

LIBRARY

1 oa.1714/2017

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH**

O.A/350/1714/2017

Date of Order: 24.4.19

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. (Ms.) Nandita Chatterjee, Administrative Member

Keshab Chandra Mondal, S/o Late Bibhuti
Bhusan Mondal, Vill- Purba Bhangonmari,
Post- Khejuri, Dist-West Midnapur, West
Bengal, Pin - 721431.

--Applicant

-versus-

1. The Union of India, through the General Manager, South Eastern Railway, Garden Reach, Kolkata-43.
2. Chief Administrative Officer (Construction) S.E Railway, Garden Reach, Kolkata-43, West Bengal.
3. Divisional Railway Manager, S.E Railway, Kharagpur Division, Post - Kharagpur, Dist - West Midnapur, Pin - 721301, West Bengal.
4. Senior Divisional Commercial Manager, South Eastern Railway, Kharagpur Division, P.S Kharagpur, Dist - West Midnapur, Pin 721301, West Bengal.

--Respondents

For The Applicant(s): Mr. M.S.S. Rao, counsel

For The Respondent(s): Ms. G. Roy, counsel

ORDER

Per: Ms. Bidisha Banerjee, Member (J):

This application has been preferred to seek the following relief:

- "i) To quash the letter dated 24.11.14 of Senior Divisional Commercial Manager/ Kharagpur addressed to Divl. Personnel Officer/ Kharagpur.
- ii) To direct the General Manager/S.E Railway, Garden Reach, Kolkata to grant interest on delayed payment of gratuity and medical allowance from the date of superannuation to till date of issue of RELHS Card.
- iii) To quash the letter dated 30.10.2017 of Sr. DCM/Kharagpur and pay interest to the applicant on delayed payment of gratuity."

2. The applicant is aggrieved as having retired on 30.11.2014, his DCRG of Rs. 58 lakhs and odds was released after one and half year on 09.06.2016. He has, therefore, claimed interest on delayed payment. The respondents have refuted the claim on the ground that the delayed payment was attributable to the applicant. At hearing, Ld. Counsel Ms. G. Roy, appearing for the respondents would furnish a communication dated 05.04.2019 issued to her by Sr. Divisional Commercial Manager, S.E. Railway, which reveals as under:

"While Sri K.C. Mondal, was working as Ch. OS (Outstanding) under Sr. DCM/KGP one letter was issued from the office of FA&CAO (T)/S.E. Rly./GRC wherein it was instructed for necessary accountal and realization of the raised debited amount of Rs. 58,10,732/- in the year of 2010. It revealed during scrutiny that even after issue of order by the Competent Authority, Sri Mondal has failed to perform his duties (Accountal and its realization) in time and Railway has lost to collect of huge revenue in due time. As a result the FA&CAO (T)/S.E. Rly./GRC vide his letter No. TA/SI/KGP/Sdg./Ch./01/14/1404 dtd. 11.02.14 has directed to identify the delinquent officials for whose act the Railway dues had not been still accounted for & realized. Sri K.C Mondal was partially involved in the case as he was the then Ch. OS (Outstanding) working under Sr. DCM/KGP. As he was going to be retire on 30.11.2014, no D&A proceeding was initiated against him. But the final settlement clearance from Comm. Branch was being held up for time being.

This is also informed that, only DCRG payment was held up only for time being and payment has been done after accountal of debited amount of Rs. 58,10,732/- and after its gradually recovered.

Now, the debited amount was started for realization since 2014. If proper action was taken in time on the basis of Sr. DCM/KGP's order in Note sheet No. 1 dtd. 01.11.2011, debited amount may be realized and Rly. May earned revenue from the Firm/Party and also interest from Bank by depositing the realized amount (after accountal realized amount of Rs. 1632504/- as on 06.03.2016 out of Rs. 58,10,732/-) at Bank. Sri Mondal cannot deny it. As the said amount is Railway earnings as well as national revenue. (Details particulars enclosed)

So no question is arise for entitle to interest on the delayed payment of DCRG."

3. Heard ld. Counsels for both sides and perused the materials on record.

4. To discern whether applicant is entitled to claim interest, we considered some circulars. The circulars in regard to delay payment of interest on retiral benefits are as under:

i) OM, dated 05.10.99, issued by Ministry of Personnel, Public Grievances & Pensions (Department of Pension & Pensioners Welfare) on Implementation of recommendations contained in para 61 of 44th Report of Parliamentary Standing

Committee on Ministry of Home Affairs Time Schedule for disbursement of Pension-
regarding, reads as under:

"2. As per CCS (Pension) Rules, 1972, no interest is payable on delayed payment of pensions/ commuted value of pension. However, the above recommendation of the Committee on delayed payment of retirement dues has been examined in this Department in consultation with Department of Personnel & Training and Department of Expenditure, Ministry of Finance and it has been decided to implement the recommendation as detailed below:-

a) All pensioners dues are to be settled by strictly following the procedures laid down in Rules 56 to 76 of CCS (Pension) Rules, 1972,

(b) Wherever delays are anticipated provisional pension should be sanctioned immediately.

c) Any delay in processing of pension resulting in pension not being authorized on the last working day of retirement of the government servant, should be reported by the Head of Office to the next higher authority who would watch the settlement of delayed cases.

