

THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET

Original

APPLICATION NO.: 522/2013

Applicant (S)

Respondent (S)

Advocate for Applicant (S)

Advocate for Respondent (S)

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

24/04/2014
O.A. No. 522/2013

Mr. C. B. Sharma, Counsel for applicant.
Mr. Anupam Aggarwal, Counsel for respondents

Heard learned counsel for the

parties.

O.A. is disposed of by a separate
order on the separate-sheets for
the reasons recorded therein.

Anil Kumar
[Anil Kumar]
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 522/2013

Date of Order: 24.04.2014

CORAM

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Padam Chand 'G' S/o Shri Gopi Lal Ji, aged about 56 years, R/o opposite Murga Farm, House No. 472, Dadawara, Kota Junction, Kota (Raj.) at present working as Gangman, under Section Engineer (P.Way), Maheedpur Road, Western Railway, Kota.

...Applicant

Mr. C.B. Sharma, counsel for applicant.

VERSUS

1. Union of India through General Manager, West Central Zone, West Central Railway, Jabalpur.
2. Divisional Railway Manager, West Central Railway, Kota Division, Kota.
3. Senior Divisional Personnel Officer, West Central Railway, Kota Division, Kota.

...Respondents

Mr. Anupam Agarwal, counsel for respondents.

ORDER (Oral)

The applicant has filed this Original Application praying for the following reliefs: -

"(i) That entire record relating to the case recalled for and after perusing the same respondents be directed to allow interest on delayed payments @ 12% per annum of gratuity Rs. 8,382/- at market rate from 1979 to 2013 by quashing letter dated 04/06/2013 (Annexure A/1) with all consequential benefits.

(ii) Any other relief which is just and reasonable may also be given to the applicant.

(iii) Cost of the application may be awarded to the applicant."

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2. The brief facts of the case, as stated by the learned counsel for the applicant, are that the father of the applicant retired from Railway Service in 1979. During his service period, he was in possession of the rent free Government accommodation.

3. He further submitted that the applicant, before retirement of his father, appointed as Khallasi in the respondent-department. The applicant applied to the respondents for the allotment of the same quarter, which was in possession of his father. The applicant continued in possession of the quarter and the respondents never informed the applicant that his application has not been considered. The father of the applicant expired in the year 1984.

4. Learned counsel for the applicant also submitted that the respondents in the year 1999, served a charge memo to the applicant and finally imposed a punishment of stoppage of annual increment without cumulative effect and simultaneously also ordered for recovery of penal rent. Aggrieved by the decision of the respondents, the applicant preferred O.A. No. 238/2004 and OA No. 316/2006 against both these actions of the respondents. The Tribunal vide order dated 07.03.2008 directed the Railway Board to decide the matter. The Railway Board rejected the request of the applicant. Being aggrieved by the decision of the Railway Board, the applicant filed OA No. 181/2009 and OA No. 183/2009 and the same were disposed of by this Bench of the Tribunal vide orders dated 10.01.2012.

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5. He further submitted that the respondents preferred D.B. Civil Writ Petition No. 4003/2012 against the order passed by the Tribunal in OA No. 181/2009 and D.B. Civil Writ Petition No. 4032/2012 against the order passed by the Tribunal in OA No. 183/2009, before the Hon'ble High Court of Rajasthan, Jaipur Bench, Jaipur. The Hon'ble High Court of Rajasthan, Jaipur Bench, Jaipur dismissed the D.B. Civil Writ Petition No. 4032/2012 vide order dated 23.05.2012. The respondents withdrew the D.B. Civil Writ Petition No. 4003/2012. The respondents also preferred Review Petition No. 14/2002 in OA No. 181/2009 before this Tribunal and the same was also dismissed vide order dated 21.08.2012. Thereafter, the respondents paid the gratuity of Rs. 8,382/- which was withheld in the year 1979 without any interest, so the applicant made request on 23.03.2013 (Annexure A/6) for allowing interest since 1979 to 2013. The respondents rejected the claim of the applicant regarding interest vide their letter dated 04.06.2013 (Annexure A/1) on the ground that the Tribunal nowhere ordered for any interest.

