

(2019) 04 CAT CK 0096

In the Central Administrative Tribunal

Case No : Original Application No. No. 3371 Of 2017

Manorma Devi

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 04-04-2019

Acts Referred:

Citation : (2019) 04 CAT CK 0096

Hon'ble Judges : A.K. Bishnoi, Member (A)

Bench : Single Bench

Advocate : Yogesh Sharma, Kripa Shankar Prasad

Final Decision : Allowed

Judgement

1. The brief facts of the case are as follows:

2. The husband of the applicant late Shri Gulab was working as a Gangman at Northern Railway Station, Patel Nagar (Delhi). While working on the said position, he expired on 26.02.1998 leaving behind his family in a difficult situation. After the Vth Central Pay Commission, it was decided by the Govt. of India vide letter dated 11.09.1998 to grant lump sum compensation of Rs. 5 lakhs to the wards of Government servants who died while performing their duties. This Circular was made applicable w.e.f. 01.01.1997 and covered employees who expired after 01.01.1997.

2.1 The Railway Board vide Circular dated 05.11.1999 decided that the above orders of the Government shall be applicable to the Railway servants mutatis mutandis.

2.2 Since the applicant was not granted this compensation, she sent a Legal Notice dated 02.08.2013 to the concerned Railway authorities for grant of ex-gratia compensation of Rs. 5 lakhs along with payment of interest @ 18%. Not getting any response from the Railway authorities, the applicant filed OA No. 3456/2013 before this Tribunal, which was decided on 15.07.2014. The relevant

portion of the order is reproduced below:-

"2. In the circumstances, the present Original Application is disposed of with direction to the respondents to give reply to the legal notice dated 2.8.2013 served upon the Divisional Railway Manager, North-Western Railway, Bikaner, the Divisional Railway Manager, North Railway, State Entry Road, New Delhi and the Section Engineer (P. Way), Northern Railway Station, Delhi Sarai Rohilla through his counsel Mr. Yogesh Sharma, within a period of eight weeks from the date of receipt of a copy of this order. While doing so, the respondents would deal with all the points raised in the said legal notice. It is also made clear that respondent No.3 would not avoid giving reply to the legal notice on the plea that the decision is to be taken by Delhi Division and if required the said authority will get relevant feed back from the Delhi Division on the issue. No costs."

2.3 Thereafter an order dated 09.04.2015 (Annexure A-1) was passed by the respondents. An amount of Rs. 5 lakhs was ordered to be paid to the dependents of the deceased. However, the order contained no reference of payment of interest nor was the interest paid. Aggrieved by this, the applicant has filed the present OA seeking the payment of interest @ 18% from the due date till the date of payment of compensation, with cost.

3. In the counter reply, the respondents have mainly contended that there is no rule for payment of interest on ex-gratia compensation and also that part of the delay is attributable to the applicant.

4. The applicant has filed a rejoinder, more or less reiterating the averments made in the OA.

5. Shri Yogesh Sharma, learned counsel appearing on behalf of the applicant submitted that the respondents are legally duty bound to pay the interest for the delay that has been caused in the payment of interest and in support cited the following judgments:-

"i) Smt. Premwati vs. Union of India & Ors. [OA No.3785/2017 decided on 29.11.2018];

ii) Smt. Bimla Devi vs. Union of India & Anr. [OA No. 1103/2016 decided on 17.04.2018]".

iii) S.K. Dua vs. State of Haryana and Another [(2008) 3 SCC 44]

6. Shri Kripa Shankar Prasad, learned counsel appearing on behalf of the respondents advanced his arguments mainly on the point of delay on the part of the applicant for agitating the issue and also that there is no rule or provision for payment of interest on ex-gratia compensation in cases of delay.

7. I have carefully gone through the pleadings on record and have given full attention to the arguments advanced by two sides.

