

CWP-25128-2024 (O&M)

- 1 -

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

111

CWP-25128-2024 (O&M)
Date of Decision: 27.09.2024.

Union of India and others

...Petitioners.

Versus

Anil Kumar and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Ms. Promila Nain, Sr. Panel Counsel and
Ms. Harveen Mehta, Advocate
for the petitioners.

LISA GILL, J. (Oral)

1. Prayer in this writ petition is for setting aside order dated 18.03.2024 passed by learned Central Administrative Tribunal, Chandigarh Bench, Chandigarh, whereby OA filed by respondent-employee has been allowed and present petitioner has been directed to pay interest @ 6% per annum on the retiral dues which were released to the employee after much delay.

2. It is a matter of record that respondent/ applicant, was appointed with Northern Railways as Box Porter on 28.09.1975 and was promoted as Clerk on adhoc basis w.e.f. 25.12.1980 with services being regularized vide order dated 18.02.1986. He was promoted as Senior Clerk

CWP-25128-2024 (O&M)

- 2-

vide order dated 16.05.1994 and subsequently promoted as Head Clerk vide order dated 04.04.2008 and thereafter promoted to the post of Chief Office Superintendent vide order dated 04.03.2014. Respondent/ applicant retired on 31.07.2015 on attaining the age of superannuation. However, he did not receive his retiral dues upon which he represented before the department. In response, order dated 22.03.2016 was passed to the effect that promotion afforded to the applicant as Head Clerk vide order dated 17.11.2008 was being withdrawn, over payment should be worked out and recovered from his settlement dues.

3. OA No.060/00584/2016 was filed by applicant challenging order dated 22.03.2016 which was disposed of on 07.07.2016 by learned Tribunal directing the present petitioners to decide representation dated 19.04.2016 filed by the applicant. Order dated 26.09.2016 rejecting applicant's claim was passed, leading to filing of OA No.1039-2016 by the applicant. Said OA was partly allowed vide order dated 27.07.2017 directing that respondents shall not effect recovery of excess amount which already stood paid to the applicant. His retiral dues were ultimately released after 34 months of his retirement. Details regarding delay in release of payment(s) is clearly enumerated in para No.9 of the impugned order.

4. OA-1189-2018 was filed by the applicant subsequent to order dated 27.08.2018 in CWP-14837-2018. Learned Tribunal on finding that disbursement of retiral benefits had been inordinately delayed, directed payment of interest @ 6% per annum from 01.08.2015 till the date of disbursement.

CWP-25128-2024 (O&M)

- 3-

5. Aggrieved therefrom present writ petition has been filed.

6. Learned counsel for the petitioners submits that mistake regarding incorrect promotion being given to the applicant came to light at the time of processing his pension papers on the basis of which order dated March, 2016 was passed. As it is a case of rectification of mistake, there is no question on any interest being paid on the retiral dues released to the applicant. Learned counsel relies upon Rule 87 of the Railway Services (Pension) Rules, 1993 to substantiate her arguments. She further relies upon judgment of Hon'ble the Supreme Court in ***U.T. Chandigarh and others Vs. Gurcharan Singh and another***, 2014 (13) SCC 598.

7. We have heard learned counsel for petitioners at length and have perused the file with her able assistance, however, we do not find any ground whatsoever to interfere in the matter.

8. Delay in release of retiral dues is a matter of record. Plea raised by petitioners is that this delay is well explained, thus calls for no interest to be paid to the applicant - employee. This plea is, however, not substantiated in any manner from the record. Promotion granted to the employee vide order dated 17.11.2008 w.e.f. 07.04.1994 is a matter of record. It is not the case of the Department that there was any concealment or misrepresentation on the part of employee who continued to receive the benefits till date of his retirement on 31.07.2015 and was also granted further promotions in the interregnum. It is clearly the fault of the Department and employee cannot be attributed with any fault. It is due to this reason that it was held by learned Tribunal in the earlier round of litigation in OA-060/01/039/2016

CWP-25128-2024 (O&M)

- 4-

that petitioners are not entitled to effect recovery of excess amount which already stood paid to the applicant. Furthermore, reliance by learned counsel for petitioners on Rule 87 of Railway Services (Pension) Rules, 1993 is clearly misplaced. Rule 87 of Railway Services (Pension) Rules reads as under:-

“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 dated 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 lapses', 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 dated 17.06.16.....RB 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 dated 17.06.16.....RB No.70

(4) If as a result of Government's decision take subsequent to the retirement of a railway servant, the amount of gratuity already paid on his retirement is enhanced on account of (a) (b) (5) grant of emoluments higher than the emoluments on which gratuity already paid was determined, or 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. 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."

9. Perusal of said Rule infact reveals that applicant-respondent is indeed entitled to interest on delayed payment of retiral dues. The so-called incorrect grant of promotion way back in the year 2008 and the same not being detected by the Department is clearly a lapse on its part and it is not open to petitioners to use the same to deny interest on retiral benefits, which are clearly due to the applicant – employee, who had to knock the doors of the Tribunal/Court on various occasions to get his rightful dues.

10. Reliance by learned counsel for petitioners on the judgment of Hon'ble Supreme court in **Gurcharan Singh's case (supra)** is clearly misplaced. In the said case, Hon'ble the Supreme Court was considering a

CWP-25128-2024 (O&M)

- 6-

case involving mistake in pay fixation of an employee detected at the time of his retirement. Pay of the employee in the said case it is noted was fixed as per option exercised by the employee, who had agreed to get his pay fixed as per the minimum of pay scale of the post in question, on which he had been re-employed. In the given situation, Hon'ble the Supreme Court directed that pay fixation as carried out the Department was correct. In the instant case, this is not a situation. Incorrect pay fixation way back in the year 2008 was not due to any option given by the applicant-respondent, thus, reliance on the said decision is of no avail to the petitioners.

11. Keeping in view the facts and circumstances as above, we do not find any illegality, infirmity or perversity in the impugned order dated 18.03.2024 which calls for interference by this court.

12. No other argument was raised.

13. Writ petition is, accordingly, dismissed with no order as to costs.

(LISA GILL)
JUDGE

(SUKHVINDER KAUR)
JUDGE

27.09.2024.
komal

Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No