

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 212/97

4-2-99

Date of Decision:

Smt. A.R. Rane

.. Applicant

Shri D.V.Gangal

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri R.K.Shetty

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble Shri D.S.Bawaja, Member (A)

The Hon'ble

(1) To be referred to the Reporter or not ? ✓

(2) Whether it needs to be circulated to
other Benches of the Tribunal ?

D.S. Bawaja
(D.S. BAWAJA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 212/97

Dated this the 4th day of February 1999.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)

Smt. Annapurnabai Raghunath Rane,
w/o Shri Raghunath P. Rane,
Ex-Examiner (Skilled),
General Stores Wing,
Quality Assurance Section,
C/o. Ordnance Factory,
Bhusawal.

By Advocate Shri D.V. Gangal ... Applicant

V/S.

1. Union of India through
Chief Controller of Defence
Account, (Pension),
Drupadi Ghat,
Allahabad, U.P.
2. The Senior Quality Assurance
Offices Establishment (GS),
Ministry of Defence (DGOA),
Govt. of India, DGOA Complex,
LBS Marg, Vikhroli,
Bombay - 400 083.

By Advocate Shri R.K. Shetty ... Respondents

O R D E R

(Per: Shri D.S.Baweja, Member (A))

The applicant is the widow of Shri Raghunath P. Rane who while working as Examiner (Skilled) working with General Stores Wing (GSW), Quality Assurance Section, Ordnance Factory, Bhusawal died on 17.7.1993. The family left behind comprised of widow, one son and one daughter. The son has been granted compassionate appointment. The widow, i.e. the applicant has received the family pension.

However, out of the total amount of DCRG of Rs.40,413/- only Rs.13,471/- has been paid to the applicant and the balance amount of Rs.26,942/- has not been paid by the respondents stating that the same will be shared between the son and the daughter as advised to the applicant as per letter dated 18.3.1996. The present application has been filed on 7.2.1997 feeling aggrieved by the letter dated 18.3.1996 seeking the following reliefs :- (a) to direct the respondents to pay the entire amount of DCRG of Rs.40,413/- with interest at 24% p.a. till payment minus the amount already paid with interest till that payment. (b) to declare that son and daughter are not entitled for payment of gratuity.

2. The main contention of the applicant in seeking the reliefs as detailed above is that her husband never nominated the son and daughter to receive the DCRG. Further, the applicant's son and daughter have no interest for any claim of payment out of the DCRG and they have already given in writing for the same. ^{Therefore} the stand of the department is that the balance amount of DCRG will be paid to the son and daughter equally. ^{is not valid} In view of this, the applicant's plea is that she is entitled for the entire amount of DCRG and also entitled for payment of interest as the delay has been caused by the respondents in making the payment. The applicant has brought on record the details of the correspondence made with the department for payment of DCRG to support her contention for delay on the part of the respondents.

3. The respondents have opposed the application through filing the written statement. The respondents have submitted that the late husband of the applicant had not made any nomination for the payment of DCRG. In view of this, as per the extant rules, the DCRG is to be shared between the widow and the children and therefore the applicant is entitled only for 1/3 share of the total amount of the DCRG and the same has been paid to the applicant. For the payment of balance amount equally to the son and daughter, they have been asked to submit the relevant papers as per the provisions of CCS(Pension) Rules, 1972 but the same have not been furnished and therefore the payment of balance amount had been held on. The respondents submit that the claim of applicant for the entire amount of DCRG in the absence of nomination made by her late husband is against the rules particularly Rules No. 50 (6) and 51 of CCS(Pension) Rules, 1972. In view of this, the reliefs prayed for by the applicant cannot be granted. The respondents further submit that direction should be issued to the daughter and son to submit the required papers for payment of balance amount of DCRG in equal share to them so that payment can be made at the earliest possible. Based on these pleadings, the respondents contend that the OA. is devoid of merit and deserves to be dismissed.

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4. The applicant has filed rejoinder reply to the written statement. The applicant while controverting the contentions of the respondents has reiterated the pleadings made in the OA. However, she had made further submission that it was not the fault of her late husband for non-submission of nomination forms for DCRG. She has contended that when the nomination for PF was done in 1977, the form for nomination for DCRG was not given by the concerned authorities and therefore the same was not filled by her late husband. She has stated that two co-employees S/Shri V.V.Muzumdar and S.G.Tadvi who also filled up the P.F. nomination form along with her late husband were also not furnished the forms for DCRG nomination. She has further contended that it was the duty of the respondents to get the nomination form filled from the employees. It is also her submission that even if as per the rules the DCRG is to be distributed among all the surviving members, the respondents have not taken any action to make the payment of balance amount to her children.

