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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.638/2000

New Delhi, this the 15th day of the May, 2001

HON'BLE MR. S.A.T.RIZVI, MEMBER (A)

Shri Gyan Prakash Sharma
Physical Education Teacher (Retd.)
R/o 1/7233, East Gorakh Park,
Shahdara, Delhi-110032.

... Applicant

(By Advocate: Shri K.P.Dohare)

V E R S U S

Govt. of NCT of Delhi, Through:

1. The Chief Secretary
Govt. of NCT of Delhi,
5, Shyam Nath Marg,
Delhi-54.
2. The Director of Education
Govt. of NCT of Delhi,
Old Secretariate,
Delhi - 54
3. Principal Secretary for Education,
Govt of NCT of Delhi,
5, Shyam Nath Marg,
Delhi-54.
4. The Commissioner,
Delhi Municipal Corporation
Town Hall, Delhi-110006.

... Respondents

(By Advocate: Shri George Paracken for R-1 to 3
Ms. Archana Gupta for R-4)

O R D E R (ORAL)

By S.A.T. RIZVI, MEMBER (A):

Aggrieved by non-payment/delayed payment of
retiral benefits, the applicant has filed the
present OA seeking, inter alia, following reliefs:-

- a) To direct the respondents to grant all
annual increments to the applicant from
1.7.1971 as admissible in the Pay Scale
of Rs.220-440, revised to Rs.425-560 on
the basis of 3rd Pay Commission's
recommendations from 1973 onwards and
also grant him Selection Grade of
Rs.440-750 as per recommendations of 4th
Pay Commission with effect from
01.01.1986 till the date of his
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retirement from service after attaining the age of superannuation on 30.6.1989,

- b) To direct the respondents to calculate his arrears of pay & allowances after giving him annual increments and pay him arrears along with 24% interest p.a,
- c) To direct the respondents to calculate his pension and other pensionary benefits based on his pay in the scale of Rs.1440-2600 and pay the same along with an interest of 24% p.a. from 1.7.1989 till the date of actual payment of the revised pension and pensionary benefits, and
- d) To direct the respondents to pay the applicant interest at the rate of 24% p.a. on his Provisional Pension and other pensionary benefits, Gratuity, Commutation of Pension, Leave Encashment, Group Insurance etc. from 1.7.1989 till the actual date of payments.

The respondents accept the fact of delay, but do not accept the responsibility for the same.

2. I have heard the learned counsel on either side, in detail, and have perused the material placed on record.

3. The facts of the case briefly stated are that the applicant joined as Physical Education Teacher (P.E.T) on 1.9.1960 in the M.C.D. He continued to work as P.E.T. under the said Corporation upto 30.6.1970. Prior to joining the M.C.D., the applicant had worked as a Teacher in a Govt. recognised School from 7.7.1955 to 30.6.1956 and later in another Middle School. The Middle Schools run by the M.C.D. were taken over by the Delhi Administration w.e.f. 1.7.1970. Accordingly, the services of the applicant also stood transferred to Delhi Administration from the same date. On

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transfer to the Delhi Administration, the applicant's pay was fixed at Rs.220/- in the pay scale of Rs.220-400. His annual increment fell due on 1.7.1971, but the same was not granted on the ground that his Service Book had not been received by the Department of Education of the Govt. of NCT of Delhi. Non-receipt of the Service Book remained a problem for a number of years despite the representations and applications filed by the applicant time and again. Consequent upon the recommendations of the 3rd Pay Commission coming into force, the applicant was placed in the pay scale of Rs.425-560, but in this scale also his pay was fixed at the initial stage of Rs.425/- again due to non-receipt of the Service Book. The applicant's contention is that his pay should have been fixed at Rs.485/- in the aforesaid grade of Rs.425-560. In the absence of Service Book his pay in the said scale also remained to be fixed in a proper manner. The aforesaid pay scale of Rs.425-560 was revised by the 4th CPC into Rs.1400-2300 w.e.f. 1.1.1986. A Selection Grade was also prescribed by the 4th CPC. In the aforesaid revised scale of Rs.1400-2300, the applicant's pay was fixed at Rs.1440/- and this was also wrongly done. A colleague of the applicant, who was similarly placed, had his salary fixed at Rs.2150/- in the aforesaid Selection Grade with pre-revised grade of Rs.440-750/-. The Selection Grade was also denied to the applicant solely on account of non-receipt of the Service Book. He made representations for the grant of Selection grade, but in vain.

