

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

(8)

O.A. No. 597/94  
T.A. No.

199

DATE OF DECISION 10.2.1997

Chandra Shekhar Goyal Petitioner

Mr. Rinesh Gupta Advocate for the Petitioner (s)

Versus

Union of India and others Respondent

Mr. Manish Bhandari Advocate for the Respondent (s)

**CORAM :**

The Hon'ble Mr. RATAN PRAKASH, MEMBER (JUDICIAL)

The Hon'ble Mr.

- ✓ 1. Whether Reporters of local papers may be allowed to see the Judgement ? *Y*
- ✓ 2. To be referred to the Reporter or not ? *Y*
- ✓ 3. Whether their Lordships wish to see the fair copy of the Judgement ? *Y*
- 4. Whether it needs to be circulated to other Benches of the Tribunal ?

  
(RATAN PRAKASH )  
MEMBER (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH:  
JAIPUR.

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O.A. NO. 597/1994

Date of order: 10.2.97.

Chandra Shekhar Goyal son of Shri Girdhari Lalji Goyal, aged about 62 years, Ex-Member (Judicial) Railway Claims Tribunal, Jaipur Bench, Jaipur, resident of 93/87 Agarwal Farm, Mansarovar, Jaipur.

: Applicant

Vs.

1. Union of India through Secretary, Ministry of Railways (Railway Board) Rail Bhawan, New Delhi.
2. Chairman, Railway Board, Ministry of Railways, Rail Bhawan, New Delhi.
3. Executive Director, Public Grievances, Railway Board, Ministry of Railways, Rail Bhawan, New Delhi.
4. Chairman, Railway Claims Tribunal, 2 Rajpur Road, Delhi 110 054.
5. Financial Advisor & Chief Accounts Officer Railway Claims Tribunal, 2 Rajpur Road, Delhi 110 054.
6. Registrar, Railway Claims Tribunal, 2 Rajpur Road, Delhi 110054.
7. Additional Registrar, Railway Claims Tribunal, D 159, Ganga Path, Kabir Marg, Bani Park, Jaipur-302 016.

: Respondents

Mr. Rakesh Gupta, counsel for the applicant  
Mr. Manish Bhandari, counsel for the respondents

CORAM:

HON'BLE SHRI RATAN PRakash, MEMBER (JUDICIAL)

O R D E R

(PER HON'BLE SHRI RATAN PRakash, MEMBER (JUDICIAL))

The applicant herein, Shri Chandra Shekhar Goyal has raised an important question of far-reaching implications in this application filed under Section

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19 of the Administrative Tribunal's Act, 1985. It relates to the payment of Gratuity to a retiring Member of the Railway Claims Tribunal appointed under the Railway Claims Tribunal Act, 1987 and governed by the Railway Claims Tribunal (Salaries and Allowances and Conditions of Services of Chairman, Vice Chairman and Members) Rules, 1989 (hereinafter referred as the 1989 Rules). The applicant has claimed to direct the respondents to make him the payment of Rs. 25,000/- as gratuity alongwith interest @ 18% p.a. from 8.11.1994; he having relinquished the charge of the post of Member Judicial, Railway Claims Tribunal, Jaipur in the afternoon of 7.11.1994.

2. Facts which are not in dispute between the parties are that the applicant after seeking voluntary retirement from the State Government w.e.f. 7.11.1989 joined as Judicial Member in the Railway Claims Tribunal on 8.11.1989. He was paid pensionary benefits by the State of Rajasthan and received Rs. 75,000/- as a retirement gratuity from the State. He held the office and post of the Member Judicial, Railway Claims Tribunal, a Jaipur Bench, Jaipur for complete tenure of five years and relinquished the office in the afternoon on 7.11.1994.

3. It is the case of the applicant that he having been appointed as Member Judicial in the Railway Claims Tribunal was governed by 1989 Rules regarding retirement from service. According to the applicant he came across a letter of Joint Director, Railway Claims Tribunal, Railway Board, New Delhi dated

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17.8.1992 (Annex.A-8) wherein it was stated that since there is no provision of gratuity in the Service Condition Rules, the Members of the Railway Claims Tribunal (for short 'RCT') are not entitled to the same. He made a representation to the Chairman, Railway Board, respondent No.2 on 8.10.1992 (Annex.A/9) on 8.10.1992 inviting attention to Rule 16 of the 1989 Rules and pleaded that under the Gratuity Rules of the Central Government the applicant is entitled to get Retirement Gratuity on completion of five years service subject to the maximum of Rs. 1.0 lakh including the amount of Retirement Gratuity which he had already received from the State Government before joining the RCT. He, therefore, made a claim for entitlement to get Rs. 25,000/- as Retirement Gratuity. A copy of this representation was also sent to FA & CAO, Railway Claims Tribunal, Delhi who referred the matter to the Secretary, Railway Board, New Delhi vide letter dated 14.9.93 (Annex.A-10). On this letter of FA & CAO, Railway Claims Tribunal, Delhi, the Railway Board after consultation from the Department of Pension and Pensioners' Welfare, inter alia decided that the retiring Members of the RCT would not be entitled to payment of Gratuity for the services rendered in the RCT and a communication to this effect dated 26.7.94 (Annex.A-11) was issued from Executive Director, Public Grievance, Railway Board, Delhi. The applicant did not agree with the interpretation put upon by the Railway Board and sent a note (Annex.A-12).