5. The respondents have filed further written statement to counter the pleadings made in the rejoinder of the applicant. The respondents have contested the claim of the applicant with regard to non supply of the forms for DCRG when the nomination for PF was filled by the late husband of the applicant. The respondents have also stated that reference to two colleagues has no relevance. The respondents



have further brought on record that the service book was made available to the late husband of the applicant in 1987 and he did not care to check for the ^{availability of} nomination form for DCRG even though he had signed the service book in token of having inspected the same. Further another opportunity was given as per letter dated 15.1.1992 to all the staff to check-up their service books with regard to availability of nomination forms but this opportunity was also not availed of by the late employee. The respondents have further stated that in terms of the clarification furnished by the Government of India in letter dated 14.4.1987, even if the children give consent for payment of DCRG to the mother, the full payment cannot be made to the mother and the DCRG is to be shared equally among all the members.

6. Heard the arguments of Shri D.V.Gangal, learned counsel for the applicant and Shri R.K. Shetty, learned counsel for the respondents. The respondents have made available the concerned personal file of late Shri R.P.Rane and the relevant correspondence with regard to the payment of DCRG to the applicant.

7. As per order dated 19.3.1998, a direction has been issued with regard to the payment of the balance amount of the gratuity after obtaining Power of Attorney in favour of the applicant. With this, the issue with regard to the payment of balance amount of gratuity of Rs.26,942/- stands concluded and the relief prayed for by the applicant has been

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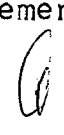
granted. Keeping this in view, the learned counsel for the applicant during the argument made a statement at Bar that the only issue left for consideration is the claim for interest for delay in payment of the DCRG. Firstly, for the delay in payment of Rs.13,471/- and secondly for the balance amount of Rs.26,942/-. In view of this, the matter has been further gone into for the relief with respect to entitlement of interest and accordingly relevant pleadings concerning this issue have been considered subsequently.

8. The main reason cited by the respondents for delay in payment of DCRG is due to non availability of nomination forms. The respondents have submitted that as per the extant rules, in case of non-availability of nomination forms, the DCRG is to be shared equally among surviving members. The respondents state that on submission of the affidavit by the applicant, 1/3 of the total amount of gratuity of Rs.13,471/- was released to the applicant. The other two members of the family, i.e. son and daughter did not submit the affidavit as asked for along with the specimen signature and photograph etc. and thereby the payment of their share of gratuity had been delayed. The applicant has contested the contention of the respondents both with regard to non-availability of affidavits the nomination for DCRG as well as the delay in filing/. As regards the non availability of nomination form, though in the OA. the applicant has not made any pleading, but subsequently when this was disclosed in the written statement, the applicant has made this as thrust of his averments in the rejoinder

reply and also filed a number of M.Ps. The main argument of the applicant is that the filling of the nomination form was to be got done by the respondents and the respondents have failed on this count. The applicant has come out with a case that when the provident fund nomination form was filled up in 1977, the form for nomination for DCRG was not furnished and therefore her late husband could not submit the form for DCRG to be filled. In making this assertion, she has relied upon perhaps on the statement of two co-employees who were also not given the forms for nomination for DCRG. The respondents have strongly controverted the statement of the applicant and stated that the nomination form was not filled up by the applicant. The respondents have brought on record that service sheet was made available to the applicant in 1987 and the applicant had failed to check up with regard to nomination form inspite of the fact that he had signed the service sheet in token of having checked the service sheet. ^{Further} ~~As~~ per the notification dated 15.1.1992, staff was given an opportunity to check the service sheet with regard to non availability of the nomination forms ^{but not availed by the applicant.} The applicant strongly contested this claim of the respondents and challenged the affidavit filed by one Shri D.R.Yadav, Sr.Quality Assurance Officer and made a prayer that Shri D.R. Yadav should be produced for cross-examination. This prayer, however, was not agreed to by the Bench and instead the respondents were directed to file an affidavit of the concerned staff who had dealt with

