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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

OA No.8 of 1997 decided on 2nd July, 1997.

Mrs. Anita Raswant
(By Advocate : Shri D.R. Gupta)

...Applicant

Vs

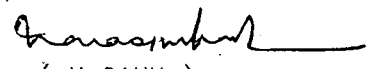
Union of India & Ors.
(By Advocate : Shri V.P. Uppal)

...Respondents

CORUM

Hon'ble Mr. N. Sahu, Member(A)

1. To be referred to the Reporter or not? ☒ YES/NO
2. Whether to be circulated to other Benches of the Tribunal? ☒ YES/NO


(N. SAHU)
Member(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 8 of 1997

New Delhi, this the 2nd day of July, 1997.

Hon'ble Mr. N. Sahu, Member(A)

Mrs. Anita Raswant
W/o Shri Y.P. Raswant,
R/o 97-C, Pkt.GG-I,
Vikas Puri,
New Delhi

...Applicant

(By Advocate : Shri D.R. Gupta)

Versus

1. Union of India
through
The Chairman
Central Board of Direct Taxes
North Block
New Delhi

2. The Chief Commissioner of
Income-tax Delhi-I,
New Delhi

3. The Commissioner of Income-tax
Delhi-I, I.P. Estate
C.R. Building
New Delhi - 110 002

...Respondents

(By advocate : Shri V.P. Uppal)

JUDGMENT

Hon'ble Mr. N. Sahu, Member(A)

The prayer in this OA is for a direction to the respondents to release the pensionary benefits due to the applicant, namely, monthly pension, DCRG, amounts standing to her credit under Group Insurance including commuted value of pension with interest at 18% per annum on delayed payments. The applicant joined the Income-tax department on 07.04.1966. She applied for voluntary retirement from Government service on 19.10.1994 which was accepted on the very next day i.e. 20.10.1994 under Rule 48(A) of CCS Pension Rules 1972. She was paid GPF final withdrawal amounting to Rs.95,166/- on 07.08.1995. She submitted

her relevant pension papers on 24.10.1994 which was processed and forwarded to the Zonal Accounts Office, CBDT, Vikas Bhawan on 02.12.1994. I shall do no better than to extract the relevant paragraph from the affidavit filed by the Chief Commissioner of Income-tax, Delhi:

"The pension papers of the applicant were submitted to the Zonal Accounts Officer, Central Board of Direct Taxes, Vikas Bhawan on 02.12.1994 which was received back with some objections from them on 25.01.1995. The same were met out and the papers were resubmitted on 08.03.1995. The ZAO again raised some objections on 07.06.1995 and after removing the objections, were submitted on 10.07.1995. The pension papers were received again from ZAO on 10.11.1995 with some objection and the papers were resubmitted on 13.11.1995. The pension papers were again received from the ZAO on 09.01.1996 with some objections. On the basis of the objections, Smt. Anita Raswant was asked to submit an application for grant of EOL for the period 21.03.1994 to 19.10.1994 according to the requirement of the Accounts Officer, ZAO, CBDT. Her application for grant of EOL for the requisite period was received on 22.04.1996 and the papers were resubmitted to the ZAO on 05.08.1996 after meeting out the relevant objections. A copy of the letter dated 24.01.1997 received from the concerned officer processing the pension papers is annexed (Annexure R-1). The ZAO returned the papers on 08.11.1996 with the objection that notice of her Voluntary Retirement was given by her during the period of EOL and she was allowed to retire voluntarily on the expiry of EOL. The order granting voluntary retirement was not in order as per the Govt. of India Decision No.1(v) below Rule 48A of the CCS(Pension) Rules, 1972. A copy of the Zonal Accounts Office's letter dated 08.11.96 is annexed (Annexure R-2). As the order of voluntary retirement has already been passed on 20.10.1994, the Department of Pension is being addressed to relax the rules on the subject so that the retirement benefits can be paid to the applicant without any further delay."

The above narration would show, according to Shri Uppal, that respondent No. 2 & 3 have been reasonably vigilant in processing pension papers and

meeting objections from ZAO. What strikes one at the first sight is that the ZAO had taken five chances to raise five different objections piecemeal on 21.05.1995, 07.06.1996, 10.11.1995, 09.01.1996 and 24.01.1997. All the objections could have been made and met in one sitting because the material papers relevant for consideration were always the same and were already present before the ZAO. I will not express an opinion on this aspect because ZAO has not been impleaded as a respondent. Secondly, the objections raised by the ZAO dated 08.11.1996 questioned the very appropriate-ness of the orders of voluntary retirement dated 20.10.1994. The respondents have petitioned to the Ministry of Personnel for relaxation so that the order of voluntary retirement could be regularised. The applicant contends that the respondents could have taken more time for consideration or they could have turned down her request, but after granting her an order of voluntary retirement it was the statutory duty to make timely payment of her retiral benefits. Hence, it is a clear case where for no fault of hers she had been denied her retiral benefits after an order was passed to retire her voluntarily.

