

ORISSA HIGH COURT: CUTTACK

W.P(C) NO. 19279 of 2011

In the matter of an application under Articles 226 & 227
of the Constitution of India.

AFR Nilamani Mishra Petitioner

-Versus-

Union of India
& others Opp. Parties

For Petitioner : Mr. C. Ananda Rao, Sr. Advocate
along with M/s S.K. Behera, A.K.
Rath & G.B. Panda, Advocates

For Opp. Parties : Mr. P.K. Parhi, A.S.G.I.

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HONOURABLE MISS JUSTICE SAVITRI RATHO**

DECIDED ON : 07.04.2022

DR. B.R. SARANGI, J. The petitioner, by way of this writ
petition, while challenging the order dated 15.02.2011
passed by the Central Administrative Tribunal, Cuttack
Bench, Cuttack in O.A. No.142 of 2009 under
Annexure-9, so far as it relates to not awarding any
compensation for withholding complementary railway
passes and compensation towards daily up and down

journey expenses from Cuttack to Chandrasekharpur, Bhubaneswar with honourarium/wages/salary from the date of retirement till handing over charges, seeks direction to the railway authorities to grant such compensation and award interest for delay in disbursing the same and also DCRG to the petitioner.

2. The factual matrix of the case, in brief, is that the petitioner was working as Sr. Clerk/Head Clerk -cum-Vehicle in charge in the office of the Deputy Chief Engineer (Construction), East Coast Railway. He received a letter on 31.08.2007 of Senior Engineer (Head Quarter), with approval by the competent authority of the office of the Principal Chief Engineer, Bhubaneswar, to handover all running files, Cash Imprest, Pass & PTO books to one K.C. Sharma with immediate effect, with a further note that the petitioner will clear all store in his charge after proper accounting before his retirement, i.e. on 31.10.2007, to which the petitioner complied. In spite of issuance of such letter, since the authority did not take any steps for taking the left over items like T.P. items, C.S. items, Condemned vehicles and motor

trolley, unserviceable tyres, tubes and batteries, all released materials and relevant old records etc., the petitioner wrote a request letter to the Deputy Chief Engineer (General) to pass orders indicating the name of the person to whom the above items were to be handed over. In turn, the Deputy Chief Engineer (General), Bhubaneswar also issued a memorandum stating that since the petitioner will retire from service with effect from 31.10.2007 (AN) on attaining the age of superannuation, the controlling officers to furnish the debit/no claim certificate within 15 days in favour of the petitioner, and that if no such certificate was received by the office within the aforesaid period, it will be presumed that there was no outstanding against the petitioner and he will be allowed to retire on superannuation with effect from 31.10.2007. On the basis of the petitioner's representation AEN (settlement) from the office of the Principal Chief Engineer, Bhubaneswar, vide letter dated 15.10.2007, instructed K.C. Sharma to take over all relevant documents from the petitioner, so as to enable him to be superannuated

on 31.10.2007. On the basis of such letter, the petitioner also requested to Mr. Sharma to take charge of the left over materials, but, he, after partially receiving the charges of stores, refused to take over the remaining items. So, the petitioner submitted a detailed representation to the Chief General Manager, with copies to C.P.O., Dy. CE/S.P.O. and others with a prayer to arrange for taking over charges and pay the final settlement dues.

2.1 When no action was taken, even after 15 months of his retirement, the petitioner submitted another representation to the General Manager, East Coast Railway, claiming interest on the DCRG dues and T.A./contingent with honourarium/wages for attending the office from Cuttack to Chandrasekharpur for the last 15 months after his retirement as due to administrative lapses/callousness of the authorities, he was harassed mentally and physically, being a diabetic patient. Since no action was taken, he approached the Central Administrative Tribunal, Cuttack Bench, Cuttack by filing O.A. No.142 of 2009 with a prayer to

direct the opposite parties to make immediate arrangement for taking over the left over charges from the petitioner and pay the DCRG and compensation for withholding complementary railway passes, compensation towards daily up and down journey expenses with wages/salary from Cuttack to Chandrasekharpur from the date of retirement as claimed in para-5.4 and other dues with compoundable interest within a specified time.

