

**Central Administrative Tribunal
Principal Bench**

OA No. 23/2015

Order Reserved on: 21.01.2016
Order Pronounced on: 01.03.2016

Hon'ble Dr. B.K. Sinha, Member (A)

Shri Phool Singh,
Aged 65 years,
S/o Shri Sri Chand,
R/o Village Nangal Kalan,
PS Rai, District Sonapat (Haryana)
PIN: 131 001

-Applicant

(By Advocate: Shri Anuj Agarwal)

VERSUS

1. Delhi Transport Corporation,
Through its Chairman,
IP Estate, New Delhi-110 002
2. The Regional Manager (North)
Delhi Transport Corporation,
Subhash Place Depot,
Delhi-110 035
3. The Depot Manager,
BBM Depot-I,
Delhi Transport Corporation,
Delhi-110 009

-Respondents

(By Advocate: Shri Sarfraz Khan)

ORDER

In the instant OA filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant is aggrieved with the action of the respondents in not paying the gratuity amounting to Rs. 68,688/- from the date of his retirement on 31.05.2010.

2. The facts of the case, in brief, are that the applicant was appointed as Conductor on 24.02.1969. His services were terminated on 07.09.1975 but he was reinstated in service on 01.11.1977 and he was treated on continuous service from the date of his appointment, i.e., 24.02.1969. The applicant retired on 31.05.2010 after having attained the age of superannuation. The gratuity of the applicant was released vide impugned order dated 28.11.2013 after having made deduction of Rs.68,688/- on gratuity amount of Rs. 1525.65 which was paid to him at the time of his termination on 07.09.1975, calculated at the rate of 12% per annum.

3. Learned counsel for the applicant submits that though the respondents had never raised the demand from the applicant to refund the gratuity and that the respondents have not only paid the gratuity late but have also charged interest @ 125% (approx.) p.a. upon the sum of Rs. 1525.65/- from the year of his reinstatement up to the date of actual payment.

4. The applicant has adopted the grounds of violation of principles of natural justice that the respondents had never raised the demand for refund of gratuity of Rs. 1525.65 for the last 33 years; the interest charged is exorbitant and there was no provision to this effect; and there is violation

of Payment of Gratuity Act, 1972, as the applicant does not fall within the ambit of Section 4(6) of the Payment of Gratuity Act, 1972.

5. The applicant has relied upon a number of decisions of the Hon'ble Supreme Court in **Union of India vs. Bhanwar Lal Mundan** [2013(1) SCALE 646], **Chandi Prasad Uniyal & Ors. Vs. State of Uttarakhand & Ors.** [(2012) 8 SCC 417], **Shyam Babu Verma Vs. Union of India** [(1994) 2 SCC 521], **Sahib Ram Vs. State of Haryana** [1995 Supp.(1) SCC 18], **State of Bihar Vs. Pandey Jagdishwar Prasad** [(2009) 3 SCC 117], **Yogeshwar Prasad & Ors. Vs. National Institute of Education Planning and Administration & Ors.** [(2010) 14 SCC 323] and **Syed Abdul Qadir & Ors. Vs. State of Bihar & Ors.** [(2009) 3 SCC 475]. The final reliance has been placed by the applicant in the cases of **State of Punjab and Ors. etc. Vs. Rafiq Masih (White Washer) etc.** (Civil Appeal No. 11527/2014) decided on and **State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr.** (Civil Appeal No. 6770/2013) decided on 14.08.2013.

6. The applicant has, therefore, prayed for the following reliefs:-

“(i) issue an appropriate order or direction thereby directing the respondent to pay the amount of gratuity of Rs. 68,688/- along with

interest to be calculated at 24% p.a. from the date of superannuation till actual payment to the applicant.

(ii) issue any appropriate order or direction as this Hon'ble Tribunal may deem fit and proper in the interest of justice and in the favour of the applicant.

(iii) allow the present application with cost, in favour of the applicants.”

7. The respondents have filed counter affidavit and also made oral submissions in which he vociferously argued that the applicant had been informed verbally on several occasions to return the amount of gratuity paid to him during the service; the applicant had intentionally omitted to return the said amount; the interest @ 12% per annum has been fairly charged from the applicant, as the delay involved is considerable; in any case, the applicant had been acquitted in a criminal case as late as on 25.09.2012, giving him 'benefit of doubt', the case laws cited by the applicant are not applicable to the instant case; and the principles enunciated by the Hon'ble Supreme Court in the case of **Chandi Prasad Uniyal & Ors. Vs. State of Uttarakhand & Ors.**, AIR 2012 SC 2951, continues to be good law. The learned counsel for the respondents, therefore, prayed for dismissal of the OA.

