

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Hon'ble Shri Shanker Raju, Member (Judicial)

O.A.No.1207/2000

New Delhi, this the 13th day of November, 2001

Dr. S.L.Sharma
s/i Late Sh. G.L.Sharma
resident of 28 Ferozshah Road
New Delhi - 110 001. Applicant

(By Advocate: Shri Gyan Prakash)

Vs.

1. Union of India through
Secretary
Deptt. of Small Scale Industry
Agro and Rural Industries
Ministry of Industry
Govt. of India
Udyog Bhawan
New Delhi - 110 001.
2. Development Commissioner
Small Scale Industries
Ministry of Industry
Nirman Bhawan
New Delhi - 110 011.
3. Secretary
Department of Pension and
Pensioners Welfare
Ministry of Personnel & Pension
Lok Nayak Bhawan
New Delhi.
4. Pay & Accounts Officer
Small Scale Industries
Nirman Bhawan
New Delhi. ... Respondents

(By Advocate: Shri J.B.Mudgil, through Shri
P.P.Relhan)

ORDER

By Shanker Raju, Member (J):

Applicant, a retired employee has sought
accord of pension w.e.f. 1.11.1975 and in alternative
w.e.f 29.8.1984 with all consequential benefits and
also a direction to the respondents to recalculate the
interest on CPF Charged from him as per the rules and
for refund of excess interest. The applicant has also
sought 12% interest on his gratuity.

2. Briefly stated the applicant has joined on 31.5.1958 in the Office of Development Commissioner, Small Scale Industry, Government of India where he has taken voluntary retirement on 1.11.1975 under FR 56(K) the applicant has completed a total period of 16 years 5 months. Before joining the Central Government, the applicant was employed as Lecturer/Reader, Faculty of Commerce in University of Lucknow and has completed a total service of 14 years 9 months. On adding both the services, the length of service of the applicant comes to around 31 years. The applicant was further sent to UNIDO on deputation on 28th September, 1966 and had remained there till the date of his retirement, i.e., 1.11.1975. This period has to be deducted from the total length of service for calculating pensionary benefits. At the time of his absorption in Central Govt., Lucknow University, Teachers were entitled to contribute the CPF and their jobs have become pensionable subsequently, as such the applicant was accorded, an amount of Rs.13000/- as Provident Fund. The applicant made a representation to the respondents on 15.5.1998 for accord of pensionary benefits as per OM dated 29.8.1984, the same was rejected as the applicant has not exercised his option for counting of his service within one year from the date of the OM. The applicant further made a representation to the Ministry of Personal and Pension on 16.6.1998 and by a communication dated 22.9.1998 it has been decided to count his previous service rendered in Lucknow University as qualified service subject to his refund of the CPF amount from Lucknow University and terminal benefits from Central Government with

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interest at flat rate of 12% per annum. It is also stated that the applicant would be entitled for disbursement of arrears of pension w.e.f. 29.8.1984, i.e., the date of the OM. The applicant further made a representation on 3.3.1999 which was turned down by the respondents. on 27.7.1999. The request of the applicant has been approved for counting past service from 27.8.1943 to 30.5.1956 for pensionary benefits and for this the applicant has been asked to refund an amount of Rs.2,82,241/- being paid to him as service and terminal gratuity from Government of India and CPE from University plus interest thereon till July 1999 before 31.7.1999. The applicant has been issued a PPO on 17.9.1999 and the arrears of pension had been credited to his Bank Account in November, 1999. The applicant has been issued DCRG on 31.8.1999. The applicant being aggrieved that non-payment of arrears of pension from 29.8.1984 to 6.2.1986 by the respondents, has preferred this OA.

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3. The learned counsel for the applicant by resorting to Rule 83 of the CCS (Pension) Rules, 1972, stated that the Pension becomes payable from the date of Government servant ceases to be borne on the establishment and except in cases of Government servants to whom the provision of Rule 37 are applicable in his case. He is eligible for pension w.e.f. 1.11.975. It is stated that the respondents in their letter dated 22.9.998 have decided to disburse the pension w.e.f. 29.8.1984 but their decision to sanction w.e.f. 7.2.1986 is arbitrary. It is also stated that the applicant has been charged interest at the rate of 12% from the date of CPF from