2.2 The opposite parties filed a preliminary counter affidavit stating therein that the petitioner was deprived of getting certain benefits after his retirement due to his wrongful act and action, to which petitioner filed his reply by way of rejoinder affidavit enclosing all those documents and stating that the verificant of the counter himself made correspondences imparting his stating his repeated instructions to different authorities to take over charges from the petitioner, but the same were not carried out, even at the pain of disciplinary proceeding. As the opposite parties, by filing a false counter affidavit, mislead the tribunal and protracted

the proceedings, for which petitioner was made to suffer by running from pillar to post spending huge amount, even after his retirement from service, he prayed the tribunal to initiate appropriate contempt proceeding against the said verificant of the counter affidavit. Pursuant to such request, though the tribunal deprecated the action of the opposite parties and even though recorded that the opposite parties have no objection to the prayer, but, instead of allowing the prayer of the petitioner, passed and ineffective order, not commensurate to the gravity of opposite parties' lapses, by directing the opposite parties only to release the withheld DCRG etc. dues, to which the petitioner is entitled to under the rules, within a period of 45 days from the date of receipt of copy of the order, during which period the opposite parties are free to complete all formalities of handing/taking over, if not completed so far. It was further directed that, failing to release the dues within the period of 45 days prescribed, shall invite penal interest to be paid to the petitioner on the arrear dues and such amount may be recovered from

the officer(s) responsible for the delay. It is also asserted that if the 1st part of the direction and 2nd part read together, the same does not carry the seriousness taken in the 2nd part, which shows non-application of mind resulting in miscarriage of justice. Therefore, the petitioner has approached this Court by filing this writ petition claiming interest as well as the compensation for delay in disbursal of the amount to him.

3. Mr. C. Ananda Rao, learned Senior Counsel appearing along with Mr. S.K. Behera, learned counsel for the petitioner vehemently contended that due to no fault of the petitioner, he has been put to difficulties. As such, admittedly, there was delay in disbursal of DCRG amount, and till date the compensation amount towards withholding of complementary railway passes, as well as towards daily up and down journey expenses from Cuttack to Chandrasekharpur, Bhubaneswar has not been paid to the petitioner. Therefore, he is entitled to get compensation in compliance of the provisions contained in the Railway Services (Pension) Rules, 1993 and the

same having not been adhered to, he has approached this Court by filing this writ petition. To substantiate his contentions, he has relied upon the judgment of the apex Court in ***D.D. Tewri (D) Thr. LRs. Vrs. Uttar Haryana Bijli Vitran Nigam Ltd. and others***, AIR 2014 Supreme Court 2861.

4. Mr. P.K. Parhi, learned A.S.G.I. appearing for the opposite parties contended that whatever benefit is admissible to the petitioner that has been paid. So far as interest part is concerned, he has not received instructions and sought time for the said purpose. He further contended that the petitioner is not entitled to the claim made in this writ petition.

5. This Court heard Mr. C. Ananda Rao, learned Senior Counsel appearing along with Mr. S.K. Behera, learned counsel for the petitioner and Mr. P.K. Parhi, learned A.S.G.I. for the opposite parties-Railway through hybrid mode. Pleadings have been exchanged between the parties and with the consent of learned

counsel for the parties, this writ petition is being disposed of finally at the stage of admission.

6. On the basis of the factual matrix, as delineated above, there is no dispute with regard to the fact that the petitioner was rendering service under the Railways and on attaining the age of superannuation, he retired from service on 31.10.2007. Due to inaction of the authority, as has been explained in the factual matrix, there was delay in receiving charge from the petitioner. As a matter of fact, no person was found out to take charge from the petitioner and when Mr. Sharma took over the charge, he only took half of the responsibility shouldered by the petitioner, and rest half he was not willing to take. In the process, there was delay in taking over charge from the petitioner and such delay is attributable to the opposite party-management, as the petitioner time and again made correspondences to the opposite parties to make necessary arrangement for taking over the charge. Consequentially, there was delay on the part of the opposite parties in disbursal of the retiral benefit due to which the petitioner

approached the tribunal by filing O.A. No. 142 of 2009, which was disposed of by order dated 15.02.2011 directing the opposite parties to pay the dues of the petitioner within a period of 45 days. As such, the charge has been taken over from the petitioner and he has only been paid DCRG, after more than five years of his retirement, without any interest. Therefore, such action of the opposite parties amounts to arbitrary and unreasonable exercise of power and hit by Articles-14 and 16 of the Constitution of India.