8. As far as the matter of delay in agitating the issue is concerned, the subject

matter of the present OA has already been considered in OA No. 3456/2013 (supra) and a clear order has already been passed by this Tribunal dated 15.07.2015, giving certain directions. It is not open to the respondents, at this stage, to raise the issue of delay. Furthermore, when the relevant rules provided for payment of ex-gratia compensation it was the responsibility of the respondents to comply with the instructions and make the requisite payment to the applicant. It is only on account of their failure to perform their duty that the applicant had to seek legal recourse and any delay incidental to this cannot be held against the applicant.

9. The order of this Tribunal dated 15.07.2014 in OA No.3456/2013 (supra) contains the specific direction that while giving reply to the legal notice dated 02.08.2013 "the respondents would deal with all the points raised in the said legal notice." A perusal of the order of the respondents dated 09.04.2015 (Annexure A-1) shows that there is no mention of payment of interest though the legal notice sent by the applicant dated 02.08.2013 contained clear demand for payment on ex-gratia compensation of Rs. 5 lakhs with interest @ 18%. The said order dated 09.04.2015 of the respondents clearly fails in terms of compliance of the order of this Tribunal in OA No. 3456/2013 referred above.

10. As for the contention that there is no rule for payment of interest on lump sum ex-gratia compensation, mere absence of a rule can be no justification for depriving a person of what is rightfully his or her due. Here, the right to claim interest for the period of delay is an inherent right attached to and inseparable from the right to receive payment of ex-gratia compensation, and it cannot be denied just because there is no express provision for the same. The delay in the present case in payment of ex-gratia compensation is entirely on account of the respondents. Since they are responsible for the delay they are legally bound to compensate the applicant for the consequences of this by paying the interest for the period of delay.

11. In *Bimla Devi* (supra) cited by the learned counsel for the applicant where the facts are similar to that in the present case, this Tribunal had held the view that interest is payable in cases of delay. The relevant portion of the judgment is reproduced below:-

"6. I have considered the arguments of the learned counsel for the parties and also perused the pleadings and the documents annexed thereto. It is not in dispute that in terms of the OM dated 11.09.1998 of DP&PW, which the Railways have also adopted, the applicant was eligible for receiving the ex-gratia amount of Rs. 5 lakhs. Apparently, due to the transfer of Gurgaon Railway Establishment from the administrative control of Bikaner Division of North-Western Railway to Delhi Division of Northern Railway, some confusion arose in regard to the processing of the claim and consequently in the release of the ex-gratia amount to the applicant. Further, it is to be noted that the respondents swung into action only after the receipt of the legal notice dated 01.06.2015 from the applicant and after the Tribunal's order dated 08.10.2015 in OA No.3707/2015 filed by the

applicant. Finally, the ex-gratia amount was released vide Annexure A-1 letter dated 12.01.2016. Hence, it cannot be denied that there has been inordinate delay in release of the ex-gratia amount to the applicant. Needless to say that it was obligatory on the part of the employer-department to release the ex-gratia amount to the kith and kin of the Railway employee, who dies in harness in performance of his duties.

7. It is an admitted fact that applicant's husband had died in performance of his duties on 20.04.1998. Even if it is assumed that some reasonable amount of time was required at the end of the respondents to process the claim of the applicant for release of the ex-gratia amount, such reasonable period could be at the most, six months.

8. As noticed hereinabove, the applicant's husband died on 20.08.1998 whereas ex-gratia amount has finally been released on 12.01.2016. Under the circumstances, I am of the view that the applicant is entitled for receiving interest from the year 1999 to 2015, i.e., for 16 years. I further feel that ends of justice would meet by ordering payment of simple interest @ 8% per annum for this period."

12. This case is also squarely covered by the judgement in Premwati (supra) cited above.

13. As regards decision of the Hon'ble Apex Court in S.K. Dua (supra), the facts and circumstances are very different from the present case hence it would be incorrect to draw any inference on a point of law on the basis of this citation.

14. In view of the above discussion, the OA is allowed. The respondents are directed to pay interest at the prevailing GPF rate for the period starting from 11th September, 1998 when the order for payment of ex-gratia compensation came into force till the time the payment is actually made to the applicant. This shall be done within a period of three months from the date of receipt of a certified copy of this order. No costs.