

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 2481/89
T.A. No.

199

DATE OF DECISION 25.1.1991.

Shri S.K. Kaul	Petitioner Applicant
Dr. D.C. Vohra	Advocate for the Petitioner(s) XXXXXXXXXX
Versus Union of India & Another	Respondent
Smt. Raj Kumari Chopra	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? */*
4. Whether it needs to be circulated to other Benches of the Tribunal? */No*

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

The applicant, who is presently over 65 years of age, retired from the post of Private Secretary in the Ministry of External Affairs on 31.3.1988 on attaining the age of 58 years. His grievance relates to the non-settlement of his T.A. claims as per the rules, non-payment of interest on delayed payment of 70 per cent gratuity and non-payment of balance of 30% gratuity together with interest.

Q

2. The applicant, who has served the Government both in its Missions abroad and at New Delhi for about 37 years, contends that the respondents are to be blamed, while the respondents contend that he is to be blamed for the delay involved.

3. The admitted factual position is as follows.
On 28.7.1982, ^{at} the Ministry of External Affairs wrote to ² the Indian Embassy at Moscow with a copy to the Controller of Accounts, Ministry of External Affairs, and ~~xxxxxx~~ ^{at} to the applicant, stating, inter alia, that the applicant has been transferred to the Headquarters, that the advance of T.A. granted to him will be adjusted in full in the T.A. Bill to be submitted by him on arrival at the Headquarters, that the unutilised balance of advance of T.A. should be refunded in one instalment by him in full from his next pay bill immediately after submission of the transfer T.A. bill, that failure to comply with these instructions will entail not only forfeiture of the claim, but also recovery of the entire T.A. advance from his pay or any other dues in an instalment and that if, due to unforeseen circumstances, the T.A. claim cannot be submitted within the prescribed period of six months, he should intimate the position stating the full facts and the details of the claim to the administration well in advance for consideration.

at

.....3....

4. The applicant had drawn T.A. advance to the tune of Rs.20,907.66 which was required to be adjusted on his arrival at Delhi from Moscow. He arrived at Delhi on 9.4.1983. As directed by the respondents in their letter dated 4.1.1985, he submitted in April, 1988 a consolidated statement of the expenditure incurred by him at the time of his transfer from the Indian Embassy at Moscow to India on retirement, wherein he claimed a total amount of Rs.24,262.24, under various heads. The respondents allowed it to the extent of Rs.22,104.52, thereby indicating that his net entitlement on account of travelling allowance works out to Rs.1197.00.

5. On 14.9.1987, the respondents paid to the applicant a sum of Rs.18,133.00 towards gratuity and withheld a sum of Rs.7772.00 on account of amounts recoverable from him. No interest was paid to him along with the principal amount on 14.9.1987.

6. On 21.7.1989, the respondents ^{are stated to have} ~~have~~ sent a cheque dated 14.6.1989 for Rs.6913 towards balance payment of gratuity, to the address of the Consul General of India, San Francisco, U.S.A. The learned Counsel of the applicant stated at the Bar that the applicant has not received the cheque so far and that he was not residing in U.S.A. at the relevant time. *a*

7. On 4.2.1987, the respondents wrote to the applicant that revised T.A. bill had been prepared and that as the claim was in minus side, he was asked to send a cheque for Rs.859.15 in favour of the respondents, along with the T.A. bill signed by him.

8. The applicant has stated in the ^{rejoinder} ~~exhibits~~ affidavit that he had already paid a sum of Rs.859.15, so as to get release of 30% of his gratuity along with interest thereon. He has not, however, indicated whether the payment was made in cash or cheque and has not produced any document in proof of such payment. Apparently, the respondents deducted a sum of Rs.859/- from the withheld amount of Rs.7772/- and sent the cheque for Rs.6913/- to him in U.S.A. through the Consul General of India, San Francisco by their letter dated 21.7.1989.

9. There had been exchange of correspondence between the parties from 11.12.1984 to 31.1.1985 regarding settlement of T.A. claim and payment of pension and gratuity. With reference to the letter of the respondents dated 4.1.1985, the applicant submitted on 31.1.1985 a consolidated statement of the expenditure incurred by him at the time of his transfer from Moscow to Delhi. The settlement of the T.A. claim was delayed until 21.7.1989,

an

.....5...

when the respondents sent their cheque for Rs.6913/- to the applicant after deducting a sum of Rs.859/- from the withheld amount of Rs.7772/- from his gratuity. The applicant has called in question this settlement of the T.A. claim, as it is not according to the relevant rules.

