(D.S. Baweja)  
Member(A)

  
(R.G. Vaidyanatha)  
Vice Chairman

NS

order/Ind. 31/8/98  
to Applicant 2/10/98  
on 2/10/98  
12/10/98