

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Writ Petition No.21014 of 2014

Date of Decision: August 24, 2017

Harbans Singh

...Petitioner

Versus

Union of India & others

...Respondents

**CORAM: HON'BLE MR.JUSTICE AJAY KUMAR MITTAL, JUDGE
HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE**

Present: Mr.Balram Singh, Advocate,
for the petitioner.

Mr.Rajiv Sharma, Advocate,
for respondent No.2.

AMIT RAWAL, J.

1. The petitioner is aggrieved by orders dated 23.5.2012 (Annexure A-10) and 11.4.2014 (Annexure P-4), whereby the Central Administrative Tribunal, Chandigarh Bench (for short "CAT"), has declined his claim. Further relief has been claimed for payment of interest @ 18% on the delayed payment of gratuity w.e.f. 1.5.2008 till the date of actual payment. Release of ₹8175/- recovered from the petitioner alongwith interest has also been prayed for.

2. The facts emanating from the writ petition and the Original Application reveal that the petitioner, on attaining the age of superannuation, had retired from the service w.e.f. 30.4.2008 after rendering more than 35 years of service. On account of the retirement, the petitioner was entitled to all the pensionary benefits while serving with the Railway Department in accordance with the Railway Servant (Pension) Rules, 1993

(for short “1993 Rules”). As per the averment, the petitioner was paid pensionary benefits w.e.f. 1.5.2008, but the amount of Death-cum-Retirement Gratuity (for brevity “DCRG”) to the tune of ₹3,03,257/- was not paid. A representation dated 2.2.2009 (Annexure A-3) for release of the aforementioned amount was submitted. The respondents instead of releasing the gratuity, recovered a sum of ₹8175/- from his salary for the month of April, 2008, which necessitated him to submit another representation dated 5.4.2009 (Annexure A-5).

3. The petitioner was surprised to receive letter dated 5.3.2010, whereby the Department had sought to recover the whole amount of DCRG on the ground that an amount of ₹12,48,514/- was outstanding at KRE as commercial debt against the petitioner. Vide order dated 3.5.2011 (Annexure A-1), his representation of alleged recovery of aforementioned amount and withholding of DCRG was rejected. The petitioner feeling aggrieved filed O.A.No.1149/PB/ 2011 before CAT, which was, vide order dated 23.5.2012, disposed of granting liberty to the respondents therein to proceed afresh in the matter in accordance with the rules. It was, however, directed to disburse the withheld benefits within two months from the date of order. As per the stand in the petition, the gratuity was withheld till 6.2.2013 and in this backdrop of the matter, compelled the petitioner to file subsequent Original Application claiming the following relief:-

- i) *That the respondents be directed to release the interest @ 18% on the delayed payment of gratuity w.e.f. 1.5.2008 i.e. till the date of actual payment;*
- ii) *That the respondents be directed to release the recovered amount of Rs.8175/- from the salary of the applicant for the month of April, 2008 without disclosing any reason along with interest.*

iii) That the applicant be extended the benefit of the Railway Board Orders No.F(E)III-94/PNI/28 of 1.11.1994.”

4. Mr.Balram Singh, learned counsel representing the petitioner submitted that the Department could not withhold the DCRG and deduct the amount as aforementioned without holding an enquiry. He also relied upon the provision 1820 of the Railway Manual extracted in the writ petition by urging that all railway dues and other charges are required to be paid before delivery of goods. The CAT has failed to take into consideration the letter dated 1.11.1994 (Annexure A-1), whereby the Railway Authorities are bound to pay compound interest on the delayed payment of gratuity beyond three months from the date of retirement of the retiree.

5. It was next argued that the respondents erroneously withheld the gratuity of the petitioner without any reasons or justification. The CAT incorrectly applied the provisions of Order II Rule 2 CPC, which are not applicable to the proceedings under the Administrative Tribunals Act. The alleged stand of the Railways of non-collection of the freight by the petitioner to the tune of ₹12,48,514/- was not backed by any cogent reasons.

6. Mr.Rajiv Sharma, learned counsel representing respondent No.2 submitted that the opinion expressed by the CAT in rejecting the claim does not warrant any interference. A sum of ₹9,45,257/- is still pending against the petitioner. The petitioner was responsible for not realizing the correct freight at the time of booking of two points rake of potatoes to Hassan and Whitefield Station on 6.3.2007. The gratuity amount of ₹3,03,257/- was adjusted and recovered towards the debt of Kartarpur Station.

7. He further submitted that the Department conducted an enquiry

against the petitioner, whereby he was held responsible for the actual amount raised by the Traffic Accounts Office for ₹28,11,192/-, out of which ₹15,62,678/- were recovered at destination at Hassan Station at the time of delivery, but balance of ₹12,48,514/- is stated to be pending against the petitioner owing to the incorrect charging of freight at Train load class rate instead of wagon load class rate.

8. Mr.Balram Singh, in rebuttal, relied upon Rule 9 of 1993 Rules to contend that it is only the President, who has the power to withhold or withdraw a pension or gratuity and, therefore, the action of the respondents in withholding the gratuity was totally against the rules.

9. We have heard the learned counsel for the parties and appraised the paper book.

10. The applicant-petitioner filed Original Application, i.e., OA No.1149/PB/2011, in which claim for interest was also raised. This fact is reflected from Ground No.(xiv) which is reproduced as under:-

“That in the aforesaid O.A applicant has also prayed that the respondents be directed to release withheld gratuity along with interest @ 18% w.e.f. 1.5.2008 till its actual payment but no findings were given by this Hon'ble Court as the matter was to be decided by the respondents.”

11. The CAT, vide order dated 23.5.2012, had invalidated the impugned action on the part of the Competent Authority to withhold the relevant service benefit. However, liberty was granted to the respondents to proceed afresh in the matter in the event it was permissible under the relevant rule formulated. The withheld benefits were to be disbursed to the applicant within two months from the date of certified copy of the order was

presented to the Competent Authority.

12. It is noticed that CAT vide the aforesaid order was silent regarding interest to be paid on any delayed payment of service benefits. It is settled law that a relief, which has been sought and not granted, is hit by doctrine akin to *res judicata*. Be that as it may, the respondents were not held responsible in delaying the DCRG, for, in the enquiry held, a sum of ₹12,48,514/- was found due and still the Department has to recover a sum of ₹9,45,257/-. In such a situation, in our opinion, the respondents cannot be held liable with the liability to pay interest. Therefore, the finding rendered by the CAT in denying the interest is in correct perspective. The orders dated 23.5.2012 and 11.4.2014, thus, cannot be faulted.

13. Adverting to the deduction of ₹8175/- from the salary of the petitioner for the month of April, 2008, as per the written statement filed by the respondents, it was attributed to the dues at the time of final settlement. Nothing could be demonstrated by the petitioner that the action of the respondents in deducting ₹8175/- was unjustified. Equally, no error could be found in the order of the Tribunal declining the same.

14. For the reasons aforementioned, we do not find any illegality or perversity in the impugned orders dated 23.5.2012 and 11.4.2014. While upholding the same, the writ petition is dismissed.

**(AJAY KUMAR MITTAL)
JUDGE**

**(AMIT RAWAL)
JUDGE**

**August 24, 2017
ramesh**

**Whether speaking/reasoned
Whether Reportable:**

**Yes/No
Yes/No**