2. Annexure-R2 is the crucial objection from the Zonal Accounts Office. The applicant had given notice for her voluntary retirement during the period of Extra Ordinary Leave and her voluntary retirement was granted the next day. She should have joined the Government service and given three months' notice from the date of expiry of EOL. The question at issue is

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whether the Department of Pensions would permit the relaxation and whether ultimately, would the order of voluntary retirement be ratified? Assuming that there would be such a ratification, I will dispose of this OA on the reliefs claimed.

3. Rule 68(1) dealing with interest on delayed payment of gratuity reads as under:

"(1) 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 such rate as may be prescribed by the Government from time to time in this behalf) on the amount of gratuity in respect of the period beyond three months shall be paid:

Provided that the delay in the payment was not caused on account of failure on the part of the Government servant to comply with the procedure laid down in this Chapter."

On the assumption that the validity of the order dated 22.10.1994 is ratified, this is a clear case of delayed payment. In the first place the ZAO could have conveyed all his objections within two to three months of the receipt of the papers. The case was dragged on for a period of two years. This delay is not attributable to the applicant^{at} all.

4. Learned counsel for the applicant cited the following decisions:

- i) 994(28) ATC 516 - R.Kapoor Vs.D.I.(Income Tax)
& another.
- ii) 1996(2) SC SLJ 362

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In R.Kapoor's case gratuity was withheld for not vacating Government accommodation and not paying damages for overstay. The Apex Court ordered an interest rate of 18% per annum because the right of such a retired employee to gratuity is not dependant on vacating the Government accommodation.

5. Learned counsel for the respondents cited the decision of SC SLJ 1995(2) page 69. In this case the Apex Court held that "before any interest can be granted on equitable considerations, it is necessary that the facts of the case should be examined to ascertain whether there are any special equities which would justify the grant of such interest although there is no provision in law for such grant."

6. If there is a rule or binding instruction, directing payment of interest, then such a rule or instruction should be followed. By O.M. No.7/3/84 dated 28.07.1984 which was also later on incorporated in a rule, rates of interest for delayed payment of retirement/death gratuity would be:

- i) Beyond 3 months and upto on year - 7% p.a.
- ii) Beyond one year - 10% per annum

This instruction was subsequently incorporated into the rule. This is not a case of gross negligence or carelessness on the part of the respondents. The respondents have been trying to clear the doubts or correct the errors pointed out by the ZAO. But then

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the acceptance of the request for voluntary retirement should have been processed more carefully keeping the continuous EOL of a long period by the applicant and after vetting the request in the light of the instructions on the subject. But once the order of voluntary retirement has been issued the dye is cast. The applicant has a legal right to expect the retiral benefits within a reasonable time. She cannot be deprived of her retiral dues for such a long time. Interest rate of 18% mandated in Kapoor's case is to be applied to the fact and circumstances of that case. We have to keep in view the admonition administered by the Apex Court in Goel's case where it reversed the decision of the Tribunal awarding interest to the applicant. I have also to keep in view the instructions of the Govt. of India (G.I. Deptt. of P. & P.W. O.M. No.7/20/89/P&PW/F dated 22nd January 91) where heads of offices are permitted six months' time in cases of retirement other than on superannuation. There are Apex Court decisions on delayed payment of pensions where only 10% interest has been allowed for the delayed payment.

7. The applicant has to establish that there is administrative lapse and the delay is not attributable to her. I think the crucial date is 22.04.1996 when she submitted her application for the grant of EOL. It was her duty as a Government servant to apply for the EOL. She should have applied for the same before she availed of the leave. It is true Department should have chastised her on this lapse on her part the moment she filed an application for voluntary

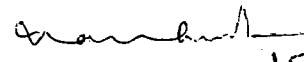
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retirement. Evenso, there was a lapse on her part in availing EOL without obtaining or keeping on record of sanction order for the same. Leave is not a matter of right; much less of a right is EOL.

8. After carefully considering the entirety of the facts ^{and} /circumstances in view, I direct the respondents to compute and pay interest at 10% on all her retirement dues including gratuity from 01.05.1996 till the date of actual payment, provided, of course the Ministry of Pensions approves the necessary relaxation sought for in this case.

OA is disposed of as above. No order as to costs.


(N. SAHU)
Member(A) 2/5/97

/Skant/