

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

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OA-636/97

New Delhi this the 19th day of February, 1999.

Hon'ble Shri R.K. Ahooja, Member(A)

Shri M.M. Aggarwal,
S/o late Sh. B.D. Aggarwal,
R/o Flat No.117, Amarjyoti
Apartments, Mayur Vihar,
Phase-1, Delhi-91. Applicant

(Applicant in person)

versus

1. Union of India through
Secretary,
Dept. of Defence Production
& Supplies, Ministry of Defence,
South Block, New Delhi-11.
2. Chairman & DGOF,
Ordnance Factory Board,
10-A, Auckland Road,
Calcutta-700001.
3. General Manager,
Metal & Steel Factory,
Ishapore-743144,
Nawabganj, N-24,
Parganas (West Bengal)
4. Chief Conhtroller of Accounts(Fys),
10-A, Auckland Road,
Calcutta-700001.
5. Chief Controller of Defence
Accounts, Pensions,
Droupadi Ghat,
Allahabad-211014. Respondents

(through Shri VSR Krishna, advocate)

ORDER

The facts leading to the present O.A., which is the second round of litigation, may be briefly stated. The applicant joined the Indian Ordnance Factory service as a Class-1 officer in 1964. In 1986 he was transferred from the Ordnance Factory Board Headquarters at Calcutta to the Ordnance Factory Muradnagar as Joint General Manager. In 1988 he was again transferred from Muradnagar

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to Metal & Steel Factory Ishapore in West Bengal. However, the applicant did not join his new place of posting and instead made a representation that he should be either posted at New Delhi or at any one of other establishments or Ordnance Factory. He also stated that if his representation was not accepted he would be left with no other alternative but to seek voluntary retirement. This request for voluntary retirement was, however, withdrawn. Another conditional notice for voluntary retirement followed when the respondents insisted on his carrying out the transfer orders. Thereafter, by his letter dated 1.1.90, the applicant submitted a notice for voluntary retirement under Rule 48(A) of CCS (Pension) Rules 1972. On expiry of three months notice, he sought the release of his retiral benefits but the same were not allowed. He approached the Tribunal in OA-1764/90. By an order dated 17.5.94, the Tribunal disposed of the O.A. with the following directions:-

"(i) We declare that the applicant shall be deemed to have voluntarily retired from service w.e.f. 2.5.90 under the provisions of Rule 48-A of the C.C.S. Pension Rules, 1972 and that, therefore, he is entitled to pensionary benefits on that basis.

(ii) As a disciplinary proceeding is pending against the applicant, the benefit of provisional pension shall be granted to him in accordance with the provisions of rule 9 and rule 69 of the C.C.S. Pension Rules within three months from the date of receipt of this order.

(iii) The prayer to quash the disciplinary proceeding is dismissed and, therefore, the interim order is vacated. The respondents are directed to complete the disciplinary proceedings as expeditiously as possible.

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2. The applicant has now come again aggrieved by the respondents refusal to grant him interest on the delayed payments of GPF, CGEIGIS, DCRG, Provisional Pension, leave salary, leave encashment as also to issue directions to the respondents to quash penal rate of interest imposed on him in regard to the TA/DA advance taken by him while in service and also to make corrections in his half pay leave account.

3. The respondents in their reply have submitted that the disciplinary proceedings initiated against the applicant were dropped by letter dated 19.9.95. Thereafter, prompt action was taken for release of retiral benefits. They submit that the applicant has also made a plea for grant of penal interest in his earlier OA-1764/90 but the same had not been allowed by the Tribunal. As regards interest on delayed payment on GPF and DCRG, they stated that the same is not permissible under the rules. In regard to the imposition of penal interest on the outstanding TA/DA advance taken by the applicant, the respondents submit that the applicant had taken this advance in respect of his transfer order to Ishapore but as he had never joined at Ishapore nor had refunded the advance, he was liable under the rules to refund the advance alongwith penal rate of interest. This had now been calculated and deducted from his leave salary entitlement.