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4. The applicant has filed a series of representations before the concerned authorities for the supply/receipt of Service Book starting from 1.7.1979 and right upto 1.11.1989. He had represented in the matter not only before the Delhi Administration, but also before the M.C.D., the previous employer of the applicant. During the aforesaid period, the applicant was asked to supply copies of documents relating to (1) proof of age, (2) first appointment letter (3) medical fitness certificate (4) police verification report and (5) educational qualification certificate. He supplied attested copies of the documents concerning proof of age (High School Certificate) and the appointment letter issued by the M.C.D. Certificates concerning educational qualifications were also supplied and all this was done in 1989 itself. Following his retirement on 30.6.1989 he has waited for nine long years for receiving the amounts due to him by way of retiral benefits. This is despite the fact that he had filled up all the pension papers well before his retirement on 30.6.1989 on the basis of his monthly pay of Rs.1440/-. His representations for expeditious payment of retiral benefits did not yield any result. He even approached the Lok Adalat for Pensioners in October, 1996 and thereafter again in May, 1997. This step also did not help. According to the applicant, the provisions made in the CCS Pension Rules, 1972, CCS Commutation Rules,

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1981, CCS Leave Rules, 1972 and Group Insurance Rules are clearly in favour of most expeditious payment of retiral benefits and yet the respondents have failed him in this regard. On his own, the applicant has taken all the possible steps and in a timely manner so as to ensure timely payment of retiral benefits. 16

5. The work and conduct of the applicant remained satisfactory throughout his career. No adverse remarks were ever communicated to him and no disciplinary enquiry was ever initiated against him during his service and no such enquiry was initiated against him after his retirement. Thus, according to the rules, there is no justification at all for delaying the payment of retiral benefits.

6. At long last, payment of Gratuity and Commutation Pension being Rs. 52,023/- was made to him on 20.8.1998 followed by the payment of Rs.1,80,744/- by way of arrears of provisional pension on 29.1.1999. The amount of the GPF was, of course, paid to him within a reasonable time after he retired, the exact date whereof he did not remember. To date, however, the Leave Encashment amount and the Group Insurance money have not been paid to him. He has, therefore, prayed for the payment of the Leave Encashment and Group Insurance money together with interest thereon from the date of his retirement upto the date of actual payment. He also prays for the payment of interest on

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Gratuity/Commutation Pension as well as on arrears of Provisional Pension from the date of retirement upto 20.8.1998 in the case of Gratuity/Commutation Pension and upto 29.1.1999 in the case of arrears of Provisional Pension. He also prays for grant of selection grade and arrears of payment arising therefrom, as well as from correct fixation of pay w.e.f. 1.10.1970 and grant of annual increment w.e.f. 1.7.1971 etc.

7. Insofar as the delay in the supply/receipt of Service Book, the single most important reason for delayed payment of retiral benefits, is concerned, it cannot be gainsaid that it was the responsibility of the M.C.D. and the Delhi Administration to send and receive the applicant's Service Book in the most expeditious manner. For this delay, both the M.C.D. as well as the Delhi Administration are to be held responsible and it will be totally unjust to hold the applicant responsible in any manner for the aforesaid delay. He has, in fact, made strenuous efforts to ensure that the Service Book is received from the M.C.D. before his retirement. Given serious and meaningful efforts on the part of the Delhi Administration, the Service Book could have been obtained or else reconstructed well in time. Similarly, given the most ordinary sense of responsibility on the part of the M.C.D., they should have sent the Service Book to the Delhi Administration much much before the applicant retired. Between the Delhi Administration

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4 and the M.C.D, they have taken something like 19 years to procure the Service Book and ultimately the matters could be processed only after certain details had been furnished by the applicant himself. Despite this, abnormal delays have again taken place in paying the retiral benefits to the applicant. Taking this as also the observations contained in earlier paragraphs 3 and 4 into consideration I am inclined to conclude that Delhi administration is to be blamed entirely together with the MCD for the delay that has taken place in the release of retiral benefits in favour of the applicant. 18

3 8. The learned counsel appearing for the respondents raised the plea of limitation generally and more especially insofar as the grant of annual increment w.e.f. 1.7.1971 is concerned. He has further proceeded to take shelter behind the non-receipt of the Service Book from the MCD, which, according to him, had to be reconstructed. In relation to the grant of Selection Grade after the 4th CPC recommendations came into force, the learned counsel submits that on having been found to be junior (placed at seniority No.25), Selection Grade could not be granted to the applicant.

