

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.020/01476/2014

Date of CAV: 20.08.2018

Date of order: 24.08.2018

Between:

D. Krishna Murthy, S/o. D. Narappa,
Aged about 65 years, Ex. Goods Guard, Gooty,
South Central Railway, Guntakal Division,
R/o. H. No. 11/268-A, Kasapuram Road, Guntakal, Anantapur District,
Andhra Pradesh – 517 501.

... Applicant

And

1. Union of India, Represented by
The General Manager,
South Central Railways,
Rail Nilayam, Secunderabad - 71.
2. The Divisional Railway Manager,
South Central Railways, Guntakal Division,
Guntakal, Anantapur Dist., Andhra Pradesh-517501.
3. The Senior Divisional Operating Manager,
South Central Railways, Guntakal Division,
Guntakal, Anantapur Dist., Andhra Pradesh-517501.
4. The Senior Divisional Personnel officer,
South Central Railways, Guntakal Division,
Guntakal, Anantapur Dist., Andhra Pradesh-517501.

... Respondents

Counsel for the Applicant ... Mr.M.C. Jacob, Advocate

Counsel for the Respondents ... Mr. N. Srinatha Rao, SC for Railways.

CORAM:

Hon'ble Mr. B.V. Sudhakar ... ***Member (Admn.)***

Hon'ble Mr. Swarup Kumar Mishra ... ***Member (Judl.)***

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

The OA is filed challenging the order of the third and fourth respondents in File No. SCR/P-GTL/359/Pay fixation/ET/15, dt. 15.05.2014 and 01.07.2014 to the extent of restricting the pay and allowances to 90% consequent to dropping further

enquiry proceedings without granting consequential benefits viz., payment of DCRG with interest on delayed payment and non-grant of commutation based on the retirement date of 30.04.2009 thereby depriving his pension benefits and causing monetary loss.

2 The brief facts of the case are that the applicant was imposed with a penalty of 'dismissal from service' w.e.f 7.7.2000 for allegedly being responsible for a railway accident while he was working as goods guard. The Appellate Authority softened the punishment to one of compulsory retirement by order dt 27.9.2000. The Revision Authority on being petitioned upheld the Appellate order vide letter dt 11.4.2001. Undaunted, the applicant approached this Tribunal vide OA no 749/2001. The Tribunal, on merit decided the case interfering only with the extent of punishment by setting aside the orders of the disciplinary/appellate/revisionary authority, and directing reinstatement of the applicant, however, with a latitude that fresh consideration be given to impose any punishment other than compulsory retirement, removal and dismissal, since others who had contributed to the said accident were let off with minor penalties. The Department moved the Hon'ble High Court of A.P, vide writ petition No 16676/2004 and though initially, the orders of the Tribunal were stayed, subsequently, the writ petition was dismissed on 18.2.2013 with a direction to the petitioners to comply with the orders of the Tribunal. An SLP filed in CC No. 2990/ 2014 challenging the dismissal of writ petition also met the same Waterloo, vide order dated 24.2.2014. The 4th respondent, based on the orders of the 3rd respondent informed that the Department is not proposing to continue the disciplinary proceedings against the applicant. On repeated representation of the applicant, claiming a number of relief consequent to the decision of the Tribunal as upheld by the Apex Court, the 4th respondent intimated that the competent authority

has directed payment of 90% of pay and allowances for the intervening period from 7.7.2000 to 30.4.2009 without addressing other grievances.

3. The applicant's claim originates from the respondents' decision of treating the period 7.7.2000 to 30.4.2009 as on duty and deciding not to take any disciplinary action against the applicant. According to the applicant, having taken such a decision, and waiving the imposition of penalty, respondents are duty bound to treat the entire period of absence from July, 2000 onwards as one of duty for all purposes and consequently, all the benefits attendant to the same shall have to accrue to the applicant. His argument is energized by the fact that had he been reinstated as per the orders of the Tribunal without challenging the order of the Tribunal, he would have got all the benefits which his other colleagues involved in the accident and who were imposed with a minor penalty are getting . The delay due to the legal process involved cannot be attributed to the applicant and therefore his demands, according to the applicant, are genuine. Moreover, it is not clause 2 but Clause 3 of the 1344 of the Indian Railway Establishment Code, Vol.II, which is applicable to the applicant in so far as disbursement of pay and allowances, since no punishment was imposed on him. After taking the decision not to proceed against the applicant consequent to the orders of the Tribunal, it would not be rational to state that he is not thoroughly exonerated. Consequently, the applicant insists that the following grievances be redressed:

1. Only getting provisional pension and other retirement benefits were not released.
2. Free pass as per eligibility not issued
3. Medical facility was not extended to him as per railway rules
4. Interest on delayed payment of interest on DCRG
5. Commutation of pension was not allowed from the date of his retirement ie 30.4.2009

6. Allowance in lieu of kilometerage for running staff.
7. Promotion benefits in the context of his junior K.N Babu being promoted.
8. Productivity linked bonus
9. Full pay and allowances for the period 7.7.2000 to 30.4.2009.

