

CENTRAL ADMINISTRATIVE TRIBUNAL

CHENNAI BENCH

OA/310/00165/2019

Dated 17th ,the day of October, 2019

PRESENT

Hon'ble Mr. T. Jacob, Member(A)

Smt. Thimmakka
W/o late Thimmappa
Ex. Trackman
SSE/P.Way/TRL/MAS Divn/S.W.Rly
Arunanpalli Village
Vepanapalli Post
Krishnagiri Taluk & Dist
635 121Applicant

By Advocate M/s Ratio Legis

VS

1. Union of India rep. By
The General Manager,
Southern Railway,
Park Town,Chennai
2. The Senior Divisional Personnel Officer,
Chennai Division, Southern Railway,
NGO Annexe, Park Town,
Chennai – 600 003.Respondents

By Advocate Mr. K. Vijayaraghavan

O R D E R

(Pronounced by Hon'ble Mr.T.Jacob, Member(A))

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"I. To call for the records related to impugned order M/P.353/CC/OA 1096/2018 dated 22.10.2018 made by the 2nd respondent and to quash the same and, further to direct the respondents to pay the interest at the rate of 18% that accrued on the enhanced ex-gratia compensation for the period of delay caused in arranging payment from 16.12.1998 till 26.02.2018 and to make further order(s) as this Hon'ble Tribunal may deem fit and proper and thus to render justice"

2. The brief facts of the case as submitted by the applicant are as follows:

The applicant's husband died in a train accident on 16.09.1998 and the mandatory 'Ex-Gratia Compensation' was not paid in accordance with the mandatory provision and within the limitation, hence OA 20 of 2015 was preferred and on the direction made by this Hon'ble Tribunal, the compensation was arranged without due interest. Although the representations seeking interest were not responded, in response to a RTI query the order dated 18.04.2018 was served stating that interest was not ordered by the Hon'ble Tribunal and hence the OA No.1096/2018 was preferred and the same was disposed of at the admission stage itself and in response the impugned order No.M/P353/CC/OA 1096/ 2018 dated 22.10.2018 was made contrary to the statutory instructions and settled norms. Hence, the applicant has filed this OA seeking the above reliefs inter-alia on the following grounds :-

i. The denial of payment of interest as directed in the statutory instructions

is arbitrary and an act coupled with colourable exercise of authority which is non-est in law.

ii. In the wake of the fact that Sec 3 of the 'The Interest Act,1978' postulates for, in any proceeding for the recovery of any debt or damage or in any proceedings in which a claim of interest in respect of any debt or damages already paid is made, the Court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest and in the instance case this Hon'ble Tribunal has allowed interest, the inaction of the respondent in not arranging to pay interest as directed is not only contemptuous but also in gross violation of the provision under the Interest Act, 1978 and hence the impugned order dated 22.10.2018 denying interest is liable to be quashed.

iii. In as much as the Interest Act, 1978 further provides for the period for which interest is chargeable and in the wake of the fact that interest for delayed payment of enhanced ex-gratia payment was pleaded in OA No.20 of 2015 before this Tribunal, the impugned non-payment of interest that accrued for the period of delay on the enhanced ex-gratia compensation is contrary to the legal principle and therefore impermissible in law.

iv. The inaction of the respondent in arranging to pay interest that accrued on the enhanced ex-gratia compensation of the delayed period of payment of ex-gratia compensation having been enunciated in the statutory instructions is not maintainable in law.

v. In as much as under similar circumstances as a result of a direction in OA 416 of 2012 dated 05.04.2013 (Annexure -A4) by this Tribunal the respondents have arranged lumpsum grant with interest vide letter dated 06.08.2014 (Annexure-A5), denial of interest in the case of the applicant tantamounts to discrimination and, therefore, the impugned order is in gross violation of Art.14 & 16 of the Indian Constitution and liable to be quashed.