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before his retirement on 19.10.1994 to the Additional Registrar, Railway Claims Tribunal, Jaipur asking him to arrange the payment of an amount of Gratuity Rs. 25,000/- on his retirement. This note was sent in its turn to the Registrar, Railway Claims Tribunal, Delhi vide letter dated 19.10.1994 (Annex.A-13) whereupon the Registrar, Railway Claims Tribunal, Delhi conveyed the decision that the applicant is not entitled to payment of gratuity in terms of Railway Board letter dated 26.7.1994 (Annex. A-11). Feeling aggrieved by the impugned orders/letters dated 26.7.94 and 26.10.1994 (Annex.A-14), the applicant has approached this Tribunal to claim the aforesaid reliefs.

4. The respondents have contested this application by filing a counter to which no rejoinder has been filed. The respondents have opposed this application mainly on two grounds. Firstly, that the OA is not maintainable before this Tribunal as it is not covered by the provisions of Section 14 of the Administrative Tribunal's Act, 1985 since the Members of the RCT cannot be considered as employees of the Central Government being governed by separate set of rules. Further the applicant's appointment was on a designated and statutory post which is not a Civil or Executive post and hence the Tribunal has no jurisdiction in this matter. The second ground taken by the respondents has been that there is no provision in the 1989 Rules for payment of any gratuity and that his claim of Rs. 1.0 lakh including the amount of gratuity already received by him is not tenable. It is also the stand of the

respondents that the Residual Clause i.e. Rule 16 of the 1989 Rules cannot be invoked in a manner so that it may amount to legislate new conditions for the Members of the RCT which has not been provided by the Legislature in the Rules. It has, therefore, been urged that the application is without any substance and should be rejected with cost in favour of respondents.

5. I heard the learned counsel for the applicant at great length and have gone through the pleadings of the parties and have examined the material on record in great detail.

6. As stated in the beginning, the material question to be determined in this application is whether a Member of the RCT is entitled to payment of Gratuity in view of residual provision contained under Rule 16 of the Railway Claims Tribunal (Salaries and Allowances and Conditions of Services of Chairman, Vice Chairman and Members) Rules, 1989?

7. To evaluate the above question, it is necessary to reproduce Rule 16 of the 1989 Rules which reads as under:-

"16. Residual provision:-

Any condition of service of the Chairman, Vice Chairman or Member for which no express provision has been made in these rules shall be determined by the rules and orders for the time being applicable to a Secretary to the Government of India in the case of the Chairman and Vice-Chairman, and by the rules and orders applicable to Additional Secretary to the Government of India in the case of Members."

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On the basis of this provision it has been vehemently argued by the learned counsel for the applicant Shri Rakesh Gupta that there being no express provision in the aforesaid 1989 Rules regarding Gratuity, the matter shall be determined by the Rules and Orders which are for the time being applicable to a Secretary to the Government of India in the case of the Chairman and Vice Chairman of the RCT and by Rules and Orders applicable to Additional Secretary to the Government of India in the case of Members. The learned counsel accordingly drew attention to Rule 2(1)(h) and Rule 93 of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 (hereinafter referred to as '1958 Rules') which governs the matter of Death-cum-Retirement Gratuity in the case of Additional Secretary to the Government of India. On the objection raised on behalf of respondents about the jurisdiction of the Tribunal in this matter, the learned counsel has placed reliance on a decision of the Central Administrative Tribunal Madras Bench in the case of B.P. Nair Vs. Union of India and another (1993) 25 ATC page 314. It has been urged that since the matter has already been settled in this regard while dealing with a matter concerning Member (Technical) of the RCT in the aforesaid decision by the Madras Bench of the Tribunal and it having been held that Members of the RCT come within the ambit of Section 14 of the Administrative Tribunal's Act; the objection raised is without any substance and the OA is maintainable.

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8. I have given anxious thought to the arguments advanced on behalf of the applicant and stand taken by the respondents.

