

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16-09-2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

W.P.No.27745 OF 2015

V.Sivan

...Petitioner

-vs-

1. The Union of India, represented by
The Financial Advisor &
Chief Accounts Officer/S&W,
Southern Railway, New Joint Office,
Iyyanavaram, Chennai-600 023.
2. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai-600 104.

...Respondents

Petition under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified mandamus, to call for the records relating to the order of the second respondent/Tribunal, made in O.A.No.1827 of 2013, dated 10.07.2015, to quash the same, and consequently, direct the first respondent to revise and re-fix the retiral benefits, by properly calculating the pay and other benefits on par with his immediate junior and the accrued service benefits thereto and consequently revise and re-fix the pension and pensionary benefits, with interest at the rate of 24% per annum.

For Petitioner : Mr.L.Chandrakumar

For Respondent 1 : Mr.P.T.Ram Kumar

O R D E R

(Order of the Court was made by S.Manikumar,J.)

Challenge in this writ petition is to the order of the Central Administrative Tribunal, Madras Bench in O.A.No.1827 of 2013, by which, the Tribunal has rejected the request of the petitioner, for a direction to revise and refix the retired benefits by calculating the pay and other benefits on par with his immediate junior, with accrued service benefits thereto. He has also sought for interest, at the rate of 24%.

2. Material on record discloses that the petitioner has joined the Railways as Clerk Gr.II on 25.10.1975. Alleging that when he was working as Section Officer (A) (Books Section) of Chennai Division during 1986, he has committed certain serious misconduct causing loss to the exchequer of Railways and that the said act, was in contravention of devotion to duty and failure to maintain integrity, on 17.09.2009, charges have been framed.

3. Material on record further discloses that in respect of the above allegation, a case in Cr.No.2/89 registered by CBI, was taken on record in C.C.No.40 of 1991 and thereafter, renumbered as C.C.No.72 of 1997 on the file of the learned Special Judge (CBI Cases) and during the pendency of the said Criminal case, the petitioner has filed CMP No.909 of 2007 for discharging him from the criminal cases, on the ground that the whole proceedings, were vitiated for want of proper sanction. Accepting the said contention, vide order dated 17.11.2007, the learned Special Judge (CBI cases), has discharged the petitioner in the criminal case.

4. Material on record further discloses that when the petitioner was discharged in Cr.No.2/89, after obtaining sanction, the case was sought to be revived, which necessitated the petitioner to file CrI.O.P.No.25231 of 2010 dated 08.04.2011, to quash the criminal proceedings in C.C.No.27 of 2010, pending on the file of the learned IX Additional Special Judge, for CBI Cases, Chennai.

5. After hearing the parties and considering the decisions of the Hon'ble Supreme Court, with reference to Article 21 of the Constitution of India, this Court, in CrI.O.P.No.25231 of 2010, dated 08.04.2011, this Court quoted C.C.No.27 of 2010 on the file of the learned IX Additional Special Judge for CBI Cases.

6. Charge Memo dated 10.07.2009, came to be challenged in O.A.No.659 of 2009 on the file of the Central Administrative Tribunal, Madras Bench. Consequently, in the application, the petitioner has sought for directions to the respondents therein to award all benefits both service and monetary from the date on which, the petitioner's immediate junior were granted the benefits stated supra.

7. Vide order dated 23.07.2010, the Central Administrative Tribunal, Madras Bench, quashed the charge memo dated 10.07.2009. Para 16 of the order of the tribunal reads as follows:

"In the result the memorandum of charge dated 10.07.2009, is quashed and the Original Application is allowed accordingly."

8. Material on record further discloses that not satisfied with the order of the Central Administrative Tribunal, Madras Bench in O.A.No.659/09 dated 23.07.2010, Union of India represented by the Financial Adviser and Chief Accounts Officer/S&W, Southern Railways, Chennai, 1st respondent herein, has filed W.P.No.24261 of 2010 and the same has been dismissed vide order dated 18.01.2011. Subsequently, he retired on 01.12.2010.

