

Central Administrative Tribunal
Principal Bench

OA 255/2000

New Delhi this the 9th day of November, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Om Prakash Gupta,
C-7, Jyoti Nagar (East),
Loni Road, Shahdara,
Delhi-110093.

... Applicant.

(By Advocate Shri R.K. Sharma)

Versus

Union of India,
The Secretary,
Ministry of Communications,
Department of Telecommunications,
Sanchar Bhawan,
New Delhi-110001.

... Respondents.

(By Advocate Ms. Geetanjali Goel)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The main claim of the applicant in the present O.A. is for payment of interest @ 18% per annum on the gratuity amount paid to him from 14.3.1996, that is the date when the respondents had imposed on him a penalty till the date of actual payment of gratuity on 12.8.1998.

2. The brief relevant facts of the case are that the applicant who is an officer of the Department of Telecommunications, was on deputation to MTNL from 1.4.1986 till his date of retirement from 31.5.1995. Admittedly, at the time of his retirement, ~~the~~ disciplinary proceedings were pending which have been continued and concluded by the President by order dated 14.3.1996. By this order, the

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President has come to the conclusion that the applicant was guilty of grave misconduct during the period of his service for which a penalty of withholding of 5% of the pension otherwise admissible to the applicant for 2 years was imposed. A copy of this order was endorsed to the concerned authorities of the respondents by their order dated 9.4.1996 in order to enable them to take further necessary action in the matter, in accordance with the Rules.

3. The applicant was paid his gratuity amount on 12.8.1998. Shri R.K. Sharma, learned counsel has submitted that there has been no doubt delayed on the part of the respondents in payment of the gratuity due to the applicant from 14.3.1996 to 12.8.1998. Hence, this O.A. for a direction to the respondents to pay 18% interest on the gratuity amount for the period of delay of 2 years and 5 months. He has relied on a number of judgements of the Hon'ble Supreme Court and the Tribunal, namely, State of Kerala & Ors. Vs. M. Padmanabhan Nair (1985(1) SCC 429), R. Kapur Vs. Director of Inspection (Painting and Publication) Income Tax & Anr. (JT 1994 (6) SC 354), H.C. Saxena Vs. Union of India & Ors. (SLJ 1992 (CAT-Allahabad Bench) 222), B.L. Aggarwal Vs. Union of India & Ors. (SLJ 1994(1) (CAT-Bombay Bench) 428).

4. Learned counsel for the applicant has also relied on the Government of India's Decision No. (3)(i)(c) under Rule 68 of the CCS (Pension) Rules, 1972. The relevant portion of this paragraph reads as under:

"(3) (i) (a) & (b) x x x x x x x x x

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(c) In case where the Government servant is not fully exonerated ^{on} the conclusion of disciplinary/judicial proceedings and where the competent authority decides to allow payment of gratuity, in such cases, the payment of gratuity will be deemed to have fallen due on the date of issue of orders by the competent authority for payment of gratuity vide O.M. No. 7(1) PU/79, dated 11-7-1979 (Para.2 of Decision (1) above). If the payment of gratuity is delayed in such cases, interest will be payable for the period of delay beyond three months from the date of issue of the above-mentioned orders by the competent authority".

5. I have perused the reply filed by the respondents and heard Ms. Geetanjali Goel, learned counsel. Respondents have taken a preliminary objection that the application is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. Learned counsel has submitted that according to the applicant himself, he had submitted a representation with respect to the claims raised in this O.A., firstly on 19.8.1998 followed by another representation dated 4.11.1998. Thereafter, after waiting for about one and a half years the applicant has filed the O.A. on 4.2.2000. Learned counsel has submitted that repeated representations will not have the effect of extending the cause of action. She has submitted that the application is barred by limitation.

6. On merits, learned counsel has submitted that at the time when the applicant retired from service on 31.5.1995, a disciplinary proceeding for major penalty was pending against him. A final decision in the matter was taken by the President vide his order dated 14.3.1996. Thereafter, she has submitted that there has been no wilful or deliberate delay on the part of the respondents in making payment of the due gratuity amount to the applicant on which he has claimed interest for ~~an~~ inordinate delay. Learned

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counsel has submitted that after the applicant was clear from the Vigilance case, which was pending at the time of his retirement, and the order was passed on 14.3.1996, they had to obtain necessary Vigilance clearance in accordance with the Rules from the concerned Department. Respondents have stated that this clearance was received from the Vigilance Cell on 9.12.1997 and thereafter from the Area General Manager on 9.6.1998 that no Vigilance case was pending against the applicant. In pursuance to the same, necessary papers were completed for payment of commutation of pension and gratuity on 12.8.1998. Thereafter, the cheque for an amount of Rs.2,01,473/- was issued to the applicant on 13.8.1998. She has, therefore, submitted that as there is no deliberate delay on the part of the respondents for payment of the gratuity amount to the applicant, the claim of the applicant for interest may be rejected.