9. The learned counsel appearing in support of the OA places reliance on a number of judgements rendered by the Hon'ble Supreme Court and this Tribunal in support of his contention that the applicant's claim cannot be treated as time barred

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and that interest is undoubtedly payable in cases of delay in the circumstances of the present case.

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10. For instance, according to him, in the case of State of Kerala Vs. M. Padmanabhan Nair reported as 1985 (1) SCC 429 the Hon'ble Supreme Court has held as under:

"Pension and Gratuity are no longer any bounty to be distributed by the Govt to its employees on their retirement but have become under the decision of this Court a valuable right and property in their hands and any culpable delay in the settlement, and disbursement of these must be visited with penalty of payment of interest at current market rate till the date of actual payment." (emphasis supplied)

If one has regard to the aforesaid observation of the Supreme Court, the present case is no doubt a case of culpable delay and therefore, grant of interest at the current market rate is one of the options to be gone into in this case.

11. Like-wise in the case of N. Balakrishnan Vs. M. Krishnamurthy decided by the Supreme Court on 3rd September, 1998 and reported in 1998 7 SCC 123, this is what the Court has held in relation to the issue of limitation:

"The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The lime-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of

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providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

Condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. In every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. The words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice."

12. On the question of limitation, further support is available to the applicant in the observations made by the Hon'ble Supreme Court in S.R. Bhanrale vs. UOI & Ors. decided on 19.7.1996 and reported in All India Service Law Journal I 1997 (1). In accordance with the aforesaid judgement, the plea of limitation cannot be taken in cases where

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the Govt. is itself at fault. In the present case as I have already seen, it is the M.C.D. and the Delhi Administration, who are to be squarely blame for the entire delay and, therefore, for this reason also the plea of limitation cannot be raised against the applicant.

13. Furthermore, in M.R. Gupta vs. UOI & Ors. decided by the Supreme Court on 21.8.1995 and reported in 1995 SCC (L&S) 1273, the issue of limitation was examined in a matter relating to the fixation of pay. The applicant had approached this Tribunal in that case after a delay of 11 years. The Supreme Court held that a grievance relating to fixation of pay is a continuing wrong giving rise to a recurring cause of action every month on the occasion of payment of salary and, therefore, an application for pay fixation cannot be held to be time barred even though the claim in respect of consequential arrears would be subject to the law of limitation. It is thus settled, according to the learned counsel for the applicant that the applicant had the right to claim fixation of his pay correctly w.e.f. 1.10.1970, 1.7.1971 and the other relevant dates already referred to, on which occasions the annual increment due to him were not paid. He is, in the circumstances, fully entitled to claim payment of arrears arising from fixation of his pay correctly on 1.10.1970, 1.7.1971 and thereafter on each occasion referred to. According to the applicant himself as stated by him in his rejoinder,

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his pay is required to be fixed correctly not only w.e.f. 1.7.1970 but also from 1.10.1970, 1.7.1971, 1.7.1973 and 5.9.1981 and annual increments are also required to be paid to him correctly with effect from the relevant dates. 22

14. Insofar as the rate of interest is concerned, the applicant has placed reliance on Vijay L. Mehrotra Vs. State of UP decided by the Supreme Court on 31.1.2000 in which payment of interest at the rate of 18% was found to be reasonable. Having regard to the argument advanced by the learned counsel for the respondents based on falling market rates, I am inclined to favour the grant of the same rate of interest in the present case although the learned counsel appearing for the applicant has asked for a higher rate of interest in the light of the decision rendered by this very Tribunal on 26.6.2000 in OA No. 1769/1999 (Sone Lal Vs. UOI & Ors.). In that OA this Tribunal ordered payment of interest at the rate of 24% per annum on delayed payment of retiral benefits.