vi. In the wake of the fact that Railway Board's letter No.E(W) 2006/CP-

I/37 dated 01.05.2007 made with reference No.E(W) 99/CP-1/1. Dated 05-11-1999 and letter No.E (W) 2006/CP-1/1 dated 08-02-2006 which restricts settlement period to 'Three months', the act of the respondents in arranging the ex-gratia compensation due as a result of death in accident on 16.09.1998, on 26.02.2018 is much delayed attracting payment of interest and hence denial of interest is untenable in law.

vii. The impugned order dated 22.10.018 alleging that the Tribunal has rejected the claim for interest is a misnomer since there was no averment justifying non-payment of interest and payment of interest was inferred with reference to the delay in payment beyond the prescribed time limit and the time-limit specified by the Railway Board on sub-delegation and therefore the impugned order is liable to be set at naught.

3. The respondents have filed a reply statement. The Ministry of Railways stipulated vide their letter No.E[W]/2007/CP1/37 dated 10.01.2011 issued orders that the compensation payable under Workmen's Compensation Act should be reduced from the lumpsum amount payable as ex-gratia compensation was withdrawn. However, the aggregate ex-gratia compensation paid for different sources of Workmen's Compensation under 124 of the Railways Act was subject to the ceiling fixed by the Department of Pension and Pensioner's OM dated 11.09.1998 (Annexure R III). In terms of the scheme, the applicant is entitled for Rs.5,00,000/- and nothing more. The respondents would submit that the applicant has not furnished the required documents which are needed to process the Ex-Gratia. After getting the requisite documents the case of the applicant was processed and sanction obtained. The respondents cannot be held responsible for the delay on the part of the applicant in not furnishing the required documents. Further, the grant of ex-gratia payment is not

under any provisions of the Act or any rules and it is only a Welfare Scheme and the same is regulated by issue of administrative instructions by the Ministry of Railways. Therefore, there is no legal right vested with the applicant to claim interest.

4. This Tribunal by order dated 09.09.2016 disposed of the Original Application No. 20/2015. In the Original Application, the applicant had prayed the relief of payment of ex-gratia of Rs.5,00,000/- along with 18% interest for the delayed payment of arrears with effect from 26.09.1998. This Tribunal observed in para (6) that "the documents sought from the applicant are essential to process the case and in the absence of such documents, it is not possible to grant the relief. As the liability was admitted by the respondents, we deem it appropriate to give a direction to the applicant to produce copies of the documents alleged to have been submitted by her already within a period of two weeks." Further, the respondents were also directed to generate as many documents as possible from their own records and also write to and follow up with the Dy.Commissioner of Labour, who has processed the case for payment of WCA. The ex-gratia payment should be arranged to the applicant within a period of two months, after completing the requisite procedural formalities. The ex-gratia payment was arranged after getting the relevant documents from the applicant as well as from the WCA Commissioner and the amount of Rs.5,00,000/- was deposited to the Bank of Baroda Account number and has also been acknowledged by the applicant. This Tribunal while disposing the Original Application No.20/2015 has rejected the prayer for grant of the relief of interest. Therefore, the applicant cannot make any further claim for the relief of interest. The respondents would

submit that it is a fundamental principle that what has not been granted is deemed to have been denied. Therefore, this Tribunal considered the facts and circumstances and the delay on the applicant's part in submitting the relevant documents and felt appropriate not to grant the relief of interest. Therefore, her representation for payment of interest from 16.12.1998 till 26.02.2018 had no merits as this Tribunal has already rejected the relief of payment of interest to the applicant. The OA is also barred by the principle of Res Judicata. Therefore, the OA claiming for interest is not tenable.

5. Heard the learned counsel of parties and carefully perused the pleadings of the respective parties and the documents annexed therewith.

6. Admittedly, this is the third round of litigation. The applicant's husband died in a train accident on 16.09.1998 and the mandatory 'Ex-Gratia Compensation' was not paid in accordance with the mandatory provision and within the limitation, hence OA No.20 of 2015 was preferred and on the direction made by this Tribunal, the compensation was arranged without due interest. The OA No.1096/2018 was preferred and the same was disposed of at the admission stage itself. Accordingly, the respondents passed impugned order No.M/P.353/OA 1096/2018 dated 22.10.2018 rejecting the claim of the applicant. Questioning the same, the present OA has been filed.

