

Reserved on 10.08.2018

***CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD***

This the ***23rd*** day of ***August, 2018.***

PRESENT:

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER- A

ORIGINAL APPLICATION NO. 330/329/2011

Nanhey Lal, S/o Shri Murari Lal alias Murali, R/o Barapur, P.S. Kachwan, District - Mirzapur .

...Applicant

V E R S U S

1. Union of India through the General Manager, Diesel Locomotive Works, Varanasi.
2. The Chief Personnel Officer, Diesel Locomotive Workshop, Varanasi. Respondents

Advocate for Applicant : Shri Rakesh Verma

Advocate for the respondents : Shri Santosh Kumar Rai

O R D E R

This applicant has filed this OA seeking the following main relief:-

“(i) to issue a writ, order or direction in the nature of Mandamus directing the Respondent Nos. 1 & 2 to make the payment of Leave encashment amounting to Rs. 24,840/- as well as interest on the whole amount of Rs. 1,97,401/- (Provident Fund, Deposit Linked Insurance, Death Gratuity & Group Insurance Scheme) for the period when it became due i.e. 15.06.1995 (the date of death of the deceased father of the petitioner) till the payment has actually been made i.e. 13.07.2010 @ 18% per annum..... .”

2. The facts in brief as per the OA are that after the death of his father on 15.06.1995, the applicant claimed for payment of terminal benefits of his father amounting to Rs. 2,23,241/-, which the respondents rejected.

Thereafter, the applicant filed a suit in the Civil Court (Succession No. 145/1995), where the applicant was found entitled to receive the terminal benefit of the deceased father and a succession certificate was issued in his favour vide order dated 19.04.1997 (Annexure A-1 to the OA). Despite the succession certificate submitted to the respondents, the payment was not made. Hence the applicant filed OA No. 540/1997, which was disposed of by this Tribunal vide order dated 19.03.2010 (Annexure A-3 to the OA) with liberty to the applicant to make a representation for payment of terminal benefit of his deceased father with reference to the succession certificate and the respondents were directed to pay the amount of terminal benefits within three months.

3. Thereafter, the respondent paid Rs. 91,649 towards PF + DLI vide Cheque dated 13.07.2010 (Annexure A-6), Rs. 69,684/- towards death gratuity vide Cheque dated 31.07.2019 (Annexure A-7) and Rs. 36,068/- towards Group Insurance Scheme vide Cheque dated 25.08.2010 (Annexure A-8), but the interest was not allowed from the date of death of father of the applicant on 15.06.1995 till the payments were made. It is also stated that amount of leave encashment Rs. 24,840/- has not been paid. The applicant preferred a fresh representation dated 14.09.2010 (Annexure A-9) followed by another representation dated 13.01.2011 (Annexure A-10). As the applicant did not receive any response from the respondents, hence he has filed the instant OA on the ground that the action of the respondents to withhold the legitimate claim of the applicant is arbitrary and illegal. It is stated that despite submission of succession certificate issued by the competent court of law, the respondents have delayed the payment of terminal benefits.

4. The respondents have filed Counter Reply stating therein the entire terminal benefits were paid to the applicant, except the leave encashment for want of leave record. It is further stated that during examination of leave records, one Shri Vijay Kumar submitted an application dated 03.08.2010 (Annexure CA-2) for stoppage of payment till disposal of suit No. 825/2009 filed by him for succession. Then the respondents vide letter dated 02.01.2011 (Annexure CA-3) informed the applicant to produce indemnity bond for final payment of leave encashment, but he did not produce the same and he submitted a representation on 08.12.2010 (Annexure CA-4) informing that the suit No. 825/2010 challenging his succession certificate has been dismissed. Thereafter, the amount of leave encashment was paid on 13.04.2011 (Annexure CA-5).

4. The applicant has filed Rejoinder Affidavit reiterating the stand taken in the OA that the respondents have acted illegally without taking action on the succession certificate and thereby unnecessarily delayed the payment. The applicant has also filed a Suppl. Affidavit in which he has admitted that the amount of leave encashment to the tune of Rs. 24,840/- has been paid on 13.04.2011.

5. We have heard Shri Rakesh Verma, learned counsel for the applicant and Shri S.K. Rai, counsel for respondents. Only grievance of the applicant that that was pressed by the learned counsel for the applicant was interest for delayed payment of retiral dues.

6. Learned counsel for the respondents submitted that the orders of this Tribunal have been complied by the respondents and all the retiral dues payable to the applicant have been released to the applicant. Learned

counsel for the respondents also filed a 'written argument' in the case stating the following main points: -

- (i). The retiral dues could not be released due to various objections and suits filed by the applicant and his rival. Hence, the respondents are not responsible for the delay.
- (ii). Applicant did not immediately apply for payment of dues, due to which the same could not be verified and there was no official record to show that the applicant was son of the deceased employee.
- (iii). In stead of any representation to the authorities, the applicant filed civil suit and then O.A. No. 540/1997, which was disposed of vide order dated 19.03.2010 and the said order did not allow any interest to the applicant. The dues could not be disbursed to him prior to 19.03.2010 since the matter was subjudice.
- (iv). One Vijay Kumar submitted an application dated 03.08.2010 that he had filed a suit for Succession. Subsequently, his suit was dismissed by the Court.