(d) In respect of delayed payment of gratuity wherever it results in payment of penal interest at the rate applicable to GPF deposits (at present 12% per annum compounded annually) under Rule 68 of CCS(Pension) Rules, 1972, Secretary of the Administrative Ministry or Department would initiate action to fix responsibility at all levels to recover the amount from the concerned Dealing Official, Supervisor and Head of Office in proportion to their salary by following the prescribed procedures for the purpose. This should be strictly enforced with immediate effect.

(e) Once it has been decided to pay gratuity the amount should be paid immediately pending a decision regarding payment of interest. This would reduce the interest liability if any on payment of delayed gratuity.

(f) In the matter of delayed payment of leave encashment, Department of Personnel & Training in their note dated 2.8.99 has clarified that there is no provision under CCS (Leave) Rules for payment of interest or for fixing responsibility. Moreover, encashment of leave is a benefit granted under the leave rules and not a pensionary benefit.

g) In the matter of CGEGIS, the Department of Expenditure, Ministry of Finance in their U.O. No. 709/EV/99 dated 6.8.99 has clarified that payments under CGEGIS cannot be termed as terminal benefit. As payments under this Scheme are made in accordance with the Table of Benefit which takes into account interest upto the date of cessation of service, no interest is payable on account of delayed payments under the scheme. They have also clarified that CGEGIS payment cannot be withheld and no Government dues can be recovered from the accumulation except the amount claimed by the financial institution as due from the employee on account of loans taken for house building purpose."

ii) OM dt. 1.5.12 issued by Ministry of Personnel, PG & Pensions Department of Pension & Pensioner's Welfare (Desk-F) stipulates as under:

"2. Rule 68 CCS (Pension) Rules, 1972 provides for payment of interest on delayed payment of gratuity and recovery of interest so paid from the officers responsible for such delay. The recommendations of the Committee on delayed payment of retirement dues was examined in this Department in consultation with Department of Personnel and Training and Department of Expenditure, Ministry of Finance and it was decided to implement the recommendations as below:-

(i) All pensioners' dues are to be settled by strictly following the procedure laid down in Rule 56 to 76 of CCS (Pension) Rules, 1972.

(ii) Wherever delays are anticipated, provisional pension should be sanctioned immediately.

(iii) Any delay in processing of pension resulting in pension not being authorized on the last working day of retirement of the retirement of the Government servant, should be reported by the Head of Office to the next higher authority who would watch the settlement of delayed cases.

(iv) In respect of delayed payment of gratuity wherever it results in payment of penal interest at the rate applicable to GPF deposits under Rule 68 of CCS (Pension) Rules, 1972, Secretary of the Administrative Ministry or Department would initiate action to fix responsibility at all levels to recover the amount from the concerned Dealing Official, Supervisor and Head of Office in proportion to their salary by following the prescribed for the purpose and should be strictly enforced.

(v) Once it has been decided to pay gratuity, the amount should be paid immediately pending a decision regarding payment of interest. This would reduce the interest liability if any on payment of delayed gratuity.

(vi) In the matter of delayed payment of leave encashment, the Department of Personnel & Training in their note dated 2.8.1999 had clarified that there was no provision under CCS (Leave) Rules for payment of interest or for fixing responsibility. Moreover, encashment of leave is a benefit granted under Leave Rules and not a pensionary benefit.

(vii) In the matter of CGEGIS, the Department of Expenditure, Ministry of Finance in their UO No. 709/EV/1999 dated 6.8.1999 had clarified that payment under CGEGIS cannot be termed as terminal benefit. As payment under this Scheme are made in accordance with the Table of Benefit which takes into account interest upto the date of cessation of service, no interest is payable on account of delayed payments under the scheme. They had also clarified that CGEGIS payment cannot be withheld and no Government dues can be recovered from the accumulation except the amount claimed by the financial institution as due from the employee on account of loans taken for house building purpose.