9. The petitioner has requested for settlement of his benefits. Thereafter, vide communication, dated 14.02.2013, Sr.AFA/S/PER, basic pension of Rs.11,100/- per month, with effect from 01.12.2010 i.e., the next day of retirement, has been arranged through PPO No.0614221263, dated 16.12.2012; Death-cum-Retirement Gratuity of Rs.3,56,033/- (3,78,233 - 22200 towards RELHS) has been arranged through NEFT Savings Bank A/c.No.418660180; Commutation of Pension of Rs.4,36,577/- has been made, vide letter of authority, dated 05.02.2013, advising the Manager, Indian Bank, Prakasam Road, T.Nagar, to credit in the petitioner's bank A/c.number; Central Government Employees Insurance Scheme of Rs.16,364/- has been arranged through NEFT; Encashment of Leave Salary of Rs.1,32,516 has been made through NEFT and Medical Allowance of Rs.300/- per month with effect from 01.12.2010 i.e., the next day of retirement, has been arranged through PPO number, as stated supra.

10. Not satisfied with the calculation and payment made, the petitioner has addressed a letter, dated 03.07.2013, to the FA & CAO/S&W, Southern Railway, New Joint Office, Ayanavaram, Chennai, and sought for refixation of pay/pension, and all other consequential benefits, from the date, when his

immediate junior was promoted in the year 1991. Lawyer's notice, dated 12.08.2013, has also been issued. Thereafter, the petitioner has filed O.A.No.1827 of 2013, before the Central Administrative Tribunal, Madras Bench, praying for a direction to Union of India, represented by Financial Advisor & Chief Accounts Officer, Ayanavaram, Chennai, to revise and refix the retiral benefits, by properly calculating the pay and other benefits, on par with his immediate junior, the accrued service benefits thereto, and consequently, for a direction to pay the pensionary benefits with interest, at 24% per annum.

11. Before the Tribunal, Union of India, represented by Financial Advisor & Chief Accounts Officer, Ayanavaram, Chennai, the first respondent, in his counter affidavit, has contended that as the writ petitioner/applicant was not free from disciplinary action under the Discipline and Appeal Rules/Vigilance Clearances, he could not be considered for promotion to the post of Senior Section Officer. It is also the case of the department that the writ petitioner/applicant was discharged from the criminal case only on technical grounds and that the charge memo was also quashed on the grounds of delay. It is their further contention that the loss suffered by Railways remains, as it is.

12. According to them, as per the instructions in para 3.5 of the Board's letter, promotion to non-selection posts, if the disciplinary proceedings/criminal prosecution is finalised, at any point of time, and if the person is fully exonerated or his suspension is held to be wholly unjustified, then, he may be empanelled/enlisted and promoted in his turn, and, in this case, as the petitioner was not wholly exonerated and since the quashing of charge memo was only on technical grounds, he cannot be considered for promotion and the consequential pay revision.

13. After considering the rival contentions, the learned Central Administrative Tribunal, Madras, vide order, dated 10.07.2015, in O.A.No.1827 of 2013, has dismissed the application filed under Section 19 of the Administrative Tribunals Act, against which the present Writ Petition is filed.

14. Mr.L.Chandrakumar, learned counsel for the petitioner, submitted that when the charge memo, dated 10.07.2009, has been quashed, by the Central Administrative Tribunal, Madras Bench, and the challenge to the same up to the Hon'ble Apex Court has been rejected, and that when the

criminal proceedings were also quashed, the petitioner ought to have been considered for promotion notionally, on par with his juniors and consequently the respondent ought to have revised the pay and refixed the retirement benefits and disbursed the same accordingly.

15. He further submitted that the observation of the Tribunal to the effect that though the applicant was relying on the earlier orders and contended that the criminal case was quashed, as well as the charge memo was set aside, the applicant had not obtained any favourable orders in regard to retrospective promotion, exhibits non-application of mind, for the reason that, no sooner the charge memo was quashed by the Tribunal in O.A.No.659 of 2009, dated 23.07.2010, which decision has been confirmed by the higher forums, and when the criminal case proceedings were also quashed, the petitioner ought to have been restored to his original position, and promoted to the next post, on par with his juniors and consequently, the respondents ought to have refixed his pay and pensionary benefits ought to have been revised.

16. He also submitted that when the charge memo and criminal case were quashed, there was nothing on the file of the respondent or the Court to undergo the process of departmental enquiry or trial for exoneration, as the case may be, and, therefore, by misdirecting itself to paragraph 3.5 of the Railway Board's letter, dated 21.01.1993, the Tribunal has erred in dismissing the Original Application.

