

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA 88/200099

New Delhi this the 6th day of December, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

(23)

Shri Mahendra Pal Singh
S/O Late Shri Sujan Singh
Ex. Sr. Dy. Director General
Ordnance Factory Board Calcutta.

r/o Flat No.54, Sector 'A'
Pocket 'C' Vasant Kunj, New Delhi.

(By Advocate Ms Meenu Mainee)

.. Applicant

Versus

Union of India- Through

1. The Secretary,
Ministry of Defence,
Govt. of India, New Delhi.
2. The Director General
Ordnance Factory Board,
10, A Auckland Road, Calcutta-1

.. Respondents

(None for the respondents)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The applicant has filed this application being aggrieved of
what he/ ^{as} alleged ^{is} wrongful and illegal action of the respondents in
not paying him interest on the delayed payment of gratuity, commu-
tation of pension as well as interest on pay and allowances in the
higher grades to which he was promoted as Senior Deputy Director
General and Additional Director General notionally w.e.f. 1.4.1995
and 10.1.1997, respectively.

2. None has appeared for the respondents even on the second call. It is further noted that notice on OA has been issued by the Tribunal's order dated 12.1.1999 and in spite of several opportunities, the respondents have not cared to file their reply.

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although Shri Rajeev Bansal, learned counsel had appeared on their behalf and sought further time to file reply. In the Tribunal's order dated 3.2.2000 it is recorded that Shri Rajeev Bansal, learned counsel for the respondents has stated that despite his best efforts the Department has not instructed him properly and nobody is coming to Court to look after this case. Even at that stage, last opportunity was given to the respondents to file reply which, for whatever reasons best known to the respondents, has not been done. In the circumstances, I have perused the averments in the OA, ^{and} heard the learned counsel for the applicant and ^{am} disposing of the application based on these documents.

3. The brief relevant facts of the case are that the applicant states, while posted as Deputy-Director General, Ordnance Factory Board, ^{he} was issued a major penalty charge-sheet dated 4.8.89. Since the same was not concluded even after five years, he had filed an application (OA 1471/1996) in the Tribunal (Calcutta Bench). He states that the OA was disposed of by order dated 3.4.1996 with a direction to the respondents to conclude the departmental proceedings within a specified period. This action was not done by the respondents. They had filed MA for extension of time to implement the Tribunal's order and to conclude the disciplinary proceedings. It is stated by the applicant that MA for extension of time was allowed and five weeks further time granted to the respondents to implement the judgement. Again the respondents are stated to have failed in implementing the order and conclude the

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disciplinary proceeding within the extended period and they have filed another MA 348/96 on 23.10.1996 praying for further extension of time. In the meantime, the applicant states that he had filed another application (OA 1382/1996) praying for a direction to the respondents to drop the disciplinary proceedings with consequential benefits like promotion to the post of Additional Director General of Ordnance Factory Board. The applicant has stated that the MA filed by the respondents for further extension of time was dismissed by the Tribunal. The applicant has annexed copies of the orders passed by the Calcutta Bench of the Tribunal dated 18.9.1997 in OA 1471/94 with MA 348/1996, and OA 1382/96 with MA 101/1997 (Annexure A-1). In pursuance of this order, the respondents have passed impugned order dated 9.12.1997 (Annexure A 2) in which they have, inter alia, stated that the disciplinary proceedings initiated against the applicant be treated as dropped without, however, mentioning the actual date in terms of the Tribunal's order dated 18.9.1997.

4. During the pendency of the aforesaid application before the Calcutta Bench of the Tribunal, the applicant had retired from service w.e.f. 30.6.1997. The applicant has stated that the respondents issued another order on 15.6.1998 (Annexure A-4) in terms of which he has been given officiating promotion as Senior General Manager in the pre-revised pay scale of Rs.7300-7600 w.e.f. 1.4.1995 till the date of his retirement i.e. 30.6.97 (Ann.A.4). Learned counsel has further clarified that the promotion of the applicant to the post in the grade of Sr. General Manager is the same as promotion to the grade of Senior Deputy/General w.e.f.

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1.4.1995. Mrs. Meenu Maine, learned counsel has submitted that Paragraph 2 of this order dated 15.6.1998 is not relevant because according to her no further proceedings were pending against the applicant at that time. As the respondents have not cared to controvert these submissions by filing their reply or any other document ¹³ placed on record, there is no reason to doubt the averments made by the applicant and his counsel.

