

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 653/2015
MA 541/2015

Reserved on: 26.08.2016
Pronounced on: 2.09.2016

Hon'ble Mr. P.K. Basu, Member (A)

Shri Nau Nihal Singh Rana
(Sr. Citizen, aged about 72 years)
Retired Chief Personnel Officer
North Central Railway HQ/ Allahabad
R/o Q-60 (First Floor), Rajouri Garden
New Delhi-110027

... Applicant

(Through Shri Yogesh Sharma, Advocate)

Versus

1. Union of India through
The Secretary
Ministry of Railways
Railway Board, Rail Bhawan,
Raisina Marg, New Delhi-110001
2. General Manager
North Central Railway (HQ)
Subedar Ganj, Allahabad(U.P.)
3. Director (D & A)
Railway Board, Rail Bhawan,
New Delhi-110001
4. Chief Personnel Officer
North Central Railway (HQ)
Subedar Ganj, Allahabad(U.P.)
5. Financial Advisor and Chief Accounts Officer
North Central Railway (HQ)
Subedar Ganj, Allahabad(U.P.)
6. Senior Deputy General Manager
North Central Railway (HQ)
Subedar Ganj, Allahabad(U.P.)
7. Deputy Chief Personnel Officer (Gazetted)
North Central Railway (HQ)

Subedar Ganj, Allahabad(U.P.) ... Respondents
(Through Shri V.S.R. Krishna and Shri Shailendra Tiwari,
Advocates)

ORDER

The applicant, who was a member of the Indian Railway Personnel Service (IRPS), had joined railways as a Class-I officer (now Group `A') on 13.12.1965 on the basis of All India Competition held by the Union Public Service Commission (UPSC). He retired on 31.03.2003. On charges of causing sexual harassment to his lady Secretary, an inquiry was held and he was imposed a minor penalty of reduction of pay for six months on 13.01.2000. He filed an appeal on 22.02.2000 and vide order dated 26.12.2002, the appellate authority passed an order removing the applicant from service with effect from 31.12.2002.

2. After dismissal of the OA filed in this regard by the Tribunal, the applicant approached the Hon'ble High Court. The Writ was allowed with all consequential benefits by setting aside both the penalty order as well as the Tribunal's order vide order dated 4.12.2008. The matter finally reached the Hon'ble Supreme Court in SLP No.17711/2009 and the Hon'ble Supreme Court upheld the judgment of the Hon'ble High Court vide order dated 27.09.2011. The Hon'ble Supreme Court further declared the show cause notice dated 19.12.2001 issued to the applicant by the appellate authority to impose the penalty of removal from service as inconsistent with rules and law.

3. It is the case of the applicant that in view of the judgment of the Hon'ble Supreme Court dated 27.09.2011, both the penalties imposed on him got extinguished and became non-existent from the date these were imposed and applicant stood fully exonerated.

4. During the pendency of the SLP, the respondents released the retirement benefits of the applicant. However, after dismissal of the SLP, the applicant represented before the respondents for payment of interest on all retiral benefits as a consequential benefit. In this regard, the applicant also relied on para 14 of the judgment of the Hon'ble Supreme Court in **S.K. Dua Vs. State of Haryana and another**, (2008) 3 SCC 44, where the Hon'ble Supreme Court noted as follows:

"14. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well founded that he would be entitled to interest on such benefits. If there are Statutory Rules occupying the field, the appellant could claim payment of interest relying on such Rules. If there are Administrative Instructions, Guidelines or Norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence Statutory Rules, Administrative Instructions or Guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of "bounty" is, in our opinion, well founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents."

Reliance was also placed on **Vijay L. Mehrotra Vs. State of U.P. & Ors.**, JT 2000 (5) SC 171, **Shashi Lata Verma Vs.**

State of Bihar and Ors., (2005) 12 SCC 197, **Govt. of NCT of Delhi Vs. Nand Lal Singh**, 193 (2012) Delhi Law Times 133 (DB), **Delhi Police Vs. Balwant Singh**, W.P. (C) 1227/2012 decided by the High Court of Delhi on 13.03.2012, order dated 19.05.2011 in OA 3933/2010, order dated 17.05.1996 in OA No.49-PB/1995 and order dated 20.04.1996 in OA 294/1995, stating that interest has been granted for delayed payment of retiral dues in all these cases.