17. On the basis of the counter affidavit filed by the Deputy Financial Adviser & Chief Accounts Officer/Stores, Ayanavaram, Chennai, Mr.P.T.Ramkumar, learned counsel for Railways, submitted that criminal proceedings were initiated by CBI on 30.01.1989 for the alleged commission of offences, in which the Railways had suffered loss to the tune of Rs.3,37,257/-, and the petitioner was prosecuted in Crime No.RC 02/1989, which culminated in Criminal Case No.40 of 1991, and subsequently numbered as C.C.No.72 of 1997, on the file of learned Additional Special Judge of CBI Cases. He further submitted that earlier the petitioner was suspended in the year 1988 and that the same was revoked on 09.12.1999. He has also submitted that consequent to the V Pay Commission scales, revision of pay was allowed to the petitioner.

18. Learned counsel for Railways, further submitted that in Crl.M.P.No.919 of 2007 in C.C.No.72 of 1997, by order, dated 07.11.2007, the learned Additional Special Judge has discharged the petitioner, on the ground that the sanction

accorded by the Head of the Department to prosecute the petitioner was not valid. Subsequent to the order in C.C.No.72 of 1997, CBI filed another case in C.C.No.27 of 2010, to prosecute the petitioner, after obtaining necessary sanction from the General Manager/Railways. The case taken up in C.C.No.27 of 2010 was also quashed by this Court in CrI.O.P.No.25231 of 2010, by order dated 28.09.2012, on the ground of delay.

19. According to the learned counsel for the respondent, both the disciplinary and criminal proceedings were quashed only on the ground of delay, and that the petitioner was not fully exonerated of the charges. He also submitted that promotion, further revision of pay and other attendant benefits are not automatic. Reference is also made to the Central Vigilance Commission Manual, applicable to a public servant, and contention has been made, that if the acquittal is recorded on grounds of technical flaw in prosecution, for example, for want of prosecution to sanction or if the matter is not proceeded with on technical grounds, the Government servant cannot be treated, as fully exonerated.

20. Heard the learned counsel for the parties and perused the material available on record.

21. The Criminal case C.C.No.40 of 1991, subsequently renumbered as C.C.No.72 of 1997, on the file of Additional Special Judge for CBI Cases, vide order in CrI.M.P.No.919 of 2007, dated 07.11.2007, the learned Additional Special Judge for CBI Cases has discharged the petitioner, for want of proper sanction. Discharge from a criminal case has the effect, that no criminal proceedings are pending, therefore, subsequent to discharge, it has to be treated as non-est in law.

22. From the materials available on record, it could be deduced that after the petitioner was discharged in C.C.No.72 of 1997, on 07.11.2007, the respondent obtained sanction from the General Manager/Railways, and once again revived the criminal case in C.C.No.27 of 2010 on the file of Additional Special Judge for CBI Cases, Chennai, and the said criminal case has also been quashed by this Court in CrI.O.P.No.25231 of 2010, by order dated 28.09.2012, on the ground of delay.

23. During the hearing of CrI.O.P.No.25231 of 2010, attention of this Court was drawn to the number of adjournments in both criminal cases viz., C.C.No.40 of 1991

and subsequently numbered C.C.No.72 of 1997. As many as 214 adjournments have been made in C.C.No.40 of 1991 up to 16.07.1996 and 151 adjournments in C.C.No.72 of 1997. This Court has also recorded that case was adjourned for over eight months for the purpose of furnishing documents to the petitioner therein.

24. After considering the rival submissions, a learned single Judge of this Court, in CrI.O.P.No.25231 of 2010, has held as follows :

"7. This Court has no doubt at all that the right ensured under Article 21 of the Constitution of India, stands infringed in the present case. Delay in trial solely has been occasioned by the prosecution. The Damocles sword has been hanging over the head of the petitioners from the year 1991 and for no fault of theirs. In P. Ramachandra Rao v. State of Karnataka, 2002 (2) Crimes 200 (SC), the Apex Court had observed as follows :

