

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Dated this the 17th of March, 1994.

OA.No.384/89

Shri C.J. ROY, Hon. Member 'J'

Shri P.T. THIRUVENGADAM, Hon. Member 'A'

Inder Kanwar Gupta
S/o Shri Mohan Lal,
Asst. Executive Engineer,
Delhi State Industrial Development Corpn.
Originally employee of Delhi Administration,
Flood Control, 122-A/20,
Gautam Nagar, New Delhi 110 049.applicant
By Advocate Shri P.K. Gupta proxy for Shri M.P. Gupta.
versus

1. Union of India
2. The Delhi Administration, through
Chief Secretary, 5, Alipur Road,
New Delhi.
3. The Chief Engineer 'Irrigation
and Flood Control', Delhi Admn.
Inter-State Bus Terminus,
Kashmere Gate, Delhi.
4. The Secretary, Irrigation,
Delhi Administration, Old
Secretariat, Delhi.
5. Pay & Accounts Officer,
G.P. Fund Cell,
Delhi Administration,
Old Secretariat, Delhi.respondents
By Advocate MS. Rashmi Chhabra proxy for Ms. Avnish Ahlawat

ORDER

'by Hon. Member 'J' Shri C.J. ROY'

The short point involved in this case is whether the applicant is entitled for payment of penal interest. As per the docket order dated 7.2.90 the entire amount has been paid including the interest and it is so recorded that the applicant will not press for payment of interest except penal interest. He has cited three judgements in which penal interest can be granted.

2. Heard the learned ^{proxy} counsel for both parties. The applicant is working in Flood Control department, Delhi Administration as Section Officer. Subsequently he was selected as Assistant Engineer in DSIDC. He opted to remain in DSIDC wef. 23.1.79. Thereafter he was absorbed in the present office lifting out his lien in his previous department. During the

period from 24.1.76 to 23.1.79, the applicant claims to have contributed GPF and deposited the same with the Pay and Accounts Officer. After the applicant submitted the application for final withdrawal of GPF amount from respondent Nos.2 and 3, he claims that it was forwarded to the respondent No.5 (Annexure-R-1). The respondent did not reply to him nor paid his benefits entitled for. He filed a suit in the Tis Hasari Court before the learned Judge which was later on transferred to this Tribunal vide T/296/86 and was finally disposed of by this Tribunal on 20.5.88 with a direction to the respondents to pay all the benefits to the applicant as are available to a permanent employee on final absorption. The applicant also claims to have ~~been~~ made six representations (Annexures A-2 to A-7) requesting to release his GPF amount. In pursuance of docket order dated 7.2.90, the applicant has ultimately been settled the GPF amount. The applicant now prays for relief for payment of penal interest against the delayed payment of GPF to him.

3. The respondents have filed their counter stating that various amount that are due to him were paid on various dates as mentioned in the counter ie. a sum of Rs.20,753 as full and final payment towards GPF has been made. Now the short point for consideration is whether is applicant is entitled for the penal interest and costs.

4. The applicant has referred to three judgements in support of his prayer for payment of penal interest and costs. A perusal of these judgements thus makes the position clear.

The decision of the Patna Bench of the Central Administrative Tribunal in the case of D.P.Sinha versus U.O.I. /OA.216/89 decided on 27.9.90' 1990/7 SLR 439,

clearly states at para-13 that for the purpose of awarding penal interest, there should be culpability proved in delayed payment. Culpability means the criminal intention which in other words called mensrea. Unless it is proved, the mental state of mensrea, the penal interest cannot be granted. Here in the instant case, we see that there is no criminal intention on the part of the respondents for the delay in payment of GPF amount. Therefore, this case is not applicable to the applicant herein.

The second judgement referred to by the applicant is the case held by the Punjab and Haryana High Court in CWP No.2637/89 decided on 13.11.91 (Ex-subedar Major Gurdeep Singh versus U.O.I. & Ors. '1991/7' SLR 229). A perusal of para 5 and 6 of the above judgement shows that the respondents having given an undertaking to the High Court, have not kept up the promise. Therefore their Lordships had held that the act is unjustified and contrary to the directions of the Hon.High Court and 15% interest was levied on the respondents. In the instant case, we fail to see how this judgement is applicable to the applicant, because there is no undertaking given by the respondents, at any time, during the course of the proceedings. Therefore, this judgement is not applicable to the applicant.

The third case cited before us is the Calcutta Bench judgement TA 1230/86 decided on 16.4.91 in the case of Brijlal Chakravorty versus Union of India and others '1991/7' SLR 796'. In this judgement, it has been held in para-9 that:

"In the facts and circumstances of the case, we are of the view that off setting a portion of the recovery stated to be commercial dues from the DCRG of the applicant by the impugned order dated 14.2.77 is only arbitrary and not sustainable in law."

5. In the instant case, without mentioning any word of penal interest, the Tribunal has allowed 17% interest. The applicant herein has failed to show anything to satisfy the court that the action of the respondents is arbitrary. We demonstrate, as to how this payment has been made. In our opinion, the applicant has failed to convince the court that any arbitrariness has taken place. Worst cum worst, the delay is only a procedural delay for which the respondents have paid the amount at various times ie. the original amount as well as prevalent interest. On 16.11.85, a sum of Rs.11,251/- has been paid, as is seen from the docket entry dated 19.5.89. On 28.8.89, a lengthy order was dictated by this Bench with a direction to hand over to the other side, a copy of the statement filed by the applicant and the exact amount payable to the applicant was directed to be made known to the court. On 7.2.90, we see from the docket order the following observations:-

"Additional information has been furnished by the respondents on 22.12.89 of the applicant....."

6. The learned counsel for the applicant states that the applicant has so far received Rs.20,753/- towards the balance on interest in the GPF but he does not press for minor differences, which according to him is a small amount. He prays for grant of penal interest on the delayed payment already made by the respondents.

7. The amount agreed to by the counsel for the applicant and mentioned in the counter by the respondents ie. Rs.20753/- is paid towards the balance and interest thereon in the GPF of the applicant. Since the minor differences were given up, there is nothing left in this OA except to decide whether the applicant is entitled for payment of any penal interest

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and costs. As stated (supra) the counsel for the applicant cited three judgements on perusal of which, we are not able to persuade ourselves in order to grant any penal interest in view of the fact that on 7.2.90, the balance amount due to the applicant has been paid to him along with the interest thereon. Therefore, we are not inclined to grant any penal interest on the interest as claimed by the applicant. In the result, the OA is dismissed with no order as to costs.

P. J. Thiruvengadam

'P.T. THIRUVENGADAM'
MEMBER 'A'

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C. J. Roy 17/9/94
MEMBER 'J'