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the filling up of the nomination form. Thereafter, the respondents have filed affidavit stating that the concerned staff who had handled the filling up the forms of nomination has since retired and it is not possible to furnish their affidavits. With this status, the matter was finally heard. After considering the rival contentions with regard to non-filling of the nomination form by the late husband of the applicant, I am of the considered opinion that this issue is not very material. Firstly, the foundation led by the applicant for non-filling of forms and putting the responsibility on the respondents is too flimsy to merit any consideration. The respondents have stated that the O.A. is filed by the Widow and the applicant cannot have first hand information with regard to the situation existing in 1977. Further, the applicant has named two employees who were also similarly situated but no affidavit of these two employees have been filed to support her contention. Further, no merits can be gone into such an issue based on general statements after a period of more than 20 years. Secondly, even if it is accepted that the respondents are responsible for not getting the forms filled up, the nomination form cannot be treated as filed with the applicant being nominated as the sole beneficiary of the D.C.R.G. This presumption cannot be made by the applicant as the nomination has to be done by her late husband. Keeping this background in view, I do not propose to go into the merits of this contention and the matter deserves to be gone into based on the presumption that the nomination form for DCRG is not available on the record. The rules are also available to cater for such a contingency as brought out by the respondents in the written statement and considered subsequently.



9. Keeping in view the above observations, the matter will be now examined to find out if the respondents are responsible for the delay in making the payments in terms of the rules. The respondents in the written statement have brought out that in terms of sub rule (6) of Rule 50 and Rule 51 of CCS (Pension) Rules, 1972, the DCRG is to be shared equally by the surviving members in case the nomination form is not available. On going through the rules, it is noted that Rule 51 (1) (b) (i) lays down that in case the nomination is not done for DCRG, the payment is to be shared equally by the members of the family as defined in sub rule (6) of Rule 50. In the present case, as per the applicant the surviving family of late Shri Raghunath P. Rane consists of wife, i.e. the present applicant and one son and one daughter. This is an admitted fact by the respondents and therefore there is no doubt that these three members of the family are entitled for payment of DCRG in equal share. On going further through the rules, it is noted that Rule 77 lays down as to how the authorisation for payment of gratuity is to be done. Rule 77 (2)(a) (ii) lays down that if the deceased Government employee had not made any nomination for the DCRG, then as indicated in Rule 77(2)(b) the Head of the Office shall address the person^{ed} concern^{ed} in Form 11 for making the claim in Form 12. Rule 78 lays down that while taking action for claiming the family as per Rule 77, the Head of Office shall take necessary action to complete

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the other formalities so that the papers can be forwarded as soon as the necessary forms are received from the concerned members of the family. Rule 78 ^{laysdown that after} forwarding the papers to the Accounts Officer, the Head of Office will draw provisionally and arrange 100% of the gratuity payment to the concerned members of the family. With these provisions of the rules, it was incumbent on the part of the respondents to arrange the payment in the absence of the nomination form for DCRG. The respondents though have stated the relevant rules to be followed in the absence of nomination form but have not elaborated as to why the delay in payment of DCRG has taken place. The averments made are very sketchy and efforts has been made to put the blame on the members of the family of the deceased employee. As indicated earlier, the respondents have made available the service book and the personal file of the applicant dealing with the correspondence for payment of family pension and DCRG etc. to the applicant. On going through the papers, it is noted that Bhusawal office had sent the papers for payment of gratuity and other dues to the Mumbai office on 24.8.1993. These papers were thereafter sent to the Accounts Officer at Allahabad. It is noted that the Pension Pay Order for family pension was issued ^{on 16.3.1994} but no action had been taken with regard to payment of D.C.R.G. Only for the first time after repeated chasing by the Bhusawal office, and the Mumbai office with the Accounts Officer at Allahabad,

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As per letter dated 6.6.1994, it was advised that the nomination form was not available and office should obtain an affidavit from the beneficiary that she is the legal wife of late Shri Raghunath P. Rane. It is noted that the applicant immediately submitted the required affidavit on 1.7.1994 which was forwarded by the Mumbai office along with the other papers to Allahabad office. Thereafter, the file shows that there had been several reminders by the Mumbai office to the Accounts Officer at Allahabad. There had ^{been} a reference from the Headquarters' office also which was not replied. The applicant had also been sending several reminders. Finally, only after a period of more than 2 years, the 1/3rd of the gratuity amount of Rs.13,471/-, ^{i.e.} the share of the applicant was released on 26.2.1996. Thereafter, on 18.3.1996 a letter addressed to the Director General, Quality Assurance, New Delhi was endorsed to the son and daughter of the applicant for submission of the affidavits indicating that they are the son and daughter of late Shri R.P. Rane along with three copies of photographs and the descriptive No. 11 as per specimen attach. Both the son and daughter thereafter submitted an affidavit stating that their share of DCRG may also be given to their mother. The papers were again forwarded to Allahabad office with the affidavit of the son and daughter. But the same was not found in order as per the extant rules. The son and daughter were again reminded to submit a separate affidavit as required and thereafter the file shows that the