'8. The width of vision cast on Article 21, so as to perceive its broad sweep and content, by the seven-Judge Bench of this Court in Maneka Gandhi v. Union of India inspired a declaration of law, made on 12-2-1979 in Hussainara Khatoon (I) v. Home Secy., State of Bihar that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty, except according to procedure established by law; that such procedure is not some semblance of a procedure but the procedure should be "reasonable, fair and just"; and therefrom flows, without doubt, the right to speedy trial. The Court said (SCC p. 89, para 5)– "No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21." Many accused

persons tormented by unduly lengthy trial or criminal proceedings, in any forum whatsoever were enabled, by Hussainara Khatoon (I)⁷ statement of law, in successfully maintaining petitions for quashing of charges, criminal proceedings and/or conviction, on making out a case of violation of Article 21 of the Constitution. Right to speedy trial and fair procedure has passed through several milestones on the path of constitutional jurisprudence. In Maneka Gandhi this Court held that the several fundamental rights guaranteed by Part III required to be read as components of one integral whole and not as separate channels. The reasonableness of law and procedure, to withstand the test of Articles 21, 19 and 14, must be right and just and fair and not arbitrary, fanciful or oppressive, meaning thereby that speedy trial must be reasonably expeditious trial as an integral and essential part of the fundamental right of life and liberty under Article 21....'

9. The Constitution Bench, in A.R. Antulay case, heard elaborate arguments. The Court, in its pronouncement, formulated certain propositions, 11 in number, meant to serve as guidelines. It is not necessary for our purpose to reproduce all those propositions. Suffice it to state that in the opinion of the Constitution Bench (i) fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily; (ii) right to speedy trial flowing from Article 21 encompasses all the stages, namely, the stage of investigation, inquiry, trial, appeal, revision and retrial; (iii) who is responsible for the delay and what factors have contributed towards delay are relevant factors. Attendant circumstances, including nature of the offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on – what is called the systemic delays

must be kept in view; (iv) each and every delay does not necessarily prejudice the accused as some delays indeed work to his advantage. Guidelines (8), (9), (10) and (11) are relevant for our purpose and hence are extracted and reproduced hereunder:

"(8) Ultimately, the court has to balance and weigh the several relevant factors – 'balancing test' or 'balancing process' – and determine in each case whether the right to speedy trial has been denied in a given case.

(9) Ordinarily speaking, where the court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order – including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded as may be deemed just and equitable in the circumstances of the case.

(10) It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be a qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint. The Supreme Court of USA too has repeatedly refused to fix any such outer time-limit in spite of the Sixth Amendment. Nor do

we think that not fixing any such outer limit ineffectuates the guarantee of right to speedy trial'

and after informing the rival contentions, regards prescribing time limits for conduct of criminal proceedings raised before a Constitution Bench in *Abdul Rehman Antulay and Ors. v. R.S. Nayan & Ors.*, (1992) 1 SCC 225 informed,

'9. In pursuance of the direction given by this Court (in *R.S. Nayak v. A.R. Antulay*, SCR p. 577 : SCC p. 243) Special Criminal Case No. 24 of 1982 was assigned to Sri Justice S.N. Khatri of the Bombay High Court. Before the learned judge, the accused raised an objection that the said special case can be tried only by a Special Judge appointed by the government under the 1952 Act and that a Judge of the High Court has no jurisdiction to try it. This and some other objections raised by the accused were rejected by the learned Judge, bound as he was by the aforesaid direction of this Court. The order of Khatri, J. was questioned by the accused in this Court but dismissed on April 17, 1984 (reported as *A.R. Antulay v. Union of India*). Later the proceedings were transferred to D.N. Mehta, J., who framed 21 charges but declined to frame charges under 22 other heads proposed by the complainant. The complainant came to this Court against the said order in so far as it declined to frame certain charges which matter was ultimately disposed of (allowed) in 1986 (reported as *R.S. Nayak v. A.R. Antulay*). The proceedings were then transferred to and taken up by P.S. Shah, J. of Bombay High Court, who framed as many as 79 charges and proceeded with the trial. A number of witnesses were examined spread over several months. While so, the accused approached this Court again, under Article 32 of the Constitution [W.P. (Cri) No. 542 of 1986] questioning the constitutional validity of Section 197 CrPC. SLP No. 2519 of 1986 was also filed by him against the

