

## **Khemchand Vs North Delhi Municipal Corporation And Anr**

**Court:** Central Administrative Tribunal Principal Bench, New Delhi

**Date of Decision:** Nov. 16, 2018

**Acts Referred:** Gratuity Act, 1972 " Section 7, 7(3), 7(3)A, 8, 9  
 Gratuity (General) Rules, 1972 " Rule 7(1)

**Hon'ble Judges:** Praveen Mahajan, Member (A)

**Bench:** Single Bench

**Advocate:** Bobby Sanjay Sharma, Amit Sinha, Anupama Bansal

**Final Decision:** Allowed

### **Judgement**

1. Briefly stated, the facts of the case are that the applicant retired as UDC from North Delhi Municipal Corporation (NDMC) on 29.02.1996. The

applicant worked with the respondents from 14.08.1959 to 29.02.1995. On retirement, he received gratuity of Rs. 92,400/- instead of the actual

gratuity amount of Rs. 1,19,538/-, due to him. After realizing the mistake, the applicant requested the respondents to pay him the difference of gratuity

amount of Rs.27,138/-. The differential amount was paid by the respondents on 22.12.2015. However, the interest on the differential amount, from

01.03.1996 to 22.12.2015 has not been paid to the applicant on the ground that his claim is not admissible as per Circular No. PSC/1066/2009 dated

04.11.2009 (Annexure A-4).

2. The aforesaid Circular stipulates that:-

"An employee or nominee who is eligible for payment of Gratuity under Gratuity Act is required to apply within thirty days from the date of

Gratuity becomes payable in terms of Rule 7(1) of Gratuity Act."

As per the respondents, since the applicant retired on 29.02.1996, he had to apply for his claim upto 31.03.1996. He applied for the same as late as

2012 thus rendering his claim inadmissible as per the Circular.

3. I have gone through the facts of the case carefully.

It is not disputed that the applicant has received the differential amount of gratuity only by approaching the Public Grievance Commission, who after

examining the case, ordered the respondents to pay the difference of gratuity to the applicant. Cornered, the respondents have paid the differential

amount of Rs.27,138/-. However, the applicant had to wait for almost two decades to get his rightful dues, withheld erroneously by the respondents. It

is equally true that the initial mistake is of the respondents, due to whose wrong calculation, the applicant had to run from pillar to post to get his

rightful dues.

4. At this stage, it is relevant to reproduce Section-7(3) of Payment Gratuity Act, 1972, which mandates the payment of gratuity by the employer to

the employee within the specified period. Section-7 and Section-7(3A) states as under:-

“7. Determination of the amount of gratuity:

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) The employer shall arrange to pay the amount of gratuity, within such time as may be prescribed, to the person to whom the gratuity is payable.”

Section-7(3A):-

“If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer

shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate

notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, be notification specify:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained

permission in writing from the controlling authority for the delayed payment on this ground.”

5. The aforesaid provision makes the employer liable to pay the amount of gratuity within thirty days from the date it becomes payable to the

employee. Once there is fault in payment of gratuity within specified period then the employer is liable to pay interest at notified rates as amended by

the Central Government from time to time.

6. The question of interest payable under sub-section (3A) of Section 7 of the Act of 1972 came for consideration before the Supreme Court in the

matter of H. Gangahanume Gowda v. Karnataka Agro Industries Corpn. Ltd.(2003) 3 SCC 4,0 in which Their Lordships have held in no uncertain

term that interest on delayed payment of gratuity is mandatory, it is a statutory compulsion and pertinently observed as under:-

7. It is evident from Section 7(2) that as soon as gratuity becomes payable, the employer, whether any application has been made or not, is obliged to

determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority

specifying the amount of gratuity. Under Section 7(3), the employer shall arrange to pay the amount of gratuity within 30 days from the date it

becomes payable. Under sub-section 3(A) of Section 7, if the amount of gratuity is not paid by the employer within the period specified in sub-section

(3), he shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate not exceeding the

rate notified by the Central Government from time to time for repayment of long term deposits; provided that no such interest shall be payable if the

delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the

delayed payment on that ground. From the provisions made in Section 7, a clear command can be seen mandating the employer to pay the gratuity

within the specified time and to pay interest on the delayed payment of gratuity. No discretion is available to exempt or relieve the employer from

payment of gratuity with or without interest as the case may be. However, under the proviso to Section 7(3A), no interest shall be payable if delay in

payment of gratuity is due to the fault of the employee and further condition that the employer has obtained permission in writing from the controlling

authority for the delayed payment on that ground. Under Section 8, provision is made for recovery of gratuity payable under the Act, if not paid by the

employer within the prescribed time. The Collector shall recover the amount of gratuity with compound interest thereon as arrears of land revenue

and pay the same to the person entitled. A penal provision is also made in Section 9 for non-payment of gratuity. Payment of gratuity with or without

interest as the case may be, does not lie in the domain of discretion but it is a statutory compulsion. Specific benefits expressly given in a social

beneficial legislation cannot be ordinarily denied. Employees on retirement have valuable rights to get gratuity and any culpable delay in payment of

gratuity must be visited with the penalty of payment of interest was the view taken in *State of Kerala & Ors. vs. M. Padmanabhan Nayar* [(1985) 1

SCC 429]. Earlier there was no provision for payment of interest on the delayed payment of gratuity. Sub-section (3A) was added to Section 7 by an

amendment, which came into force with effect from 1st October, 1987. In the case of *Charan Singh vs. M/s. Birla Textiles and Another* [(1988) 4

SCC 212], this aspect was noticed in the following words: (SCC pp.214-15, para 4)

4. There was no provision in the Act for payment of interest when the same was quantified by the Controlling Authority and before the Collector

was approached for its realization. In fact, it is on the acceptance of the position that there was a lacuna in the law that Act 22 of 1987 brought about

the incorporation of sub-section 3(A) in Section 7. That provision has prospective application.

9. It is clear from what is extracted above from the order of learned Single Judge that interest on de- layed payment of gratuity was denied only on the

ground that there was doubt whether the appellant was entitled to gratuity, cash equivalent to leave etc., in view of divergent opinion of the courts

during the pendency of enquiry. The learned Single Judge having held that the appellant was entitled for payment of gratuity was not right in denying

the interest on the delayed payment of gratuity having due regard to Section 7(3A) of the Act. It was not the case of the respondent that the delay in

the payment of gratuity was due to the fault of the employee and that it had obtained permission in writing from the controlling authority for the

delayed payment on that ground. As noticed above, there is a clear mandate in the provisions of Section 7 to the employer for payment of gratuity

within time and to pay interest on the de- layed payment of gratuity. There is also provision to recover the amount of gratuity with compound interest

in case amount of gratuity payable was not paid by the employer in terms of Section 8 of the Act. Since the employer did not satisfy the mandatory

requirements of the proviso to Section 7(3A), no discretion was left to deny the interest to the appellant on belated payment of gratuity....

7. In view of the aforesaid reasons, the respondents cannot possibly deny the interest, on delayed payment of gratuity, to the applicant for a mistake

initially committed by them. Thus, I, direct the respondents to pay interest to the appliÃ, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, cant on differential amount of Rs.

27,138/- from 01.03.1996 to 22 .12.2015 at GPF rates, within three months of the date of receipt of a certified copy of this order. O.A. is allowed

accordingly. No costs.