7. Para(5) of the Department of Pension & Pensioners' Office Memorandum dated 11.09.1998 regarding ex-gratia payment reads as follows:-

" 5. In supersession of all earlier orders issued by Government

as well as by individual ministries and departments in so far as these relate to the payment of ex-gratia lumpsum compensation in certain specified circumstances, the President is pleased to decide that families of Central Government Civilian Employees who die in harness in the performance of their bonafide official duties under various circumstances shall be paid the following ex-gratia lumpsum compensation:

(a) Death occurring due to accidents in the course of performance of duties. - Rs. 5.00 lakhs

(b) Death occurring in the course of performance of duties attributable to acts of violence by terrorists, anti-social elements, etc. - Rs.5.00 lakhs

(c) Death occurring during (a) enemy action in international war or border skirmishes and (b) action against militants, terrorists, extremists etc. - Rs.7.50 lakhs."

8. The aforesaid policy has been adopted by the Railway vide Railway Board's Circular No.285/99 dated 05.11.1999. The said order is also reproduced as under :-

R.B.E. No. 285/99 Subject : Payment of Ex-Gratia lumpsum compensation to families of Railway employees.

The question of rationalization and further liberalization of the existing schemes and guidelines regarding Ex-gratia lumpsum compensation to families of Civilian Govt. employees had been engaging the attention of the Government. In supersession of all earlier orders issued by the Govt. in so far as these relate to the payment of ex-gratia lumpsum compensation in certain specified circumstances. President is pleased to decide that the families of Central Government Civilian employees who die in harness in the performance of their bonafide official duties under various circumstances shall be paid ex-gratia lumpsum compensation as per Department of Pension & Pensioners Welfare, Ministry of Personnel, Public Grievances and Pensions Letter No.45/55/97-P&PW(C) dated 11th September, 1998.

Ministry of Railways have decided that the above orders (copy enclosed) of the Govt. shall be applicable to the Railway Servants mutatis mutandis.

This issues with the concurrence of Finance Directorate of Ministry of Railways.

9. In the instant case admittedly, the respondent-Railways have adopted the

policy of payment of ex-gratia lump-sum compensation to its employees vide RBE No.285/99 dated 5.11.1999. Since the husband of the applicant died in the year 1998, she is entitled for the ex-gratia of Rs.5,00,000/- as per Rules within a reasonable time w.e.f. 05.11.1999. Since the policy was adopted by the respondents on 05.11.1999 and the applicant's husband admittedly died while discharging his regular duties, the explanation of the respondents that the delay in payment of ex-gratia was due to non submission of documents when the applicant's husband died in a train accident is not acceptable. The respondents miserably failed in satisfactorily explaining the inordinate delay of about 18 years in payment of the ex-gratia.

10. The Principal Bench of this Tribunal in OA.3398/2012 dated 17.07.2014 has dealt with a similar issue of payment of interest over the belated payment of ex-gratia amount due to death of Government employee while in service and held that the applicant is entitled to interest on the amount of Rs.5,00,000/- w.e.f. the date of expiry of six months from the date of issuance of RBE No.285/99 dated 05.11.1999. The Apex Court has in the case of Union of India Vs 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."

In the instant case the delay in payment is an oophing 18 years and interest rate during 1998 is around 12%.(Simple interest). Adopting the dictum of the Apex Court

in the above case, I have no hesitation to allow this OA and direct that the respondents shall work out interest in delayed payment of ex-gratia of Rs.5 lakhs @ 9% per annum (simple interest) and remit the same to the applicant.

11. Accordingly, the OA is allowed. The impugned order is quashed and set aside. The respondents are directed to make payment of interest at the bank rate to the applicant w.e.f. the date of expiry of 6 months from 05.11.1999, till the payments were actually made. The respondents are also directed to comply with these directions within a period of three months of the communication of this Order. No costs.

/kam/

(T.Jacob)
Member(A)
-10-2019