

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(1)

O.A./xxx. No. 1223/95 /19 Decided on: 12 February, 1996,

Shri Prem Sagar Sharma! APPLICANT (S)
(By Shri K.K.Rai) Advocate

VERSUS

Ministry of Defence & others: RESPONDENTS

(By Shri V.S.R.KRISHNA, Advocate)

DR RAM

THE HON'BLE SHRI S.R.ADIGE, MEMBER (A).

THE HON'BLE SHRI/SMT./DR.

1. To be referred to the Reporter or not? yes.
2. Whether to be circulated to other Benches of the Tribunal ?

Art 17
(S.R.ADIGE)
MEMBER (A).

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No. 1223/95

New Delhi: this the 12th February, 1996.

HON'BLE MR.S.R.ADIGE, MEMBER(A).

Shri Prem Sagar Sharma,
S/o Late Sh.Gurdial Charan,
744, Saraswati Vihar,
Gurgaon -122 002

.....Applicant.

By Shri K.K.Rai, Advocate.

Versus

1. Ministry of Defence,
through

its Secretary,
South Block,
Govt. of India,
New Delhi.

2. Engineer-in-Chief,
Army Head Quarters,
Kashmir House,
New Delhi.

3. Chief Engineer,
Western Command,
Chandi Mandir,
Haryana-134107

..... Respondents.

By Advocate Shri V.S.R.Krishna.

JUDGMENT

By Hon'ble Mr. S.R.Adige, Member(A).

In this application, Shri P.S.Sharma has impugned the order dated 21.12.94 (Annexure-A1) and has prayed for penal interest for alleged delay in payment of pension and DCRG at the rate of 18% p.a. from 16.11.79 till 18.5.94.

2. Shortly stated, the applicant joined the MES as Superintendent Gr.II on 2.11.63 and was declared quasi permanent w.e.f. 2.11.66. He was promoted as Superintendent Gr.I on 16.3.68 and was relieved from MES to join the Central Warehousing Corporation as Asstt Engineer on 16.11.76. He was allowed to retain lien over

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the post of Superintendent initially for two years which was extended from time to time till it was finally terminated on 15.11.79. The applicant meanwhile was confirmed as Superintendent Gr.II w.e.f. 1.4.76 vide Order dated 5.9.86 (Annexure-A2).

3. After going over to the C.W.C the applicant sought for prorata pension in respect of the period of service put in by him in MES. After some correspondence the respondents finally rejected the claim vide letter dated 10.1.91, holding inter alia that in absentia confirmation of an employee who resigned from service was not in order, and cancelling the confirmation order dated 5.9.86 issued earlier (Annexure-A2). Against that order dated 10.1.91 the applicant filed OA No.2293/91 praying inter alia for prorata pension, but making no prayer for interest on the alleged delay in payment of the same. The said OA was disposed of by judgment dated 18.2.93 (Annexure-A 11) by which the impugned order dated 10.1.91 was quashed, and the applicant was deemed to be a confirmed employee of the respondents, and thereby entitled to prorata pension as per extant rules which the respondents were directed to pay within 3 months from the date of receipt of a copy of the judgment. No direction was given for payment of any interest on that sum as no such direction was sought in the OA. Thereupon it appears that the applicant sought payment of interest on the alleged delay in payment of pension arrears and DCRG from the respondents to which they in their impugned letter dated 21.12.94 informed him that sanction for permanent absorption in C.W.C was accorded by Govt. during September, 1993

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and he submitted his pension papers during October, 1993 for which PPO was received from competent authority during February, 1994. Hence there was no delay in sanctioning prorata pension and the applicant was not entitled to any interest thereon.

4. I have heard Shri K.K.Rai for the applicant and Shri V.S.R.Krishna for the respondents. I have perused the materials on record and considered the matter carefully.

5. The prayer for penal interest can succeed only if the applicant can establish that there was deliberate delay on the part of the respondents in sanctioning his prorata pension. No such evidence has been produced by the applicant to lead me to conclude that there was deliberate delay on the part of the respondents. The applicant has claimed penal interest from 16.11.79 onwards but he has not filed any document to indicate that he wrote any letter to the respondents prior to 8.1.88 (Annexure-A4). It is true that the respondents had confirmed him as Superintendent Gr.II w.e.f. 1.4.76 vide order dated 5.9.86 (Annexure-A2), but thereafter under the bonafide belief that the said confirmation order contravened the existing rules/instructions, the said order was rescinded vide order dated 10.1.91 (Annexure-A10). Against that order the applicant filed OA No.2293/91, but in the relief clause, although a prayer for payment of prorata pension was made, there was no prayer for penal interest because of the alleged delay in sanctioning the prorata pension. If the applicant was really aggrieved by the delay in sanctioning the prorata pension, he could have

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claimed the penal interest in O.A. 2293/91, but he did not do so. That O.A. was disposed of by judgment dated 18.2.93, in which no order was passed as to the penal interest because the same was not asked for. The applicant did not file any application for review or appeal against that judgment dated 18.2.93, and under the circumstances there is nothing to indicate that the said judgment has not become final. There is, therefore, merit in the respondents' contention that the applicant cannot agitate now something which should have been agitated in the earlier O.A. and this claim is barred by the principle of res judicata. It is, therefore, manifest that no penal interest is legally due to the applicant for the period prior to the judgment dated 18.2.93.

6. Applicant's counsel Shri K.K. Rai has relied on certain rulings, namely State of Kerala Vs. M.P. Nair AIR 1985 SC 356 and O.P. Gupta Vs. UOI AIR 1987 SC 2257 in support of the contention that prompt payment of retiral benefits is the duty of the Govt., failing which the Govt. is liable to pay the penal interest. None of those rulings are applicable to the present case because the question whether the applicant was entitled to such retiral benefits from Govt. when he had gone to CWC, was itself in doubt and the matter was settled only after the Tribunal conclusively ruled on the issue vide judgment dated 18.2.93 in O.A. 2293/91.

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7. By the judgment dated 18.2.93, the resp. were directed to pay the prorata pension within 3 months from the date of receipt of a copy of that judgment. Assuming it to have taken a fortnight for the receipt of the copy of the judgment by the resp., they should have paid the prorata pension by the end of May, 93. ^{from 18.2.93} Respondents' letter dated 21.12.94 (Ann. A1), it appears that the resp. sanctioned the applicant's permanent absorption in CWC during Sept. 93, ^{and} the applicant himself submitted his pension papers in Oct. 93 and PPO was received from the competent authority in Feb. 94. While no doubt the prorata pension was not sanctioned within the prescribed period of 3 months from the date of receipt of a copy of the judgment, the applicant also appears to have taken no action to enforce implementation of the judgment within the prescribed time period. In fact it is only on 6.10.94 (Ann. A13) i.e. nearly 10 months after the receipt of the PPO from the competent authority that the applicant sent his representation dated 6.10.94 claiming interest or delayed payment. In view of the applicant's own tardiness in the matter, he is in position to allege delay on the part of the respondents. Under the circumstances, there are no good grounds to award penal interest for the period from 18.2.93 till the date of payment either.

8. This O.A. therefore fails and is dismissed. No costs.

K. J. Adige
(S.R. ADIGE)
Member (A)