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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.NO.2916/97

NEW DELHI, THIS THE 16TH DAY OF FEBRUARY, 2000.

HON'BLE MR. M.P.SINGH, MEMBER (A)

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Dr. K.S. Bhandari, S/O Late S. Avtar
Singh Bhandari, R/O 169, Nilgiri
Apartments, Alak Nanda, New Delhi -
110019.

.....Applicant.

(By Advocate: Sh. G.D.Gupta)

VERSUS

1. Administrator, Union Territory of Delhi, Raj Niwas, Delhi.
2. Government of National Capital Territory of Delhi through its Chief Secretary, 5, Sham Nath Marg, Delhi - 110 054.
3. Director of Education, Delhi, Old Secretariat, Delhi - 110 006.

.....Respondents

(By Advocate: Sh. Rajinder Pandita)

O R D E R

By this OA, the applicant has prayed that the respondents be directed to pay interest on pension, DCRG, commutation of pension etc.

2. The brief facts of the case are that the applicant was initially appointed as a Teacher in the Department of Education, Govt. of Punjab on 26.5.53 and remained there upto 8.8.1963. Thereafter he was directly recruited as Research Associate Lecturer in the Department of Science & Maths., National Council of Educational Research & Training (Govt. of India) on 9.8.63 and continued on the said post upto 28.8.72, whereafter he was directly recruited through the Union Public Service Commission (UPSC) as Dy. Director of Education under the Govt. of N.C.T. of Delhi w.e.f. 29.8.72. He was promoted as Joint Director of Education

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(Planning) on 2.8.80. Later on, he was promoted to the post of Addl. Director w.e.f. 2.10.86 and retired on superannuation w.e.f. 31.5.88.

3. After his retirement from service, the applicant was appointed as Director of the State, Council of Educational Research and Training (SCERT) an autonomous body of the Govt. of N.C.T. of Delhi for a period of two years from 1.6.88 to 31.5.90. After his retirement on superannuation, the applicant was granted only the provisional pension w.e.f. 1.6.88 and without counting the qualifying service rendered by him in NCERT (from 9.8.63 to 28.8.72). He was informed by the respondents that the provisional payment was sanctioned till the vigilance case/ complaint was dropped or filed. Apart from the provisional pension, the payment of other retiral benefits like DCRG and commutation of pension were not released to the applicant.

4. The applicant submitted the representations to the Director of Education, Secretary (Education), Chief Secretary, Delhi Administration, Lt. Governor, Govt. of N.C.T. of Delhi and later on to the Govt. of India, Ministry of Public Grievances & Pension for settlement/payment of his pension and other dues. He has stated that in the meantime, the NCERT vide their order dated 31.7.89 accorded the sanction to the payment of pensionary benefits to the applicant for qualifying service as rendered by him from 9.8.63 to 28.8.72. According to him, it is not understandable that if any vigilance enquiry was pending, then how the applicant was



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appointed as Director, SCERT. The applicant did not receive any reply to any of his representation for more than 8 years nor any communication whatsoever in regard to allegation pertaining to the said alleged vigilance enquiry was ever communicated to him. The only reply received by the applicant was from the Ministry of Personnel on 18.4.95.

5. The retirement dues including DCRG and commutation of pension were released vide order dated 20.11.96. Since the retiral benefits of the applicant was wrongfully withheld from 1.6.88 to Jan.1997, the applicant submitted a representation for granting him the interest and suitable damages for the sufferings which he had undergone during that period. Since no reply was received from the respondents, the applicant has filed this OA seeking reliefs for payment of interest/ compensation for the delay in settlement/ payment of pension, DCRG, commutation of pension at the rate of 18% p.a. with all consequential benefits.

6. The respondents in their reply have raised the preliminary objections regarding the limitation. They have relied on the judgement of Hon'ble Supreme Court in the case of S.S.Rathore Vs. State of Madhya Pradesh, AIR 1990 (10). In this case, Hon'ble Supreme Court has held as under:-

"(20) We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy



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has been availed of, a six months period from the date of preferring of the appeal or making of the representation shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.

(21) It is appropriate to notice the provision regarding limitation under S.21 of the Administrative Tribunal Act. Sub-Section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period six months has been vested under sub-section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned. Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.

7. The respondents have also stated that the applicant was allowed provisional pension as certain complaints were pending against him and were being investigated at the level of the Directorate of Education, Directorate of Vigilance and Central Vigilance Commission. The allegations levelled against the applicant were that he had amassed money with corrupt practices and had accorded recognition to some schools for consideration. During the investigations, some anonymous caller advised the Administrative officer (Vig.) to investigate and examine a number of cases. Only two cases were chosen as sample cases for detailed examinations. For first case, the applicant was awarded the displeasure of the Govt. and for the second case, Directorate of Vigilance had asked for further clarification. They have also stated that as per Rule 9 (2) (b) of Pension Rules, the departmental proceedings if

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not instituted while the Government Servant was in service or during the re-employment..... shall not be (instituted) in respect of any event which had taken place more than four years before such institution. Since these events have taken place before retirement of the applicant, no case can be instituted against him at this stage as the same was barred by limitation.