University of Lucknow and benefits from Central Government. But placing reliance on OM dated 25.8.1994 and 13.10.1995, it is stated that the rate of interest will be the rate applicable on GPF accumulation and as per the rates, the rates were varying from 1980-81 to 1986-87, i.e., from 8.5% to 12% and the respondents have arbitrarily charged the rate of interest at a rate of 12% which was lesser in the previous years as such the refund of the excess interest charged should be legally made to the applicant. It is also stated that as the applicant has been received gratuity in 1999 he is also entitled for the interest on this to be paid by the respondents under the relevant rules. The learned counsel for the applicant further placing reliance on a decision of the Apex Court in Union of India Vs. Justice S.S.Sandhawalia (Retd) & Others, 1994(3) AISLJ 181 contended that once it is established that an amount legally due to a party has not been paid he is entitled for 12% interest per annum and further placing reliance on the decision of the Apex Court in State of Kerala and Others Vs. M.Padmanabhan Nair, (1985) 1 SCC 429, it is contended that pension is to be paid to the Government servant, failing which Government is liable to pay penal interest at the rate of 12% per annum. The learned counsel for the applicant has also filed an MA 1688/2001 for bringing on record some additional documents to show that the respondents have not provided their own calculation of interest charged from the applicant and in view of OM dated 3.6.1999 by the Department, the pension and arrears are to be paid w.e.f. 7.2.1986. The applicant is entitled for gratuity from the date of

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his voluntary retirement in 1975 and as it has been paid to him in 1999, he is entitled for the gratuity from 1975, he is equally entitled to the interest on recalculated gratuity.

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4. The learned counsel for the respondents, strongly rebutting the contentions of the applicant, has stated that as the applicant has applied for counting of past service on 15.5.1998 after an inordinate delay, within one year prescribed as per the OM his case was considered and relaxation was accorded to count his past service rendered in autonomous body service and Central Government service together. As per Rule, he is entitled to pay interest from the date of approval of the pensionary benefits till the date of refund, the same has been charged from him as per the extant instructions. The delay in according him payment of gratuity is concerned, the delay was on account of administrative lapses and as the applicant himself had not exercised option within the stipulated time, he is not eligible for interest as the order relating to reciprocal agreement with State Government rendered in state autonomous was issued on 7.2.1986 and accordingly pension was disbursed to the applicant w.e.f. 7.2.1986. As there has been inadvertently mistake in payment of arrears, the order passed by the respondents on 22.9.1998, the applicant cannot claim a right over a bonafide mistake of the Government. As per Rules, the applicant has been asked to pay the interest and as the option has been exercised very late, he is entitled to be accorded the same not from the date of voluntary retirement but from the date the instructions have

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been issued on 7.2.1986. Regarding counting of service of an autonomous body, the applicant since 1958 till 1998 has not made any application and as per 1994 instructions of Government of India the employees who had come from Central or Autonomous Body the facility was extended only w.e.f. 1986. The option is to be exercised within one year the applicant has taken 16 years to make the same, but for the relaxation given in the applicant's case was time barred. But as a welfare measure delay was condoned and as the decision was taken to accord him pensionary benefits vide OM dated 29.8.1984. As per the OMs dated 29.8.1984 and 7.2.1986 an employee is required to return the pensionary/terminal benefits, directly received by him, together with interest for the purpose of counting of his past service, which has been rightly ordered against the applicant and the interest calculated is in accordance with the Rules and Instructions. The interest has been calculated as per the rates applicable in GPF accumulation from time to time in stead of at a rate of 12% from the date of receipt of the CPF from the University of Lucknow. The Cheque regarding gratuity was paid to the applicant in 1999. The delay is neither arbitrary nor unjustified. The applicant having become entitled to gratuity from the date of issue of the sanction, i.e., 15.5.1998 he is not entitled to interest prior to that date.