7. For better appreciation, Rules-78, 79 and 87 of the Railway Services (Pension) Rules, 1993, being relevant for the purpose of this case, are extracted below:-

“78. Preparation of Pension Papers – Every Head of Office shall undertake the work of preparation of pension papers in Form 7, one years before the date on which a railway servant is due to retire on superannuation, or on the date on which he proceeds on leave preparatory to retirement, whichever is earlier. (Authority: File No. 2015/F(E)III/1(1)/4 dt.17.06.16RB NO.70

79. Stages for the completion of pension papers on superannuation – (1) The Head of Office shall divide the period of preparatory work of one year referred to in rule 78 in the following three stages, namely:-

(a) First Stage – Verification of service. –

(i) The Head of Office shall go through the service book of the railway servant and satisfy himself as to whether the certificates of verification for the service subsequent to the service verified under rule 47 are recorded therein.

(ii) In respect of the unverified portion or portions of service, he shall verify the portion or portions of such service, as the case may be, based on pay bills, acquittance rolls or other relevant records such as last pay certificate, pay slip for month of April which shows verification of service for the previous financial year and record necessary certificates in the service book.

(iii) If the service for any period is not capable of being verified in the manner specified in sub-clause (i) and sub-clause (ii), that period of service having been rendered by the railway servant in another office or Department, the Head of Office under which the railway servant is at present serving shall refer the said period of service to the Head of Office in which the railway servant is shown to have served during that period for the purpose of verification.

(iv) On receipt of communication referred to in sub-clause (iii), the Head of Office in that office or Department shall verify the portion or portions of such service, in the manner as specified in sub-clause (ii), and send necessary certificates to the referring Head of Office within two months from the date of receipt of such a reference:

Provided that in case a period of service is incapable of being verified, it shall be brought to the notice of the referring Head of Office simultaneously.

(v) If no response is received within the time referred to in sub-clause (iv), such period or periods shall be deemed to qualify for pension.

(vi) If at any time thereafter, it is found that the Head of Office and other concerned authorities had failed to communicate any non-qualifying period of service, the Railway Board shall fix responsibility for such non-communication.

(vii) The process specified in sub-clauses (i), (ii), (iii), (iv) and (v) shall be completed eight months before the date of superannuation.

(viii) If any portion of service rendered by a railway servant is not capable of being verified in the manner specified in sub-clause (i) or sub-clause (ii) or sub-clause (iii) or sub-clause (iv) or sub-clause (v), the railway servant shall be asked to file a written statement on plain

paper within a month, stating that he had in fact rendered service for that period, and shall, at the foot of the statement, make and subscribe to a declaration as to the truth of that statement.

(ix) The Head of Office shall, after taking into consideration the facts in the written statement referred to in sub-clause (viii) admit that portion of service as having been rendered for the purpose of calculating the pension of that railway servant.

(x) If a railway servant is found to have given any incorrect information willfully, which makes him entitled to any benefits which he is not otherwise entitled to, it shall be construed as a grave misconduct.

(b) Second Stage.- Making good omission in the service book.-

(i) The Head of Office while scrutinising the certificates of verification of service shall also identify if there are any other omissions, imperfections or deficiencies which have a direct bearing on the determination of emoluments and the service qualifying for pension.

(ii) Every effort shall be made to complete the verification of service, as specified in clause (a) and to make good the omissions, imperfections or deficiencies in sub-clause (i).