9. On the plea of jurisdiction, it is suffice to mention that in the case of E.P. Mir (supra), the Madras Bench of the Tribunal has held that the Member (Technical) appointed under the R.C.T. Act, 1987 is covered by the expression "a person appointed to a civil service of the Union" and also that Members appointed under the Railway Claims Tribunal Act, 1987 fulfil many of other tests of civil servants. Hence this question having been decided by a Division Bench as early as in the year 1991, the objection raised on behalf of the respondents is of no consequence. It is accordingly held that this Tribunal has jurisdiction to entertain and decide this application filed by the applicant under the Administrative Tribunal's Act, 1985.

10. Coming now to the main controversy raised in this application, it is necessary to mention that according to the scheme of the Railway Claims Tribunal Act, 1987 the salaries and allowances and other terms and conditions of Chairman, Vice Chairman and <sup>other</sup> Members of the RCT are governed by Section 9 of the R.C.T. Act, 1987 read with 1989 Rules. Section 9 of the R.C.T. Act, 1987 which is relevant to sort out the controversy raised in this OA reads as under:-

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"9. Salaries and allowances and other terms and conditions of service of Chairman, Vice-Chairman and other Members.- The salaries and allowances payable to and the other terms

and conditions of service (including pension, gratuity and other retirement benefits) of the Chairman, Vice Chairman and other Members shall be such as may be prescribed.

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairman, Vice Chairman or other Member shall be varied to his disadvantage after his appointment (emphasis supplied).

The stand of the respondents has been that the claim of the applicant regarding Gratuity stood satisfied before he joined the PCT. The stand has been that as per Rule 5(2) of the 1989 Rules, the Chairman, a Vice-Chairman or Member shall be entitled to receive pension and gratuity in accordance with the retirement rules applicable to him prior to such retirement.

Accordingly, it has been urged on behalf of respondents that as far as benefit of gratuity is concerned, the applicant would be governed by the same rules which were applicable to him prior to his retirement from the Higher Judicial Service (State Service) and that it is erroneous to say that the applicant is entitled to get the same benefits in this regard as are applicable to the Additional Secretaries of the Government of India by invoking the residual clause (Rule 16) of 1989 Rules.

As against this, the argument of the learned counsel for the applicant has been that Rule 3 of the 1989 Rules which deals with the pay which is payable to the Chairman, Vice Chairman or the Member of the PCT and that Rule 5 of the aforesaid Rules lays down the manner by which the retirement benefits in the parent service on appointment as a Member of the PCT are to be construed. It has been urged that there being

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... no specific provision for payment of gratuity to the Chairman, Vice Chairman and Member appointed to the RCT; the relevant provision is Rule 16 which is a residual provision and covers the situation of the payment of gratuity to a Member (the applicant in the case) on his retirement from RCT as per Rules and Orders applicable to the Additional Secretary to the Government of India i.e. All India Service (Death-cum-Retirement Benefits) Rules, 1958. In these rules applicable to the Additional Secretary to the Govt. of India, there being a provision of payment of Rs. 1.0 lakh maximum as a gratuity and the applicant having received an amount of Rs. 75,000/- as his entitlement for gratuity under the parent service, it is urged that the applicant is entitled to be paid the balance of Rs. 25,000/- as the amount of gratuity from the respondents.

11. A perusal of the relevant provision of 1989 Rules exhibits that Rule 3 of it deals with the subject of Pay which the Chairman, Vice-Chairman or Member of the RCT would receive on his appointment with the RCT. It further clarifies that the Chairman, Vice-Chairman or a Member who has joined the RCT after retirement as Judge of a High Court, or who has retired from service under the Central Government or a State Government, as the case may be and who has received or has become entitled to receive any retirement benefits by way of pension, gratuity, employer's contribution to a Contributory Provident Fund or other forms of retirement benefits; his pay shall

be reduced by the gross amount of pension or pensionary equivalent of employer's contribution to the Contribution Provident Fund or any other form of retirement benefits, (emphasis supplied), if any, drawn, or to be drawn by him. Vide Sub-Rule (2) of Rule 5 of the aforesaid 1989 Rules what has been protected is that the Chairman, a Vice-Chairman or Member even after appointment under the Railway Claims Tribunal Act, 1987 shall also be entitled to receive pension and gratuity in accordance with the retirement rules applicable to him prior to his retirement from the parent service. This Sub Rule cannot be interpreted to import an interpretation as has been raised on behalf of the respondents that so far as the benefit of gratuity is concerned, a Member of the RCT would be governed by the same Rules which were applicable to him prior to his retirement from the parent service. This is more so in view of proviso laid down under Section 9 of the PCT Act which provides that "neither salary and allowances, nor the other terms and conditions of the services of the Chairman, Vice Chairman or other Members shall be varied to his disadvantage after his appointment." If the stand raised on behalf of respondents is accepted, it would negate the import of the total emoluments including pay which are to be paid to a Chairman, Vice Chairman or Member of the RCT on his appointment in the RCT. Reading both these provisions i.e. Rule 3 and 5 together, what is culled out is that the pay which shall be paid to