orders of Shah, J. framing 79 charges. Another SLP (Cri) No. 2518 of 1986 was filed by him against yet another order of Shah, J. holding that the charges framed by him do not require the sanction under Section 197 CrPC. Special leave was granted in the above matters and further proceedings in the High Court stayed. The petition under Article 32 and the appeals arising from the said special leave petitions were referred to and taken up by a seven Judge bench of this Court. The seven Judge bench, however, delinked W.P. No. 542 of 1986 and SLP No. 2518 of 1986 from the other SLP. It directed those two matters to be heard separately. It heard only the appeal arising from SLP No. 2519 of 1986. By its judgment delivered on April 29, 1988, the bench allowed the appeal [arising from Special Leave Petition (Cri) No. 2519 of 1986] and quashed all the proceedings in the said special case taken subsequent to the directions of this Court contained in its judgment dated February 16, 1984. It directed the trial to proceed according to law, that is to say under the 1952 Act. The result of this judgment was that all the proceedings which were taken in the Bombay High Court in pursuance of this Court's direction dated February 16, 1984 — the complainant had practically completed his evidence recorded over a period of one year — became non-est and the case had to be proceeded with before the Special Court in accordance with the 1952 Act. '

9. Closer to the case on hand are the observations of the Apex Court in *Vakil Prasad Singh v. State of Bihar* (2009) 2 SCC (Crl.) 95,

'29. We have no hesitation in holding that at least for the period from 7-12-1990 till 28-2-2007 there is no explanation whatsoever for the delay in investigation. Even the direction issued by the High Court seems to have had no effect on the prosecution and they slept over the matter

for almost seventeen years. Nothing could be pointed out by the State, far from being established to show that the delay in investigation or trial was in any way attributable to the appellant. The prosecution has failed to show any exceptional circumstance which could possibly be taken into consideration for condoning a callous and inordinate delay of more than two decades in investigations and the trial. The said delay cannot, in any way, be said to be arising from any default on the part of the appellant'

AND,

Mansukhlal Vithaldas Chauhan v. State of Gujarat, 1997 (3)Crimes 301 (SC),

39. Normally when the sanction order is held to be bad, the case is remitted back to the authority for reconsideration of the matter and to pass a fresh order of sanction in accordance with law. But in the instant case, the incident is of 1983 and, therefore, after a lapse of fourteen years, it will not, in our opinion, be fair and just to direct that the proceedings may again be initiated from the stage of sanction so as to expose the appellant to another innings of litigation and keep him on trial for an indefinitely long period contrary to the mandate of Article 21 of the Constitution which, as part of right to life, philosophises early end of criminal proceedings through a speedy trial.

10. The Criminal Original Petition shall stand allowed and the proceedings in C.C.No.27 of 2010 shall stand quashed. Consequently, the M.P. is closed."

25. Thus, it could be seen from the above, that this Court has considered the criminal proceedings, initiated by the prosecution, after so many years, as violation of Article 21 of the Constitution of India.

26. From the sequence of events, it could be seen that when CBI has launched proecution in Crime No.RC 02/1989,

which culminated in Criminal Case No.40 of 1991, and subsequently numbered as C.C.No.72 of 1997, on the file of learned Additional Special Judge of CBI Cases, by order, dated 07.11.2007, in Crl.M.P.No.919 of 2007, the petitioner has been discharged,

27. Though the department was fully aware of the facts and the allegations levelled against the petitioner, from 1988 to 1999, they did not choose to take any disciplinary action, although it is well settled that both departmental and criminal action can be taken simultaneously. The department waited for more than a decade. No sooner the petitioner was discharged from the criminal case, they started initiating disciplinary proceedings, by issuing a charge memo, dated 10.07.2009, which was set aside on 23.07.2010. Writ Petition No.24621 of 2010, filed challenging the order in O.A.No.659 of 2009 has been dismissed on 18.01.2011. The attempt on the part of CBI to revive the prosecution, by obtaining sanction from the General Manager/Railways, has also failed.

28. Prayer made in O.A.No.659 of 2009, is to quash the charge memo, dated 10.07.2009, and for a consequential direction to the respondent therein to accord all the benefits, both service and monetary, from the date on which the petitioner's immediate junior was granted. The Tribunal, at paragraph 16 of the order in O.A.No.659 of 2009, has stated, that the impugned charge memo, dated 10.07.2009, is quashed and the O.A.is allowed accordingly.

29. As rightly contended by the learned counsel for the petitioner, no sooner the disciplinary and criminal proceedings were quashed, the petitioner ought to have been placed in his original position, as if there was no charge memo, in which event, there is no question of undergoing the process of a regular departmental inquiry or trial and consequently to get himself fully exonerated. Once the proceedings are quashed, there is nothing on record, against the public servant. Though the Central Vigilance Commission manual reads that if an order of acquittal is recorded on ground of technical flaw in prosecution, for example, for want of prosecution to sanction or if the matter is not proceeded with on technical grounds, the Government servant cannot be treated, as fully exonerated, in the light of the decision of the Hon'ble Apex Court, extracted supra, this Court is of the view that the said provision in the Manual cannot be made applicable, to the case of the petitioner, as the decision of the Hon'ble Supreme Court under Article 141 of the

Constitution of India is binding on all authorities.