8. I have carefully examined the pleadings of the parties as also the documents submitted by them and also listened

oral submissions made by their respective counsels. The twin issues involved in the instant case are that: (i) whether the respondents were justifying in making a deduction of Rs.68,688/- from the gratuity payable to the applicant; and (ii) whether the law laid down in **Chandi Prasad Uniyal & Ors. Vs. State of Uttarakhand & Ors.** (supra) continues to be good law in place of **State of Punjab and Ors. etc. Vs. Rafiq Masih (White Washer) etc.** (supra).

9. Insofar as the first of the issues is concerned, I have taken note of the fact that services of the applicant had been terminated on 07.09.1975 and he was reinstated on 01.11.1977. Admittedly, as per rules, the applicant was required to refund the amount of gratuity which he has received at the time of termination of his services. However, it is also an admitted fact that no demand has been placed with the applicant for the refund of the gratuity amount at the time of his reinstatement. I am not at all in sync with the learned counsel for the respondents that the applicant had been demanded orally on several occasions in face of the denial made by the applicant on affidavit (Paras 4.6-8 of the counter affidavit). It so thereby clearly emerges that the respondents have defaulted in their duties. I also take note of the fact that the applicant has retired w.e.f. 31.05.2010 and he was entitled to receive

his gratuity on the same date. But the gratuity was released by the respondent – department after deduction of amount of Rs. 68,688/- after a delay of more than three years and six months vide the impugned order dated 13.11.2013. The applicant has further raised the question of violation of principles of natural justice, as no prior notice had been issued to him. This had been contradicted by the respondents on the ground that the notice had been issued to them as contained at Annexure A-3 (page 97 of the paper book). This appears to be communication of decision of the respondents to deduct so much of amount and not any kind of notice. I also take note of the argument of the respondents in para 5.B of the counter affidavit that the applicant was involved in a case bearing no. RC-DAI-2000-AOO47-DLI pending with CBI at the time of his retirement. His retirement benefits were withheld, except Provident Fund subject to finalization of the said criminal case. The payments were finally made after criminal case had been decided in favour of the applicant. However, a copy of the judgment dated 25.09.2011 of the court of competent jurisdiction has been enclosed wherein the accused persons, including the applicant, had been fully exonerated. Once the applicant had been exonerated, he became entitled to the payment of gratuity amount.

10. The question that would now arise is that whether the gratuity amount would become payable from the date of retirement of the applicant or from the date when order of acquittal was passed by the criminal court of competent jurisdiction. Rule 68 of the CCS (Pension) Rules provides interest on the delayed payment of gratuity. However, no interest is to be paid where delay in payment of gratuity is not attributable to administrative lapses on the part of the department. The DOP&T OMs dated 11.07.1979 and 10.01.1983 provide as under:-

“(1) Admissibility of interest on gratuity allowed after conclusion of judicial/ departmental proceedings.- 1. Under the rules, gratuity becomes due immediately on retirement. In case of a Government servant dying in service, a detailed timetable for finalizing pension and death gratuity has been laid down, vide Rule 77 onwards.

(2) Where disciplinary or judicial proceedings against a Government servant are pending on the date of his retirement, no gratuity is paid until the conclusion of the proceedings and the issue of the final orders thereon. The gratuity, if allowed to be drawn by the Competent Authority on the conclusion of the proceedings will be deemed to have fallen due on the date of issue of orders by the Competent Authority.

(3) In order to mitigate the hardship to the Government servants who, on the conclusion of the proceedings are fully exonerated, it has been decided that the interest on delayed payment of retirement gratuity may also be allowed in their cases, in accordance with the aforesaid instructions. In other words, in such cases, the gratuity will be deemed to have fallen due on the date following the date of retirement for the purpose of payment of interest on delayed payment of gratuity. The benefit of these

instructions will, however, not be available to such of the Government servants who die during the pendency of judicial/ disciplinary proceedings against them and against whom proceedings are consequently dropped.”

11. I hold that the interest on payment of gratuity had become due with effect from the date following the date of retirement of the applicant, i.e. 01.06.2010. Thus the issue has been answered in terms that no demand had been placed after reinstatement of the applicant on 01.11.1977 for refund of the gratuity amount and no notice had been issued before the deduction of the amount. I have also seen that the gratuity amount becomes payable from the date of retirement of the applicant under the terms of OMs dated 11.07.1979 and 10.01.1983 as cited above.