(iii) Any omission, imperfection or deficiency which is incapable of being made good and the periods of service about which the railway servant has submitted no statement and the portion of service shown as unverified in the service book which it has not been possible to verify in accordance with the procedure laid down in clause (a) shall be ignored and service qualifying for pension shall be determined on the basis of the entries in the service book.

(iv) For the purpose of calculation of average emoluments, the Head of Office shall verify from the service book the correctness of the emoluments drawn or to be drawn during the last ten months of service.

(v) In order to ensure that the emoluments during the last ten months of service have been correctly shown in the service book, the Head of Office may verify the correctness of emoluments only for the period of twenty-four months preceding the date of retirement of a railway servant, and not for any period prior to that date.

(c) Third Stage.- As soon as the second stage is completed, but not later than eight months prior to the

date of retirement of the railway servant, the Head of Office shall –

(i) Furnish to the retiring railway servant a certificate regarding the length of qualifying service proposed to be admitted for the purpose of pension and gratuity and also the emoluments and the average emoluments proposed to be reckoned for retirement gratuity and pension.

(ii) Direct the retiring railway servant to furnish to the Head of Office the reasons for nonacceptance, supported by the relevant documents in support of his claim within two months if the certified service and emoluments as indicated by the Head of Office are not acceptable to him.

(iii) Forward to the retiring Government servant Form 8 advising him to submit the same duly completed in all respects so as to reach the Head of Office not later than six months prior to his date of retirement.;

**(Authority: File No. 2015/F(E)III/1(1)/4) ..dt.17.06.16
.....RB NO.70/2016**

79-A. **Submission of Form 8.**- A railway servant, retiring for reasons other than superannuation may, submit Form 8 before such retirement but after the competent authority has approved such retirement or the retirement has become effective, as the case may be.

**(Authority: File No. 2015/F(E)III/1(1)/4) ..dt.17.06.16
.....RB NO.70/2016**

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87. Interest on delayed payment of gratuity: - (1) In all cases where the payment of gratuity has been authorised later than the date when its payment becomes due, including the cases of retirement otherwise than on superannuation, and it is clearly established that the delay in payment was attributable to administrative reasons or lapses, interest shall be paid at the rate applicable to State Railway Provident Fund amount in accordance with the instructions issued from time to time:

Provided that the delay in payment was not caused on account of failure on the part of the railway servant to comply with the procedure laid down by the Government for processing his pension papers.

**(Authority: File No. 2015/F(E)III/1(1)/4 dt.17.06.16
.....RB NO.70**

(2) Every case of delayed payment of gratuity shall be considered by the General Manager or Administrative Head of the Railway Unit, as the case may be, and where the said General Manager or Administrative Head is satisfied that the delay in the payment of gratuity was caused on account of administrative reasons or lapse, he

shall order for arranging the payment of interest. The powers to pass order for payment of interest on delayed payment of death-cum-retirement gratuity shall rest with General Manager or Administrative Head of the Railway Unit and shall not be delegated to any lower authority. **(Authority: File No. 2015/F(E)III/1(1)/4 dt.17.06.16RB NO.70**

(3) In all cases where the payment of interest has been ordered, the railway shall fix the responsibility and take disciplinary action against the railway servant or servants concerned who are found responsible for the delay in the payment of gratuity on account of administrative lapses. **(Authority: File No. 2015/F(E)III/1(1)/4 dt.17.06.16RB NO.70**

(4) If as a result of Government's decision taken subsequent to the retirement of a railway servant, the amount of gratuity already paid on his retirement is enhanced on account of –

(a) grant of emoluments higher than the emoluments on which gratuity already paid was determined, or

(b) liberalisation in the provisions of these rules from a date prior to the date of retirement of the railway servant concerned, no interest on the arrears of gratuity shall be paid.

(5) Gratuity becomes due immediately on retirement and in case of a railway servant dying in service, action for finalising his pension and death-cum-retirement gratuity shall be paid.”

