
(2017) 10 AP CK 0022
In the Andhra Pradesh High Court
Case No : 16345 of 2002

Sk. Khader Saheb (died) by Lrs

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 12-10-2017

Acts Referred:

[Railway Servants \(Pension\) Rules, 1993](#), Rule 87

Citation : (2017) 10 AP CK 0022

Hon'ble Judges : C.V.Nagarjuna Reddy, Kongara Vijaya Lakshmi

Bench : DIVISON BENCH

Advocate : G. Ramachandra Rao, A. Ravinder Reddy

Judgement

1. Feeling partly aggrieved of the order dated 28.09.2001 in O.A.No.778 of 2001 on the file of Central Administrative Tribunal, Hyderabad Bench, Hyderabad (for short, the Tribunal), the applicant therein filed this writ petition.

2. The brief facts of the case are as follows: The petitioner has joined in South Central Railway as casual labour on 15.11.1961. He has acquired temporary status on 10.07.1962. He was permanently absorbed on 17.12.1976. While working as Bridge Inspector, the petitioner retired on 30.06.1995. A few days before his retirement, departmental enquiry was initiated against the petitioner and a charge sheet was issued on 24.05.1995. During the pendency of the enquiry, the petitioner was paid encashment of unavailed leave on 17.04.1996. The petitioner pleaded that the enquiry was completed on 17.06.1997, the Enquiry Officer has submitted his report on 24.03.1998 and more than 2 years thereafter i.e., on 19.10.2000, Respondent No.2 has passed the order, while accepting the enquiry report, exonerating the petitioner, however, by recording his dissatisfaction. The petitioners gratuity and commuted value of pension were with- held on the ground of pendency of the disciplinary proceedings. On 08.01.2001, the petitioner was paid gratuity and on 24.03.2001, he was paid commuted value of pension. The petitioner filed the afore mentioned O.A. claiming interest on the delayed payments of encashment of unavailed leave,

gratuity and commuted value of pension. The petitioner also disputed the action of the respondents in reducing the qualifying service from 33 years as initially calculated by them to 25 years.

3. The respondents resisted the claim of the petitioner mainly on the ground that due to pendency of the disciplinary proceedings, the petitioner was not paid gratuity and that as the provisional pension was sanctioned to the petitioner, he was not entitled to the commuted value of pension during the pendency of the disciplinary proceedings.

4. As regards qualifying service, it was averred that initially it was wrongly computed as 33 years and the said mistake was subsequently rectified by adopting 25 years as qualifying service. The Tribunal while accepting the stand of the respondents that the delay cannot be attributed to them with regard to payment of gratuity and the commuted value of pension, however, found that no explanation was forthcoming from the respondents for the delay in payment of leave encashment. It has accordingly awarded interest at the rate of 12% p.a. on the said component from the date of retirement of the petitioner, till the date of payment. Feeling dissatisfied with the order of the Tribunal in denying him interest on the delayed payments of gratuity and commuted value of pension, the petitioner filed this writ petition.

5. From the admitted facts of the case, it is evident that though the enquiry was completed in June, 1997, the enquiry report was submitted by the Enquiry Officer only on 24.03.1998. Till the enquiry report is received by the Disciplinary Authority, it cannot be found fault with for not completing the disciplinary proceedings. However, after receipt of the enquiry report on 24.03.1998, final order was not passed till 19.10.2000. No explanation has been offered by the respondents for this inordinate delay.

6. Mr. G. Ramachandra Rao, learned counsel for the petitioner has relied upon Rule 87 of the Railway Servants (Pension) Rules, 1993 to buttress the claim of the petitioner for interest on delayed payment of gratuity. Sub-rule (1) of Rule 87, which is relevant for the present case, reads as under: (87) If the payment of gratuity has been authorized after three months from the date when its payment became due on superannuation and it is clearly established that the delay in payment was attributable to administrative lapse, interest at such rate as may be specified from time to time by the Central Government in this behalf on that amount of gratuity in respect of the period beyond three months shall be paid.

7. Provided that the delay in the payment was not caused on account of failure on the part of the Railway servant to comply with the procedure laid down in this chapter.

8. Rule 87, thus, vests with a right on the retired employee to claim interest on the delayed payment of gratuity, provided the delay in payment was attributable to the administrative lapse. As noted herein before, while there may be

justification for the respondents in not releasing the gratuity, till the Enquiry Officer has submitted his report, such a justification does not exist after 24.03.1998. The gratuity, being a retirement benefit for the services rendered by an employee unreasonable delay cannot be caused in payment of this benefit. Therefore, in our opinion, the Tribunal has committed an error in denying interest on the gratuity to the petitioner, at least from 01.04.1998.

9. As regards the commuted value of pension, even if the petitioner was not entitled to such commutation in view of the sanction of provisional pension during the pendency of the enquiry, as the enquiry was completed and enquiry report was submitted on 24.03.1998, the petitioner was eligible for commuted value of pension. Therefore, the delay in payment of commuted value of pension stands on similar footing as that of the gratuity.

10. Though, no specific provision as Rule 87 is envisaged for payment of interest on the delayed payment of commuted value of pension, even in the absence of such a rule, where there is no justification for causing the delay, the retired employee is entitled to interest in equity. We, therefore, hold that the petitioner is entitled to reasonable interest on gratuity and commuted value of pension at least from 01.04.1998.

11. With regard to the rate of interest, the Tribunal has awarded interest at 12% p.a. on the delayed payment of encashment of unavailed leave. We, therefore, feel that it is reasonable to award the said rate of interest even in respect of gratuity and commuted value of pension.

12. Accordingly, the respondents are directed to pay interest at 12% p.a. on both the above components from 01.04.1998 till the respective dates of payment of gratuity and commuted value of pension.

13. With regard to the qualifying service, the Tribunal has accepted the explanation of the respondents that the figure 33 shown in the calculation sheet was a mistake. The petitioner failed to substantiate his plea as to how his claim of 33 years of qualifying service is correct. In the absence of any such proof, we are not inclined to interfere with the order of the Tribunal on this aspect.

14. For the afore mentioned reasons, the writ petition is partly allowed to the extent indicated above.

15. As a sequel to allowing of the writ petition, WP MP No.11666 of 2003 shall stand disposed of as infructuous.