

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00285/2018

Wednesday, this the 19th day of June, 2019

Hon'ble Mr.Ashish Kalia, Judicial Member

Rahoothyajan.S
48/1, Muthuswamy Colony
Venketeswara Nagar, Railway Colony
Erode – 638 002 **Applicant**

(By Advocate Mr.Siby J Monippally)

V e r s u s

1. Union of India rep. by
General Manager
Southern Railway, Chennai
2. Senior Divisional Personal Officer
Southern Railway, Palghat Division
Palghat **Respondents**

(By Advocate – Mrs.Mini.R.Menon, ACGSC)

This Original Application having been heard on 19.6.2019, the Tribunal on the same day delivered the following:

O R D E R (ORAL)

Per: Mr.Ashish Kalia, Judicial Member

This Original Application is filed by the applicant praying for a direction to respondent no.2 to grant ELR gratuity of the husband of the applicant from 6.7.1967 to 31.3.1980 with interest.

2. Applicant is the wife of late S.Syed Ghous, a retired employee of Southern Railway, Palghat Division. The husband of the applicant entered into the services of the Railways on 6.7.1967 and worked in various stations of Palghat Division in the capacity

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of Fitter till 31.3.1980. He was regularized in service with effect from 9.10.1980 and he worked till his death on 26.8.2001. The applicant has also placed on record the Death Certificate of her husband vide Annexure A-2. It is further submitted that her husband was never paid ELR gratuity along with the terminal benefits. Feeling aggrieved by the non-payment of ELR gratuity, she has filed the Original Application as she being the legal heir of her deceased husband.

3. Notices were issued and the respondents entered appearance through their Standing Counsel Mrs.Mini.R.Menon,ACGSC. Reply statement has been filed by the respondents and it is stated therein that the applicant's husband was a Railway employee and he expired on 26.8.2001 while in service. The settlement of the pensionary dues was arranged to be paid to the applicant and to other legal heirs in the year 2002 and for getting ELR gratuity, she has not made any representation to the respondents. However, she has filed the present Original Application claiming the same after an elapse of over 15 years. Respondents relied on the judgement of the Hon'ble Supreme Court in **Capt.Harish Uppal v. Union of India and others** (JT 1994(3)SC 126), wherein it is held that if the parties 'choose to sleep over their rights and remedies for an inordinately long time, the court may well choose to decline to interfere'. In another judgment of the Hon'ble Supreme Court in **Union of India v. A.Durairaj** (JT 2011(3) SC 254) the Hon'ble Supreme Court has held that if the claim is raised after a considerable period, the employee will be at great disadvantage of effectively contest or counter the claim as the officers who dealt with the matter and/or the relevant records relating to the matter may no longer be available. In view of these judgments, respondents prayed for dismissal of the O.A *in limine*.

4. Heard Mr.Siby J Monippally, learned counsel for the applicant and Mrs.Mini.R.Menon,ACGSC, learned counsel for the respondents. Perused the records.

5. The short question raised by the applicant herein is that whether the applicant is

entitled for ELR gratuity for the service rendered by her late husband with the respondents as Casual Labourer from 06.07.1967 to 31.03.1980 with interest?

6. Learned counsel for the applicant has relied upon the judgements delivered by this Bench of Central Administrative Tribunal in O.A Nos.698/14 and 700/2014 in **V.Vasu, Super Gangman and Anr v. Union of India r/b the General Manager, Southern Railway**. In this O.A, a similar issue has been dealt with. It reads:

“10. The learned counsel for the applicants has referred the Railway Board Circular RBE 130/2000 dated 30.6.2000 which directs the Railway to take necessary steps to comply with the provisions of the Payment of Gratuity Act, 1972, for payment of gratuity to the casual labourer, whether employed on daily or monthly rates etc., Para 3.1 therein says that the period of casual labour service upto the date preceding the date of absorption under the provisions of Payment of Gratuity act, 1972 worked out on the basis of the wages admissible on the last date of temporary status service and for the period of delay in payment of gratuity, ie., for the period from the date of absorption up to the end of the month preceding the date on which the payment is made, the amount of gratuity shall be worked out and it will carry interest at the simple rate not exceeding the rate notified by the government from time to time. Paragraph 6 therein directs the Railway to take steps to examine all the past cases on the basis of the records available and settle the claims accordingly.