10. The case of the applicant is that he is fully entitled within the rules and regulations to be reimbursed for the actual expenses incurred by him on the transportation of his personal charges and also for demurrage charges which he has incurred in the circumstances beyond his control, that there is no legal justification for withholding applicant's gratuity to the extent of 30%, viz., Rs.7772.00 for the alleged liability of Rs.859.15 instead of settling his T.A. claim amounting to Rs.8000 to Rs.10,000 for his journey from Moscow to New Delhi in respect of the transportation of his luggage, that different criteria for different persons is followed and the respondents use discretionary power arbitrarily in settling T.A. claims of its personnel, and that the action of the respondents is violative of Articles 14 and 16 of the Constitution.

On

11. The case of the respondents is that the applicant did not settle his claim till April, 1988 for which he alone is responsible, that since he owed "some money" to the Government because of non-settlement of T.A. bills, which was undetermined at the time, 30% gratuity was withheld, that he submitted T.A. claim in April, 1988 and the same was finally settled in February, 1989, that his claim for Rs. 8,000-10,000/- was not permissible in accordance with the T.A. rules, and that the delay in release of gratuity is due to non-issue of 'No Demand' certificate in his favour which was due to non-settlement of T.A. claim.

12. We have carefully gone through the records of the case and have considered the rival contentions. In State of Kerala Vs. Padmanabhan Nair, 1985 SCC (L&S) 278, the Supreme Court has observed as follows:-

"1. Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment.

2. Usually the delay occurs by reason of non-production of the L.P.C. (last pay certificate) and the N.L.C. (no liability certificate) from the concerned Departments but both these documents pertain to matters, records whereof would be with the concerned Government Departments. Since the date of retirement of every Government servant is very much known in advance we fail to appreciate

1A

why the process of collecting the requisite information and issuance of these two documents should not be completed at least a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following month. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over-emphasised and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement."

13. In the instant case, the respondents have stated in their counter-affidavit that the applicant retired in March, 1983 "but proceeded to Washington immediately and returned only in March, 1984". This has not been specifically controverted in the rejoinder affidavit. There has been delay in the settlement of the T.A. claim submitted by the applicant for which neither the applicant nor the respondents appear to be solely responsible.

14. In our view, while the respondents would be within their rights to withhold a reasonable amount of gratuity pending the settlement of the T.A. claims preferred by the applicant, the non-payment of a substantial amount of gratuity for an unduly long period is not tenable in law. The gratuity rightfully belonged to the applicant and the respondents are liable to pay interest for its delayed payment. The entire amount of gratuity was available with the respondents till the same was released to the applicant.

15. The plea of the applicant that his T.A. claim was not settled in accordance with the rules, does not appear to be convincing. In our opinion, the same has been settled in accordance with the relevant rules.

16. In the conspectus of the facts and circumstances, the application is partly allowed and disposed of with the following orders and directions:-

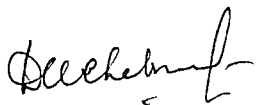
(i) The respondents shall pay to the applicant simple interest at the rate of 12 per cent per annum on Rs. 18,133.00 paid to him towards 70% of the gratuity on 14.9.1987. The interest becomes payable for the period from 1.6.1983 to 14.9.1987.


(ii) The respondents shall pay to the applicant the balance 30% of the gratuity amounting to Rs. 7,772/- minus Rs. 859/- payable by him to the Government towards adjustment of his T.A. bills after verifying from their records a sum of ✓ whether Rs. 859/- has, in fact, already been paid by him, as claimed by him and whether the cheque for Rs. 6,913/- sent to the Consul General of India, San Francisco on 21.7.1989, has been paid to the applicant and encashed by him. The respondents shall also pay him

Q

simple interest on the said amount at the rate of 12% per annum from 1.6.1983 till the date of payment.

- (iii) The amounts payable to the applicant under (i) and (ii) above, should be released to him by cheque within a period of two months from the date of receipt of this order. The same should be sent to the applicant by registered post to his address given in the application.
- (iv) The applicant will not be entitled to any relief on account of T.A. claims as prayed for in the application.
- (v) There will be no order as to costs.


(D.K. Chakravorty)
Administrative Member
25/1/89


(P.K. Kartha)
Vice-Chairman(Judl.)
25/1/89