8. According to them the pro-rata pensionary benefits were remitted by the NCERT to Delhi Govt. only on 17.7.96. Hence there is no delay on the part of the Govt. of N.C.T. of Delhi as the payments were released on 20.11.96.

9. Heard both the learned counsel for the parties at length and perused the record.

10. From the facts mentioned above, it is clear that the applicant retired on superannuation on 31.5.88 and his retirement dues, DCRG, commutation of pension and part of pension i.e. difference between the provisional pension and the actual pension due to him, were wrongfully withheld till 20.11.96. It is also not in dispute that no memo of charge was served nor any DE proceedings were initiated against the applicant during this period. The contention of the respondents that disciplinary proceedings could not be instituted against a Govt. servant while in service or during his re-employment in respect of any event which had taken place more than four years before such institution, cannot be accepted as four years have expired after the retirement on 31.5.92.

11. Learned counsel for the respondents has vehemently argued that this case is barred by limitation. The learned counsel for the applicant stated that the limitation does not apply in the case of retiral dues as it is a continuous cause of action. He has relied upon the judgement of the Hon'ble Supreme Court in the case of S.R.Bhanrale Vs. Union of India and Other, (1996) 10 SCC page 172 which has been observed as under:-

"4. The amounts now paid to the appellant admittedly fell due to him much before his retirement. The same was wrongfully withheld. It was, to say the least, improper on the part of the Union of India to plead the bar of limitation against such claims of its employees, when it had defaulted in making the payments promptly when the same fell due. It is not as if the appellant had woken up after a decade to claim his dues. He had been asking the Department to pay him his dues both while in service and after superannuation also but to no avail. In these circumstances it ill behoved the Union of India to plead bar of limitation against the dues of the appellant. We need say no more about it because better sense has prevailed and claim of the appellant has now been settled and payment made to him. The appellant who had served the Department for almost 40 years before his superannuation was made to run from pillar to post to get his legitimate dues. It is a sad commentary of affairs. He has undoubtedly suffered a lot. Had the amount which has now been found due and paid, been paid to him at the appropriate time at least in 1984 when he retired, the appellant would have been saved from a lot of unnecessary harassment; besides he would have earned interest on that amount also. He could have utilised that amount for other purposes. He was denied the same on account of the default of the Department. The appellant in his reply to the statement of account filed by Sh. Arya in this Court has claimed almost 18 lakhs of rupees from the Department out of which more than Rs. 16 lakhs has been claimed towards interest and compensation etc.

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12. As regards the payment of interest for long delay in settlement/ payment of retiral benefits, the learned counsel for the applicant has relied on the judgement of Hon'ble Supreme Court in the case of R.Kapur Vs. Director of Inspection (Painting & Publication) Income Tax and Another, (1994) 6 SCC page 589 which has been held as under:-

"10. This Court in M. Padmanabham Nair Case has held as under:- "Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."

11. The Tribunal having come to the conclusion that DCRG cannot be withheld merely because the claim for damages for unauthorised occupation is pending, should in our considered opinion, have granted interest at the rate of 18% since right to gratuity is not dependent upon the appellant vacating the official accommodation. Having regard to these circumstances, we feel that it is a fit case in which the award of 18% is warranted and it is so ordered. The DCRG due to the appellant will carry interest at the rate of 18% per annum from 1.6.86 till the date of payment. Of course this shall be without prejudice to the right of the respondent to recover damages under Fundamental Rule 48-A. Thus, the civil appeal is allowed. However, there shall be no order as to costs."

13. The Hon'ble Supreme Court in a recent judgement in the case of Mohd. Zaheeruddin Siddiqui Vs. Executive Council, A.M.U. & Anr., has also observed as under:-

"5. The Professors and other staff members constitute highly respectable elements in a University. The University is not expected to treat them in such callous and negligent manner as

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was done in the case of Prof. Siddiqui. Having regard to the facts set out above, we dispose of this application by directing that an additional amount of Rs.50,000/- shall be paid to the widow of Prof. Siddiqui by way of compensation for withholding the Gratuity amount for three years as the amount of Gratuity, if paid in time and invested either by Prof. Siddiqui or his widow in some commercial enterprise or in a Bank, would have earned rich dividends.

14. In view of the above discussion and also the facts and circumstances of the case, it is abundantly clear that the respondents have wrongly withheld the DCRG and other retiral dues of the applicant from 1.6.88 to 20.11.96. The respondents are, therefore, directed to pay the interest to the applicant @ 18% p.a. in respect of DCRG and other retiral dues from 1.6.88 to the date of actual payment, within a period of two months from the date of receipt of a copy of this order.

No order as to costs.

m.p.singh
(M.P.Singh)
Member (A)

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