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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2406/1999

New Delhi this the 17th day of October, 2001.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Kumud Ranjan Sinha,
S/o Late S.C. Sinha,
D-13, IFS Apartments,
Mayur Vihar, Phase-I,
New Delhi-110091.

-Applicant

(By Advocate Shri A.K. Behera)

-Versus-

1. Union of India through
the Secretary,
Ministry of External Affairs,
South Block,
New Delhi-110 001.
2. Chief Controller of Accounts,
Ministry of External Affairs,
Akbar Bhawan, New Delhi.
3. The Secretary, Ministry of
Personnel, Public Grievances & Pensions,
North Block, New Delhi-110 001. -Respondents

(By Advocate Shri A.K. Bhardwaj)

ORDER (ORAL)

By Mr. Shanker Raju, Member (J):

The applicant, who retired on 31.1.98, has assailed the action of the respondents whereby the gratuity has been withheld by the respondents as well as non-accord of interest on the delayed payment of retiral benefits.

2. Briefly stated the applicant was posted as Consul General of India in Chicago, USA from 1.10.92 to 9.7.96. During his tenure the applicant made certain calls and on enquiry by the vigilance it has been found that the same have been made unauthorisedly without having any official work. In the enquiry the applicant has not been given a participation. The applicant retired on superannuation on 31.1.98 and before retirement he had submitted his pension papers. The respondents despite

instructions to release the retiral benefits have not released the same.

3. The learned counsel for the applicant stated that presuming without admitting that the complete pension papers have not been submitted by the applicant to the respondents on 26.5.99 the retiral benefits should have been released within three months, as laid down in Rule 68 of the C.C.S. (Pension) Rules, 1972. Having failed to do so the applicant is entitled for an interest of 12% on the retiral benefits. There is no justified explanation of delay in releasing the retiral benefits to the applicant. It is also stated that the gratuity amounting to Rs.3,50,000/- has been withheld by the respondents on the ground of arrears, which includes, as per the respondents, House Building Advance (HBA), Motor Car Advance (MCA), excess drawn foreign allowance and also recovery of US \$14653.58 and US \$569.07 on account of excess calls from residential and official telephones. It is stated that the applicant has been sought explanation in 1994 and after his reply the matter has been closed and in audit the same has been cleared but yet after four years the same have been shown as arrears and in this view of the matter placing reliance on a decision of the Apex Court in D.K. Yadav v. J.M.A. Industries 1993 SCC (L&S) 723, it is contended that the intended recovery of the dues from the applicant visits him with civil consequences after his retirement and as such he is entitled for a show cause notice to rebut the claim of the respondents and having now allowed any participation in the vigilance enquiry where it has been found that the calls were made in private capacity and in excess resulting in recovery of allowances the same

violates principles of natural justice. It is also stated that as per the instructions of Government dated 25.8.58 under Rule 73 of the Pension Rules ibid the same cannot be treated as a misconduct and reasonable opportunity is to be given to him. It is lastly contended that any recovery can be made only after following the provisions of Rule 9 of the Pension Rules and Government dues cannot be treated to be a misconduct as such the respondents have no jurisdiction to recover the arrears and to withhold the gratuity of the applicant.

4. On the other hand, strongly rebutting the contentions of the applicant the learned counsel for the respondents submitted that the applicant himself has submitted the complete pension papers only on 26.5.99 and thereafter due to formalities the same have been released around November, 1999 and the applicant is not entitled for any interest as there is no wilful delay in disbursing the retiral benefits of the applicant. It is further stated that the applicant has already been paid all the retiral benefits, viz., pension, commuted value of pension, insurance, leave encashment and GPF, but the gratuity has been withheld to recover the HBA, MCA and bills for excess telephone calls. Placing reliance of Rules 71 and 73 of the Pension Rules it is contended that any dues other than the dues pertaining to Government accommodation can be adjusted against the amount of retirement gratuity, as such the respondents are within their right to claim outstanding dues from the applicant.

5. In the rejoinder, the learned counsel for the applicant stated that he has already been paid the HBA, as well as MCA and the same has been wrongly shown as arrears against him by the respondents.

6. Having regard to the rival contentions of the parties and perusal of the pleadings I am of the view that the respondents are liable to pay a simple interest at the rate of 12% p.a. on the retiral benefits released to the applicant. As per the admission of the respondents the complete papers have been submitted to them by the applicant on 26.5.99 and having regard to the provisions of Rule 68 of the Pension Rules if three month's period is reckoned from this date the retiral benefits should have been disbursed to the applicant upto 26.8.99. As the same have not been released to him by that date and were released subsequently in November, 1999 and having no explanation of this delay and whatever they have contended is not justified as having in possession of all the relevant documents the time of three months was reasonable to work out the retiral benefits of the applicant. He is entitled to interest of 12% on these retiral benefits on account of the delay on the part of the respondents. I am fortified in this view of mine by the ratio of the Apex Court in Vijay Kumar Malhotra v. Union of India, 2000 AIR SCW 2678, wherein it has been held that on account of delay in payment of retiral benefits a simple interest at the rate of 12% p.a. is to be paid to a Government servant.

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7. As regards the adjustment and recovery of dues other than pertaining to Government accommodation, I find that the provisions of Rule 73 of the Pension Rules do empower the respondents to withhold and adjust the arrears from retirement gratuity payable to the applicant.

8. As regards the dues of HBA, MCA, admittedly the same are Government dues and the contention of the applicant that he has already paid the same, has not been taken into consideration by the respondents. This has occasioned before effecting withholding of gratuity and effecting a recovery of arrears from the amount, a show cause notice has to be given to him and this has been denied and in the vigilance enquiry the applicant has not been allowed participation.

9. As regards the recovery on account of excess calls the applicant's contention that the same has been made in discharge of official duties and the fact that on explanation the matter has been closed down in 1994 would not preclude the respondents from treating it as arrears against the applicant but not before he is accorded an opportunity to rebut the same and to put his version for consideration of the respondents. No doubt that withholding of gratuity has visited the applicant with civil consequences and before this action was taken admittedly no show cause notice was served upon the applicant, which in my considered view amounts to violation of principles of natural justice and fair play.

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10. Having regard to the reasons recorded above, the present OA is partly allowed. The respondents are directed to pay to the applicant interest on delayed payment of retiral benefits to be computed from 26.8.99 till it is actually paid with simple interest at the rate of 12% p.a.

11. As regards dues on account of HBA, MCA advance and excess bills are concerned, while retaining the gratuity of the applicant the respondents are directed to accord a reasonable opportunity to the applicant by way of issuing him a show cause notice and giving details of the arrears to be recovered from him and thereafter affording him an opportunity to put his version and the proof of having paid some of the dues and thereafter to take a final decision within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)

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