11. The learned counsel for the respondents would submit that the applicant in OA 698/2014 retired on 31.5.2005 about five years after the aforesaid circular issued by the Railway Board (RBE 130/2000). In the other OA 700/2014 the applicant retired on 31.1.2010. It is true that there has been considerable delay in applicant's approaching the Tribunal but at the same time it would be too unjust to deny the benefit of aforesaid circular which was issued in implementation of the Judgment of the Hon'ble Supreme Court. The applicants cannot claim interest for the whole period as they were not diligent in prosecuting the matter by filing the application at the appropriate time. The applicant in OA 698/2014 who retired on 31.5.2005 should have at least approached the Tribunal within a reasonable time but he has approached the Tribunal only after about 9 years. Therefore, he is not entitled to get the interest for the whole period but it will be limited to the period of three years prior to the date of filing of the OA and thereafter at the rate prescribed as per the rules. Similarly the applicant in OA 700/2014 who retired from service on 31.1.2010 also would be entitled to get interest only for a period of three years prior to the date of filing of the OA and from the date of the application till the date of payment.

12. In the result both these OA are allowed in part. Claim for benefit of the up gradation under the MACP is disallowed. The respondents are directed to effect payment of the ELR gratuity

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reckoning the casual labour service till the date of conferment of temporary status also and the amount due to them which shall be worked out in terms of RBE No. 130/2000 referred to above and other circulars on that point but it is made clear that the applicants would be entitled to get interest only for a period of three years prior to the date of filing of the OA and from the date of OA till the date of actual payment. The respondents will complete the exercise and effect payment within three months from the date of receipt of a copy of this order. No order as to costs. ”

7. Learned counsel for the applicant submitted at the Bar that in view of the Railway Board Circular RBE 130/2000 dated 30.6.2000 which directs the Railways to take necessary steps to comply with the provisions of the Payment of Gratuity Act, 1972, for payment of gratuity to the casual labourer, whether employed on daily or monthly rates etc. Para 3.1 of the Payment of Gratuity Act says that the period of casual labour service up to the date preceding the date of absorption under the provisions of Payment of Gratuity Act, 1972 worked out on the basis of the wages admissible on the last date of temporary status service and for the period of delay in payment of gratuity, ie, for the period from the date of absorption up to the end of the month preceding the date on which the payment is made, the amount of gratuity shall be worked out and it will carry interest at the simple rate not exceeding the rate notified by the government from time to time.

8. Respondents have raised objection in regard to the delay in filing the Original Application for more than 15 years. In normal cases, this Tribunal could have been rejected the Original Application on the ground of limitation. But in the present case, the question is relating to ELR gratuity, which is part and parcel of the pensionary benefits and the pensionary benefit has continuous cause of action and it is an admitted fact that the applicant has worked with the respondent organization and has not been paid the ELR gratuity till date in terms of Payment of Gratuity Act, 1972. In view of this, this Tribunal has no hesitation to hold that the applicant herein has a valid claim for ELR gratuity in accordance with law. The respondents are directed to calculate the ELR gratuity due to the widow of late retired Railway employee from 06.07.1967 to 31.03.1980. This payment shall be made within a period of 6 months from today and it will carry interest also at the

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rate of interest of Savings Bank Account. The interest shall be paid to the applicant only for a period of three years prior to the date of filing of the O.A.

9. In view of the above, the Original Application stands allowed as held by this Tribunal in O.A Nos.698/2014 and 700/2014. No costs.

**(ASHISH KALIA)
JUDICIAL MEMBER**

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List of Annexures

Annexure A1 - Photostat copy of the service certificate of husband of the applicant

Annexure A2 - Photostat copy of the death certificate of husband of the applicant dated 12.9.2001

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