5. The respondents rejected the claim of interest on gratuity as per Railway Ministry's order dated 23.10.2012 based on para 5.4 of letter dated 21/22.01.1993 and letter dated 1.10.1997 according to which, interest is payable to those employees who have been fully exonerated of the charges in the departmental proceedings as per RBE No.76/91 dated 15.04.1991, holding that the applicant was not fully exonerated but let off on technical grounds. The applicant had also filed a Contempt Petition No.317/2009 before the Hon'ble High Court. The question had arisen whether interest on other retirement benefits would be treated as a consequential benefit in the light of observations of the Hon'ble High Court, as upheld by the Hon'ble Supreme Court and vide order dated 11.12.2014, the Hon'ble High Court finally decided that interest could not be treated as part of consequential benefits and gave liberty to the applicant to get redressal of his grievances, if any, by availing such remedies as may be permissible in accordance with law.

6. The applicant has, therefore, filed this OA claiming interest on delayed payment of gratuity and other retiral benefits in the light of observations of the Hon'ble Supreme Court in S.K. Dua (supra). The prayers of the applicant are as follows:

- 8.1 May kindly set aside and quash illegal impugned order dt. 23.10.12 of Respondents by which they have refused to pay interest on delayed payments of gratuity and other retiral benefits of applicant, though claim of this interest is a Fundamental Right of applicant under Article 14, 19 and 21 of Constitution of India whether there are rules for the same for not as per judgment of Hon'ble Supreme Court in "S.K. Dua Vs. State of Haryana" case (2008) 3 SCC 44 as already cited above.
- 8.2 May kindly order the respondents to pay interest @ 18% p.a. as had been allowed by Hon'ble Supreme Court in the case of Vijay Kumar Malhotra JT 2000 (5) SC 171 cited above, on delayed payment of gratuity and all other retiral benefits i.e. commutation of pension, leave encashment, consolidated transfer grant, arrears of pension, arrears of pay illegally withheld due to illegal punishments etc. including all these increased benefits paid to applicant in year 2012, after granting notional promotion as per order dated 29.2.2012, by opening sealed cover w.e.f. 14.02.2000 to Higher Administrative Grade of 22400-24500 (5th Pay Commission) = 67000-79000 (6th Pay Commission).
- 8.3 May kindly also order respondents to pay interest at 18% p.a. on salary of applicant withheld during his period of suspension of

applicant from 31.10.96 to 17.03.98 as this period of suspension had been ordered to be treated as duty being unjustified as per orders dated June 2000, of respondents but respondents have not paid interest on this withheld amount of his salary upto now. This is permissible as per judgment of Hon'ble Supreme Court & High Court of Delhi in similar cases of illegal suspension.

- 8.4 May kindly order the respondents to pay interest @ 18% to applicant on the reduced salary paid to applicant by reduction of one increment of applicant, during the period 14.01.2000 to 13.07.2000 when the respondents implemented the illegal minor penalty of "reduction of one increment for six months non-cumulatively" imposed on applicant, illegally by disciplinary authority by its order dt. 13.01.2000, as per **Annexure A-3** as this illegal penalty has been set aside by Hon'ble Supreme Court finally, by judgment dated 27.09.11 in CA No.1752/2010 filed by respondents against judgment dated 04.12.2008 of Hon'ble High Court in W.P (C) 4014/2005 which had been filed by applicant here. Though this reduced salary has been paid back to applicant in year 2012, but no interest has been paid to applicant on this amount by respondents.
- 8.5 May kindly grant costs including Lawyer's fee for this litigation to applicant, as it is respondents only, who have forced the applicant to initiate this litigation, by their impugned illegal impugned order dt. 23.10.2012.

8.6 May kindly order the respondents to pay interest also on interest which had become due but not paid as per law laid down by judgment of Hon'ble Supreme Court in Alok Shankar case, already referred to above.

7. The applicant's case is that since he has retired on 31.03.2003, the payment of interest should be from 1.04.2003 till the actual date of payment of interest and in this regard in accordance with provision of para 2 (i) of RBE No.76/91 dated 15.04.1991 which states as follows:

"2. (i) In case of Railway servants against whom disciplinary/ judicial proceedings are pending on the date of retirement and in which gratuity is withheld till the conclusion of the proceedings.

(a) In such cases if the Railway servant is exonerated of all charges and where the gratuity is paid on the conclusion of such proceedings, the payment of gratuity will be deemed to have fallen due on the date following the date of retirement vide Board's letter of even number dated 25.05.1983. If the payment of gratuity has been authorized after three months from the date of his retirement interest may be allowed beyond the period of three months from the date of retirement."