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5. I have carefully considered the rival contentions of both the parties and also perused the material on record. The claim of the applicant for accord of pensionary benefits w.e.f. 1975 cannot be

countenanced and is not legally sustainable. The applicant having retired voluntarily on 1.11.1975, had made this request after belated period and having regard to his request 15.5.1998 which is beyond the limitation as under the OM of 1984 the same is to be made within one year the respondents having acceded to his request by relaxing the rules and to count his service for the purpose of pension is not entitled for the accord of pensionary benefits w.e.f 1975. The ratio cited by the applicant to contend that if it is legally due the applicant is entitled for the interest would have no application in the facts and circumstances of the present case where the applicant has himself found not to have exercised the option within the stipulated period as envisaged under the rules. As regards the contention of the applicant regarding accord of pensionary benefits as an alternative prayer w.e.f. 1984, as decided by the respondents, in their communication dated 22.9.1998 is concerned noting that a decision has been taken to give him arrears of pension w.e.f 29.8.1984 but later on according the same from 1996 cannot be treated to be illegal and the principle of estopple would have no application in the facts and circumstances of the case. In fact, the order regarding the reciprocal agreement with State Government for counting of past service rendered with State Autonomous was issued on 7.2.1986 and as such the applicant has been rightly accorded the pensionary benefits w.e.f. 7.2.1986. As the payment of arrears as per the communication of the respondents in their OM dated 22.9.1998 was inadvertently done the respondents having rectified the same rightly paid the arrears w.e.f. 7.2.1986 to

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the applicant there cannot be an estopple against the principles of law or rules. The claim of the applicant for accord of pensionary benefits w.e.f. 1984 is rejected.

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6. The claim of the applicant for refund of the excess amount of interest charged from him in pursuance of the notification OM dated 22.9.1998 after the decision has been taken to accord him pensionary benefits by counting his past service is concerned, I find force in the contentions of the applicant. As per the Government of India's instructions dated 29.8.1984 the rate of interest is to be charged on refund of the amount in pursuance of decision to accord pensionary benefits would be on the basis of rates of interest applicable on GPF accumulation. As per the GPF accumulation the rates of interest from 1980 to 1987 vary, i.e., 8.5%, 9%, 9.5%, 10% and 10.5% since 1986., Whereas from the calculation in the letter issued on 22.9.1998 it appears that the applicant has been subjected to refund of Rs.2,82,241/- charging flat interest at the rate of 12% per annum from the receipt of the benefits till the date of refund. The contention of the respondents that the same has been calculated not at flat rate of 12% but as rates applicable on GPF accumulation cannot be countenanced for want of calculation produced before this Court. In this view of the matter, the respondents are required to review the calculation of interest in accordance with the Government of India's decision under Rule 11 pertaining to the interest and after yearwise calculation of the interest at

prevalent rates, the applicant shall be communicated the calculation and in case any excess amount is found the same may be refunded to the applicant.

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7. As regards the contention of the learned counsel for the applicant that after recalculating, the gratuity has been paid to the applicant only in 1999 as the applicant has been subjected to interest the respondents have also under the Rules under obligation to pay the interest at the rate of 12% on delayed payment of gratuity. This contention of the applicant has been rebutted and controverted by the respondents on the ground that the gratuity was paid for the period of his service including service rendered in Lucknow University after being sanctioned from 15.8.1999 as such he is to be entitled for the same w.e.f. 15.8.1999 and his claim for interest thereof prior to this date is not legally sustainable.

8. In my considered view the applicant is not entitled for any interest of the gratuity as the interest charged by the respondents in view of their relaxation of the rules and accord of pension to the applicant by counting the past service, was taken in accordance with the OM dated 1984. As per Rule 68, the interest on delayed payment of gratuity if exceeds six months from the date of retirement the incumbent is entitled for an interest. In the instant case, the gratuity is recalculated having taken a decision in 1998, there is absolutely no unreasonable delay in according gratuity as after taking the decision the respondents have sanctioned the gratuity to the applicant w.e.f. 15.8.1999 and from this date he has

become entitled to receive the gratuity. As the applicant himself was to be blamed for submission of late option, he cannot claim interest on the same. The claim of the applicant for interest on gratuity is hereby rejected. 28

9. Having regard to the discussion made above, and the reasons recorded, the OA is partly allowed. I do not find the claim of the applicant for accord of pension w.e.f. 1975 or 1984 as justifiable as well as he is also not entitled for any interest on the gratuity. The respondents are directed to recalculate the interest being paid by the applicant in pursuance of their letter dated 22.9.1996. The respondents while calculating the interest on refund of CPF amount and terminal benefits from Central Government by the applicant, should keep in mind the rates of interest as applicable to GPF from 1980 to 1997 and would recalculate the same accordingly and in the event any amount is found excess the applicant shall be refunded the same within three months from the date of receipt of a copy of this order.

10. The OA is disposed of with the above directions. No costs.

S. Raju

(SHANKER RAJU)
MEMBER(J)

/RAO/