13

3. The above recommendations were circulated among all Ministries/Departments vide this Department's OM No.38/64/98-P&PW(F) dated 5th October 1999. However, it is noticed that all Ministries/ Departments are not strictly following the above instructions. The above instructions provide that wherever delays are anticipated, provisional pension should be sanctioned immediately. Thus, in case where regular pension is not authorized at the time of retirement, provisional pension should invariably be sanctioned. In spite of these instructions, there have been instances where payment of pension (regular or provisional) is not authorized at the time of retirement. In some cases, the administrative departments have been directed by the Central Administrative Tribunal/Court to pay interest for delay in payment of pension and a number of proposals for payment of interest of delayed pensionary benefits is being forwarded to Department of Pension and Pensioners Welfare. Therefore, it is reiterated that all the Ministries/Departments should strictly follow the above recommendations communicated vide this Departments OM dated 5.10.1999.

4. The Ministries/ Departments may circulate this OM among the concerned attached/subordinate/field organizations under the administrative control of the respective Ministry/Department for strict compliance."

iii) O.M dt. 6.11.08, issued by Railway Board enjoins:

" 1. Instructions were issued vide Board's letter No. F(E)III/94/PN1/28 dated 01-11-1994 inter-alia providing that where the payment of DCRG has been delayed beyond 3 months from the date of retirement, interest at the rate applicable to SRPF deposits (then 12 per cent per annum, compounded annually) will be paid to retired/dependents of deceased Railway servant. Subsequently, instructions were issued in supersession of earlier instructions dated 01-11-1994, vide Board's letter of even number dated 27-06-2002 wherein the provision for payment of interest on delayed payment of DCRG was simply reiterated without mentioning therein the words "compounded annually".

2. In this regard, a point has been raised under RTI Act, 2005 as to whether the manner of calculation of interest on delayed payment of gratuity has been changed from 'compound' to 'simple interest' consequent upon issue of Board's letter dated 27-06-2002. Since Board's aforementioned instructions were based on the corresponding instructions issued by the Department of Pension and Pensioners' Welfare, the matter has been examined in consultation with that Department and it is clarified that there is no change in the manner of calculation of interest on delayed payment of gratuity i.e interest should be calculated at the rate applicable to SRPF deposits compounded annually.

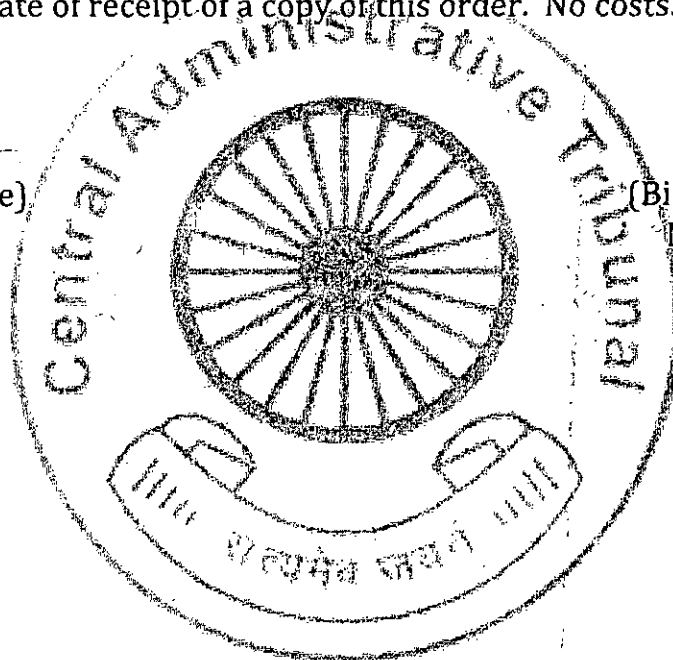
3. The Zonal Railways etc. are advised that past cases, where simple interest has been paid, may be re-opened and the difference between simple interest and compound interest may be paid."

5. Apart from the aforesaid circulars, it is noticed that interests on delayed payments have been allowed in the following matters:

- i) **S.K. Dua -vs- State of Haryana & Anr 2008(3) SLJ 108**
- ii) **Suresh O Shah -vs- State of Gujarat Spl. Civil Application 220/03 (High Court)**
- iii) **Bhailal Mahijibai Patel -vs- UOI (2014) 2 SLJ 22 (CAT)**
- iv) **OA.2832/12 (2015) 2 AI SLJ (CAT) 405.**

6. Since the communication establishes the fact that the delay is attributable wholly to the respondents, we find no reasonableness in withholding the payment for one and half years without paying interests due to such delay. Accordingly, we allowed^{ed} the O.A with a direction upon the respondents to release the interest in accordance with law on the delayed payment of gratuity, within a period of 2 months from the date of receipt of a copy of this order. No costs.

(Nandita Chatterjee)
Member (A)



B. Banerjee
(Bidisha Banerjee)
Member (J)