5. In Paragraph 4.14 of the OA, the applicant has stated that after his retirement on 30.6.1997, he has been paid the retiral benefits on 18.11.1998 i.e. DCRG and commutation amount. According to him, the commutation amount was due on 9.3.1998 and therefore, he has submitted that there has been delay for eight months in the payment. Mrs. Meenu Maine, learned counsel has submitted that as the applicant has retired on superannuation on 30.6.1997 sixteen there has been ~~16~~ months delay in payment of DCRG and eight months delay in commutation of pension on which interest is payable to the applicant at the rate of 18% per annum. She has also submitted that further direction may be given to the respondents to pay the difference in pay and allowances with consequential difference in pensionary benefits on the promoted posts due to the applicant with the same rate of interest. She also relies on the judgement of the Supreme Court in State of Kerala and Ors. Vs. M. Padmanabhan Nair (AIR 1985 SC 356).

6. I have considered the application and the documents on

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record and particularly the order of the Tribunal (Calcutta Bench) dated 18.9.1997 in OA 1471/94 and OA 1382/1996. The Tribunal had concluded in the facts of the case that, the disciplinary proceeding initiated against the applicant on 4.8.89 was liable to be dropped for failure of the authority to conclude ^{it} ~~within~~ the time allowed by the Tribunal. It was further noted in the order that the petitioner has since retired and whatever benefits will be admissible to him at the present moment will be in the shape of monetary benefits. MA 348/1996 filed by the respondents for extension of time to conclude the disciplinary proceedings was rejected. Para 11 of this order reads as follows:-

" OA 1382/1996 is disposed of with a direction upon the respondents to treat the disciplinary proceeding against the petitioner as dropped on the expiry of the extended period allowed by this Tribunal in MA 262 of 1996."

7. As mentioned above, following the aforesaid order of the Tribunal, the respondents have passed the order dated 9.12.1997 in which after reiterating the relevant facts of the order dated 18.9.1997, they have stated that in the circumstances of the case, the President has come to the conclusion that the disciplinary proceedings initiated against the applicant be treated as dropped. They have, however, not cared to mention the date from which it has to be effected in terms of the aforesaid order of the Tribunal. Learned counsel for the applicant has submitted that the disciplinary proceedings are deemed to be dropped w.e.f. 9.12.1997. This will be a matter for the respondents to verify from the records.

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8. The contention of Mrs Meenu Mainee, learned counsel ^{is} that there is delay in payment of gratuity amount of sixteen months, from the date of retirement of the applicant on 30.6.1997. Learned counsel has contended that, therefore, ^{interest is payable on the} delay of sixteen months in the payment of gratuity after the date of retirement of the applicant on 30.6.1997, and eight months delay in payment of commutation amount from 9.3.1998. Taking into account the aforesaid facts of the case, including the fact that according to the applicants own averment, the disciplinary proceedings have been dropped on 9.12.1997, I am unable to agree with the contention that there has been delay of sixteen months in payment of the gratuity amount to the applicant. Admittedly, major disciplinary proceeding was pending against the applicant from 1989 till it was dropped on the orders of the Tribunal dated 18.9.1997. In the present case, since the disciplinary proceeding was pending against the applicant on the date of his retirement, and taking into account the other facts mentioned above, the applicant would be entitled for payment of interest on the gratuity amount due to him from the two months of the date of dropping ^{of 13/} all the charges i.e. w.e.f. 1.2.1998 till the actual date of payment i.e. 18.11.1998. With regard to the payment of commutation amount which was due to the applicant on 9.3.1998, which was admittedly been paid to him on 18.11.1998, ~~he~~ shall also be entitled to interest for the delayed payment from 9.3.1998 till 18.11.1998. In the circumstances of the case, simple rate of interest to be paid to the applicant shall be 12% per annum.

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9. In Paragraph 4.13 of the OA the applicant has ¹³ mentioned that he was also entitled for promotion as Additional Director General from the date his immediate junior was so promoted. The applicant, who is present in Court and identified by Ms. Meenu Mainee, learned counsel, has further submitted that during the pendency of the OA the respondents have passed further orders promoting him to the post of Additional Director General on 10.1.1997. His grievance is that on the difference in salary in the promoted post, he has not been given any interest. As the respondents have not cared to file their reply to this averment, there is also no reason to doubt the submissions made by the learned counsel for the applicant at the Bar with regard to this fact.

10. ^{However,} ¹³ In the facts and circumstances of the case and taking into account also the fact that ¹³ major proceedings were initiated against the applicant in 1989 and the same were dropped in 1997 by the Tribunal's order in OA 1382/1996, the claim of the applicant for interest on the difference in the pay and allowances in the promoted posts does not appear to be justified and is accordingly rejected.

11. In the result for the reasons given above, the O.A. is partly allowed as given in Paragraphs 8 ¹³ ~~8~~ above. Necessary action for payment of due amount by way of interest to the applicant as directed above shall be paid within two months from the date of receipt of a copy of this order. No costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)