7. The order dated 19.03.2010 (Annexure A-3) in O.A. No. 540/1997 filed by the applicant has directed that if the applicant files a detailed representation to the competent authority, he shall pass appropriate reasoned and speaking order in view of the fact that the Succession Certificate has already been confirmed in favour of the applicant and there is no impediment in his way. Accordingly, representation of the applicant was to be disposed of by the competent authority within three months on receipt of such representation. Thereafter, the representation dated 30.03.2010 has been filed by the applicant. In this representation, copy of which is enclosed at Annexure A-4, the applicant has mentioned about the review application filed by some interested person against the applicant's

claim in this Tribunal raising validity of his Succession Certificate and such review application was allowed by the Tribunal, as apparent from the order dated 19.03.2010. The authority did not release retiral dues payable to the applicant. He has mentioned that since Succession Certificate has been confirmed vide order dated 20.11.2008 (Annexure A-2), he requested for release of terminal benefits. Finally, he made the following prayer in the said representation : -

“It is, therefore, most respectfully prayed that your goodself may be pleased to ensure and take immediate action for the payment of aforesaid terminal benefits amounting to Rs. 2,23,241/- of my deceased father (railway employee) at an early date, without any further delay. In case of delay, I shall be entitled to be compensated in terms of interest at the appropriate rate.”

8. For delayed payment of gratuity, the rule 87 of the Railway Services (Pension) Rules, 1993 states as under:-

“87. Interest on delayed payment of gratuity: - (1) In all cases where the payment of gratuity has been authorised later than the date when its payment becomes due, including the cases of retirement otherwise than on superannuation, and it is clearly established that the delay in payment was attributable to administrative reasons or lapses, interest shall be paid at the rate applicable to State Railway Provident Fund amount in accordance with the instructions issued from time to time: Provided that the delay in payment was not caused on account of failure on the part of the railway servant to comply with the procedure laid down by the Government for processing his pension papers.

(Authority: File No. 2015/F(E)III/1(1)/4 dt.17.06.16RB NO.70

(2) Every case of delayed payment of gratuity shall be considered by the General Manager or Administrative Head of the Railway Unit, as the case may be, and where the said General Manager or Administrative Head is satisfied that the delay in the payment of gratuity was caused on account of *administrative reasons or lapse*, he shall order for arranging the payment of interest. The powers to pass order for payment of interest on delayed payment of death-cum-retirement gratuity shall rest with General Manager or Administrative Head of the Railway Unit and shall not be delegated to any lower authority.

(Authority: File No. 2015/F(E)III/1(1)/4 dt.17.06.16RB NO.70

(3) In all cases where the payment of interest has been ordered, the railway shall fix the responsibility and take disciplinary action against the railway servant or servants concerned who are found

responsible for the delay in the payment of gratuity on account of administrative lapses. (Authority: File No. 2015/F(E)III/1(1)/4 dt.17.06.16RB NO.70

(4)

(5) Gratuity becomes due immediately on retirement and in case of a railway servant dying in service, action for finalizing his pension and death-cum-retirement gratuity shall be paid.”

9. From above, it is clear that the gratuity was payable to the applicant immediately after death of his father in 1995. After submission of the Succession Certificate on 19.4.1997, there was no problem in releasing the gratuity to the applicant as per the provision of law and any one opposing the same could have been asked to produce an appropriate order from the competent court of law cancelling the succession certificate produced by the applicant within a reasonable time. Alternatively, the applicant could have been asked to produce an acceptable security before releasing the gratuity to him. It was not done. The contention that the dues could not be released since the OA No. 540/1997 was pending, is not acceptable since, the respondents could have sought for direction from the Tribunal in this regard and if such permission was refused or delayed, then the respondents would not have been responsible for the delay. There is nothing on record to show that such steps were taken by the respondents. Hence, for the gratuity dues, the respondents are liable to pay interest at the rate specified under the rule 87 of the Railway Services (Pension) Rules, 1993 from three months after submission of the succession certificate by the applicant (i.e. from 19.7.1997) till the date of actual payment of the gratuity dues.

10. For other retiral dues except gratuity, these should have been paid to the applicant within three months from the date of submission of the representation dated 30.03.2010 as per the orders of the Tribunal dated 19.03.2010, which stated as under:-

"5. In the circumstances, it would be open to the Applicant to prefer a detailed representation to the Competent Authority, who shall pass appropriate reasoned and speaking order in view of the fact that succession certificate has already been confirmed in favour of the Applicant and there is no other impediment in his way. Accordingly, we direct the applicant to file a detailed representation within a period of four weeks from the date of receipt of certified copy of this order. If such representation is filed within stipulated period of time, the Competent Authority shall consider and decide the same by a reasoned and speaking order and pay the amount to the applicant in accordance with the Rule, within a period of three months on receipt of such representation."

11. In view of the above, the respondents are liable to pay interest on all payments of retiral dues of the applicant's father, except gratuity, at the rate of 12% per annum from 30.06.2010 till the date of actual payment of the dues to the applicant. The interest payable on gratuity amount as per the discussions in paragraph 9 above, shall be ensured by the respondents.

12. The directions in paragraph 11 shall be complied within two months from the date of receipt of a certified copy of this order. The OA is allowed in part accordingly. No costs.

**(GOKUL CHANDRA PATI)
MEMBER-A**

Anand...