7. In the rejoinder filed by the applicant, he has submitted that the O.A. has been filed within 18 months from the date of first representation dated 19.8.1998 and, therefore, there is no delay. Learned counsel for the applicant has reiterated his arguments that since payment of the gratuity has been made after 2 years and 5 months, this itself shows that there has been an inordinate delay, for which the applicant is entitled to interest @ 18% per annum from 14.3.1996.

8. I have carefully considered the pleadings and submissions made by the learned counsel for the parties.

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9. The contention of the learned counsel for the respondents that the case is barred by limitation is not tenable as the applicant has filed the O.A within the period of 18 months from the date of his first representation. Apart from that, under the relevant provisions of the CCS (Pension) Rules, 1972, interest is also payable by the respondents where there has been delay in payment of gratuity amount due to the retiree. In this view of the matter, plea of limitation is rejected.

10. From the facts mentioned above, it is seen that the President has imposed a penalty on the applicant vide his order dated 14.3.1996. In this order, it is stated that the President has come to the conclusion that the applicant was guilty of grave misconduct for which he had imposed a penalty of withholding of 5% of the pension otherwise admissible to him for ^{ap}the period of two years. Taking into account the nature of the charges, namely that the applicant was proceeded against for major penalty under Rule 14 of the CCS (CCA) Rules, 1965, I find force in the submissions made by the respondents that even after the order dated 14.3.1996 was passed imposing a penalty on him in one Vigilance case, the respondents had also to obtain the Vigilance clearance in accordance with the Rules. This, they have received on 9.12.1997, that is, nearly after 1 year and 9 months. Further, it is seen that it took another six months for the Area General Manager to give his clearance that no further Vigilance case was pending against the applicant. Considering the lapse of time for the concerned authorities to give necessary Vigilance clearance, I also find force in the contention of the learned counsel for the applicant that this has been done ^{is}with inordinate delay. ~~in the facts and~~

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11. In the facts and circumstances of the case, the respondents ought to have taken the necessary Vigilance clearance from the concerned authorities at least within one year of their intimation of the President's order dated 14.3.1996. In the present case, the applicant had already faced a departmental inquiry for major penalty and, therefore, it cannot be held that some time taken by the respondents to get the necessary vigilance clearance from the concerned officers should not be allowed to them. Such a situation did not arise in the case of Padmanabhan Nair (supra) relied upon by the learned counsel for the applicant. I have also considered the other judgements relied upon by him but taking into account the present facts and circumstances of the present case, the claim for interest from the date of the penalty order dated 14.3.1996 cannot be agreed to. Therefore, taking into account the totality of the facts and circumstances, the respondents should have made arrangements to pay the gratuity amount due to the applicant at least by 1.5.1997, whereas admittedly the amount was paid to the applicant only on 13.8.1998, that is after a further delay of 1 year and 3 months.

12. Having regard to the conclusion of the President in the order dated 14.3.1996, and the aforesaid provisions, I am unable to agree with the contention of Shri R.K. Sharma, learned counsel for the applicant that the applicant's case falls within the aforesaid provisions of Government of India's Decision No. 3 (i) (c) under Rule 68 of the CCS (Pension) Rules or that it applies to a case where a Government servant is not fully exonerated on the conclusion of the disciplinary proceedings. In the present case, the competent authority has found the applicant guilty

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of the charges levelled against him and imposed on him a penalty of withholding of 5% of his pension otherwise admissible to him for a period of two years. Therefore, the above provision relied upon by the applicant will not assist him. I have also considered the judgements relied upon by the applicant regarding his claim for damages on delayed payment of gratuity. In the present case, subject to what has been stated in paragraphs 10 and 11 above, the claim of the applicant for interest on the gratuity amount due from 1.5.1997 to the date of actual payment is allowed as it appears to meet the ends of justice and is in accordance with the Rules.

13. In the result, for the reasons given above, the application is partly allowed with the following directions:

Respondents to make payment of interest in accordance with the Pension Rules for the delayed payment of gratuity to the applicant from 1.5.1997 till actual payment on 12.8.1998. Necessary action in this regard shall be taken within three months from the date of receipt of a copy of this order. No order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'