

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 896/1999

DATE OF DECISION: 19/04/2001

Shri P. R. Das, Applicant

Shri G.S. Walia, Advocate for
Applicant.

Versus

Union of India & Another, Respondents.

Shri S. C. Dhavan, Advocate for
Respondents.

Coram:

Hon'ble Smt. Shanta Shastry, Member (A).

1. To be referred to the Reporter or not? /Y
2. Whether it needs to be circulated to
other Benches of the Tribunal?
3. Library.

Shanta S

(SHANTA SHAstry)
MEMBER(A)

app:

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:896/1999
DATED THE 19th DAY OF April 2001**

**CORAM: HON'BLE SHRI S.L.JAIN, MEMBER(J)
HON'BLE SMT.SHANTA SHAstry, MEMBER(A)**

P.R.Das,
Retired Asst. Operating
Superintendent (Coaching),
Central Railway,
Mumbai CST,
Mumbai - 400 001. Applicant

By Advocate Shri G.S.Walia

V/s.

1. Union of India, through
The Secretary,
Railway Board,
Ministry of Railways,
Rail Bhavan,
New Delhi.

2. General Manager,
Central Railway,
Head Quarters Office,
Mumbai CST,
Mumbai - 400 001. Respondent

By Advocate Shri S.C.Dhawan

(ORDER)

Per Smt.Shanta Shastry, Member(A)

The following reliefs were sought by the applicant at the time of filing the OA on 5/10/99.

i) To direct the respondents to consider and promote the applicant to the post of Senior Scale from the date on which his juniors were promoted after including him in the respective panel of class-II.

...2.

- ii) To release the gratuity amount due to him with 18% interest thereon.
- iii) To grant him all the consequential benefits such as arrears of pay, increments, fixation of pay in Sr. scale, refixation of pensionary benefits on that basis.

2. The applicant retired as Assistant Office Superintendent. He was officiating on adhoc basis as Group 'B' Officer. He had appeared in the written test for selection to class-II post held in the year 1977. The result was declared on 17/12/78 and the applicant was asked to appear for Viva Voce test on 20/10/81 and he appeared accordingly.

3. Prior to this in 1980, a criminal case was registered against him in the Court of the Special Judge at Bombay. The case was decided on 15/7/99 and he was acquitted.

4. The result of the Viva Voce test was not declared. He was asked however not to appear for the supplementary test vide letter dated 25/8/82. He made a representation on 8/10/86 to promote him. He retired on 31/12/86. Thereafter, he filed OA-743/88 claiming several reliefs namely promotion to a higher post, together with all consequential benefits releasing of his gratuity, etc. The Tribunal allowed the OA partially and directed the respondents to release half of the amount of DCRG to the applicant subject to his furnishing a bond with one surety to make good the amount being paid to him in the event of the applicant being convicted by the Criminal Court and the President's ordering to recover the entire amount of gratuity

that may be paid. The applicant was granted liberty to pursue his remedy with regard to the other reliefs should he be acquitted in the criminal case. The OA was decided on 27/9/94.

5. However, it transpires that the respondents could not pay the amount of 50% gratuity of Rs.44,550/- as per entitlement of the applicant immediately because the applicant did not produce any surety or execute a bond as required. Later on after receipt of the judgement of the Criminal Court and after the applicant had made a representation on 20/12/99, the entire amount of gratuity was credited to his account on 15/2/2000. Thus, as far as the gratuity is concerned, it has already been paid.

6. The applicant filed an additional Affidavit on 14/3/2000 stating that the payments towards DCRG had not been made correctly by the respondents. The total gratuity amount worked out to Rs.52,800/- which became payable to the applicant immediately on his retirement. However, the was was with-held by the respondents on account of the criminal case pending against him. After being acquitted, he is now entitled to the full amount of Rs.52,800/- towards DCRG and a cummulative interest of 12% per annum.

7. The respondents have filed their affidavit stating that subsequent to the implementation of the 4th pay commissions recommendation, all the old cases were revised from 1/1/86 including that of the applicant and therefore inadvertently the difference of DCRG, Pension and other settlement dues were paid to the applicant without releasing DCRG which I had been withheld

because of the pending criminal case. Thus, the difference of DCRG of Rs.8,250/- was paid to the applicant vide CO 7 No.02451/414 dated 17/9/87 prior to the payment of the original DCRG. The applicant has professed total ignorance about the payment of Rs.8,250/- which is supposed to have been paid in 1987. According to him he did not receive any information about the said payment not even when he had filed OA 743/98 was it disclosed in the reply of the respondents.

