

(19)

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

OA.No.2453 of 1999

New Delhi, this 6th day of September, 2000

HON'BLE MRS.SHANTA SHAstry, MEMBER(A)

S.K.Anand
S/o Late Shri S.D.Anand
R/o SFS Flat No.511, GH-13(G-17 Area)
Paschimpuri
New Delhi. ...Applicant

(By Advocate:Shri K.L.Bhandula)

versus

Union of India, through

1. Secretary
Ministry of of Defence
South Block
New Delhi.

2. Engineer-in-Chief
Army HQs, Kashmir House
DHQ P.O.
New Delhi-110011

3. Chief Engineer
Central Command
Lucknow

4. Chief Engineer
Lucknow Zone
Lucknow ... Respondents

(By Advocate:Shri V.S.R.Krishna)

Order

By Mrs Shanta Shastry, M(A)

The applicant has claimed interest at 18% on the delayed payment of DCRG amounting to Rs.87,750/- from 29.4.1995 to 27.2.1999 and leave encashment amounting to Rs.67,881 paid on 17.7.1995 after eight-and-half months' delay.

2. The applicant retired on 31.10.1994. A chargesheet was served on him one week before his retirement, i.e. on 24.10.1994. Till October

1995, i.e. one year after serving the chargesheet, the respondents had not taken any further action on the charges. The applicant filed OA.2024/95 on 16.10.1995. The same was disposed of on 11.10.1996 with a direction to the respondents to conclude the departmental enquiry as expeditiously as possible preferably within six months. In the enquiry the applicant was imposed a penalty of cut in pension @ Rs.100 p.m. for a period of three years. He did not file any appeal against the order but kept on filing OA, MAs and CPs to get his disciplinary case expedited. Finally he was exonerated in the departmental enquiry in February 1998 vide order dated 20.2.1998. The applicant is therefore claiming interest from June 1995 to February 1999 as his DCRG was due to him in June 1995.

3. The learned counsel for the respondents submits that the applicant was involved in a disciplinary case. The final orders exonerating the applicant were passed on 20.2.1998. Action for release of gratuity was initiated and corrigendum to original PPO was issued by the Controller of Defence Accounts (Pension), Allahabad vide order dated 7.9.1998 for making payment on the gratuity to the applicant. The corrigendum was sent to the Banker of the applicant on 17.11.1998 stating that the papers

should be routed through their link Branch in Tis Hazari, New Delhi and thereafter the gratuity was paid to the applicant.

4. The learned counsel draws my attention to the rule position under Rule 68 of the Pension Rules. If the payment of gratuity has been authorised after three months from the date when its payment became due and it is clearly established that the delay in payment was attributable to administrative lapse, interest at the rate of five percent per annum on the amount of gratuity in respect of the period beyond three months shall be paid, provided that the delay in payment was not caused on account of failure on the part of the government servant to comply with the procedure laid down. It is also clarified vide Government of India's decision dated 11.7.1979¹ that under the rules, gratuity becomes due immediately on retirement. Where disciplinary or judicial proceedings against a government servant are pending on the date of his retirement, no gratuity is paid until the conclusion of the proceedings and the issue of the final orders thereon. The gratuity if allowed to be drawn by the competent authority on the conclusion of the proceedings will be deemed to have fallen due on the date of issue of orders by the competent authority. Accordingly the applicant will be

entitled for interest on gratuity only from 3 months after the issue of orders after his exoneration.

5. I have heard the learned counsel for the applicant as well as for the respondents and have perused the relevant Pension Rules.

6.1 I find that the respondents have cited only a portion of the Clarifications/Decisions of the Government of India in regard to the payment of interest on delayed payment of gratuity on account of disciplinary proceedings. The Department of Personnel & Administrative Reforms O.M. No.F7(1)-P.U./79 dated 11.7.1979 and No.1(4)/Pen.Unit/82 dated 10.1.1983 provide as follows:

"2. Where disciplinary or judicial proceedings against a Government servant are pending on the date of his retirement no gratuity is paid until the conclusion of the proceedings and the issue of the final orders thereon. The gratuity if allowed to be drawn by the competent authority on the conclusion of the proceedings will be deemed to have fallen due on the date of issue of orders by the competent authority"

6.2 The learned counsel for the respondents has rightly quoted this. However there is a further clarification in para-3 of the same OA which the respondents have not quoted. It reads as follows:

"3. In order to mitigate the hardship to Government servants who on the conclusion of the proceedings are fully exonerated it has been decided that the interest on delayed payment of retirement gratuity may also be allowed in their

cases in accordance with the aforesaid instructions. In other words, in such cases the gratuity will be deemed to have fallen due on the date following the date of retirement for the purpose of payment of interest on delayed payment of gratuity."

6.3 The rates at which interest is to be paid on delayed payment of such gratuity have also been laid down in the O.M. dated 28.7.1984, i.e. at 7% per annum where the delay is beyond 3 months and up to one year and 10% per annum beyond one year.

7. In the present case the applicant was exonerated completely on 28.2.1999. Therefore he is entitled to interest on delayed payment of his gratuity deeming that the gratuity has fallen due on the date following the date of retirement of 31.10.1994.

8. I, therefore, direct the respondents to pay to the applicant interest at the rates prescribed by the Government of India from time to time from 29.7.1995 till 27.2.1999. ^{as prayed for} Further leave encashment also becomes due on the date of retirement. Interest ^{at 12%} should, therefore, be paid from the date ^{of retirement} till the date the amount was paid actually. The payment of interest on both gratuity as well as on leave encashment shall be made within a period of two months from the date of receipt of a copy of this order.

9. OA is thus allowed. No costs.

Shanta R.
(Mrs. Shanta Shastry)
Member(A)