6. Learned counsel for the applicant submitted that this Tribunal had given no finding regarding the payment of gratuity. The respondents have not considered this fact that gratuity was withheld in the year 1979 without any base. The action of the respondents against the applicant also came to an end. Therefore, the applicant is entitled for interest on the delayed payment of gratuity.

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7. The respondents have submitted their reply. In the reply, the respondents have submitted that the Tribunal never directed the respondents to pay the amount of gratuity and interest. As held by the Hon'ble Apex Court, the relief prayed for, if not granted, deemed to be rejected. The applicant did not challenge the order of the Tribunal dated 10.01.2012 in OA No. 183/2009 to this extent before the appropriate forum; rather accepted the same. Thus, in view of the principles of estoppels and principles of res-judicata /constructive res-judicata, he has no right to seek the relief. Accordingly, the Original Application deserves to be dismissed on this count alone.

8. Learned counsel for the respondents further submitted that the father of the applicant retired in 1979. As per rules, he became entitled for the payment of gratuity immediately after his retirement. Thus, cause of action, if any, arose was in 1979. He never sought any direction of the Tribunal within limitation since then. He expired in 1984. Yet the applicant failed to seek any direction within one year from the death of his father. As per the pleadings in the O.A., he preferred O.A. for the first time in 2004 followed by in 2006 and 2009. Thus, on the ground of limitation also, the O.A. is not maintainable.

9. Learned counsel for the respondents also argued that the order of the Tribunal has been implemented in letter and spirit. Since the applicant's father did not vacate the Government quarter, therefore, his gratuity was not paid at that point of

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time. When finally the issue was settled by the competent court in 2012 immediately thereafter the gratuity was paid to the applicant. Therefore, there is no deliberate delay on the part of the respondents in the payment of gratuity to the applicant. Thus, he is not entitled for any interest on the payment of gratuity.

10. Heard the learned counsel for the parties and perused the documents available on record.

11. It is not disputed that the father of the applicant while in service was in possession of a Government accommodation. On his retirement, he did not vacate the said Government accommodation/quarter. He died in the year 1984. The Government accommodation remained in possession of the family of the father of the applicant; though it was not officially allotted either in the name of the wife of the deceased Govt. employee or in the name of the applicant. The respondents also did not initiate any action for the vacation of the quarter. Suddenly, after 20 years, the respondents raised a demand of penal rent from the applicant, therefore, this Tribunal in OA No. 183/2009 directed the respondent-department not to recover the penal rent from the applicant but this does not mean that the applicant was not in the unauthorized occupation of the said quarter.

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12. According to the learned counsel for the respondents, the gratuity could not be released to the father of the applicant when he was alive or thereafter to the mother of the applicant or to the applicant because he had not vacated the said quarter at the time of his retirement. After the dispute with regard to the vacation / regularization of the said quarter has been settled in 2012, the respondents have paid the gratuity to the applicant in 2013 and, hence, there is no deliberate delay or negligence on the part of the respondents in not making the payment of gratuity at the time of the retirement of the father of the applicant.

13. Looking to the facts of the present Original Application, I am inclined to agree with the contentions of the learned counsel for the respondents that the applicant is not entitled for any interest on the delayed payment of gratuity. According to the Rule 16 (8) of the Railway Services (Pension) Rules, 1993, a railway servant shall vacate the railway accommodation immediately after his retirement. The Rule 16 (9) of the Railway Services (Pension) Rules, 1993 also provides that in case where a railway accommodation is not vacated by a railway servant after superannuation, the full amount of the retirement gratuity, etc. shall be withheld, which shall be released immediately on the vacation of such railway accommodation.

14. Thus, under the facts and circumstances of the present case, I am of the opinion that the applicant is not entitled for the

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interest on the gratuity and, as such, the present Original Application deserves to be dismissed.

15. Consequently, the Original Application being devoid of merit is dismissed with no order as to costs.

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(ANIL KUMAR)
ADMINISTRATIVE MEMBER

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