12. Insofar as the second issue is concerned, the applicant has placed reliance on the judgment of **State of Punjab & Ors. etc. vs. Rafiq Masih (White Washer) etc.** (supra). As per the ratio propounded in this case, recoveries by the employers from the employees belonging to Class-III and Class-IV service (or Group ‘C’ and ‘D’ service) and from retired employees, or employees who are due to retire within one year, of the order of recovery and from employees, when excess payment has been made for a period in excess of five years, before the order of recovery is

issued, would be impermissible in law. For the sake of greater clarity, I reproduce para 12 of the judgment as under:-

“12. It is not possible to postulate all situation as hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following situations, wherein recoveries by the employers, would be impermissible in law:-

- (i) Recovery from employees belong to Class-III and Class-IV service (or Group ‘C’ and Group ‘D’ service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer’s right to recover.”

13. I have also taken note of the argument of the respondents that the decision in **State of Punjab & Ors. etc. vs. Rafiq Masih (White Washer) etc.** (supra) would not become binding in this case, as it had been rendered under the circumstances peculiar to that case and would

not hold a binding legal precedent and that the case of **Chandi Prasad Uniyal & Ors. vs. State of Uttarakhand & Ors.** (supra) continues to be good, as it had been confirmed by a three-Judge Bench to which a reference has been made. In this regard, I take note of decision dated 17.07.2015 by the Patna Bench of this Tribunal in OA/050/00279/2015. The Coordinate Bench had noted the conflicting judgments on one hand in the case of **Shyam Babu Verma & Ors. vs. Union of India & Ors.** (1994) 2 SCC 521 and **Sahib Ram Verma vs. State of Haryana** (1995) Supp. 1 SCC 18 and on the other hand, in **Chandi Prasad Uniyal & Ors. Vs. State of Uttarakhan & Ors.** (supra). In the case of **State of Punjab & Ors. etc. vs. Rafiq Masih (White Washer) etc.** (supra), a reference had been made to three Judge Bench of the Apex Court regarding the correct position of law. The referral Bench had disposed of the matter vide order dated 08.07.2014, holding that the view laid down in **Chandi Prasad Uniyal's** case (supra) was in no way in conflict with the observations made by Court in other two cases and in those decisions, directions were issued in exercise of powers of this Court under Article 142 of the Constitution.

14. The applicant has also relied upon the case of **State of Jharkhand & Ors. vs. Jitendra Kumar Srivastava &**

Anr. MANU/SC/0801/2013. However, this case relates to pension, while the case in hand is in respect of payment of gratuity. Therefore, I place no reliance upon it. The issue is accordingly answered that the sole reliance upon the case of **State of Punjab & Ors. etc. vs. Rafiq Masih (White Washer) etc.** (supra) is not tenable, as the decision was given in peculiar circumstances of the case.

15. However, in conclusion, I hold that in issue no. (i), I have arrived at certain clear findings that entitlement of interest on gratuity commenced from the date following the date of retirement of the applicant, i.e. 01.06.2010 and that the respondents had omitted to notice the applicant for refund of his gratuity amount at the time of his reinstatement on 01.11.1977. I have also noted that the interest @ 15% charged right from the date of his reinstatement is travesty of justice and is grossly against the principles of equity. The fact that the interest @ 12% has been charged on the amount of gratuity despite the default of the respondent – department would even put Shylock to shame. I have also held that in response to issue no.2, the applicant cannot draw much solace from the case of **State of Punjab & Ors. etc. vs. Rafiq Masih (White Washer) etc.** (supra). Therefore, in exercise of equity jurisdiction, I hold the action of the respondents in

recovering an amount of Rs. 68,688/-, calculated at the interest of 12%, patently wrong. Hence, I direct the following:-

- (i) That the part of the order dated 13.11.2013 relating to interest @ 12% is quashed;
- (ii) The respondents will only recover an amount of Rs. 1525.65 from the gratuity payable to the applicant and refund the rest of amount, i.e., Rs. 67162.35 (Rs. 68,688-1525.65); and
- (iii) The respondents will also pay interest @ 12% per annum, the same which they have charged from the applicant, on the delayed payment of gratuity with effect from the date following the date of retirement of the applicant, i.e. 01.06.2010.

16. With the above directions, the OA stands disposed of.

(Dr. B.K. Sinha)
Member (A)

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