15. Insofar as the applicant's upgradation to Selection Grade is concerned, in the rejoinder filed by him, the applicant has contested the factual position stated by the respondents. According to the applicant, there is no doubt that only 20% of the total strength of the P.E.T. were given Selection Grade, but he was not considered even though his juniors were granted Selection Grade. He has named S/Shri Daya Nand and Om Prakash Kaushik as the P.E.Ts who were junior to him and yet succeeded

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in getting the Selection Grade. Of them, the first named was, according to the applicant, placed at serial No.20 and the other at serial No.22 and both of them were junior to him. The applicant's own name in the relevant list figured at No.19 and, therefore, Selection Grade should have been given to him. This new factual position has not been controverted by the respondents. I hold the view, therefore, that the applicant was entitled to receive Selection Grade at the relevant time during the currency of the 4th CPC recommendations. ,

16. On a careful consideration of the ratio of the various judgements of the Supreme Court referred to in the preceding paragraph, I unhesitatingly conclude that the benefit of the discretion vested in this Tribunal under Section 21 (3) of the AT Act, 1985 must be extended to the applicant in this case, more especially since the respondents have themselves kept the limitation alive by paying certain amounts to the applicant as late as in August, 1998 and January, 1999.

17. In the background of the above detailed discussion, it is clearly established that the limitation will not operate against the applicant in any manner and that he is entitled to receive post retiral benefits in the shape of Leave Encashment and Group Insurance money along with interest from the date of his retirement upto the date of actual payment. Similarly, he is also entitled to receive

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interest from the respondents in respect of payments already made with respect to Gratuity, Commutation of Pension and arrears of Provisional Pension. He is further entitled to fixation of his pay correctly w.e.f. 1.7.1970 and thereafter on all the relevant dates mentioned above and in the OA filed by the applicant and to receive payment of arrears in respect thereof. The applicant will also be entitled to the grant of annual increments in the manner indicated above and in the OA and to receive payment of arrears in respect thereof together with the arrears arising from the grant of selection grade.

18. To sum up, the OA is allowed and the respondents are directed as follows:-

- 1) Pay interest to the applicant at the rate of 18% on Rs.52,013/- paid by way of Gratuity/Commutation of Pension on 20.8.1998. The interest will be calculated from the date of retirement upto 19.8.1998.
- 2) Pay interest to the applicant at the rate of 18% on Rs.1,80,744/- paid to him by way of arrears of Provisional Pension on 29.1.1999. Interest will be paid for the period from the date of retirement upto 28.1.1999.

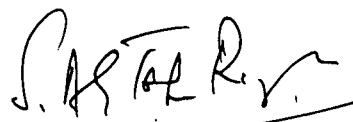
- 3) Pay Leave Encashment and Group Insurance money to the applicant together with interest at the same rate of 18% per annum. In respect of these payments also the amount of interest will be calculated from the date of retirement upto the dates of actual payment of Leave Encashment and Group Insurance money.
- 4) Pay arrears of salary by re-fixing the applicant's pay w.e.f. 1.7.1970 and thereafter w.e.f. 1.10.1970, 1.7.1971, 1.7.1973 and 5.9.1981. The annual increments accruing to the applicant in the relevant pay scales will also be granted from the correct dates and arrears paid to the applicant together with interest at the rate of 18% p.a. w.e.f. from the due dates upto the date of actual payment.
- 5) Having regard to the applicant's claim for the grant of Selection Grade, the pay of the applicant will be fixed in the said grade again from the correct date and arrears paid to him accordingly together with interest at the rate of 18% p.a. from the date his junior was placed in that grade upto the date of actual payment.

6) The payments envisaged in numbers 4 and 5 above, arise as these do on account of fixation of pay, will be subject to the application of the law of limitation insofar as the payment of consequential arrears is concerned as has been held in M.R. Gupta's case (supra)

19. Before proceeding to make the aforesaid payments along with interest, the respondents will scrutinise their record so as to avoid duplicate payment. This note of caution is being added at the instance of the learned counsel for the applicant, who is not very sure about the receipt of Leave Encashment money by the applicant.

20. The respondents are further directed to make all the payments found due as above within a maximum period of four months from the date of receipt of a copy of this order.

21. The present OA is allowed and is disposed of in the aforestated terms. No costs.


(S.A.T. RIZVI)
MEMBER (A)

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