

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.2653/2000

Friday, this the 11th day of October, 2002

Hon'ble Shri Shanker Raju, Member (J)

RA Bhatnagar
(Retired SDE)
DG-1063
Sarojini Nagar,
New Delhi-22

...Applicant

(By Advocate: Shri S.N.Anand)

VERSUS

1. The Secretary
Ministry of Communications
(Department of Telecom.)
Sanchar Bhawan
20, Ashoka Road
New Delhi-1
2. Member Services
Department of Telecom.
Sanchar Bhawan
20, Ashoka Road
New Delhi-1
3. Assistant Director General (Vig.II)
Department of Telecom.
West Block-1, Wing 2,
R.K.Puram, Sector-1
New Delhi-66
4. The Chief General Manager (Telecom.)
UP (West) Telecom. Circle
Dehra Dun - 248 001

..Respondents

(By Advocate: Shri M.M.Sudan)

O R D E R (ORAL)

By Shri Shanker Raju, Member(J):

Through this application, applicant has sought release of leave encashment along with interest of 24 per cent.

2. Applicant while in service, was proceeded against in a major penalty proceedings which ended in imposition of punishment to reduction of pay by four stages by an order dated 28.6.2000. Applicant superannuated on 31.7.2000 but the leave encashment

as due, has not been paid to him and was paid belatedly on 17.4.2002. Applicant seeks interest on the same.

3. Applicant's counsel, Shri S.N.Anand, placing reliance on a decision of the Apex court in Vijay L. Mehrotra V. State of U.P., ATJ 2001(1) SC 215 contends that leave encashment is a part of the retiral benefits and on account of unexplained and inordinate delay, an interest of 18% was ordered as such the applicant whose proceedings have been finalised on 28.6.2000 much before his retirement, the leave encashment was paid after about two years, without any explanation and reasons, as such he is entitled to interest on the said amount.

4. It is stated that in the order of penalty no loss has been caused to the Government for which the leave encashment could have been withheld as such there was no justification to deny the same, and as per Rule 68 of the Pension Rules, 1972 causing delay in releasing the retiral benefits, responsibility should be fixed on the erring officials.

5. On the other hand, respondents' counsel, Shri M.M.Sudan states that there is no provision, under the CCS (Pension) Rules for claiming interest on leave encashment and as the punishment was imposed upon the applicant on 28.6.2000, and suspension period was not treated as duty, and the subsistence allowances have already been paid to the applicant, payment of leave encashment was made on 17.4.2002 and subsequently the decision to treat the suspension

period as duty merely for a specific purpose, i.e., solely for pensionary benefits, there was no delay in payment of leave encashment to applicant and the same can be withheld as per Rule 39 of the CCS (Leave) Rules, 1972.

6. I have carefully considered the rival contentions of the parties and perused the material on record. In my considered view, leave encashment can be withheld only if there is possibility of some money recoverable from the Government servant on conclusion of the disciplinary proceedings. As the penalty was imposed upon the applicant before his superannuation on 28.6.2000, and there was nothing in the order to indicate that any recovery is to be made on account of loss incurred to the Government, and moreover in case of minor penalty the period of suspension should have been treated as spent on duty, and the respondents themselves on 26.9.2001 treated the period of suspension as duty for pensionary benefits, the delay taken to pay his leave encashment was without any explanation or reasons, recorded by the respondents, cannot be countenanced. However, there is no provision under Section 68 of the Pension Rules to accord the applicant interest on leave encashment but having regard to the Apex Court in Vijay L. Mehrotra's case supra as leave encashment has been treated as part of the retiral benefits in case of inordinate delay, which is more than one and half year in the present case for payment of leave encashment, the applicant is entitled for interest on the aforesaid amount.

7. In the result, the OA is allowed. Respondents are directed to pay to the applicant simple interest, at the rate of 9 per cent, on his leave encashment amount w.e.f. 31.10.2000, i.e., after three months from the date of retirement till 17.4.2002, i.e., to the date of actual payment of leave encashment, without deduction of any Income Tax. No costs.

S. Raju
(Shanker Raju)
Member (J)

/rao/