Learned counsel also relies on S.K. Dua (supra). The appellant in the cited case was Engineer-in-Chief in the Department of Irrigation, Government of Haryana. There was a charge-sheet against him in June 1998, which is prior to his retirement but ultimately the authorities exonerated Shri Dua of all the charges and his retiral benefits were thereafter given to him between 11.06.2002 and 18.07.2002. He had retired on 30.06.1998.

The question was of grant of interest on delayed payment of retiral benefits. The Hon'ble High Court of Punjab and Haryana had dismissed his Writ *in limine* giving him liberty to approach Civil Court. The Hon'ble Supreme Court remitted the matter back to the Hon'ble High Court for fresh disposal in accordance with law, further clarifying that the Hon'ble Supreme Court may not be understood to have expressed any opinion on the merits of the matter, one way or the other. The applicant, however, relies on para 14 of the judgment, which has already been quoted above.

8. Learned counsel for the respondents drew our attention to order dated 4.12.2008 passed by the Hon'ble High Court of Delhi in Writ Petition (C) No.4014/2005. The question for consideration in this Writ was that when the appellate authority acting under Rule 22 of the Railway Servants (Discipline and Appeal) Rules, 1968 issues a show cause notice to a delinquent officer only for enhancing the penalty, is it permissible for that authority to upset, on merits, the findings of fact and conclusions arrived at by the disciplinary authority? The Hon'ble High Court answered the above question in the negative. The Writ Petition was allowed with a direction that the applicant will be entitled to all consequential benefits, after observing as follows:

“19. Taking all these facts into consideration, in our opinion, it is quite clear that the appellate authority completely misdirected itself in law in upsetting the factual conclusions arrived at by the Railway Board and thereafter enhancing the punishment awarded to the Petitioner. For this reason, the order passed by the Tribunal

upholding the decision of the appellate authority is required to be set aside.

20. In a situation such as this, ordinarily, we would have had to remit the case to the appellate authority for reconsideration of the matter in its correct perspective. But, we have been told that the Petitioner has since retired and has also suffered the monetary penalty that was originally imposed upon him by the Railway Board. Therefore, we do not think it appropriate to remit the matter back to the Respondents for a reconsideration of the issue. The case is about 12 years old and deserves to be given a quite burial."

9. It is stated by the learned counsel for the respondents that when the matter came up in Contempt Petition No.317/2009, vide order dated 11.12.2014, the Hon'ble High Court disposed of the matter as follows:

"Vide a separate order, the contempt petition is dismissed with liberty to the petitioner to get redressal of his grievances, if any, by availing such remedies as may be permissible in accordance with law."

The original Contempt Petition No.317/2009 was dismissed vide order dated 11.12.2014. In fact, in para 7 of the order, the Hon'ble High Court has held as follows:

- "7. In the order granting consequential reliefs to the petitioner, there is no mention of payment of interest either on gratuity or on the amount of arrears payable to the petitioner by way of consequential benefits. Therefore, this court cannot enlarge the scope of the impugned order so as to give benefit of interest on any score to the petitioner."

10. It is, therefore, argued by the learned counsel for the respondents that after this finding of the Hon'ble High Court, the

applicant has no ground to raise the question of payment of interest either on gratuity or on amount of arrears payable to him by way of consequential benefits. In para 8 of the order, the Hon'ble High Court has directed as follows:

"8. Similarly, based on the same analogy, even if the petitioner is disputing the quantum of payment made to him, that cannot be subjected to a minute analysis in a contempt petition. The petitioner is free to seek redressal on all these scores in accordance with law if his grievances still subsist."

11. It is the case of the respondents that in the above para 8 of order dated 11.12.2014, liberty has been granted to the petitioner only to the extent of dispute regarding quantum of payment made to him, which could not be subjected to a minute analysis in a Contempt Petition. The question of payment of interest is no longer open and already settled by the High Court.

12. Learned counsel for the applicant, however, states that in Civil Appeal No.1752/2010, in para 9 of its order, the Hon'ble Supreme Court has noted as follows:

"9. Being dissatisfied, the respondent preferred a writ petition in the High Court, questioning not only the validity of the order of enhancement of punishment but also the minor punishment awarded by the disciplinary authority. As afore-stated, the said writ petition has been allowed, setting aside both the said orders."