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reminders had been sent to the son and daughter but they did not take action to carry out the direction as per the statement of the respondents. From these facts as emerging from the file, it is quite clear that the Head of Office while furnishing the papers for payment of Family Pension and DCRG initially did not check up about the availability of nomination form and only after the family pension was authorised, the Accounts Officer pointed out that the nomination form is not available. Though the widow was asked to submit the affidavit but the file shows that the action was not taken in terms of Rule 77 as already brought out. The widow was not asked to furnish the separate affidavits for all the members of the family on the necessary format, Form-12. In fact, the letter was not addressed to the members of the family as required to be ^{sent} submitted in Form ¹²12. The Accounts Officer simply sat on the matter and only after repeated reminders sanctioned 1/3rd payment for the applicant. Thereafter, the concerned unit office, Head Office as well as the Accounts Officer did not take any action to make the children of the late Railway employee aware of the need for submitting separate affidavits as per the format laid down. Keeping in view the above observations, I am convinced that the respondents have not acted with concern in arranging payment to the widow and the members of the deceased employee. The matter had been dealt with in a routine way. The office at Mumbai as well as at Bhusawal appear to be not aware of the provision of C.C.S(Pension) Rules for payment of D.C.R.G. in the event of non-availability of nomination form. Infact, the office file does not bring out whether this aspect was checked at all at any time

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while processing the papers for payment of settlement dues. If proper care was taken to take action as per the rules and the Accounts Department had been prompt and concerned to point out the lapse by field unit, the delay in payment could have been avoided. Under these circumstances, I hold that the applicant is entitled for payment of interest for delay in payment of the DCRG both for the share of the applicant as well as for the share of the son and daughter.

10. The applicant has claimed an interest of 24% p.a. From the facts as narrated earlier, the respondents are primarily responsible for delay in payment. However, the applicant has also contributed to delay. When the son and daughter were directed to produce separate affidavits as per the extant rules, for their share, but the affidavits were submitted to the effect that the payment of their share should be made to the mother. This was not accepted by the Department. Again both son and daughter were reminded to submit separate affidavits but no action was taken by them. The percentage of the interest to be allowed is to be ~~seen~~ in this background. The Learned Counsel for the applicant brought to my notice the judgement of R. Kapur V/s. Director of Inspection (Painting and Publication) Income Tax and Another, (1994) 28 ATC 516, where interest of 18% has been allowed for delay for the payment of D.C.R.G. Here, initially the Tribunal had allowed only 10% of interest while in the appeal it has been raised to 18% by the Hon'ble Supreme Court as a penal interest on account of the delay in payment by the administration. In the present case, as stated

earlier, there is a delay on the part of the applicant also as she was insisting for making the payment of entire DCRG to her instead of sharing with the children. I am of the opinion that keeping this situation in view, the applicant cannot be allowed penal interest for the delay. In this connection, I refer to the Full Bench Judgement of the Tribunal in the case of Balchandra Chintaman Gadgil V/s. Union Of India & Ors., 1997(2) ATJ 303, where interest of 12% has been allowed for delay in payment of settlement dues. Keeping in view what is held by the Full Bench, I also hold that the applicant is entitled for payment of interest of 12% p.a. for the entire period for delay excluding the period of three months from the date of death to allow for the processing time.

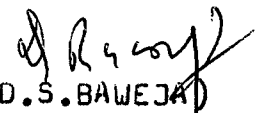
11. As brought out above, the dealing of the case of payment of DCRG to the applicant shows lack of knowledge of the rules by the field offices and concern by the Accounts Department. In view of this, the competent authority (Respondent No. 1) may go into this issue and find out as to who is/are responsible for the delay and what action could be taken against the staff and what preventive steps should be taken to avoid such cases in future.

12. Keeping in view the above deliberations, the O.A. is allowed with the following directions :-

- (a) The applicant shall be entitled for the payment of interest at the rate of 12% p.a. on Rs. 13,471.00 from the date of death

and excluding three months thereafter till 26.2.1996 when this payment was authorised.

- (b) On the balance amount of Rs.26,942/-, the applicant shall be entitled for the payment of interest ^{7 12%} from the date of death excluding three months thereafter till 19.3.1998 when the direction was issued to the respondents to make payment to the applicant in respect of share of the children against the Power of Attorney.
- (c) The compliance of the order shall be done within a period of three months from the date of receipt of the order. In case the payment of interest as directed above is delayed beyond the period of three months, the applicant shall be entitled to interest of 12% on the payment of interest amount.
- (d) No order as to costs.


(D.S. BAWEJA)
MEMBER (A)

mrj.