

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

O.A. No. 551/2002  
Tx~~xx~~ No.

199

DATE OF DECISION 02.07.2003

A.K.Verma

Petitioner

Mr. Shiv Kumar (not appeared)

Advocate for the Petitioner (s)

Versus

Union of India & ors.

Respondent

Mr. N.C.Goyal

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. M.L.CHAUHAN, MEMBER (JUDICIAL)

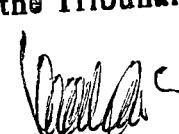
The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?

2. To be referred to the Reporter or not ? Yes

3. Whether their Lordships wish to see the fair copy of the Judgement ?

4. Whether it needs to be circulated to other Benches of the Tribunal ? Yes

  
(M.L.CHAUHAN)  
Member (Judicial)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Dated of order: 02.07.2003

OA No.551/2002

A.K.Verma s/o Shri Hari Singh Verma r/o 135, Adarsh Nagar, Ajmer, last employed on the post of Senior Project Manager under Chief Works Manager, Ajmer Loco Workshop, Ajmer.

.. Applicant

Versus

1. Union of India through the General Manager, North Western Railway, Jaipur.
2. Divisional Railway Manager, Western Railway, Jaipur Division, Jaipur.
3. Chief Works Manager, Loco Workshop, Ajmer.

.. Respondents

None present for the applicant.

Mr. N.C.Goyal - counsel for the respondents.

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

O R D E R (ORAL)

Per Hon'ble Mr. M.L.Chauhan

The applicant who was railway servant retired on superannuation on 30.4.96. Just before his retirement, the respondent No.2 issued the impugned order dated 22.4.96 by which the pay of the applicant was fixed as Rs. 3400/- in the pay scale of Rs. 2000-3500 w.e.f. 3.2.98 instead of Rs. 3500/- which the applicant was drawing pursuant to grant of benefit of stepping up vide order dated 12.7.89. No notice was given to the applicant before issuing the said order. The respondents further withheld the gratuity amount of Rs. 50,000/- payable to the applicant. Feeling aggrieved by this action of the respondents, the applicant

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filed OA No.248/97 in this Tribunal, which was finally disposed of vide order dated 29.9.99 with the following directions:-

""In view of the above, we allow this application and quash the impugned order dated 22.4.96 and direct the respondents that any order of re-fixing the pay of the applicant may be made only after giving an opportunity to show cause to the applicant. The amount of DCRG withheld by the respondents may be released within one month from the date of receipt of a copy of this order with interest @ 12% per annum".

2. Since the respondents did not comply with the aforesaid directions, the applicant filed a Contempt Petition No.13/2000 in this Tribunal. However, during the pendency of the Contempt Petition, the respondents released the amount of Rs. 39,399/- without interest. The said Contempt Petition was finally disposed of vide order dated 7.9.2001 with a direction to the applicant to file a representation for remaining amount of Rs. 10,601/- and interest on the amount of gratuity which was not paid to him. Consequently, the applicant made representation dated 18.9.01 to the respondents for releasing the balance amount as well as payment of interest of gratuity. Since the representation was not decided by the respondents, he again filed OA No. 604/2001 before this Tribunal. The said OA was decided by this Tribunal vide order dated 3.1.2001 (Ann.A8) with a direction to the respondents to decide/dispose of the representation dated 18.9.01 filed by the applicant within a period of one month from the date of receipt of a copy of that order. A liberty was

given to the applicant to approach the appropriate forum if he still feels aggrieved with the decision on the representation. The representation dated 18.9.01 was decided by the respondents vide impugned order dated 17.10.01 (Ann.A/1A) wherein it is stated that out of the withheld amount of gratuity of Rs. 50,000/-, Rs. 39,399/- has been paid to the applicant upto 5.7.99 and Rs. 10,601/- has been deducted towards recovery of Scooter advance and excess payment. Since no interest is payable on the amount which is kept for adjustment of the excess payment made to the employee, no interest was paid to the applicant. Feeling aggrieved by this order, the applicant has filed the present OA thereby praying for the following reliefs:-

- "i) That the respondents may be directed to release the amount of Rs. 10,601/- and they may be further directed to pay the interest on the amount of DCRG Rs. 50,000/-. Further the respondents may be directed to revise the pension of applicant on the basis of his last pay drawn i.e. Rs. 4375/- and further they may be directed to pay the arrear and interest on account of revision of pension. Further the impugned order Dt. 17.10.2001 rejecting the representation of applicant may also be declared illegal, arbitrary and the same may be quashed with all consequential benefits.
- ii) Any other order/directions/reliefs may be passed in favour of applicant which may be deemed fit, just and proper under the facts and circumstances of this case.
- iii) That the cost of this application may be

awarded."