30. Yet another factor to be considered is that the criminal proceedings have been quashed on the ground of violation of Article 21 of the Constitution of India. When the Tribunal has quashed the charge memo and further observed that O.A.is allowed accordingly, the consequential effect would be that the petitioner is entitled to all the benefits, as if he was not suspended or departmentally proceeded against. The technical objection of the respondent that there is no further direction to promote the petitioner with all consequential benefits with that of his junior cannot be countenanced.

31. When the charge and the criminal proceedings were quashed, it is the duty of the respondent to have considered the case of the petitioner to the next promotional avenue. Though the Tribunal in the ultimate paragraph of the order made in O.A.No.1827 of 2013, dated 10.07.2015, has observed that various judgments have been considered, we are constrained to state that none is reflected in the order.

32. During the course of hearing, when we posed a question to Mr.P.T.Ramkumar, learned counsel for the respondent, as to whether the post of Section of Officer, to which the petitioner has made a claim, consequent to the quashing of disciplinary/criminal proceedings, is a selection or non-selection post, the answer was that, the post of Section Officer is a non-selection post. As there is nothing on file for the petitioner to undergo a process of a departmental enquiry or trial, to get himself fully exonerated and inasmuch as we have culled out the effect of discharge in a criminal case, the respondent ought to have considered the case of the petitioner, and promoted him on par with his immediate junior, refixed the pay, revised the pensionary benefits and, accordingly, disbursed the same. Though petitioner has prayed for 24% per annum interest, we are not inclined to grant the same.

33. In this connection, it is relevant to refer to two decisions of the Hon'ble Apex Court, as under :

33.1. In Dr.Uma Agarwal v. State of U.P., reported in 1999 (3) SCC 438, the Supreme Court held that,

" grant of pension is not a bounty but a right of the government servant. The Government is obliged to follow the Rules mentioned in the earlier part of this order

in letter and in spirit. Delay in settlement of retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too there is a prescribed procedure. This is indeed unfortunate. In cases where a retired government servant claims interest for delayed payment, the Court can certainly keep in mind the time-schedule prescribed in the Rules/Instructions apart from other relevant factors applicable to each cases."

33.2. In *S.K.Due v. State of Haryana*, reported in 2008 (3) SCC 44, the appellant was served with three charge sheets/show cause notices in June 1998, few days before his retirement. However, he retired on 30.06.1998, on reaching the age of superannuation. He was paid provisional pension, but other retiral benefits were not given to him, which included commutation value of pension, leave encashment, gratuity, etc. They were withheld till the finalisation of disciplinary proceedings. While answering the issue as to whether the appellant therein was entitled to interest on delayed payment of retiral benefits, in the absence of any statutory rules/administrative instructions or guidelines, the Supreme Court, at paragraph 14 of the judgment, held as follows :

"14. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well founded that he would be entitled to interest on such benefits. If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in the absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of "bounty" is, in our opinion, well founded and needs no authority in support thereof.

In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents."

34. Following the decisions in Dr.Uma Agarwal v. State of U.P., reported in 1999 (3) SCC 438, and S.K.Due v. State of Haryana, reported in 2008 (3) SCC 44, which a Division Bench of this Court has considered in The Government of Tamil Nadu v. M.Deivasigamani, reported in 2009 (3) MLJ 1, the respondent is directed to pay the benefits with interest, at the rate of 10% per annum within two weeks from the date of receipt of a copy of this order, failing which penal interest at 2% per annum would be added.

35. Writ Petition is allowed. No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The Financial Advisor &
Chief Accounts Officer/S&W,
Union of India, represented by
Southern Railway, New Joint Office,
Iyyanavaram, Chennai-600 023.

2. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai-600 104.

1 CC to Mr.L.Chandrakumar, Advocate SR.No. 50871

1 CC to Mr.P.T.Ram Kumar, Advocate SR.No. 51041

W.P.No.27745 of 2015

GJ (CO)

PSI (20.10.2015)