8. In view of the aforementioned provisions, it is made clear in Rule-78 that every Head of Office shall undertake the work of preparation of pension papers in Form 7, one year before the date on which a railway servant is due to retire on superannuation, or on the date on which he proceeds on leave preparatory to retirement, whichever is earlier. Rule-79 of the Rules, 1993, which deals with different stages, i.e. first stage

from Clause-I to Clause-X and second stage from clause-(i) to clause-(v), clearly indicates the different stages have to be followed by the employer to make payment of dues of its employees on superannuation after due compliance thereof. In this case, even though the petitioner had expressed his willingness to hand over the charges, but due to inaction on the part of the authority, he could not be able to do so. As such, delay can only be attributable to the employees. Therefore, for delay in taking over the charge, the legitimate dues of the petitioner cannot be refused. More so, Rule 87, as quoted above, clearly envisages that the petitioner is entitled to get interest on delayed payment of gratuity. Pursuant to order of the tribunal passed on 15.02.2011, though within 45 days DCRG has been released, but in the process there was delay of 5 years and, as such, DCRG has been paid to the petitioner without paying any interest. In view of the provisions contained in Rule-87 of Rules, 1993, as extracted above, the petitioner is entitled to get interest for delayed payment of gratuity.

9. So far as compensation is concerned, till date the same has not been paid, though the petitioner has suffered a lot after his retirement, and consequent upon which, he is not able to talk also. In that view of the matter, for the delay in release of the compensation amount, the petitioner is also entitled to get interest.

10. In **D.D. Tewari (D) Thr. LRs.** (supra), on which reliance was placed by the petitioner, the apex Court clearly held that interest on delayed payment of pensionary benefits and gratuity amount erroneously withheld by the employer has to be paid and accordingly, awarded 9% interest from the date of entitlement till the date of actual payment.

11. This Court, while dealing with similar issue, in the case of **Dhruba Charan Panda v. State of Orissa**, 1999 (II) OLR 433, awarded interest on delay in disbursement of pensionary benefits. In paragraph-18 of the said judgment this Court directed to the following effect:

“18. We dispose of this application with a direction to the State Government to administratively instruct all the Heads of Departments and the concerned officials to ensure that different steps prescribed to be taken under the Rules are rigidly followed and any non-observance thereof is to be strictly viewed. If there is any delay in payment of pension

the pensioner shall be entitled to 18% interest per annum for the period of delay and this interest shall be recovered from the person/persons responsible for the delay. While fixing the rate of interest, we have kept in view the minimum bank rate of interest charged for borrowing from bank. This aspect shall also be notified to all concerned. We are sure, if such stringent steps in addition to those, which the State Government may feel necessary to impose, are taken there shall be strict compliance of the requirement of law and in future the old retired persons shall not be required to move in the corridors of the Courts with tears in their eyes and a faint ray of hope of getting remedy early, and not posthumous. We record our appreciation for the able and fair assistance rendered by all learned counsel who appeared in the case for various parties. No costs."

Similar view was also taken by this Court in **Gobardhan Naik v. State of Orissa**, (WPC (OAC) No.2044 of 2005 disposed of on 22.06.2021).

12. Taking into consideration the factual scenario of this case and the principles of law laid down by the apex Court as well as this Court, as mentioned above, this Court is of the considered view that the petitioner should be paid interest at the rate of 9% per annum on the gratuity amount from the date of retirement till the date of actual payment was made in terms of Rule-87 of the Rules, 1993, and also compensation amount, as claimed by him, along with interest thereon at the rate of 9% per annum, within a period of three months from the date of communication/production of this judgment.

13. Over and above the same, for the callousness and recalcitrant attitude shown by the opposite parties, in disbursal of the above benefits to the petitioner, for no fault of him, the opposite parties are imposed with cost of Rs.10,000/-(ten thousand), which shall be paid to the petitioner within the aforesaid time.

14. The writ petition is thus allowed. There shall be no order as to costs.

SAVITRI RATHO,J.

I agree.

**(DR. B.R. SARANGI)
JUDGE**

**(SAVITRI RATHO)
JUDGE**

***Orissa High Court, Cuttack
The 7th April, 2022, Alok***