4. The applicant represented to the respondents on 11.7.14 & 15.10.2014 to redress his grievances but of no avail and hence the O.A.

5. The resistance of the respondents to the claim of the applicant is that by the time the case of the applicant had a full cycle of judicial journey till the Apex Court, the applicant reached the age of superannuation and hence they could not proceed against him as per the Tribunal order even for minor penalty and therefore the entire period from 7.7.2000 to 30.4.2009 was treated as duty. The plea of the respondents, however, is that the claim for all the benefits sought by him for the period 7.7.2000 to 30.4.2009 cannot be granted as he has not performed duty. The respondents persist that the applicant has not been thoroughly exonerated by the Tribunal and therefore it is only clause 2 of Indian Railway Establishment code that is applicable to him.

6. Counsel for the parties presented their arguments which were by and large embracing those in the pleadings.

7. The applicants claim essentially is that as his absence has been treated as duty for the period in question he is entitled to all the benefits admissible as for being on duty. His retort to the contention of the respondents that the applicant did not perform any duty during the period in question, is that he was denied to perform duty for which it is the respondents who are to be blamed. The respondents refute the contention of the applicant holding that the legal process to come to its logical end does entail delay in finalization and therefore they are

helpless. The respondents further inform, as per their reply statement, that the medical facility was extended after recovering the amount due for the purpose. Commutation pension was paid to the applicant after due medical examination on 22.8.14. Applicant was till then paid 100 % provisional pension. The applicants pay was erroneously drawn as Rs 5625 instead of Rs 5500 which was explained in detail in the reply statement and was found to be correct.

8. As is evident, here is a case where the applicant had to be off duty because of the long journey the case had to traverse with many twists and turns. The applicant averment is that since he was shown as on duty, he is naturally qualified for the benefits that stream from such an arrangement. From the respondent side they claim that they had to go through the process and the lapse of time consumed in the process had resulted in certain actions to be initiated at different intervals of time. Nevertheless, just being shown on duty but in the real sense not performing duty on ground should not be a carte blanche to seek everything under the sky.

9. We in the tribunal would like to take a balanced view, in the context of the rival presentations about the benefits sought. A surgical analysis of the same will lead us to the following:

9(a) Pay and allowances for the period of absence from 07-07-2000 to 30-04-2009:

9(b) Though the Respondents could not impose any penalty on the applicant due to factors explained, the stigma of the accident continues to stick to the applicant. The accident is a reality for which the applicant has also contributed and the punishment is an action which is decided based on the interplay of multiple factors. Therefore, the claim that he has been fully exonerated is not based on reason since his contributory role to the accident does not get obliterated just because punishment has not been imposed on him. In this case the time was the

restraint. Pay and allowance and to the extent 90 % for the period in question thus appears logical and is also on the basis of the fact that the applicant did not render any service during that period.

9(c) In respect of running allowance claimed in lieu of the kilometerage, it is understood that such a running allowance for running staff is reckoned to calculate pensionary benefits. In that event, the argument that running allowance should be paid to him stands valid. For, when the applicant is deemed to have continued in service, he is equally to be deemed to have been in service in the post he held, viz., Goods Guard. If so, as the absence from 2004 to 2009 had been treated as duty for all purpose, his entitlement to running allowance gets crystallized. In this regard, it is worth to refer to the oft quoted decision of Lord Asquith in the case of East End Dwellings Co., Ltd vs Finsbury Borough Council (1952 AC 109) wherein it has been held as under:-

“If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.”

The aforesaid observation has been approved and followed by our own Supreme Court in a series of decisions e.g. Bhavnagar University v. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111, and Raja Shatrunji v. Mohd. Azmat Azim Khan, (1971) 2 SCC 200, and in a latest decision in Mohd. Akram Ansari v. Chief Election Officer, (2008) 2 SCC 95. In a recent case of Kumaran vs State of Kerala (2017) 7 SCC 471, while extracting the above part of the judgment, the Apex Court has interpreted the same as under:-

28. “.....once the purpose of the legal fiction is ascertained, full effect must be given, and it should be carried to its logical conclusion. This is clear from the celebrated passage in *East End Dwellings Co. Ltd. v. Finsbury Borough Council*¹³: (AC pp. 132-33).....”

9(d) As regards the claim for promotion at par with the juniors, it is to be stated that promotion is not based only upon being in service but is contingent upon many factors. Just by being on duty the applicant would not become entitled to any promotion. He has to be found fit for promotion and in respect of selection post, merit and benchmark also are the reckoning factor. Therefore claim for promotion by the applicant is not in order and the same is therefore, outrightly rejected.

9(e) Coming to Productivity linked bonus , Productivity linked bonus, by its appellation signifies that it is one proximately knit to production and commensurate with the joint contribution of capital and labour. The extent of bonus is directly proportional to the extent of production. In the event of an institution running in loss, there is no question of grant of bonus since, bonus in common parlance is not a deferred wage. If it were, it would have taken precedence to dividend in respect of companies. However, in the Railways, the PLIB is normally granted, not directly proportional to the extent of production or profit but on a percentage basis. Nevertheless, taking into account the fact that the applicant is treated as on duty should embrace, eligibility to PLIB. Thus, the individual is entitled to PLIB for the period his absence is considered as duty.