4. I have heard the applicant in person and Shri VSR Krishna for the respondents. In so far as the

applicant's claim for interest of arrears on pension is concerned, the respondents are right in pointing out that the applicant had made a plea for the same in his earlier O.A. when he specifically made the following prayer:-

"Award interest @ 18% p.a. to the applicant on the payments which had become due to the applicant and which have been illegally withheld for the period from which the same became due till the date of actual payment."

5. The directions given by the Tribunal in its order which have been extracted above do not show that this prayer was allowed and it has, therefore, to be treated as having been rejected. Accordingly, the applicant is now barred from re-agitating the question of interest on the delayed payment of pension.

6. The position in respect of the other retiral benefits, is however, different. It is an admitted position that the GPF of the applicant was paid to him in December 1994 though the interest thereon was granted only till 2.5.90 i.e. the deemed date of retirement of the applicant. The amount of GPF which is a contribution made by the applicant was with the respondents till December 1994. The payment of GPF was delayed by the respondents since they had decided that the applicant had not actually retired on the basis of the voluntary retirement notice dated 1.1.90. Be that as it may, the payment of interest on GPF has to be continued till its actual refund to the subscriber. Accordingly, the applicant is entitled to the payment of interest @ 12% p.a. calculated as per rules upto 30.11.94.

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7. The applicant has also prayed for interest on his DCRG. The respondents have stated that under Rule 68 of the CCS (Pension) Rules, 1972, interest is not permissible. Rule 68(1) reads as follows:-

"(1) If the payment of gratuity has been authorised later than the date when its payment becomes due, and it is clearly established that the delay in payment was attributable to administrative lapses, interest shall be paid at such rate as may be prescribed and in accordance with the instructions issued from time to time:

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 by the Government for processing his pension papers."

8. The Government of India, Department of Personnel O.M. No.7(1)-P.U./79 dated 11.7.79 and No.1(4)/Pen. Unit/82 dated 10.1.83 as reproduced in Swamy's Pension Compilation Thirteenth Edition Page 146 read as follows:-

- (1) Admissibility of interest on gratuity allowed after conclusion of judicial/departmental proceedings-1. Under the rules, gratuity becomes due immediately on retirement. In case of a Government servant dying in service, a detailed time-table for finalising pension and death gratuity has been laid down, vide Rule 72 onwards.
- (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.

(3) In order to mitigate the hardship to the 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. The benefit of these instructions will, however, not be available to such of the Government servant who die during the pendency of judicial/disciplinary proceedings against them and against whom proceedings are consequently dropped." (Emphasis supplied)

9. Since the disciplinary proceedings against the applicant had ultimately been dropped, the applicant would be deemed to be fully exonerated of the charges in terms of the Government decision quoted above. The gratuity will be deemed to have fallen due on the date following the date of retirement for the purpose of payment of pension and delayed payment of gratuity. Accordingly, the applicant is entitled to payment of interest @ 12%. This prayer is not hit by the principle of resjudicata since the same could not have been considered by the Tribunal in the earlier O.A. as the disciplinary proceedings against the applicant had at that stage not come to a conclusion.

10. As the same reasoning applies to the grant of interest on delayed payment of leave encashment the applicant is allowed 12% interest for the period from the date of his retirement to the date of actual payment.

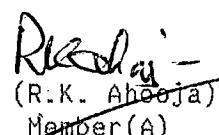
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11. The contention of the applicant regarding the penal rent charged on his outstanding TA/DA advance is, however, rejected. The respondents are perfectly right in deducting the penal rate as per rules and to deduct the same from his leave salary/leave encashment payments.

12. As regards the crediting of additional half pay leave to the applicant, the same was not pressed by the applicant. Nor do I find any ground for issuing any direction to respondents in this regard.

13. The applicant has also made a mention about his final TA bill on the basis of his movement to his permanent place of residence from his last place of posting. I consider that the respondents have a valid point that when the applicant never moved to Ishapore and also never reported back at Muradnagar, this claim cannot be considered.

14. In the result, the O.A. is partly allowed with a direction to the respondents to make payment of 12% interest in respect of the delayed payment of the GPF, gratuity and leave encashment of the applicant. This will be done within a period of four months from the date of receipt of a copy of this order. There will be no order as to costs.


(R.K. Ahuja)
Member (A)

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