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the Chairman, a Vice Chairman or Member appointed in the RCT would be reduced by the gross amount of pension or pensionary equivalent of employer's contribution to a Contributory Provident Fund or any other form of retirement benefits, which necessarily includes gratuity as well. Sub-rule (3) of Rule 5 does not debar the Chairman, a Vice-chairman or Member who is appointed in the RCT upon retirement from parent service; to receive the pension and gratuity which was payable to him in accordance with the retirement rules applicable to him prior to his retirement from the parent service. Although no specific provision has been made in the 1989 Rules applicable in the RCT regarding the payment of gratuity to the Chairman, a Vice-Chairman or Member retiring from the RCT, yet the legislature has been mindful of the contingency of the amount of gratuity which may be payable to a Chairman, Vice Chairman or Member of the RCT after his retirement. With an intention to fill this <sup>vacuum</sup>, the Legislature has made a provision in the form of residual provision under Rule 16 that where there is no express provision with regard to any condition of service of the Chairman, Vice Chairman or Member of the RCT, that missing condition shall be determined by the Rules and Orders which are applicable for the time being to a Secretary to the Government of India in the case of the Chairman and Vice Chairman and by the Rules and Orders applicable to the Additional Secretary to the Government of India in the case of Members of the RCT. In my opinion, this construction

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is the only possible construction which can be carved out of the aforesaid provisions to solve the controversy raised in this application. As has been held by Hon'ble the Supreme Court in the case of Collector of Customs Vs. D.S. & W. Mills Ltd., AIR 1961 SC 1549 (1551):

".... It is one of the well established rules of construction that "if the words of the statute are in themselves precise and unambiguous no more is necessary than to expound those words in their natural and ordinary sense the words themselves in such case best declaring the intention of the Legislature." It is equally well settled principle of construction that "Where alternative constructions are equally open that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system." .....

In the instant case also, if the stand raised on behalf of the respondents on the basis of the applicability of Rule 5(2) of the 1989 Rules is adopted, it would not only introduce uncertainty but would result into confusion in the matter of gratuity payable to the Chairman, Vice-Chairman and Member of the RCT, as the case may be.

12. Further as observed earlier there are specific rules called the All India Services (Death-cum-Retirement Benefits) Rules, 1958 which are applicable to the Secretary of the Government of India as also to the Additional Secretary to the Government of India. Rule 19(3)(a)(i) of the 1958

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Rules reads as under:-

"19(3)(a)(i) A retirement gratuity equal to one fourth of the emoluments for each completed period of six months of service shall be paid to member of the service shall be paid to member of the service on his retirement from service who has completed five years' qualifying service, subject to a maximum of sixteen and half times of the emoluments.

Provided that the amount of retirement gratuity payable under the clause shall not exceed rupees one lakh."

It is thus evident that the maximum amount of retirement gratuity payable under clause 19(3)(a)(i) of the 1958 Rules which are applicable in the case of Additional Secretary to the Government of India shall not exceed Rs. 1.0 lakh.

13. From the above, it is abundantly clear that the claim about the payment of gratuity advanced by the applicant is governed by the residual provision under Rule 16 of the 1989 Rules and not by Rule 5(2) of these Rules. The applicant having retired as Member of the Railway Claims Tribunal after completion of his full tenure of five years service, is to be governed by the Rules and Orders applicable to the Additional Secretary to the Government of India i.e. All India Services (Death-cum-Retirement Benefits) Rules, 1958 and as per the residual provision Rule 16 of the 1989 Rules, <sup>thus</sup> and is entitled to receive a further amount of Rs. 25,000/- after reduction of Rs. 75,000/- received by the applicant on his retirement from parent service from the amount of rupees one lakh payable as retirement gratuity in the case of Additional Secretary to the Government of India.

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14. Consequently, while answering the point for determination raised in this OA in the 'affirmative' the OA is allowed and the impugned order/letter dated 26.7.1994 (Annex.A-11) and dated 26.10.1994 (Annex.A-14) are hereby quashed. The respondents are directed to pay to the applicant who has retired as Member of the RCT Jaipur on 7.11.1994 an amount of Rs. 25,000/- as his reduced retirement gratuity alongwith interest thereon @ 12% p.a. from 8.11.1994 till the date of actual payment (sic) to him, within a period of three months of the receipt of a copy of this order by them. No order as to costs.



(RATAN PRAKASH )  
MEMBER (J)