8. According to the applicant even now the respondents have not given any particulars in regard to the actual payment of the amount of Rs.8,250/-. No date or the number of the cheque has been mentioned. The applicant has in his possession, the Pension Saving book of the year 1987-88. Even this book does not disclose any payment received towards gratuity. The applicant does not remember having received any such payment by him unless the respondents could produce the record. Therefore the applicant had prayed to direct the respondents to produce the relevant file and gave the details.

9. The respondents have not been able to give any more details other than the number already quoted.

10. The applicant has therefore claimed this amount of Rs.8,250/- alongwith interest.

11. The respondents submit that as far as the issue of promotion is concerned, the applicant was officiating in a Group 'B' post. No doubt he had appeared in the selection test but he had not been regularised in Group B. Before that a criminal case was registered against him and therefore the applicant could not

be promoted to a Group 'A' post. It is a selection post and unless the selection was made the applicant could not be granted any promotion to group 'A' as he was not inducted into the junior scale on regular basis during his service. His selection to Group 'A' is done on merit. Thus though acquitted in the criminal case, the applicant could not now be given promotion to Group 'A' post from the date his junior was promoted.

12. We have heard the learned counsel for the applicant as well as the respondents and have given anxious consideration to the pleadings and arguments advanced on both sides.

13. In regard to the promotion of the applicant to Group 'B' post, it is well settled that if any criminal case or departmental enquiry is pending against the employee, then his promotion case has to be kept in a sealed cover. It is to be opened only after the finalisation of the criminal case or the disciplinary proceedings. No doubt the sealed cover could be reviewed after a period of two years and adhoc promotion can be considered. In the present case, the applicant had appeared for the selection, but the final selection had not taken place because by then a criminal case had been registered against him. Now that he has been acquitted, his case could have been considered if it had been kept in a sealed cover. This is not so. The applicant was not even regularised in the Group 'B' post, therefore the question of considering for promotion to Group 'A', which is a selection post does not arise as rightly stated by the Respondents. Therefore, we are unable to grant the relief in this matter.

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 Government servants who die during the pendency of judicial/disciplinary proceedings against them and against whom proceedings are consequently dropped.

(Bd's letter No.F(E)III-79 PN1/13, dated 25.5.1983 read with Deptt. of Per. & A.R.O.M.No. 1(4)/Ren. Unit/82 dated 1.1.1983)."

Perusal of the underlined portion makes it clear that in case of exoneration, the interest on delayed payment of Death Gratuity or Retirement Gratuity may be allowed as 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.

It is true that the applicant has filed an OA.No.743/98 claiming relief of releasing his gratuity along with other reliefs which was decided on 27/9/94 and allowed partly and the applicant did not avail the benefit of the said order. Hence, the applicant cannot claim interest in respect of that amount 50% of the gratuity but for the remaining 50% of the gratuity, it continued to be withheld in view of the said Railway Board's letter along with the order of the Tribunal for which the applicant cannot be deprived in respect of interest for the reason that it continued to be withheld in view of the Railway Board's letter and interest is also payable according to the same Hence, applicant is entitled to interest @ 7% p.a. for the period beyond three months w.e.f. 31.12.1986 upto one year, 10% beyond one year till 1.4.88 till 31.3.89 ~~1.4.89~~ 1.4.89 ~~1.4.89~~ and 12% p.a. w.e.f. 25.8.1984 to the date the amount credited in his account on 15.2.2000.

15. We are not satisfied regarding the explanation for payment of Rs.8,250/- to the applicant in 1987. We therefore hold that the applicant is entitled to interest on the amount of Rs.8,250/- from the date it is supposed to have been paid i.e. from 17/9/87. We therefore direct the respondents to pay the applicant interest @ 12% from 17/9/87, till the amount of Rs.8,250/- is actually paid to the applicant. This shall be done within a period of two months from the date of receipt of copy of this order. So also the payment of interest as indicated in para 14 above on 50% of gratuity. The OA is thus partly allowed. We do not order any costs.

Shanta S

(SHANTA SHASTRY)
MEMBER(A)
abp.

Jain

(S.L.JAIN)
MEMBER(J)