9(f) As regards interest on the terminal benefits for the delayed payment, the terminal benefits became due on and from the date of retirement/compulsory retirement. Leaving a margin of two months for due processing, delay beyond three months could earn interest for delayed payment. Here again, it is subject to

the rules, if any on the subject. Though the Appellate authority had reduced the penalty to one of compulsory retirement, and the entitlement to draw the DCRG and leave salary had accrued to the applicant immediately thereafter, the fact that the applicant was deemed reinstated in service and treated to have superannuated only on 30-04-2009, the entitlement to draw the terminal benefits shifted from the date of order of compulsory retirement to 30-04-2009, the date of superannuation. The respondents ought to have advised the applicant to submit necessary details required under the rules for release of the said terminal benefits after the said 30-04-2009. Admittedly the same has not been done, instead, they challenged the order of the Tribunal and unsuccessfully tried their luck upto the level of the Apex Court which dismissed their special leave petition on 24-02-2014. Once the respondents have chosen not to proceed further against the applicant, the result was that the applicant's superannuation on 30-04-2009 was without any stigma or blot of misconduct in which event, the applicant became entitled to disbursement of the terminal benefits and in case of delay, in addition to such terminal benefits he is entitled to interest on delayed payment as per the rules. Withholding of leave encashment is subject to Rule 39(3) of the CCS (Leave) Rules, which reads as under:-

(3) The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any.

This contingency not having been there, the applicant is entitled to interest on leave encashment for the period reckoned from three months after the date of his superannuation till the date of payment.

9(g) As regards interest on delayed payment of gratuity, Rule 68 of the CCS (Pension) Rules provide for the same. The said rule reads as under:-

68. 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 General 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 Government servant to comply with the procedure laid down by the Government for processing his pension papers.]

(2) Every case of delayed payment of gratuity shall be considered by the Secretary of the Administrative Ministry or the Department in respect of its employees and the employees of its attached and subordinate offices and where the Secretary of the Ministry or the Department is satisfied that the delay in the payment of gratuity was caused on account of ¹[administrative reasons or lapse], the Secretary of the Ministry or the Department shall sanction payment of interest.

(3) The Administrative Ministry or the Department shall issue Presidential sanction for the payment of interest after the Secretary has sanctioned the payment of interest under sub-rule (2).

(4) In all cases where the payment of interest has been sanctioned by the Secretary of the Administrative Ministry or the Department, such Ministry or the Department shall fix the responsibility and take disciplinary action against the Government servant or servants who are found responsible for the delay in the payment of gratuity ¹[on account of administrative lapses].

The rate of interest for delayed payment of gratuity has been prescribed as one as applicable to Provident Fund accumulations, vide Rule 68(1) above.

9(h) In so far as rate of interest on delayed payment of leave encashment is concerned, it is pertinent to note that leave encashment is not a part of pensionary benefits since the same does not figure in Pension Rules but associated with Leave Rules. Hence the rate of interest as of delayed payment of gratuity cannot be enforced.

This leads to the consideration as what should be the rate of interest on delayed payment of leave encashment. The Apex Court has, in the case of *Union of India v. Justice S.S. Sandhawalia, (1994) 2 SCC 240* has held as under:-

Once it is established that an amount legally due to a party was not paid to it, the party responsible for withholding the same must pay interest at a rate considered reasonable by the Court. Therefore, we do not see any reason to interfere with the High Court's order directing payment of interest at 12% per annum on the balance of the death-cum-retirement gratuity which was delayed by almost a year.

When the above decision was rendered, the rate of interest on FD was comparable to 12%. Now that the same has been reduced, interest at the rate of 7.5% applicable to senior citizen would render justice to the applicant.

9(i) Granting a free pass as per his eligibility from hence cannot be refused to the applicant as he stands at par with any other railway servant who has attained normal superannuation.

10. Thus based on the extensive deliberations made in the above paras considering the various pros and cons of the case, the OA is allowed to the extent as under:-

(a) It is declared that the period of absence of the applicant from service from 7.7.2000 to 30.4.2009 is treated as of duty for all purpose and save the truncation of pay and allowances by 10%, the applicant is entitled to

90% of his pay and allowances for the said period including the kilometerage in lieu of running allowance to that extent.

(b) The applicant is entitled to interest on delayed payment of DCRG and leave encashment at the rate applicable for Provident Fund credit balance at the relevant point of time in so far as gratuity is concerned @ 7.5% per annum in respect of delayed payment of leave encashment. The interest to be calculated after 3 months from the date of superannuation till the date of payment.

(c) Productivity linked bonus for the aforesaid period at the rates applicable for the relevant period.

(d) Free Railway pass facility in accordance with the extant rules and at par with any retired Railway servant of comparable status.

Time stipulated for compliance with the above direction is six months from the date of receipt of the copy of this order.

11. Under the circumstances, the OA is allowed. No order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 24th day of August, 2018

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