3. When the matter was listed for admission/hearing on 17.12.02, the learned counsel for the applicant submitted that he will limit his prayer only to the interest on the DCRG amount of Rs. 50,000/- minus Rs. 10,601/- i.e. Rs. 39,399/- which is lawfully payable to him, this Tribunal directed Mr. N.C.Goyal, Advocate to take notice on behalf of the respondents and to file reply within 4 weeks and the applicant was also granted time to file rejoinder within 2 weeks thereafter and the matter was directed to be listed for orders on 20.2.2003. Thereafter the matter was appeared before this Bench on different dates and finally on 22.4.03 when the learned counsel for the applicant submitted that he does not want to file rejoinder and the matter may be heard finally. However, on that date on the request of the learned counsel for the respondents, the matter was adjourned to 2.7.03 for the purpose of final arguments. Consequently, the matter was heard today.

4. In the reply filed on behalf of the respondents, the only stand for not making the payment of interest on the amount of Rs. 39,399/- is that no such interest is payable on the amount which is kept in deposit for adjustment of excess payment made to the employee and as such no interest was paid to the applicant.

5. None has put in appearance on behalf of the applicant. However, I have heard the learned counsel for the respondents and gone through the material placed on record.

5.1 The limited point that arises for consideration and decision in this OA is whether the respondents were justified in denying the interest on the belated payment of gratuity on the ground that no interest is payable on the amount which is kept in deposit for adjustment of excess payment made to the employee. In order to appreciate the contention urged on behalf of the respondents, it is necessary to notice the provision of Rule 87 of the Railway Services (Pension) Rules, 1993 to the extent they are relevant. Sub-rule (1) of Rule 87 is to the following effect:-

"(1) If the payment of gratuity has been authorised after three months from the date when its payment became due on superannuation and it is clearly established that the delay in payment was attributable to administrative lapse, interest at such rate as may be specified from time to time by the Central Government in this behalf on the amount of gratuity in respect of the period beyond three months shall be paid:

Provided that the delay in the payment was not caused on account of failure on the part of the railway servant to comply with the procedure laid down in this Chapter."

The aforesaid rule mandates that if the payment of gratuity had been authorised after three months from the date when its payment became due on superannuation, the railway servant shall be entitled to interest as such rate as may be specified from time to time by the Central Government in this behalf on the amount of gratuity in

respect of the period beyond 3 months. However, proviso to this Sub-rule postulates that no payment of interest is payable to the railway servant, if the delay in the payment was caused on account of failure on the part of the railway servant to comply with the procedure laid down in this Chapter (Chapter VII). It is not the case of the respondents that the delay in payment of gratuity was caused on account of any lapse/failure on the part of the railway servant to comply with the procedure laid down in Chapter VII of the Railway Services (Pension) Rules, 1993. Rather, the lapse is on the part of the railway authorities while retaining the amount over and above the amount which was recoverable from the applicant. As such, they were not authorised to retain the amount of Rs. 39,399/- which was subsequently paid to the applicant pursuant to the order passed by this Tribunal. Therefore, the applicant was entitled to interest on the withheld amount of Rs. 39,399/- in terms of the provisions contained in Rule 87 of the Railway Services (Pension) rules.

5.2 Payment of gratuity with or without interest does not lie in the domain of discretion, but it is a statutory compulsion. Specific benefits expressly given in a social beneficial legislation cannot be ordinarily denied. The employee on retirement has valuable right to get gratuity and any culpable delay in payment of gratuity must be visited with the penalty of payment of interest, was the view taken in State of Kerala and ors. v. M. Padmanabhan Nayyar [1985 (1) SLR 750 (SC)].

5.3 As already been stated above, it was not the case of the respondents that delay in payment of gratuity was due to the fault of the employee. As noticed above, there

is a clear mandate in the provisions of Rule 87 to the employer for payment of gratuity within time and to pay interest on belated payment of gratuity. Since the respondents did not satisfy the mandatory requirement of Rule 87 of the Railway Services (Pension) Rules, no discretion was left to deny interest to the applicant on the belated payment of gratuity.

5.4 That apart, in OA No.248/97 decided on 29.9.99, this Tribunal has specifically directed the respondents to release the amount of DCRG withheld by them alongwith interest at the rate of 12% p.a. This order had attained finality and has not been challenged by the respondents. In view of this finding given in the earlier OA, the respondents were not justified to scuttle the judicial order by passing the impugned order dated 17.10.01 whereby holding that no interest is payable on the amount which is kept in deposit for adjustment of excess payment made to the employee, as it is well settled that administrative ipse-dixit cannot infiltrate on arena which stands by judicial order.

6. In the light of the facts as stated and for the reasons aforementioned, the impugned order dated 17.10.01 (Ann.A1/A) cannot be sustained. Consequently, it is set-aside. The respondents are directed to pay interest at the rate of 12% per annum on the amount of gratuity i.e. Rs. 39,399/- to which the applicant was entitled from the date it became payable, as per Rule 87 ibid till the same was actually paid to the applicant. The OA is allowed accordingly with no order as to costs.



(M.L.CHAUHAN)

Member (Judicial)