It is argued that the Hon'ble Supreme Court has, therefore, clearly upheld the setting aside of both the minor punishment and the removal and the respondents cannot now get into the question of whether the applicant has been exonerated on

technical grounds and not on merits by the Hon'ble High Court. It is further argued that as per order dated 29.02.2012 issued by the respondents, the applicant has been notionally promoted to HA Grade with effect from 14.02.2000 with all consequential benefits and all consequential benefits would include interest. Learned counsel for the applicant submits that in order dated 21.03.2012 in Contempt Petition No.317/2009, the Hon'ble High Court had recorded as follows:

"Learned counsel for the respondent submits that consequent upon the judgment of the Supreme Court, the petitioner has been granted one promotion after opening the sealed cover. He further submits that the respondents have to make calculation of the amount due on account of arrears and other dues. He seeks time and further submits that the petitioner's case for further promotion shall also be considered."

According to him, this clearly indicates that the respondents had sought time only to work out arrears and other dues and hence interest as well.

13. Learned counsel for the applicant further drew my attention to para 5 of the judgment in Writ Petition (C) No.4014/2005 where the following has been noted by the Hon'ble High Court:

"5. It is clear from the charges leveled that the basis of the fourth charge is the sexual advances alleged to have been made by the petitioner. But since none of the charges relating to sexual harassment were proved against him, it appears to us that the allegation that the Petitioner had initiated disciplinary action against his Private Secretary on a frivolous ground with the ulterior motive of making her more pliable so that she would

give in to him, must necessarily fall to the ground."

It is the case of the learned counsel that this makes it absolutely clear that the charges leveled against the applicant were frivolous and he was exonerated on merit and not on technical grounds.

14. Lastly, the learned counsel for the applicant relies on circular dated 25.05.1983 by which instructions had been issued that in cases where judicial proceedings have been instituted, gratuity if allowed to be drawn then interest would be payable on gratuity from the date of retirement.

15. Vide order dated 4.12.2008 in Writ Petition (C) No.4014/2005 (supra), the Hon'ble High Court of Delhi, in view of the case being pending for 12 years, decided not to remit it to the respondents and allowed the Writ making the applicant entitled to all consequential benefits. The Writ Petition basically challenged the Tribunal's order dated 24.10.2003 by which it rejected the OA followed by rejection of Review Application (RA) as well. When the matter came up before the Hon'ble Supreme Court, it refused to interfere in the decision of the Hon'ble High Court. The Hon'ble High Court had set aside the order of the Tribunal on the ground that the appellate authority had misdirected itself in law in upsetting the factual conclusions arrived at by the Railway Board and thereafter enhancing the punishment awarded to the petitioner, primarily for violation of the principles of natural justice and Rule 22 of the Railway

Servants (Discipline & Appeal) Rules, 1968. The Hon'ble Supreme Court in its order has also reiterated the position that Rule 22 of the aforesaid Rules was not complied with.

16. It is also clear from para 7 of the order of the Hon'ble High Court dated 4.12.2008 in Writ Petition (C) No.4014/2005 (supra) that the petitioner has already undergone the penalty imposed by the Railway Board initially, *namely*, the minor penalty of reduction of one stage in the same pay scale for a period of six months without cumulative effect. The challenge before the Hon'ble High Court was to appellate authority's order of his removal, upheld by the Tribunal both in OA as well as RA. We also find from para 7 of the order of the Hon'ble Supreme Court that it was not a decision by the Supreme Court but only a statement of the respondent i.e. applicant in this case. The Hon'ble High Court has allowed the Writ Petition (C) No.4014/2005 (supra), which means that the appellate order has been set aside.

17. Vide its order dated 11.12.2014 in CP 317/2009 (supra), in para 7, the High Court has clearly recorded that it cannot enlarge the scope of the impugned order so as to give benefit of interest on any score to the petitioner. What was left to be agitated by the applicant was only, as mentioned in para 8 of the order in CP 317/2009, any dispute on quantum of payment made to him, which could not be subjected to a minute analysis in a Contempt Petition. In fact, it is interesting to note that in

para 20 and 21 of the said order, the Hon'ble High Court had made adverse observations against the petitioner.

18. I am also of the view that S.K. Dua (supra) will not apply in this case as in that matter, the issue was remitted back to the High Court. In its observations in para 14 of the judgment, the Hon'ble Supreme Court has made it clear that these observations are "prima facie". It is not a ratio laid down by the Hon'ble Supreme Court.

19. From the above, what can be concluded is as follows:

- (i) The Hon'ble High Court has already held that the question of interest does not arise and consequential benefits does not include interest;
- (ii) The judgment of the Hon'ble Supreme Court in S.K. Dua (supra) is not relevant in this case;
- (iii) The applicant was not exonerated on merit but let off on technical ground.

20. In view of above discussion, the OA is found to be devoid of merit and is accordingly dismissed. No costs.

(P.K. Basu)
Member (A)

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