

**(2008) 09 CAL CK 0062****Calcutta High Court****Case No:** W.P.C.T. No. 699 of 2007 with C.O.C.T. No. 1 of 2008

Chandi Charan Jana @ C.C. Jana

APPELLANT

Vs

Union of India and others

RESPONDENT

**Date of Decision:** Sept. 30, 2008**Citation:** (2009) 120 FLR 646**Hon'ble Judges:** Manik Mohan Sarkar, J; Kalyan Jyoti Sengupta, J**Bench:** Division Bench**Advocate:** S.N. Sanyal, for the Appellant; Dipak Mukherjee, for the Respondent**Judgement**

K.J. Sengupta, J.

The above application of Chandi Charan Jana and cross objection of Union of India have been filed against one common judgement and order of the learned Administrative Tribunal dated 6th December, 2006. By this judgement and order impugned the learned Tribunal allowed the prayer of the petitioner, Chandi Charan Jana for granting pro rata pension for the service rendered by him during the period when he was in Central Government establishment. But his prayer for granting interest was not allowed. So this application has been filed by him for the interest and cost. On the other hand, Union of India has challenged the aforesaid impugned judgement and order granting pro rata pension. The fact of the case is as follows:

Chandi Charan Jana was appointed in the post of LDC in CPWD in the scale of Rs. 110-180/- temporarily with effect from 1st October, 1963 and then he was made quasi-permanent with effect from 2nd October, 1966. He had worked as such till 1973 when he was sent on deputation to International Airport Authority of India (IAAI). Subsequently he was absorbed permanently in IAAI on and from 16th August, 1977. Thereafter, he retired from the services in IAAI on attaining age of superannuation. Upon retirement he asked for pro rata pension and on refusal such demand being met he filed the aforesaid application. The application was opposed by Union of India. Learned Tribunal has allowed the application as it found that the other employees who are similarly placed and circumstanced were granted the

same benefit following the judgement rendered by the learned Tribunal in another case decided earlier.

2. Learned counsel for the Union of India contends that the applicant did not qualify himself for pro rata pension as per Rules. He has to render service at least for 20 years in order to get pro rata pension. Admittedly, he rendered service for less than 20 years. So he cannot get pro rata pension under the Rules. Learned counsel further contends that it is true that the department has accepted the judgement rendered in case of Ananta Kumar Swar and others but acceptance of the judgement in one individual case does not create any right to get benefit which is not otherwise legally admissible. Each and every case has to be examined individually and separately to find out whether an employee is entitled to get benefit under law or not.

3. The learned counsel for the respondent has said that the case of the applicant is based upon the equal treatment for equally placed persons. In one case benefit is granted while accepting judgment of the learned Tribunal and in another case similar claim is refused on the ground of law. He has drawn our attention to the C.C.S. Pension Rules regarding grant of pro rata pension and submit that it will appear that the temporary employee is also entitled to get pension if he has rendered qualifying service for 10 years.

4. Therefore, the order of granting pro rata pension by the learned Tribunal is justified. He contends that the learned Tribunal though allowed the prayer for pro rata pension, refused to grant interest. The learned Tribunal ought to have granted interest from the date of making application before Tribunal if not from the date when the pension has become due and payable.

5. We have heard the argument of the learned counsels for both the parties to examine as to whether the learned Tribunal was justified in granting pro rata pension in case of the petitioner and further refusing to grant interest to the applicant as prayed for. We have gone through the judgment of the learned Tribunal. The learned Tribunal has not decided the legal issues raised separately as the learned Tribunal found that the issues raised in the original application are no longer res integra since the same have been decided in Ananta Kumar Swar's case previously by the learned Tribunal. Learned Tribunal also relied upon judgment of the Hon'ble Supreme Court rendered in case of Baleshwar Dass and Others Vs. State of Uttar Pradesh and Others, and Praduman Kumar Jain's case 1994 (69) FLR 510 (SC).

6. We have checked up the grounds made out in the cross-objection of the Union of India. There is no challenge against the aforesaid findings that issues are identical and the decision rendered by the learned Tribunal in earlier case is squarely applicable in this case. In absence of such challenge it is difficult for us to upset the judgment of the learned Tribunal on the basis of the argument advanced in this

case. The point urged before us might or might not have been urged in Ananta Kumar Swar's case. Whether it is a question of fact or law raised or not in the previous case cannot be avowed to raise in subsequent case as the same is hit by the principle of constructive res judicata. More so, the said judgment rendered in Ananta Kumar Swar's case admittedly has been accepted and implemented. Hence Union of India is estopped from raising the same plea, nor it can mete out discrimination amongst the equally circumstanced and placed retired employees. We, therefore, do not find any error in the judgment and order of the learned Tribunal regarding grant of pro rata pension. As such contention of the Union of India is not acceptable. Accordingly, their cross-objection is dismissed. Now, question arises whether the applicant, Chandi Charan is entitled to get interest as prayed for in his application. We have checked up his application and we find that he has demanded interest at the rate of 25% from the date when it has become due. We are of the view that he cannot get any interest for the period prior to the date of making application before the Tribunal for the reason that no demand nor any claim was made prior thereto. Moreover, unless a right of having pension has been adjudged being payable, claim for interest is absurd. The issue and/or claim whether he is entitled to get any pro rata pension or not was not settled until the learned Tribunal decides the matter. The claim of interest is not a matter of right or course. It can be made in the event either the departmental Rule creates a right for interest in favour of their employees or under the Interest Act, 1978. But the Court has power to grant interest during pendency of the matter. Therefore, the applicant is not entitled to get any interest for the pre-proceeding period, and of course he is entitled to get interest during the pendency of the application before the Tribunal till today.

7. We, therefore, allow the prayer for interest at the rate of 10% per annum from the date of making of the application before the Tribunal till the payment is made. We do not find any basis for claiming interest at the rate of 25% for the reasons we have mentioned above. As such, prayer is rejected. As far as cost is concerned we think that it is the discretion of the learned Tribunal to award cost and when it has refused we do not like to substitute our own discretion. So, cost of the application filed before the Tribunal is not allowed by this Court. However, Chandi Charan is entitled to cost on this application as well as for contesting the cross-objection filed by the Union of India in this Court. Such cost is assessed at Rs. 3,000/- for both the matters and the same shall be paid by Union of India within two months from the date of receipt of this order. We, therefore, dispose of both the matters with the aforesaid modification of the judgement and order of the learned Tribunal.

8. Stay of operation of the order has been prayed for. We grant stay of operation of the order for a period of six weeks from date.

Xerox certified copy, if applied for, be supplied to the parties on priority basis.

M.M. SARKAR, J.

9. I agree.