

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO., : 1084 OF 1999.

Dated this Tuesday, the 25th day of April, 2000.

Shri B. G. Khandekar, Applicant.

Shri D. V. Gangal for Advocate for the
Shri S. V. Marne, applicant.

VERSUS

Union of India & Another, Respondents.

Shri R. R. Shetty, Advocate for the
Respondents.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha,
Vice-Chairman.

- (i) *To be referred to the Reporter or not ?*
- (ii) *Whether it needs to be circulated to other Benches* } *of the Tribunal ?*
- (iii) *Library.*

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1084 OF 1999.

Dated this Tuesday, the 25th day of April, 2000.

CORAM : Hon'ble Shri Justice R.G. Vaidyanatha, Vice-Chairman.

R. G. Khandekar,
Retired Assistant Teacher,
Central Railway.
Residing at -
Soniminde Chawl,
P.O. Kurduwadi,
Tal.: Madha,
Dist. Sholapur,
Pin - 413 208.

... *Applicant.*

(By Advocate Shri D. V. Gangal
alongwith Shri S. V. Marne).

VERSUS

1. *Union of India through
The General Manager,
Central Railway,
Headquarters Office,
Mumbai C.S.T.,
Mumbai - 400 001.*
2. *The Divisional Railway
Manager,
Sholapur Division,
Central Railway,
Sholapur.*

... *Respondents.*

(By Advocate Shri R. R. Shetty).

OPEN COURT ORDER

PER : Shri R. G. Vaidyanatha, Vice-Chairman.

This is an application filed by the applicant seeking a direction to the respondents to pay him gratuity. Respondents have filed reply. We have heard Mr. D. V. Gangal alongwith Shri S. V. Marne, the Learned Counsel for the applicant and Shri R. R. Shetty, the Learned Counsel for the respondents. Since the point involved is a short point, the O.A. is being disposed of finally at the admission stage.

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2. The applicant was a teacher in Central Railway. He retired from service on 31.08.1995. He was paid pension and gratuity on the basis of his actual service of 20 years under the railway administration. The applicant had put in earlier twenty years in the schools of Local Board and Zilla Parishad but that service was not taken into consideration while passing the applicant's gratuity and pension. Being aggrieved by this action of the respondents, the applicant filed the previous O.A. No. 770/96. After hearing both sides, the O.A. came to be allowed by order dated 18.09.1997 (Page 12 of the Paper Book) by holding that the previous service in the Local Board School and Zilla Parishad School should be taken into consideration while fixing the pension of the applicant. Accordingly, the application was allowed and respondents were directed to treat the previous service as qualifying service for the purpose of pension and refix his pension on that basis and pay the arrears. In pursuance of this order, the Railway Administration has refixed the pension and paid the arrears to the applicant.

But the applicant's grievance is that the respondents have not paid him gratuity amount by taking into consideration the previous service which is held to be qualifying service for the purpose of pension by the order of the Tribunal.

3. The respondents' defence is that the previous order of the Tribunal does not grant relief regarding gratuity but only pension and that order has been complied with and, therefore, the applicant cannot file a fresh O.A. seeking gratuity, which will be barred by the principles of resjudicatta. They have also taken the plea of delay and limitation.

4. After hearing both sides I find that the stand of the administration that the previous O.A. has not granted the relief of gratuity may not be correct. As rightly pointed out on behalf of the applicant, the word 'pension' includes gratuity. In the previous order, the Tribunal has directed the respondents to refix the pension of the applicant by taking the erstwhile service as qualifying service. The word 'Pension' is defined in Rule 2(19) of the Railway Service (Pension) Rules, 1993 to say that pension includes gratuity except when the term pension is used in contradiction to gratuity. It is nobody's case that in the previous order there is any such usage of the word 'Pension' in contradiction to gratuity. The Tribunal only said that the previous service must be counted for the purpose of pension. The word 'Pension' includes gratuity as per the Railway rules. Therefore, in the facts and circumstances of the case, there is no difficulty to hold that in the previous direction by the Tribunal the word 'Pension' includes not only pension but also gratuity in view of Rule 2(19) of the Railway Rules. There is no dispute that the qualifying service is the same, both for the purpose of pension and gratuity, as mentioned in Rule 3(22) of the said Rules. Even granting for a moment that the word 'Pension' does not include gratuity in the order of the Tribunal, still there is no legal impediment to grant gratuity when once the Tribunal has held that previous service amounts to qualifying service for the purpose of pension. The argument about resjudicatta or constructive resjudicatta does not appeal to me. It is true that in the previous O.A. the Tribunal could have given a direction even for gratuity. The Tribunal might have thought that the word 'Pension' includes gratuity, therefore there is no necessity to add gratuity. Hence, in the facts and



circumstances of the case, the respondents cannot escape their legal law to pay gratuity to the applicant when once it is held by the Tribunal that previous service counts as qualifying service for the purpose of pension, which includes necessarily gratuity as per rule 2(22) of the Railway Service (Pension) Rules, 1993.

Then as far as delay and limitation is concerned, we must note that this O.A. is in continuation of the previous O.A. Anyway, this O.A. is to implement the order passed by the Tribunal in the previous O.A. It has also come on record that the applicant approached this Tribunal for clarification by filing M.P. No. 779/98. The Tribunal disposed of the said M.P. by order dated 09.08.1999 stating that the question cannot be decided by filing a M.P. and the matter should be heard by filing a fresh O.A. It is further ordered that if a fresh O.A. is filed within two months, then the question of limitation will not come in the way. The said order of the Tribunal dated 09.08.1999 has become final and it is binding on both the parties. Hence, it is too late in the day for the respondents to take up the question of limitation in the present case. After going through the materials on record I am satisfied that the applicant is entitled to gratuity amount, both on the ground that the previous order directing payment of pension must necessarily include gratuity or even otherwise on merits, the applicant is entitled to gratuity when once it is held that the previous service is qualifying service for the purpose of pension. Therefore, the respondents are bound to pay the difference of gratuity to the applicant as they have paid difference of pension.

5. In the result, the O.A. is allowed. The respondents are directed to refix the gratuity amount of the applicant on the basis of the previous qualifying service as mentioned in the order of the Tribunal dated 18.09.1997 in O.A.No. 770/96. On refixing the gratuity, the difference in gratuity after deducting whatever amount that has been paid to the applicant, should be paid to the applicant within a period of three months from the date of receipt of a copy of this order. No order as to costs.

Revised order

(R.G. VAIDYANATHA)
VICE-CHAIRMAN.

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