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C.A.T. (PROCEDURE) RULES

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.460/99 Date of order: 10/8/2001

Nand Kishore, Retd., DCM/BVP, A180, Gokhale Marg, Pani Pech, Jaipur.

...Applicant.

Vs.

1. Union of India through the General Manager, W.Rly, Churchgate, Mumbai.

2. The Divisional Railway Manager, W.Rly, Bhavnagar Para (Gujrat).

...Respondents.

Applicant in person

Mr.T.P. Sharma : for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member.

Hon'ble Mr.A.P.Nagrath, Administrative Member.

PER HON'BLE MR S.K.AGARWAL, JUDICIAL MEMBER.

In this O.A filed under Sec.19 of the ATs Act, 1985, the applicant claims interest on delayed payment of retiral benefits @ 18% per annum.

2. The case of the applicant in brief is that the applicant retired on 1.10.95 but his gratuity and commutation was with-held due to pending false and baseless DAR proceedings. It is stated that the DAR proceedings were delayed without any plausible reason and took about 3 years and 9 months without any fault of the applicant, thereby he suffered great mental agony and financial loss. It is stated that ultimately the Enquiry Officer did not find the charges established against the applicant and thereafter the amount so with-held was paid to the applicant on 22.4.99, without any interest. It is stated that as per instructions issued

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on 6.5.91 by the Railway Board, if the payment of gratuity is delayed on account of administrative lapses, the applicant is entitled to claim interest. Therefore, the applicant filed this O.A for the relief as above.

3. Reply was filed. In the reply it is stated that DCRG and Commutation could not be released to the applicant on superannuation, due to pending DAR case but other dues including provisional pension was given to the applicant immediately after his retirement. It is furtner stated that enquiry against the applicant was finalised on 24.2.98 however, the disciplinary authority took a lenient view and instead of imposing any penalty, only "Government Displeasure" was conveyed to the applicant in December 1998. It is also stated that DCRG and Commutation was released to the applicant immediately after finalisation of DAR case. It is also stated that the applicant was not exonerated, therefore, he is not entitled to any interest on the delayed payment and circular dated 15.4.91 issued by the Railway Board is not applicable in the instant case. It is stated that the applicant was served the charge-sheet for major penalty for committing a grave misconduct and the enquiry was completed within the frame work of rules. It is stated that only DCRG & Commutation payable to the applicant was with held and rest of the payment were made including provisional pension, therefore, the applicant is not entitled to any interest.

4. Rejoinder was filed reitating the fact as stated in the O.A which is on record.

5. Heard the learned counsel for the parties and also perused the whole record.

The established fact which emerges on perusal of the

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averments made by the parties is that the applicant was superannuated on 1.10.95 and DCRG and Commutation payable to the applicant on superannuation was with-held on account of pending DAR case. It is also an admitted fact that charge-sheet was issued to the applicant on 3.1.95 and finalised on 24.2.98.

7. The Enquiry Officer vide his report dated 24.2.98, held that no malafide intention existed behind his action of correcting the marks of six marginal candidates (falling in range 56-59) upwards to enable them qualify for viva voce and in adopting the procedure of evaluating best five answers in the case of other candidates and therefore the charges of his acting in a manner which is unbecoming of a Railway servant and thereby violating rule 3.1(i),(ii)&(iii) of Railway Services (Conduct) Rules, 1966 levelled against Sh.Nand Kishore, Retd.DCM/VBP are not proved. However, he has committed the error of evaluating large number of answer sheet in contravention of GM(E)/W.Rly's direction of 7.12.90.

8. The finding of the Enquiry Officer makes it abundantly clear that the applicant was not found guilty of the charges for which he was charge-sheeted. The Enquiry officer only found that he has committed an error of evaluating large number of answer sheet in contravention of GM(E)/W. Rly's directions of 7.12.90 for which there was no charge.

9. The learned counsel for the respondents, during the course of arguments has contended that the applicant was not exonerated. On perusal of the findings of the Enquiry Officer, it clearly emerges that the charges levelled against the applicant are not proved and there can be no

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other meaning of this fact that the applicant was exonerated. The disciplinary authority thereafter issued 'Government Displeasure' vide order dated 30.12.98 and on the basis of this Govt displeasure, it appears that the applicant was refused interest on delayed payment.

10. "Government Displeasure" has not been provided as any of the penalties in the Rules of 1968. After departmental enquiry the disciplinary authority is of the opinion that the charges are established against the delinquent, the penalty as provided under the aforesaid rules can be inflicted upon the delinquent government servant. Therefore, the communication of Govt. displeasure to the applicant in pursuance of the disciplinary proceedings has no meaning and we are of the considered opinion that in pursuance of the disciplinary proceedings under the Railway Servants (Discipline & Appeal) Rules, 1968 the communication of 'Government displeasure' is not in accordance with the rules and the same cannot be used against the applicant.

11. On a perusal of pleadings of the parties, it appears that the communication of 'Govt. Displeasure' to the applicant was issued without affording an opportunity to show cause to the applicant, thereby the respondents' department has violated the principles of natural justice. Therefore the communication of Govt displeasure to the applicant without any basis and without affording him and opportunity to show cause is not in accordance with the rules and on the basis of such communication the denial of interest to the applicant on delayed payment was not justified.

12. In State of Kerala & Ors Vs. V.M.Padmanabhan Nair

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1985(1) SCC 429, Hon'ble Supreme Court held that retiral dues like pension, gratuity are no longer any bounty to be distributed by the government to its employees on their retirement. They have become valuable rights in the hands of retired employees under various decisions of the Supreme Court. Any culpable or unjustified delay in settlement and disbursement of the retiral benefits by the government will make them liable to pay interest on the delayed payments. This view gets support in the case of S.R.Bhanrale Vs. Union of India & Ors 1997(1)AISLJ 1.

13. In K.H.Vaswani Vs. Union of India & Ors, OA No.808/92 decided on 3.4.95 held by Bombay Bench of the Tribunal that the applicant is entitled interest on delayed payment of DCRG excluding the first 3 months at the rate of 12% per months.

14. In the instant case, the enquiry was finalised on 24.2.98 and the enquiry officer has held that the charges levelled against the applicant could not be established, therefore, in view of the facts and circumstances of this case and settled legal position, we are of the opinion that the applicant is entitled to interest @ 12% per annum from 1.1.96 (after 3 months of his retirement) on DCRG and Commutation which was with-held by the respondents' department due to pending DAR proceedings against the applicant and the 'Government Displeasure' as communicated by the respondents does not come in the way of the applicant.

15. We, therefore, allow this O.A and direct the respondents to pay interest to the applicant at the rate of 12% per annum on delayed payment of Gratuity and Commutation w.e.f. 1.1.96 till the date of actual payment, within 3

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months from the date of receipt of a copy of this order.

15. No order as to costs.

(A.P.Nagrath)
Member (A).

(S.K.Agarwal)
Member (J).

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Certified That This is a True and **Accurate Copy of The** Document/Ord. **As In The Case File No.** ... 460/99 **And That All The Matter** Appearing Therein **Have Been Legibly and** Faithfully Copied **with no Modification.**

14.8.2001

Copying Clerk Section Officer(Judicial)
C.A.T. Jaipur Bench